

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE BOARD OF TRUSTEES OF THE  
CITY OF BIRMINGHAM EMPLOYEES'  
RETIREMENT SYSTEM, ET AL,

Case No. 09-cv-13201

Hon. Stephen J. Murphy, III

Plaintiffs,

v.

COMERICA BANK,

Defendant/Third-Party Plaintiff,

v.

MUNDER CAPITAL MANAGEMENT,

Third-Party Defendant.

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**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement is entered into between and among, through their respective undersigned counsel: (i) the Named Plaintiffs on behalf of themselves and the Class (collectively, “Plaintiffs”); (ii) defendant/third-party plaintiff Comerica Bank (“Comerica”); and (iii) third-party defendant Munder Capital Management (“Munder”) (collectively, the “Settling Parties”).<sup>1</sup> The Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Settled Claims and the above-captioned action (the “Action”) and all claims asserted therein, upon and subject to the terms and conditions hereof, including, but not limited to, the approval of the Court.

WHEREAS:

A. Two pension plans, through their boards of trustees, initiated this action on August 14, 2009, with the filing of the Class Action Complaint against Comerica Incorporated, asserting claims for breach of contract, negligence and breach of fiduciary duty for alleged losses suffered in the securities lending program operated by Comerica (the “Securities Lending Program”) when a security issued by Sigma Finance Inc. and Sigma Finance Corp. (together, “Sigma”) defaulted.

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<sup>1</sup> Unless otherwise noted, capitalized terms shall have the meaning ascribed to them in paragraph 1.

B. On August 16, 2010, the Court consolidated this action with *Board of Trustees of the Iron Workers' Local No. 25 Pension Fund, et al., v. Comerica Bank*, Case No. 10-cv-10206 (E.D. Mich.), which was filed on January 15, 2010, upon the joint request of the parties and upon a finding that the cases involved common issues of law and fact.

C. On September 30, 2010, Plaintiffs filed a Consolidated Class Action Complaint (the "Complaint") against Comerica making claims of declaratory judgment, breach of fiduciary duty under the common law, ERISA violations, violations of the Michigan Public Employee Retirement System Investment Act, breach of contract, and breach of the implied covenant of good faith and fair dealing arising out of Comerica's investment of its Securities Lending Program's assets in the Sigma Notes.

D. On October 14, 2010, Comerica filed a Motion to Dismiss the Complaint. After oppositions and replies, on February 15, 2011, the Court granted in part and denied in part Comerica's Motion to Dismiss. On March 11, 2011, Comerica filed its Answer with Affirmative Defenses to the Complaint.

E. On April 5, 2011, Plaintiffs and Comerica filed a Joint Rule 26(f) Proposed Discovery Plan with the Court.

F. On March 25, 2011, Comerica filed a Third-Party Complaint against Munder, which was subsequently amended on April 4, 2011. On June 10, 2011, Munder filed a Motion to Dismiss the Amended Third-Party Complaint filed by Comerica. After oppositions and replies, on December 16, 2011, the Court denied Munder's Motion to Dismiss. Munder filed its Answer with Affirmative Defenses to the Amended Third-Party Complaint and Counterclaims to the Amended Third-Party Complaint on January 20, 2012.

G. On March 8, 2012, Plaintiffs, Comerica and Munder filed a Joint Rule 26(f) Proposed Discovery Plan with the Court.

H. In the course of discovery, Comerica produced 268,995 pages of documents, Munder produced 194,169 pages of documents and 487 audio recordings, and Plaintiffs produced 3,407 pages of documents.

I. The Settling Parties conferred regarding the possibility of settlement and agreed to mediate a possible resolution of the case. Prior to mediation, the Settling Parties submitted confidential mediation statements to the mediator, Hon. Layn Phillips (Ret.), some of which were also exchanged amongst some or all of the Settling Parties. On April 8, 2013, the Settling Parties attended a mediation under the direction of Judge Phillips in New York, New York. The Settling Parties were unable to reach a

settlement at the April 8, 2013 mediation, but made substantial progress and continued to engage in settlement discussions thereafter, including a second session with Judge Phillips on June 17, 2013 in New York, New York. As a result of continued settlement negotiations, the Settling Parties agreed to the material terms of a settlement of this Action.

J. Plaintiffs' Counsel have conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Plaintiffs' Counsel have analyzed evidence adduced during their investigations and in discovery and have researched the applicable law with respect to the claims of the Named Plaintiffs and the Class against Comerica, as well as the potential defenses thereto.

