

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE THE RESERVE PRIMARY FUND
SECURITIES & DERIVATIVE CLASS ACTION
LITIGATION

No. 08-cv-8060-PGG
(Class Action)

STIPULATION AND AGREEMENT OF SETTLEMENT DATED AUGUST 14, 2013

This stipulation and agreement of settlement (the “Stipulation” or the “Settlement”) is entered into between and among: the Third Avenue Institutional International Value Fund, L.P. (“Lead Plaintiff” or “Class Representative”), on behalf of itself and the Class; the Defendants; the Independent Trustees; and the Primary Fund, by and through their respective counsel.

This Stipulation will be submitted in the Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and is subject to the approval of the Court. This Stipulation embodies a global settlement among the Settling Parties as to all claims asserted in the Class Action in their entirety, including those in the Complaint and the Third Party Complaint, as well as Defendants’ claims for indemnification, expenses and management fees that Defendants have asserted against shareholder funds.

WHEREAS:

A. All terms with initial capitalization shall have the meanings ascribed to them in paragraph 1 below.

B. On and after September 17, 2008, the following twelve putative class action cases were filed in the United States District Court for the Southern District of New York: (1) *Pomeranz v. The Primary Fund*, Case No. 08 Civ. 8060 (PGG); (2) *Miller v. The Reserve*, Case No. 08 Civ. 8098 (PGG); (3) *Third Avenue Institutional International Value Fund, L.P. v. The Reserve Fund*, Case No. 08 Civ. 8103 (PGG); (4) *Lifschitz v. Reserve Management Company, Inc.*, Case No. 08 Civ. 8137 (PGG); (5) *Dyer v. The Reserve Fund*, Case No. 08 Civ. 8139 (PGG); (6) *Kurtzer v. The Reserve Fund*, Case No. 08 Civ. 8292 (PGG); (7) *Goodman v. Reserve Management Company, Inc.*, Case No. 08 Civ. 8593 (PGG); (8) *Shabel v. Bent*, Case No. 08 Civ. 8946 (PGG); (9) *Wolgin v. The Reserve Fund*, Case No. 08 Civ. 9525 (PGG); (10) *Pogolzelski v. The Reserve Fund*, Case No. 08 Civ. 9604 (PGG); (11) *Frenkel v. The Reserve*, Case No. 08 Civ. 10006 (PGG); (12) *Albert Fried &*

Company, LLC v. The Reserve Fund, Case No. 08 Civ. 10302 (PGG). On August 26, 2009, the Court ordered these cases consolidated, appointed Third Avenue Institutional International Value Fund, L.P. as Lead Plaintiff and Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel ("Lead Counsel").

C. On January 5, 2010, Lead Plaintiff filed the consolidated class action complaint (the "Complaint").

D. On June 25, 2010, Defendants filed their motion to dismiss. On August 13, 2010, Lead Plaintiff filed its opposition to the motion to dismiss, and on September 3, 2010, Defendants filed their reply in further support of their motion to dismiss.

E. On September 30, 2012, the Court granted in part and denied in part Defendants' motion to dismiss the Complaint, noting that the reasons for the Court's ruling would be explained in a forthcoming written opinion.

F. On January 22, 2013, Defendants filed their answer to the Complaint, and also filed the Third Party Complaint against certain of the Independent Trustees.

G. Following extensive settlement negotiation efforts, including multiple mediation sessions before the Mediator, certain of the Settling Parties executed a confidential Final Settlement Terms term sheet ("Term Sheet") on February 27, 2013 to settle amongst themselves pursuant to the terms and provisions of this Stipulation.

H. Based upon its investigation, Lead Counsel has concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff and the Class, and in their best interests, and has agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the substantial benefits that Lead Plaintiff and the Members of the Class will receive from resolution of the Action as against the Defendants,

(ii) the attendant risks of litigation, (iii) the prior recovery of approximately 99.04% by Members of the Class, and (iv) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

I. The Fund Board, after investigation and in the exercise of its reasonable business judgment, believes that the terms and conditions of this Stipulation are fair and reasonable and in the best interests of the Primary Fund and its shareholders.

NOW THEREFORE, without any admission or concession by any Settling Party as to the merit or lack of merit, or amount, of the claims in the Action, or as to the merit or lack of merit, or amount, on Defendants' claims for indemnification, expenses and management fees in the SEC Action, it is hereby

STIPULATED AND AGREED, by and among the Settling Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 and other conditions set forth herein, in consideration of the benefits flowing to the parties hereto, that the Action shall be fully, finally and forever compromised, settled, released, discharged and dismissed with prejudice, upon and subject to the following terms and conditions:

DEFINITIONS

1. As used in this Stipulation, the following terms shall have the meanings specified below.

(a) "Action" or "Class Action" means the consolidated class action styled *In re The Reserve Primary Fund Securities & Derivative Class Action Litigation*, Civil Action No. 08 Civ. 8060 (PGG) (S.D.N.Y.), including both the Complaint and the Third Party Complaint.

(b) “Bent” means Bruce R. Bent, Sr.

(c) “Bent II” means Bruce R. Bent II.

(d) “Bent III” means Arthur T. Bent III.

(e) “Cash Contribution” means the cash contribution(s) paid or caused to be paid by Defendants to the Class Settlement Amount as described below in paragraph 9a.

