

**Exhibit 5 to Master Agreement**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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

**COLUMBIA/CANARY SEVERED AGREEMENT  
AND STIPULATION OF SETTLEMENT**

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

WHEREAS, based upon their investigation, Plaintiffs (as defined below) and their counsel have concluded that the terms and conditions of this Severed Settlement (as defined below) are fair, reasonable and adequate to the Class (as defined below) and the Columbia Releasing Funds (as defined below), and in their best interests, and, subject to the approval of the Court, have agreed to settle the claims raised in the Actions (as defined below) as against the Canary Defendants pursuant to the terms and provisions of this Agreement;

WHEREAS, in no event shall this Severed Settlement Agreement be construed or deemed to be evidence or an admission or a concession on the part of the Canary Defendants of any fault or liability or damages whatsoever. To the contrary, the Canary Defendants have vigorously denied and continue to deny any and all wrongdoing of any kind whatsoever and any

liability to anyone in the Actions, and no such defenses are waived. The Canary Defendants believe that they have meritorious defenses to each of the Actions. The Parties have concluded that it is desirable that each of the Actions be fully and finally settled in the manner and upon the terms and conditions set forth herein in order to avoid the expense, inconvenience, uncertainties and risks associated with further proceedings; and

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

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

#### **DEFINITIONS**

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

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

(b) “Advisor Corporate Defendants” or “Columbia Advisor Corporate Defendants” means Bank of America Corporation, Columbia Management Group, Inc., Columbia Management Advisors, Inc., Columbia Wanger Asset Management, L.P., Columbia Funds Distributor, Inc., and Columbia Funds Services, Inc.;

(c) “Advisor Individual Defendants” or “Columbia Advisor Individual Defendants” means Joseph Palombo, Stephen E. Gibson, James Tambone, and Louis Tasiopoulos;

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

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

(e) “Canary Cross-Claims” means any and all claims of the Canary Defendants against the Fund Family Defendants and, as applicable, any other settling Other Defendant and all of their respective Related Parties, whether under federal or state law, whether known or unknown (including “unknown claims” as defined in the cross-releases to be exchanged between the Canary Defendants and the Fund Family Defendants pursuant to paragraph 9 below), whether suspected or unsuspected, whether accrued or unaccrued, concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Columbia Mutual Funds during the Class Period, including any claims that the Fund Family Defendants and, as applicable, any other settling Other Defendant and their respective Related Parties, allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated market-timing, late-trading, or short-term or excessive trading and including, without limitation, all claims that could have been brought against the Fund Family Defendants and, as applicable, any other settling Other Defendant and their respective Related Parties concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Columbia Mutual Funds during the Class Period;

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

(g) “Canary Defendants’ Counsel” means Kramer Levin Naftalis & Frankel LLP;

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

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

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

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

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

(m) “Class” or “Columbia Class” means, for purposes of this Severed Settlement only, all persons and entities who, during the period November 1, 1998 through February 25, 2004, inclusive, purchased and/or held shares in any of the Releasing Funds. Excluded from the Class are: (i) any and all defendants named in any action that is part of the Columbia Subtrack of MDL-1586; (ii) for defendants who are natural persons, members of their immediate families (parents, spouses (current or former), siblings, and children), their heirs, successors or assigns, and any person acting on their behalf for purposes of collecting a payment under this Settlement; (iii) for defendants that are legal entities, their parents, subsidiaries, affiliates, successors or assigns; (iv) any entity in which any defendant has, or during the Class

Period had, a controlling interest; and (v) all Columbia portfolio managers during the Class Period (defined as the person or persons with primary responsibility for the day-to-day management of the investment portfolio of a Releasing Fund during the Class Period). Also excluded from the Class are any persons or entities who timely and validly exclude themselves by filing a request for exclusion from the Class;

(n) “Class Action” or “Columbia Class Action” means *Dukes, et al. v. Columbia Acorn Fund, et al.*, Civil Action No. 04-cv-01763-JFM (D. Md.);

(o) “Class Complaint” means the Consolidated Amended Class Action Complaint filed in the Class Action on September 30, 2004 and entered as part of the MDL in docket number 371 of *In re Alger, Columbia, Janus, MFS, One Group, Putnam, and Allianz Dresdner*, 04-md-15863-JFM (D. Md.);