K. Based upon their investigation, research and review of all materials produced through discovery to date, Plaintiffs' Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Named Plaintiffs and the Class, and in their best interests. Named Plaintiffs agreed to settle the claims asserted in the Action pursuant to this Stipulation, after considering (i) the substantial benefits that Named Plaintiffs and Class Members will receive from resolution of the Action, (ii) the risks of litigation, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

L. Comerica has denied and continues to deny that it has committed any act or omission giving rise to any liability or violation of law, and is entering into this Settlement solely to eliminate the burden, expense, and distraction of further litigation. Likewise, Munder has denied and continues to deny that it has committed any act or omission giving rise to any liability to Comerica or Plaintiffs or any violation of law, and is entering into this Settlement solely to eliminate the burden, expense, and distraction of further litigation. Neither the Settlement nor any of its terms shall in any way be construed or deemed to be evidence of, or an admission or concession on the part of Comerica or Munder with respect to, any fact or matter alleged in the Action or claim of fault or liability or wrongdoing or damage whatsoever, or any infirmity in the claims, or defenses, that Comerica or Munder have, or could have, asserted.

M. Concurrent with the execution of this Stipulation, Comerica and Munder are entering into a Settlement and Release Agreement (the “Comerica-Munder Agreement”) to resolve the third-party claims and counterclaims in the Action, the terms of which are confidential.

NOW THEREFORE, 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, without admission of any liability or wrongdoing, and in consideration of the benefits flowing to the Settling Parties as set forth herein, that all Settled Claims shall be fully, finally and forever compromised, settled, released, and discharged and the Action, including all third-party claims and counterclaims, shall be dismissed with prejudice, upon and subject to the following terms and conditions:

1. As used in this Stipulation, the following terms shall have the meanings specified below. In the event of any inconsistency between any definition set forth below and any definition in any other document related to the Settlement, the definition below shall control:

(a) “Action” means the action captioned *The Board of Trustees of the City of Birmingham Employees’ Retirement System, et al. v. Comerica Bank*, Case No. 09-cv-13201, pending in the United States District Court for the Eastern District of Michigan, and all cases consolidated therewith including *Board of Trustees of the Iron Workers’ Local No. 25 Pension Fund, et al. v. Comerica Bank*, Case No. 10-cv-10206, pending in the United States District Court for the Eastern District of Michigan.

(b) “Authorized Recipient” means a Class Member who does not submit a timely Request for Exclusion.

(c) “Class” or “Settlement Class” is defined as all participants in Comerica’s Securities Lending Program that, through one or more of the investment vehicles offered or managed by Comerica or its affiliates, incurred losses relating to investments in the Sigma Notes and that have not previously released Comerica from all liability related to such losses, including, for the avoidance of doubt, all Collective Investment Funds (“CIFs”) of which Comerica Bank & Trust is trustee that participated in Comerica’s Securities Lending Program, including but not limited to the 500 Index Fund, Comerica Aggregate Bond Index Fund, Comerica Bank Large Cap Growth Index Fund, Comerica Bank Large Cap Value Index Fund, Comerica Bank Bond Index Fund, Comerica Large Cap Index Fund, Comerica Midcap Index Fund, Comerica Smallcap Index Fund, Comerica Total US Equity Index, Completeness Fund, Foreign Equity Fund, Intermediate Government Index Fund, Large Cap Growth Index Fund, Large Cap Value Index Fund, Medium Cap Index Fund, Small Cap Index Fund, SDA Intermediate Term Bond Index Fund, SDA International Equity Index Fund, SDA Large Cap Equity Index Fund, SDA Mid & Small Cap Equity Index Fund, SDA Short Term Bond Index Fund, and SDA Total Market Bond Index Fund, excluding those Persons that would be members of the Class but which properly exclude themselves.



(d) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Recipients.

(e) “Class Member” means a Person that falls under the definition of Class.

(f) “Class Member Releasees” means Named Plaintiffs, all Class Members, and all of their Related Parties.

(g) “Comerica” means Comerica Bank. The definition of “Comerica” herein shall exclude those Collective Investment Funds and Common Trust Funds (“CIFs”), of which Comerica Bank & Trust, N.A. is trustee, that are Class Members.

(h) “Comerica’s Counsel” means Bodman PLC.

(i) “Comerica Releasees” means Comerica and all of its Related Parties.

(j) “Complaint” means the Consolidated Class Action Complaint filed on September 30, 2010 in the Action.

(k) “Court” means the United States District Court for the Eastern District of Michigan.

(l) “Effective Date” means the first date by which all of the events and conditions specified in paragraph 28 of this Stipulation have been met, have been waived, or have occurred, as set forth in that paragraph.

(m) “Escrow Account” means an interest-bearing escrow account maintained by the Escrow Agent.

(n) “Escrow Agent” means the escrow agent appointed and approved by the Court.

(o) “Escrow Agreement” means the agreement(s) between Plaintiffs’ Counsel and the Escrow Agent, setting forth the terms under which the Escrow Agent shall maintain the Escrow Account in accordance with this Stipulation.