(f) “Claims Administrator” means Crederian or other claims administrator selected by Lead Counsel with approval of the Fund Board (which approval will not be unreasonably withheld) and the Court.

(g) “Class” means all Persons who (i) purchased or held shares of the Primary Fund during the period from September 28, 2006 through September 15, 2008 and held them as of 4:00 p.m. ET on September 15, 2008; or (ii) purchased shares of the Primary Fund during the period between 4:00 p.m. ET on September 15, 2008 and September 17, 2008. Excluded from the Class are: (a) Defendants; (b) members of the immediate families of Bent, Bent II, and Bent III; (c) the subsidiaries and affiliates of Defendants; (d) any person or entity who is a partner, executive officer, director, trustee or controlling person of the Reserve Defendants or the Primary Fund (including any of their subsidiaries or affiliates); (e) any entity in which any Defendant has a controlling interest; (f) Defendants’ liability insurance carriers, and any affiliates or subsidiaries thereof; and (g) the legal representatives, heirs, successors and assigns of any such excluded party.¹ Also excluded is any Person who validly excludes himself, herself or itself from the Class.

(h) “Class Member” or “Member of the Class” means any person or entity who is a member of the Class and who does not exclude himself, herself or itself by filing a valid request for exclusion in accordance with the requirements set forth in the Notice.

¹ Notwithstanding the foregoing, neither the Yield Plus Fund (YP) nor the Independent Trustees of the Primary Fund are excluded from the definition of the Class.

(i) “Class Period” means the period between September 28, 2006 and September 17, 2008, inclusive.

(j) “Class Representative” or “Lead Plaintiff” means Lead Plaintiff Third Avenue Institutional International Value Fund, L.P.

(k) “Class Settlement Amount” means, collectively, the Cash Contribution in paragraph 9a below, the Relinquishment Credit in paragraph 9b below, and the State Street Credit in paragraph 9c below.

(l) “Complaint” means the Consolidated Class Action Complaint, filed by Lead Plaintiff in the Action on January 5, 2010.

(m) “Court” means the United States District Court for the Southern District of New York.

(n) “Crederian” means Crederian Fund Services LLC.

(o) “Defendants” means Reserve Management Company, Inc., Resrv Partners, Inc., Reserve Management Corporation, Bruce Bent Sr., Bruce R. Bent II, and Arthur T. Bent III.

(p) “Defendants’ Counsel” means the law firms of Morgan, Lewis & Bockius LLP and Duane Morris LLP.

(q) “Effective Date” means the first day following the day on which the settlement contemplated by this Settlement shall become effective as set forth in paragraph 36 below.

(r) “Expense Fund” means the expense fund established in paragraph 5 of the Court’s November 25, 2009 Order (ECF No. 201 in the SEC Action), and subject to the Court’s subsequent orders relating to the Primary Fund.

(s) “Final.” when referring to an order or judgment, means the expiration of any time for appeal or review of the Order and Final Judgment, or, if any appeal is filed and not dismissed, after

the Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by certiorari or otherwise, and the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired; or, in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and none of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment is no longer subject to appeal or review by certiorari or otherwise, and the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired *provided, however*, that any disputes or appeals relating solely to amount, payment or allocation of attorneys’ fees and expenses or the Plan of Allocation shall have no effect on finality for purposes of determining the date on which the Order and Final Judgment becomes Final.

(t) “Final Approval Hearing” or “Settlement Hearing” means the hearing set by the Court under Rule 23(e) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(u) “Final Distribution Order” means an order entered by the Court authorizing and directing that the remaining assets of the Primary Fund, including the Net Settlement Fund and the Expense Fund, be distributed, as described in paragraph 27 below.

(v) “Fund Board” means the current Board of Trustees of the Primary Fund.

(w) “Future Defense Fund” means the fund established pursuant to paragraph 11a. below.

(x) “Independent Trustees” means, in their capacities as present or former independent trustees of the Primary Fund, Santa Albicocco, Ronald J. Artinian, William E. Viklund, Edwin Ehlert, Jr., William J. Montgoris, Frank J. Stalzer, Stephen P. Zieniewicz, and Joseph D. Donnelly.

(y) “Individual Defendants” means Bruce R. Bent, Sr., Bruce R. Bent II, and Arthur T. Bent III.

(z) “Lead Counsel” means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(aa) “Lead Plaintiff” means the Third Avenue Institutional International Value Fund, L.P.

(bb) “Litigation Expenses” means the reasonable costs and expenses incurred by Plaintiffs’ Counsel in connection with commencing and prosecuting the Action, for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund. Litigation Expenses may also include reimbursement of the expenses of Lead Plaintiff in accordance with 15 U.S.C. § 78u-4(a)(4).

(cc) “Massachusetts Action” means *In the Matter of Reserve Primary Fund*, Docket No. 2008-0079, Commonwealth of Massachusetts, Office of the Secretary of the Commonwealth, Securities Division.

(dd) “Mediator” means the Hon. Layn R. Phillips (Fmr.).

(ee) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes and Tax Expenses; (ii) any Notice and Administration Costs; and (iii) any attorneys’ fees, Litigation Expenses or other costs and expenses awarded by the Court from the Settlement Fund.

(ff) “Notice” means the Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing, and Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (substantially in the form attached hereto as Exhibit A-1), which is to be sent to Members of the Class as directed by the Court.