(p) “Class Counsel” means Milberg LLP;

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

(r) “Class Period” means November 1, 1998 through February 25, 2004, inclusive;

(s) “Class Plaintiff” or “Columbia Class Plaintiff” means Jackie Williams;

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

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

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

(w) “Costs of Notice and Administration” refers collectively to the Costs of Notice and Costs of Administration;

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

(y) “Cross-Claims” refers to any and all claims of any Fund Family Defendants and, as applicable, any other settling Other Defendant against the Canary Defendants and/or any one or more of the Canary Defendants’ respective Related Parties, whether under federal or state law, whether known or unknown (including “unknown claims” as defined in the cross-releases to be exchanged between the Canary Defendants and the Fund Family Defendants pursuant to paragraph 9 below), whether suspected or unsuspected, whether accrued or unaccrued, concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Columbia Mutual Funds during the Class Period, including any claims that any one or more of the Canary Defendants and/or any one or more of the Canary Defendants’ respective Related Parties, allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated market-timing, late-trading, or short-term or excessive trading and including, without limitation, all claims that could have been brought against any one or more of the Canary Defendants and/or any one or more of the Canary Defendants’ respective Related Parties concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Columbia Mutual Funds during the Class Period;

(z) “Default Escrow Procedure” has the meaning set forth at paragraph 11(b)

below;

(aa) “Effective Date” has the meaning set forth at paragraph 42 below;

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

(cc) “Fee and Expense Award” refers generally to an award to Plaintiffs’ Counsel of fees and expenses and costs in connection with this Severed Settlement, as awarded by the Court to Plaintiffs’ Counsel from the Severed Settlement Sum;

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

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

(ff) “Fund Derivative Action” or “Columbia Fund Derivative Action” means *Slabe v. Columbia Management Advisors, Inc. et al.*, Civil Action No. 04-md-01620 (D. Md.);

(gg) “Fund Derivative Complaint” means the Consolidated Amended Fund Derivative Complaint filed in the Fund Derivative Action on September 30, 2004 and entered as part of the MDL in docket number 359 of *In re Alger, Columbia, Janus, MFS, One Group, Putnam, and Allianz Dresdner*, 04-md-15863-JFM (D. Md.);

(hh) “Fund Derivative Plaintiffs” or “Columbia Fund Derivative Plaintiffs” means Harold Beardsley, Brad Smith, Edward and Iris Segel, Virginia Wilcox, Pamela Yameen, Barbara Cordani, Mayer and Morris Sutton, George Slabe, as Custodian for Jo D. Slabe UGMA, Grace Nugent and David Armetta;

(ii) “Fund Derivative Plaintiffs’ Counsel” means Wolf Haldenstein Adler Freeman & Herz LLP;

(jj) “Fund Individual Defendants” or “Columbia Fund Individual Defendants” means Margaret Eisen, Leo A. Guthart, Jerome Kahn, Jr., Steven N. Kaplan, David C. Kleinman, Allan B. Muchin, Robert E. Nason, John A. Wing, Charles P. McQuaid, Ralph Wanger, Douglas A. Hacker, Janet Langford Kelly, Richard W. Lowry, Charles R. Nelson, John J. Neuhauser, Patrick J. Simpson, Thomas E. Stitzel, Thomas C. Theobald, Anne-Lee Verville, Richard L. Woolworth, and William E. Mayer;

(kk) “Fund Family Defendants” or “Columbia Fund Family Defendants” means the Columbia Releasing Funds, the Columbia Releasing Funds Trustees, the Columbia Advisor Corporate Defendants, and the Columbia Advisor Individual Defendants;

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



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

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

(oo) “Fund Shareholder” or “Columbia Fund Shareholder” means any current shareholder of any of the Releasing Funds;

(pp) “Master Agreement” refers to the Master Agreement of Settlement with Canary Defendants;

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

(rr) “Mutual Funds” or “Columbia Mutual Funds” refers to all open-ended mutual funds advised by Columbia Management Advisors, Inc. or Columbia Wanger Asset Management, L.P. during the Class Period;