(p) “Final” when referring to the Judgment means the later of: (i) if there is an appeal from the Judgment, the date of final affirmance on appeal or review pursuant to the grant of a writ of certiorari and the expiration of the time for any further judicial review whether by appeal, reconsideration, or a petition for a writ of certiorari; or (ii) if there is no appeal from the Judgment, the expiration of the time for the filing or noticing of any appeal from the Judgment. No appeal or proceeding seeking judicial review pertaining solely to (i) Court approval of the Plan of

Allocation; and/or (ii) the Court's award of attorneys' fees, costs or expenses shall affect whether the Judgment becomes Final or the timing thereof.

(q) "Final Approval 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.

(r) "Funded" means (i) payment to Comerica, in cash, of the difference between the Outstanding Loan Balance and 110% of the Authorized Recipient's Remaining Unpaid Sigma Deficiency, which funds will be credited to that Authorized Recipient's Unpaid Sigma Deficiency; or (ii) payment to Comerica, in cash, of funds sufficient to satisfy the Remaining Unpaid Sigma Deficiency, which funds will be credited to that Authorized Recipient's Unpaid Sigma Deficiency.

(s) "Gross Settlement Fund" means the Settlement Amount plus accrued interest, if any.

(t) "Judgment" means the final order of the Court approving the Settlement and dismissing the Action with prejudice, substantially in the form attached hereto as Exhibit C, to be entered by the Court.

(u) "Litigation Expenses" means the actual and reasonable costs and expenses incurred by Plaintiffs' Counsel in commencing and prosecuting the Action.

(v) “Munder” means Munder Capital Management.

(w) “Munder’s Counsel” means Dechert LLP and Jaffe, Raitt, Heuer & Weiss P.C.

(x) “Munder Releasees” means Munder and all of its Related Parties.

(y) “Named Plaintiffs” means the Board of Trustees of the City of Birmingham Employees’ Retirement System, the Board of Trustees of the Road Commission for Oakland County Retirement System, the Board of Trustees of the Iron Workers’ Local No. 25 Pension Fund, the Board of Trustees of the Iron Workers’ Health Fund of Eastern Michigan, the Board of Trustees of the Roofers Local No. 149 Pension Fund, the Board of Trustees of Carpenters Pension Fund Trust-Detroit & Vicinity, and the Board of Trustees of Line Construction Benefit Fund. For the avoidance of doubt, the Board of Trustees of the City of Monroe Employees’ Retirement System and the Board of Trustees of the Waterford Township General Employees’ Retirement System have withdrawn as Named Plaintiffs, but remain a part of the Class.

(z) “Net Settlement Fund” means the Gross Settlement Fund less any: (i) Taxes; (ii) Notice and Administration Costs; (iii) Litigation

Expenses awarded by the Court; (iv) attorneys' fees awarded by the Court; and (v) other Court-approved deductions.

(aa) "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 B).

(bb) "Notice and Administration Costs" means the costs, fees and expenses that are incurred by the Settlement Administrator in connection with (i) providing Notice to the Class; and (ii) administering the claims process.

(cc) "Outstanding Loan Balance" means, for those Authorized Recipients with Remaining Unpaid Sigma Deficiencies, the market value of the Authorized Recipient's securities on loan in Comerica's Securities Lending Program.

(dd) "Paid Sigma Deficiency" refers to the satisfaction of the Sigma Deficiency by certain Class Members prior to the Effective Date, according to the books and records of Comerica.

(ee) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, professional corporation, limited liability corporation, association, joint stock company, estate, legal

representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their spouses, heirs, administrators, predecessors, parents, subsidiaries, divisions, affiliates, representatives, successors or assignees.

(ff) “Plaintiffs” means Named Plaintiffs and the Class.

(gg) “Plaintiffs’ Counsel” means The Miller Law Firm, P.C.; Glancy Binkow & Goldberg LLP; Sullivan, Ward, Asher & Patton, P.C.; and Robbins Geller Rudman & Dowd LLP.

(hh) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund as described herein and in the Notice.

(ii) “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 as set forth therein.

(jj) “Related Parties” means any and all of a Person’s past, present, and future predecessors, successors, parents, shareholders, subsidiaries, affiliates, divisions, partners, members, trustees, executors, personal representatives, heirs, and assigns and each of their respective past, present, and future employees, representatives, officers, directors, shareholders, principals, members, managers, trustees, fiduciaries, partners,

agents, attorneys, advisors, investment advisors, auditors, accountants, insurers, servants, sponsors, settlors, successors, plan participants, personal representatives, executors, heirs, and assigns, and anyone claiming by or through such Person or on his, her, or its behalf. The foregoing notwithstanding, the CIFs shall not be considered to be Related Parties to Comerica for purposes of this Settlement.