(gg) “Notice and Administration Costs” means the costs, fees and expenses that are incurred in connection with (i) providing notice to the Class; and (ii) administering the Settlement

Fund, including any government reporting requirements, tax reporting, or escheat issues.

(hh) “Order and Final Judgment” means the order(s) and final judgment(s) to be entered in this Action pursuant to paragraph 35 of this Stipulation substantially in the form attached hereto as Exhibit B.

(ii) “Person” and “Persons” means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(jj) “Plaintiffs’ Counsel” means Lead Counsel and all other counsel who, at the direction and under the supervision of Lead Counsel, represent Class Members in the Action.

(kk) “Plan of Allocation” means the plan for distributing the remaining assets of the Primary Fund, including the Net Settlement Fund, proposed by Lead Plaintiff, or such other distribution plan that the Court may order.

(ll) “Post Distribution Expense Amount” means the amount established pursuant to paragraph 11b. below.

(mm) “Preliminary Approval Order” means the order (substantially in the form attached hereto as Exhibit A) to be entered by the Court preliminarily approving the Settlement and directing that Notice be provided to the Class and that the Summary Notice be published.

(nn) “Primary Fund” or “Reserve Fund” means the Reserve Primary Fund, n/k/a the Primary Fund-in Liquidation, and the legal entity of which it is an investment series.

(oo) “Private Investor Suits” means *Henry Ford Health System, et al. v. The Reserve Fund, et al.*, No. 09-cv-05108 (PGG) (S.D.N.Y.); *Ameriprise Financial Services, Inc. v. Reserve Management Company, Inc., et al.*, No. 09-cv-1288 (PGG) (S.D.N.Y.); *BNP Paribas Commodities*

Futures, Inc. v. The Reserve Fund, et al., 1:09-cv-05996 (PGG) (S.D.N.Y.); and *BNP Paribas Securities Corp. v. The Reserve Fund, et al.*, 1:09-cv-05997 (PGG) (S.D.N.Y.).

(pp) “Reimbursement Payments” means the reimbursement to Defendants of certain amounts as described below in paragraph 9b.

(qq) “Released Claims” means any and all actions, causes of action, claims, damages, demands, duties, issues, judgments, liabilities, losses, matters, obligations, proceedings, and rights of every nature and description whatsoever, whether based on law or equity, on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic), including both known claims and Unknown Claims (as defined below), accrued claims and not accrued claims, foreseen claims and unforeseen claims, matured claims and not matured claims, suspected or unsuspected, fixed or contingent and whether or not concealed or hidden, that relate to, concern or in any way involve the Primary Fund, and that have been or could have been asserted through the Effective Date in the Action or in any forum of competent jurisdiction (including a state or federal court) by or on behalf of (a) the Lead Plaintiff or any other Member of the Class, (b) the Defendants, (c) the Primary Fund, or (d) the Independent Trustees. With respect to the releases being given by Defendants, Independent Trustees, and the Primary Fund, “Released Claims” also includes all claims related to any and all transactions up to the Effective Date between one or more Defendants, on one hand, and the Primary Fund (including its current officers, in their respective capacities as such), Crederian or the Independent Trustees, on the other hand.

(rr) “Released Parties” means: (a) the Defendants; (b) the Primary Fund; (c) the Independent Trustees; (d) the trustees, officers, employees, agents, attorneys, successors and assigns of each of the foregoing Released Parties, in their respective capacities as such; (e) Crederian, in its capacity as service provider of the Expense Fund; and (f) Eugene P. Grace, in his capacity as Chief

Administrative Officer of Crederian in its capacity as service provider of the Expense Fund, and as an officer of the Primary Fund.

(ss) "Relinquishment Credit" means the value of the relinquished claims of Defendants as part of the Class Settlement Amount as described below in paragraph 9b.

(tt) "Reserve Defendants" means Reserve Management Corporation, Resrv Partners, Inc., and Reserve Management Company, Inc.

(uu) "SEC Action" means *Securities and Exchange Commission v. Reserve Management Company, Inc., et al.*, 09 Civ. 4346 (PGG) (S.D.N.Y.).

(vv) "Settlement" means this Stipulation and Agreement of Settlement and the settlement contained herein.

(ww) "Settlement Fund" means the Class Settlement Amount plus any interest earned thereon.

(xx) "Settling Parties" means (i) Defendants; (ii) Lead Plaintiff on behalf of itself and the Class; (iii) the Independent Trustees; and (iv) the Primary Fund.

(yy) "Shareholder" means a shareholder of the Reserve Primary Fund still having an outstanding balance as of the applicable date(s) that the Claims Administrator determines the applicable distribution amounts.

(zz) "Stipulation" means this Stipulation and Agreement of Settlement.

(aaa) "Summary Notice" or "Publication Notice" means the summary notice (substantially in the form attached hereto as Exhibit A-2), which is to be published as set forth in the Preliminary Approval Order.

(bbb) "Tax Expenses" means any expenses and costs incurred in connection with the payment of Taxes (including, without limitation, expenses of tax attorneys and/or accountants and

other advisors and expenses relating to the filing or failure to file all necessary or advisable tax returns) related to the Settlement Fund.

(ccc) "Taxes" means any taxes due and payable with respect to the income earned by the Settlement Fund, including any interest or penalties thereon.

(ddd) "Third Party Complaint" means the Third Party Complaint filed by Defendants in the Class Action on or about January 22, 2013.