(ss) “Net Settlement Sum” or “Columbia Net Settlement Sum” shall have the meaning set forth in paragraph 12 below;

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

(uu) “OAG” means the Office of the New York State Attorney General;

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

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

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

(yy) “OAG Settlement Agreement” means the settlement agreement entered into between the Canary Defendants and the OAG;

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

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

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

(ccc) “Plaintiffs” means the Class Plaintiff and Fund Derivative Plaintiffs;

(ddd) “Plaintiffs’ Counsel” means Class Counsel and Fund Derivative Plaintiffs’ Counsel;

(eee) “Plan of Allocation” has the meaning set forth in paragraph 28 below;

(fff) “Preliminary Approval Order” means the Order to be entered by the Court (i) preliminarily approving the terms and conditions of the Severed Settlement; (ii) directing that

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

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

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

(iii) “Released Claims” means any and all claims against the Canary Released Parties, whether direct, derivative or brought in any other capacity, whether under federal or state law, whether known or unknown (including “Unknown Claims” as defined below), whether suspected or unsuspected, whether accrued or unaccrued, concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Columbia Mutual Funds during the Class Period, including any claims that the Canary Released Parties allowed, assisted, cleared, brokered, financed, provided the means for, subjected investors to or otherwise facilitated market-timing, late-trading, or short-term or excessive trading and including, without limitation, all claims that were alleged in the Class Complaint and the Fund Derivative Complaint and all claims that could have been brought against the Canary Released Parties concerning in any respect, directly or indirectly, market-timing, late-trading, or short-term or excessive trading in any of the Columbia Mutual Funds during the Class Period;

(jjj) “Released Parties’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law

or any other law, rule or regulation, whether known or unknown (including “Unknown Claims” as defined below), that have been or could have been asserted in the Actions or any other forum by the Canary Released Parties or any of them or the successors and assigns of any of them against Plaintiffs or any Class Members or their respective attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of any of the Actions in this Sub-Track (except for claims to enforce this Severed Settlement);

(kkk) “Releasing Funds” or “Columbia Releasing Funds” means each of the mutual funds set forth on Exhibit 1 attached hereto;

(lll) “Releasing Funds Current Trustees” or “Columbia Releasing Funds Current Trustees” means the current trustees of the Releasing Funds as of the date of the execution of the mutual cross-release with the Releasing Funds and the Releasing Funds Trustees referenced in paragraph 9 below;

(mmm) “Releasing Funds Trustees” or “Columbia Releasing Funds Trustees” means the Columbia Fund Individual Defendants and the Columbia Releasing Funds Current Trustees;

(nnn) “Releasing Plaintiffs Parties” means Plaintiffs and all Class Members;

(ooo) “Restitution Amount” or “Columbia Restitution Amount” has the meaning set forth in paragraph 34 below;

(ppp) “Restitution Sum” or “Columbia Restitution Sum” has the meaning set forth in paragraph 34 below;

(qqq) “Settlement” or “Severed Settlement” means the settlement embodied by this Agreement;

(rrr) “Settlement Amount” or “Columbia Settlement Amount” has the meaning set forth in paragraph 2 below;

(sss) “Severed Settlement Sum” or “Columbia Severed Settlement Sum” has the meaning set forth in paragraph 2 below;

(ttt) “Sub-Track” or “Columbia Sub-Track” refers to the sub-track in this MDL which consists of the Columbia Class Action and Columbia Fund Derivative Action;

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

(vvv) “Unknown Claims” means any and all Released Claims which any Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Parties’ Claims which any Canary Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Severed Settlement. With respect to any and all Released Claims and Released Parties’ Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and the Canary Defendants shall expressly waive, and each Class Member and each of the other Canary Released Parties shall with respect to such claims be deemed to have waived, and by operation of the Order and Final Judgment in the Actions shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of