(eee) "Unknown Claims" means any and all Released Claims that the releasing party does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, which if known by him, her or it might have affected his, her or its settlement with and release of the Released Claims, or might have affected his, her or its decision not to object to this Settlement or not exclude himself, herself or itself from the Class. With respect to any and all Released Claims, the parties stipulate and agree that, upon the Effective Date, the Settling Parties shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Order and Final Judgment shall have expressly waived, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by Cal. Civ. Code § 1542, and any law of any state or territory of the United States, or principle of common law, or the law of any foreign jurisdiction, that 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 or Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject

matter of the Released Claims, but the Settling Parties shall expressly – and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have – fully, finally and forever settled and released any and all Released Claims, known or Unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and Class Members by law and operation of the Order and Final Judgment shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a material element of the Settlement.

CLASS CERTIFICATION

2. The Class shall have the meaning set forth above in paragraph 1(g) above. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate and agree to: (a) certification of the Class 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 Lead Plaintiff as Class Representative; and (c) appointment of Lead Counsel as Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

RELEASE OF CLAIMS

3. The Settling Parties understand and agree that the obligations incurred pursuant to this Stipulation shall be in full and final disposition of the claims in the Class Action, including in the Complaint and Third Party Complaint; and, upon the Effective Date, certain releases will be

effective as set forth below.

4. Upon the Effective Date, Lead Plaintiff and Members of the Class shall fully and finally release any and all of the Class Members' Released Claims as against the Released Parties.

5. Upon the Effective Date, except as set forth herein, Defendants shall fully and finally release any and all current claims and future claims against the Expense Fund or other assets of the Primary Fund, except that nothing herein shall limit Defendants' rights to participate in Shareholder distributions of the remaining assets of the Primary Fund other than distribution of the Cash Contribution, as Shareholders of the Primary Fund, in accordance with the Court's pro rata distribution plan in the Court's November 25, 2009 Order in the SEC Action, and all subsequent orders of the Court related to the pro rata distribution of the Primary Fund.

6. Upon the Effective Date, Defendants shall fully and finally release any and all Released Claims against Lead Plaintiff, Lead Counsel, any other Class Member, the Primary Fund (including its current officers, in their capacities as such), Crederian, and the Independent Trustees.

7. Upon the Effective Date, the Independent Trustees and the Primary Fund (including its current officers, in their capacities as such) shall fully and finally release any and all Released Claims against Lead Plaintiff, Lead Counsel, any other Class Member, and Defendants.

8. Upon the Effective Date, Defendants shall fully and finally release any and all claims that they have asserted or could potentially assert involving State Street Bank and Trust Company, its agents and affiliates and their respective officers, directors and employees, in their respective capacities as such, for which \$2.5 million is currently held in the Expense Fund, but that will instead be included as part of the Settlement Fund as described below in paragraph 9c.

THE SETTLEMENT CONSIDERATION

9. The Class Settlement Amount shall be funded as follows:

- a. Immediately upon the Effective Date, and simultaneous with the releases provided for herein and the payment of the Reimbursement Payments, Defendants shall pay or cause to be paid into the Primary Fund ten million dollars (\$10,000,000) in cash (the “Cash Contribution”; collectively, with the Relinquishment Credit and State Street Credit, the “Class Settlement Amount”) which shall be segregated within the Primary Fund;
- b. Immediately upon the Effective Date, and simultaneous with the releases provided for herein, Defendants shall relinquish \$42,413,368 (the “Relinquishment Credit”) of their \$72,363,368 in current claims against the Expense Fund set forth in their post-trial submissions to the Court in the SEC Action, including, inter alia, all of their claims against the Expense Fund for management fees, broker and Rule 12b-1 fees, Bent II salary expenses, and prejudgment interest, and shall also have their claim for actual, out-of-pocket defense costs reduced, such that Defendants shall only be reimbursed for their actual, out-of-pocket expenditures in the amount of twenty-nine million, nine-hundred and fifty thousand dollars (\$29,950,000) (the “Reimbursement Payments”). Pursuant to wiring instructions that Defendants shall cause to be provided, the Reimbursement Payments shall be made to Reserve Management Company, Inc., subject to Court approval, immediately after the Court grants final approval of the Settlement notwithstanding that the Effective Date has not occurred and notwithstanding any objections or appeals or collateral attack thereon, subject to Defendants’ obligation to (i) simultaneously pay or cause to be paid the Cash Contribution; and (ii) cause the Reimbursement Payments to be promptly returned in the event the Court’s approval of the Settlement is effectively reversed as a result of a final order on appeal or other proceedings (at which time the Cash Contribution would also be returned). The

Reimbursement Payments described in this subparagraph 9b. shall be deemed to be allocated as follows:

- (i) \$6,859,254 for Bent I, Bent II, and Bent III defense costs for the SEC's pre-suit investigation;
- (ii) \$10,363,580 for Bent I and Bent II defense costs for the SEC Action;
- (iii) \$11,001,679 for Defendants' unreimbursed expenses administering the Primary Fund from September 2008 through November 2010;
- (iv) \$869,914 for Defendants' unreimbursed expenses in complying with the Court's orders regarding assistance to Crederian and KPMG; and
- (v) \$855,573 for Defendants' unreimbursed independent trustee compensation.²

- c. Immediately upon the Effective Date, and simultaneous with the releases provided for herein, the \$2.5 million that is currently held in the Expense Fund related to any and all claims that Defendants have asserted or could potentially assert involving State Street Bank and Trust Company, its agents and affiliates and their respective officers, directors and employees, in their respective capacities as such, will be released and made available for distribution to Shareholders as part of the Settlement Fund (the "State Street Credit"). Defendants will take any additional steps necessary to ensure that the State Street Credit will be released and available for distribution to Shareholders pursuant to the Settlement.