common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

#### **SETTLEMENT CONSIDERATION**

2. Defendant Edward Stern has previously paid or caused to be paid the principal amount of \$15,000,000 into the Canary Escrow Account towards the settlement of various claims asserted against the Canary Defendants in the MDL. The sum equal to (x) 0.1% of the \$15,000,000 principal amount deposited into the Canary Escrow Account (*i.e.*, \$15,000) (the “Settlement Amount” or “Columbia Settlement Amount”), plus (y) the interest earned or accrued on the Columbia Settlement Amount while on deposit in the Canary Escrow Account, calculated on a *pro rata* basis, less (z) the amount of any Taxes or escrow fees chargeable to the Columbia Settlement Amount while held on deposit in the Canary Escrow Account, calculated on a *pro rata* basis, shall be referred to as the “Severed Settlement Sum” or the “Columbia Severed Settlement Sum.” At the time set forth in paragraph 11 below, the Parties hereto shall cause the Canary Escrow Agents to pay from the Canary Escrow Account into the Columbia Fund Family Escrow Account the remaining balance of the Columbia Severed Settlement Sum after deducting therefrom any Costs of Notice and Administration and any Court-awarded attorneys’ fees and

litigation expenses previously paid from the Canary Escrow Account pursuant to paragraphs 19, 22, and 25 below.

**STAY OF LITIGATION**

3. Litigation against the Canary Released Parties in this Sub-Track shall remain stayed, and neither Plaintiffs nor any Class Member shall commence, join or otherwise prosecute any Released Claim against any Canary Released Party in any other proceeding, pending approval of this Severed Settlement by the Court.

4. This stay shall not preclude reasonable third party discovery from the Canary Released Parties in any sub-track in the MDL pursuant to the Federal Rules of Civil Procedure.

**CLASS CERTIFICATION**

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

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

6. Upon the Effective Date, all Released Claims brought by or on behalf of any and/or all of the Releasing Plaintiffs Parties and their respective heirs, executors, administrators, successors and assigns against the Canary Released Parties in any case or complaint transferred to or filed in MDL-1586, including, without limitation, the Actions, including specifically, without limitation, the Fourth, Fifth, Twelfth, and Thirteenth Claims for Relief in the Class

Complaint, as against any and all of the Canary Released Parties, are to be dismissed with prejudice.

7. Upon the Effective Date, all Releasing Plaintiffs Parties, on behalf of themselves, their heirs, executors, administrators, successors and assigns: (i) shall be conclusively deemed to have fully, finally and forever released, relinquished, and discharged all Released Claims against the Canary Released Parties; (ii) shall be conclusively deemed to have covenanted not to sue the Canary Released Parties in any action alleging any claim that is a Released Claim; (iii) shall be conclusively deemed to have covenanted not to knowingly and voluntarily assist in any way any third party in commencing or prosecuting any suit against the Canary Released Parties relating to any Released Claim, including any derivative suit, and (iv) shall forever be enjoined and barred from asserting the Released Claims against any Canary Released Party in any action or proceeding of any nature.

8. Upon the Effective Date, each of the Canary Defendants, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall release each and every of the Released Parties' Claims, and shall forever be enjoined from prosecuting any or all of the Released Parties' Claims, against the Releasing Plaintiffs Parties and their respective counsel.

9. As a condition of any settlement(s) with the Fund Family Defendants in the Actions, Class Plaintiff shall obtain (to the extent it has not already done so) a cross-claim release from each such settling defendant(s) (including, in the case of any settlement with the Fund Family Defendants, from the Releasing Funds), on behalf of themselves, their heirs, executors, administrators, successors and assigns, in favor of the Canary Released Parties, releasing any and all of their Cross-Claims against the Canary Released Parties (each a "Cross-Claim Release"). The Canary Defendants (on behalf of themselves, their heirs, executors,



administrators, successors and assigns) shall provide a reciprocal and co-extensive release or releases of (i) each such settling Fund Family Defendant (including, in the case of any settlement with the Fund Family Defendants, the Releasing Funds) and its Related Parties that provides a Cross-Claim Release to the Canary Released Parties; and (ii) each other settling Other Defendant and its Related Parties that agrees to provide a Cross-Claim Release to the Canary Released Parties. Each such Cross-Claim Release and reciprocal cross-claim release shall be structured so that it becomes effective at such time as the settlements involving the Canary Defendants and the settling Fund Family Defendants and/or other settling Other Defendants become effective. The proposed Order and Final Judgment to be entered in this Sub-Track shall provide for reciprocal, co-extensive cross-claim releases consistent with this paragraph, including appropriate reciprocal provisions barring and permanently enjoining the prosecution of Cross-Claims and Canary Cross-Claims, and such reciprocal cross-claim releases shall become effective at such time as the Order and Final Judgment providing for such cross-claim releases becomes Final.