10. Within ninety (90) days following the Effective Date, or as otherwise ordered by the

² Defendants represent that the amounts in subsections (i) and (ii) reflect an approximately 18% reduction of the base amount of defense costs, exclusive of prejudgment interest, and that the amount in subsection (iii) reflects a deduction of the \$1 million that the SEC attributes to Bent II salary expenses.

Court, the Cash Contribution paid by or on behalf of Defendants into the Primary Fund as set forth above in paragraph 9a., shall be distributed to Class Members, through the record holders, pursuant to the Plan of Allocation, or other distribution order as may be ordered by the Court, and the record holders may be required to distribute the settlement proceeds to Class Members to the extent economically feasible.

11. Subject to paragraphs 9 and 10 above and subparagraphs 11a. and 11b. below, within ninety (90) days following the Effective Date, or as otherwise ordered by the Court, the remaining balance of the assets in the Primary Fund, including the remaining amount of the Net Settlement Fund (less the amount of the Cash Contribution), shall be distributed to Shareholders in accordance with the Court's pro rata distribution plan in the Court's November 25, 2009 Order in the SEC Action, and all subsequent orders of the Court related to the pro rata distribution of the Primary Fund.

a. Four million dollars (\$4,000,000) shall be held back from the remaining assets of the Primary Fund for exclusive use to cover the future defense costs of any and all of the Defendants in the SEC Action, the Massachusetts Action, this Action, and/or any other private investor suits (including but not limited to the Private Investor Suits as defined above), for all defense costs incurred beginning on February 27, 2013. In the event that all parties in the SEC Action resolve the SEC Action prior to the Final Approval Hearing in this Action, the amount held back shall be decreased from four million dollars (\$4,000,000) to five hundred thousand dollars (\$500,000).

(i) In the event that, prior to final Court approval of this Settlement, all of the Private Investor Suits join in this Settlement, no other private investor suits are commenced, shareholders representing no more than

0.1% of the assets of the Primary Fund opt out of the Settlement (exclusive of the plaintiffs in the Private Investor Suits), and the SEC Action and the Massachusetts Action are resolved, then upon the Effective Date, any holdback in subparagraph 11a. not yet paid or invoiced for payment shall be made available for distribution to Shareholders pursuant to the distribution plan proposed by Lead Plaintiff.

- (ii) In the event that all the conditions in subparagraph 11a.(i) are not met prior to final Court approval of this Settlement, upon the Effective Date, the holdback pursuant to subparagraph 11a. shall be segregated within the remaining assets of the Primary Fund (the "Future Defense Fund"). Amounts shall be disbursed to Defendants from the Future Defense Fund per approval of the Mediator (or, if the Mediator is unable to continue serving in such role, such other person or entity jointly designated by the Settling Parties), who shall review and confirm Defendants' invoices for reasonableness, within thirty (30) days of submission. Any fees and expenses of the Mediator (or other designated person or entity) incurred as a result of this paragraph 11 shall be borne by the Future Defense Fund, and paid out of the Future Defense Fund upon approval of the Fund Board (or other designated person or entity in charge of the Primary Fund at the time in the event the Fund Board is no longer in existence). Any remaining holdback not paid upon thirty (30) days of a final, non-

appealable judgment in the last remaining suit against Defendants as set forth in this subparagraph shall be escheated per applicable law, or as otherwise ordered by the Court.

- b. In order to effectuate this paragraph 11, concurrent with the submission of this Stipulation to the Court, the Fund Board shall submit to the Court for approval, with copies to all Settling Parties, a proposed budget of remaining expenditures for the Primary Fund and the Fund Board for which they will be seeking a hold back from the remaining assets of the Primary Fund prior to further distribution to Shareholders. The other Settling Parties may submit papers to the Court objecting to, or opposing, the Fund Board's proposed budget, in which case the Court shall resolve the issues and determine the budget for Fund Board and Primary Fund expenses. The amount of the budget approved by the Court shall be held back from the final distribution of the remaining assets of the Primary Fund to Shareholders. Any remaining amounts for which a Shareholder distribution is not economically feasible shall be escheated as per applicable law.

USE OF SETTLEMENT FUND

12. The Settlement Fund shall be used to pay any: (i) Taxes and Tax Expenses; (ii) Notice and Administration Costs; and (iii) any attorneys' fees and Litigation Expenses awarded by the Court. The balance remaining in the Settlement Fund, *i.e.*, the Net Settlement Fund, shall be distributed to Class Members and other Shareholders as set forth herein or as otherwise ordered by the Court. All costs and expenses incurred by or on behalf of Lead Plaintiff and the other Members of the Class associated with the Settlement Fund, including but not limited to any attorneys' fees and expenses of Plaintiffs' Counsel, shall be paid from the Settlement Fund as awarded by the

Court. In no event shall Defendants bear any further or additional responsibility for any such costs or expenses beyond payment of the Class Settlement Amount.

13. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Primary Fund prior to the Effective Date. All funds held in the Primary Fund, including the Net Settlement Fund, the Future Defense Fund and the amounts referred to in paragraph 11b., above, shall continue to be subject to the supervision of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court.