#### **BAR ORDER**

10. The Parties shall request that the Court, as part of the Order and Final Judgment, enter a bar order that will discharge the Canary Released Parties, to the maximum extent allowed by applicable state or federal law (including the PSLRA) from any and all claims for contribution, and all claims for indemnification or the like, however styled, by any person or entity, whether arising under state, federal, local, statutory or common law, or any other law, rule or regulation, based upon, arising out of, relating to, or in connection with the Released Claims (the “Bar Order”). The Bar Order will bar all such claims for contribution to the full extent provided by the PSLRA, and all such claims for indemnification or the like to the maximum extent allowed by applicable state or federal law (including the PSLRA): (a) against the Canary Released Parties; and (b) by the Canary Released Parties against any person or entity other than

any person or entity whose liability to the Class has been extinguished pursuant to this Severed Settlement Agreement and the Order and Final Judgment.

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

11. (a) Within ten (10) business days of the Effective Date, if so requested by Plaintiffs' Counsel, the Parties hereto shall cause the Canary Escrow Agents to transfer the remaining balance of the Severed Settlement Sum, after deducting therefrom any Costs of Notice and Administration and any Court-awarded attorneys' fees and litigation expenses previously paid from the Canary Escrow Account pursuant to paragraphs 19, 22, and 25 below, from the Canary Escrow Account to the Columbia Fund Family Escrow Account.

(b) In the event that Plaintiffs do not obtain a judgment against, or settlement with, the Fund Family Defendants in this Sub-Track, such that a Fund Family Escrow Account is not established by the Fund Family Defendants, or in the event that the Fund Family Defendants do not agree to the transfer of the Severed Settlement Sum into the Fund Family Escrow Account as contemplated by paragraph (a) above, within ten (10) business days of the Effective Date, Class Counsel and the Canary Defendants shall jointly direct the Canary Escrow Agents to transfer the remaining balance of the Columbia Severed Settlement Sum, after deducting therefrom any Costs of Notice and Administration and any Court-awarded attorneys' fees and litigation expenses previously paid from the Canary Escrow Account pursuant to paragraphs 19, 22, and 25 below, from the Canary Escrow Account to such other account for the benefit of the Class and the Releasing Funds as may be designated by Class Counsel (the "Default Escrow Account"). The procedure described in the preceding sentence shall be referred to as the "Default Escrow Procedure," and any disputes that may arise with respect to the Default Escrow

Procedure shall be resolved by the Court, consistent with the letter and intent of this Severed Settlement Agreement.

**USE OF SETTLEMENT PROCEEDS**

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

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

14. All funds held in the Escrow Accounts shall be invested and reinvested in short term United States Agency or Treasury Securities, or mutual funds invested solely in such securities, except that any residual cash balances of less than \$100,000 may be invested in money market mutual funds comprised exclusively of investments secured by the full faith and credit of the United States.

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

16. All Taxes paid or payable on interest earned on the Columbia Settlement Amount while such sum is held in the Canary Escrow Account shall be timely paid by the Canary Escrow

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

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

#### **ATTORNEYS' FEES AND EXPENSES**

18. Class Counsel and Fund Derivative Plaintiffs' Counsel (on behalf of themselves and on behalf of any of their respective co-counsel) will apply to the Court for payment of a reasonable Fee and Expense Award from the Severed Settlement Sum in an amount not to exceed the amount referred to in the Notice forms approved by the Court, including accrued interest thereon calculated at the same net rate as earned by the Columbia Settlement Amount from the date of funding to the date of payment. The Canary Released Parties shall not take any position with respect to Plaintiffs' Counsel's application for a Fee and Expense Award, provided such application is consistent with the terms of this Agreement, and such matters are not the subject of any agreement between the Canary Defendants and Plaintiffs other than what is set forth in this Agreement.

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

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

21. Any order or proceedings relating to the Fee and Expense Award, or any appeal from such an order, is not a material term of this Settlement and shall not operate to void or cancel this Settlement, or affect or delay the finality of the Order and Final Judgment approving