14. All Taxes (including any interest or penalties) and Tax Expenses of the Settlement Fund shall be considered to be a cost of administration of the Settlement and shall be paid out of the Settlement Fund. The Settling Parties hereto agree to cooperate with each other, Crederian, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this Stipulation. The Court's Order entered November 18, 2010 (ECF No. 348), and related orders by the Court, in the SEC Action shall continue to apply with respect to the responsibility for submitting tax documents and tax returns for the Primary Fund.

15. This is not a claims-made settlement. Except as otherwise provided herein, as of the Effective Date, neither Defendants nor any other Person who paid any portion of the Settlement Fund on any of their behalves, shall have any right to the return of the Settlement Fund or any portion thereof. If any portion of the Net Settlement Fund remains following distribution to Shareholders as authorized by the Court, any remaining amounts for which a subsequent Shareholder distribution is not economically feasible shall be escheated as per applicable law.

16. The Claims Administrator shall discharge its duties under the supervision of the Fund Board and Lead Counsel and subject to the jurisdiction of the Court. Except as otherwise

expressly provided herein, the Released Parties shall have no responsibility whatsoever for the notice and administration of the Settlement, and shall have no liability whatsoever to any person, including, but not limited to, the Class Members, in connection with any such notice and administration. Crederian shall cause the Notice to be mailed to all Class Members, through the record holders, pursuant to the contact information that Crederian previously obtained in connection with the Court's Order entered November 18, 2010 (ECF No. 348) appointing it as the liquidation agent of the Primary Fund, and subsequent related orders, in the SEC Action. The Fund Board shall also cause the Notice to be posted on the Primary Fund's website, <http://www.primary-yieldplus-inliquidation.com>.

17. At the request of Lead Counsel, Crederian shall cause to be paid from the Primary Fund, without further approval from Defendants or the Fund Board or further order of the Court, all reasonable Notice and Administration Costs actually incurred in connection with administering the Settlement. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses actually incurred and fees reasonably charged by the Claims Administrator in connection with providing Notice and distributing the Settlement Fund, and the reasonable fees, if any, related to the Settlement Fund. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs properly paid or incurred, including any related fees, shall not be returned or repaid.

18. The finality of the Settlement shall not be conditioned on any ruling by the Court concerning the Plan of Allocation or any award of attorneys' fees and expenses. Any order or proceeding relating to a request for approval of the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or

affect or delay the Effective Date or the effectiveness or finality of the Order and Final Judgment and the release of the Released Claims.

19. The Plan of Allocation for disbursing the Net Settlement Fund and the remaining assets of the Primary Fund to Class Members and Shareholders that Lead Plaintiff proposes (the “Plan of Allocation”) is the pro rata distribution plan in the Court’s November 25, 2009 Order in the SEC Action, and all subsequent orders of the Court related to the pro rata distribution of the Primary Fund, with the addition that if the prorated payment to any Class Member or other Shareholder in any distribution calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to those Class Members or Shareholders. The monies that would have been made in distributions that calculate to less than \$10.00 will instead be included in the distributions to those Class Members or Shareholders who would receive \$10.00 or more, and the calculations will be re-run excluding those who would receive less than \$10.00. For clarification, payments from the Net Settlement Fund and the remaining assets of the Primary Fund may be made through one or more distributions, and the \$10.00 minimum will apply to each distribution.

ATTORNEYS’ FEES AND LITIGATION EXPENSES

20. Lead Counsel will apply to the Court, on behalf of itself and all Plaintiffs’ Counsel, for a collective award from the Settlement Fund of attorneys’ fees. Lead Counsel also will apply to the Court for reimbursement from the Settlement Fund of Plaintiffs’ Counsel’s Litigation Expenses. Litigation Expenses may include reimbursement of the expenses of Lead Plaintiff in accordance with 15 U.S.C. § 78u-4(a)(4). Attorneys’ fees and Litigation Expenses are not the subject of any agreement between the Settling Parties other than what is set forth in this Stipulation.

21. Lead Counsel shall have the sole authority to allocate the Court-awarded attorneys’

fees among Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the prosecution and settlement of the Action. The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees or expenses that the Court may award in the Action, or to the allocation among Plaintiffs' Counsel.

22. The procedure for and amounts of any award of attorneys' fees and Litigation Expenses, and the allowance or disallowance by the Court thereof, shall not be a condition of the Settlement. Lead Counsel shall request that its application for an award of attorneys' fees and Litigation Expenses be considered by the Court separately from the Court's consideration of the fairness and adequacy of the Settlement. Any order or proceedings relating to such request, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or affect the releases set forth herein. The finality of the Settlement shall not be conditioned on any ruling by the Court concerning Lead Counsel's application for attorneys' fees and Litigation Expenses.

23. Any attorneys' fees and Litigation Expenses that are awarded by the Court may be paid to Lead Counsel from the Primary Fund, subject to Court approval, immediately upon award by the Court notwithstanding that the Effective Date has not occurred and notwithstanding any objections or appeals or collateral attack thereon, subject to Plaintiffs' Counsel's obligation to promptly return the amounts in the event the amounts are modified or eliminated as a result of a final order on appeal or other proceedings.

CLAIMS ADMINISTRATOR

24. The Claims Administrator, subject to the supervision, direction and approval of the Fund Board, Lead Counsel and the Court, shall administer and calculate the distribution to Shareholders, oversee distribution of the Net Settlement Fund and perform all claims administration

procedures necessary or appropriate in connection therewith. Except as otherwise provided herein, Defendants and the other Released Parties shall have no liability, obligation or responsibility for the Notice, administration of the Settlement or disbursement of the Net Settlement Fund. Defendants shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

25. The allocation of the Net Settlement Fund among investors is a matter separate and apart from the proposed Settlement between Defendants and Lead Plaintiff, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. No Settling Party may cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action. Neither Defendants nor any other Released Party shall have any responsibility or liability whatsoever for allocation of the Net Settlement Fund, nor shall Defendants object to the Plan of Allocation proposed by Lead Plaintiff.

26. Each Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to the Class Member's distribution from the Settlement Fund, including, but not limited to, the releases provided for in the Order and Final Judgment. Each Class Member will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the issue of his, her or its status as a Class Member and the validity and amount of the applicable record holder's distribution. No discovery shall be allowed on the merits of this Action or this Settlement in connection with the distribution of the Settlement Fund.

27. Lead Counsel and the Fund Board will apply to the Court, with reasonable notice to Defendants, for a Final Distribution Order, *inter alia*: (i) approving the Claims Administrator's administrative determinations concerning the calculation and distribution of the remaining assets of the Primary Fund, including the Net Settlement Fund, to Class Members and/or Shareholders as set forth herein; (ii) approving payment of any outstanding administration fees and expenses associated with the administration of the Settlement Fund from the Settlement Fund; and (iii) if the Effective Date has occurred, directing payment of the remaining assets of the Primary Fund, including the Net Settlement Fund, to Class Members and/or other Shareholders as set forth herein.

28. Payment pursuant to the Final Distribution Order shall be final and conclusive against any and all Class Members.

29. All proceedings with respect to the administration, processing and distribution of the Settlement Fund, and the determination of all controversies relating thereto, including disputed questions of law and fact, shall be subject to the jurisdiction of the Court, except that if any dispute arises out of the Settlement or out of the Term Sheet, the dispute will be resolved by the Mediator, first by way of expedited telephonic mediation, and then, if unsuccessful, by way of final binding non-appealable determination.

REQUESTS FOR EXCLUSION

30. A Class Member requesting exclusion from the Class shall be requested to provide the following information to the Claims Administrator: (i) name, (ii) address, (iii) telephone number, (iv) number of Primary Fund shares owned during the Class Period and, if purchased through a broker or nominee, the name of the broker or nominee, (v) number of Primary Fund shares held at least until 4:00 p.m. ET on September 15, 2008, (vi) number of Primary Fund shares held between 4:00 p.m. ET on September 15, 2008 and September 17, 2008, (vii) the amount

previously received in distributions pursuant to the Court's November 25, 2009 Order and subsequent orders of the Court, and (viii) a statement that the person or entity wishes to be excluded from the Class. Unless otherwise ordered by the Court, any Class Member who does not submit a timely written request for exclusion as provided by this section shall be bound by the Settlement. Unless otherwise ordered by the Court, Persons who would otherwise be Class Members but who submit valid exclusion requests will not be eligible to participate in distribution of the Cash Contribution, but will otherwise be eligible to participate in the distribution in the remaining assets of the Primary Fund including the remaining amount of the Net Settlement Fund (less the amount of the Cash Contribution), as set forth herein.

31. Lead Plaintiff will use its best efforts to persuade all plaintiffs in the Private Investor Suits to join in this Settlement and not request exclusion from the Class.

32. All Settling Parties reserve their rights to communicate with and attempt to persuade any Class Member who requests to be excluded from the Class, to withdraw its request for exclusion. In the event the exclusion request is withdrawn prior to the Final Approval Hearing, the exclusion request shall be deemed null and void.

33. The Claims Administrator shall scan and send electronically copies of all requests for exclusion in PDF format (or such other format as shall be agreed) to counsel to the Fund Board, Defendants' Counsel and to Lead Counsel expeditiously (and not more than three (3) business days) after the Claims Administrator receives such a request.

**TERMS OF PRELIMINARY APPROVAL ORDER
IN CONNECTION WITH SETTLEMENT PROCEEDINGS**

34. Following execution of this Stipulation, Lead Plaintiff, by and through Lead Counsel, shall submit the Stipulation together with its Exhibits to the Court and shall move for entry of the Preliminary Approval Order substantially in the form annexed hereto as Exhibit A.

TERMS OF ORDER AND FINAL JUDGMENT

35. Lead Plaintiff, by and through Lead Counsel, shall request that the Court enter an Order and Final Judgment substantially in the form attached hereto as Exhibit B. The Settlement is expressly conditioned upon, among other things, the entry of an Order and Final Judgment substantially in the form attached hereto as Exhibit B.

EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

36. The Effective Date of Settlement shall be the latest date when all of the following shall have occurred:

(a) Defendants have submitted, via *in camera* submissions to the Mediator, information sufficient to substantiate that they do not have substantial personal assets with which to pay a judgment of the magnitude sought by the Class in this Action, and that the Mediator is satisfied with those submissions (which submissions shall be made as soon as practicable);

(b) the submission of an affidavit or sworn declaration to the Court by the Mediator in support of this Settlement, setting forth the arms-length nature of the Settlement and the reasons why the Settlement, in his view, is fair and reasonable;

(c) entry of the Preliminary Approval Order;

(d) approval by the Court of the Settlement, following notice to the Class and a hearing in accordance with Rule 23 of the Federal Rules of Civil Procedure; and

(e) entry by the Court of an Order and Final Judgment approving of the Settlement, and the expiration of any time for appeal or review of the Order and Final Judgment, or, if any appeal is filed and not dismissed, after the Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by certiorari or otherwise, and the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired, or, in

the event that the Court enters an Alternative Judgment and none of the parties hereto elects to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review by certiorari or otherwise, and the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired.

37. Defendants, Lead Plaintiff, the Primary Fund, and the Independent Trustees each shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to the others within thirty (30) days of the date on which: (a) the Court declines to enter the Preliminary Approval Order in any material respect; (b) the Court refuses to approve this Settlement or any material part of it; (c) the Court declines to enter the Order and Final Judgment in any material respect; (d) the Order and Final Judgment is vacated, modified or reversed in any material respect; (e) an Alternative Judgment is vacated, modified or reversed in any material respect; or (f) the Effective Date of Settlement otherwise does not occur. The foregoing list is not intended to limit or impair the parties' rights under the law of contracts of the State of New York with respect to any breach of this Stipulation. In the event the Settlement and this Stipulation are terminated, the provisions of ¶¶1, 17, 37, 38, and 39 shall survive termination.

38. Except as otherwise provided herein, in the event the Settlement and this Stipulation are terminated or if the Effective Date fails to occur for any reason, the Settling Parties shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action as of February 27, 2013; any paid or incurred Tax and Tax Expenses and Notice and Administration Costs shall be paid out of the Primary Fund; and except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered and without any prejudice in any way from the negotiation, fact or terms of this Settlement.

NO ADMISSION OF WRONGDOING

39. Whether or not the Settlement is approved by the Court, and whether or not the Settlement is consummated, the fact and terms of this Stipulation, including exhibits, all negotiations, discussions, drafts and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement:

(a) shall not be offered or received as evidence of, or be deemed to be evidence of, any presumption, concession or admission with respect to the truth of any fact alleged by any Settling Party or the validity, or lack thereof, of any claim that has been or could have been asserted in the Action (including the Complaint and the Third Party Complaint) or in any other litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, or of any liability, negligence, fault or wrongdoing;

(b) shall not be offered or received as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document, or as evidence of any infirmity in any claims asserted in the Complaint or the Third Party Complaint;

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

(d) shall not be construed as an admission or concession 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 as or received in evidence as an admission, concession or presumption that any of the claims in the Complaint or Third Party Complaint are without merit or that damages recoverable under the Complaint or Third Party Complaint would not have exceeded the amounts set forth herein.

MISCELLANEOUS PROVISIONS

40. Defendants agree that they will use their best efforts to resolve the lawsuit captioned *Reserve Management Co. v. Willkie Farr & Gallagher LLP*, No. 11 Civ. 7045 (PGG) (S.D.N.Y.).

41. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that a conflict or inconsistency exists between the terms of this Stipulation and the terms of any exhibit hereto, the terms of this Stipulation shall prevail.

42. If a case is commenced in respect of Defendants (or any Person contributing funds to the Settlement Fund on behalf of 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 the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be 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 to the Settlement Fund by others, then, at the election of Lead Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and the Order and Final Judgment entered, which releases and judgment shall be null and void, and the parties shall be restored to their respective positions in the litigation immediately prior to February 27, 2013, and the Cash Contribution (less Tax and Tax Expenses and

Notice and Administration Costs paid or incurred) and Reimbursement Payments shall be returned.

43. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Settling Parties or their successors-in-interest.

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

45. The Settling Parties intend the Settlement to be a final and complete resolution of all claims in the Complaint and Third Party Complaint as set forth herein. Accordingly, the Settling Parties agree not to assert any claim under Rule 11 of the Federal Rules of Civil Procedure or any similar law, rule or regulation, that the Action was brought or defended in bad faith or without a reasonable basis. The Settling Parties agree that the amounts paid 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 based upon adequate information and after consultation with experienced legal counsel.

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

47. This Stipulation and its exhibits constitute the entire agreement among the Settling Parties as to the Primary Fund, and no representations, warranties or inducements have been made to any Settling Party concerning this Stipulation or its exhibits, other than the representations, warranties and covenants contained and memorialized in such documents.

48. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via e-mail. All executed counterparts and each of them shall be deemed to be one and the same instrument.

49. The Settling Parties and their respective counsel of record agree that they will use their best efforts to obtain all necessary approvals of the Court required by this Stipulation.

50. Each counsel signing this Stipulation represents that such counsel has authority to sign this Stipulation on behalf of the respective Settling Party, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

51. This Stipulation shall be binding upon and shall inure to the benefit of the successors and assigns of the Settling Parties.

52. Notices to counsel for the Settling Parties required by this Stipulation shall be submitted either by any form of overnight mail, e-mail, facsimile, or in person to each of the signatories below.

53. Subject to paragraph 29 herein, the administration, consummation and enforcement of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Settling Parties intend that the Court retain jurisdiction for the purpose of, *inter alia*, entering orders, providing for awards of attorneys' fees and Litigation Expenses, and enforcing the terms of this Stipulation and the Settlement.

54. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

55. 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 among the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys as of August 14, 2013.

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