(kk) “Remaining Unpaid Sigma Deficiency,” if any, means an Authorized Recipient’s remaining Unpaid Sigma Deficiency following payment and distribution of the Net Settlement Fund.

(ll) “Request for Exclusion” means any request for exclusion from the Class pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure.

(mm) “Settled Claims” means any claims (including “Unknown Claims”), debts, demands, rights, obligations, losses, causes of action, or liabilities of any nature or kind whatsoever (including but not limited to any claim for damages, interest, lost earnings or profits, attorneys’ fees, litigation expenses, and/or other costs), whether based on federal, state, foreign, statutory, common law or otherwise, in tort or in contract, fixed or contingent, accrued or unaccrued, asserted or unasserted, express or implied, foreseen or unforeseen, suspected or unsuspected, known or unknown,

contingent or vested, liquidated or unliquidated, at law or in equity, matured or unmatured, asserted in a class or individual capacity, that (i) arise from or relate to the nucleus of operative facts alleged in the Complaint and were or could have been asserted in the Action; or (ii) arise from, or that in any manner relate to, any direct or indirect investment by Comerica or Munder in Sigma Notes on behalf of any Class Member through the Securities Lending Program.

Notwithstanding the foregoing, for purposes of this Agreement, Settled Claims do not include any claims by Comerica against Munder, or by Munder against Comerica.

(nn) “Settlement” means this Stipulation of Settlement and the settlement contained herein.

(oo) “Settlement Administrator” means Garden City Group, subject to the approval of the Court.

(pp) “Settlement Amount” means the total amount of \$11,000,000 in cash.

(qq) “Settling Parties” means (i) Named Plaintiffs on behalf of themselves and the Class Members, (ii) Comerica, and (iii) Munder.

(rr) “Sigma Deficiency” means the pro rata amount of the Sigma Loss attributable to each Class Member. The Sigma Deficiency shall



be initially determined based upon the books and records of Comerica, and the Settlement Administrator shall provide notice to each Class Member of that Class Member's apparent Sigma Deficiency. Although Class Members shall have, and such notice shall disclose, an opportunity to challenge their designated Sigma Deficiency within 45 days after mailing of such notice, upon the resolution of all such challenges by the Court (or the forbearance by all Class Members of the opportunity to make such challenges in a timely manner) and the distribution of the Class Members' respective shares of the Net Settlement Fund, the Sigma Deficiency established for each Class Member shall be final and binding upon the Class Members. The foregoing notwithstanding, the resolution of any such challenge shall not affect the total Settlement Amount, nor shall the resolution of any such challenge change the gross Unpaid Sigma Deficiency.

(ss) "Sigma Loss" means the total amount of principal lost by Comerica collective investment vehicles when Sigma failed to repay in full the Sigma Notes, less any prior partial payments made by Sigma's receiver to Comerica and/or its collective investment vehicles.

(tt) "Sigma Notes" means the medium-term notes issued by Sigma Finance Inc. and/or Sigma Finance Corp. with a maturity date of May 18, 2009.

(uu) “Stipulation” means this Stipulation of Settlement.

(vv) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any estimated taxes, interest or penalties) on any income earned by the Gross Settlement Fund; and (ii) the reasonable expenses and costs incurred in determining the amount of, and paying, any taxes owed by the Gross Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

(ww) “Unknown Claims” means any and all Settled Claims that any releasing party does not know or suspect to exist in his, her or its favor at the time this Stipulation is executed, approved, or becomes effective, which if known by it might have affected its settlement and release of such claims, or might have affected its decision to enter into or not to object to this Settlement, or not to exclude itself from the Class. The Settling Parties acknowledge that they may hereafter discover facts or legal theories or authorities in addition to or different from those that they now believe to be true. Notwithstanding the foregoing, the Settling Parties stipulate and agree that, upon the Effective Date, they and all other releasing parties hereunder shall expressly waive, and each shall be deemed to have waived, and by operation of the 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 release of Unknown Claims, as set forth in this Stipulation, was separately bargained for and is a material element of the Settlement.

(xx) “Unpaid Sigma Deficiency” refers to Sigma Deficiencies that have not been satisfied by certain Class Members as of the Effective Date, according to the books and records of Comerica.

**RELEASE OF CLAIMS BY NAMED PLAINTIFFS  
AND CLASS MEMBERS AGAINST COMERICA  
RELEASEES AND MUNDER RELEASEES**

2. Upon the Effective Date, Named Plaintiffs and each Class Member, on behalf of themselves and all of their Related Parties, individually and collectively, (a) shall be deemed by operation of law to have fully, finally and forever released, relinquished, waived, discharged and dismissed any and all Settled Claims against the Comerica Releasees and the Munder Releasees; (b) shall be enjoined from asserting or prosecuting any

Settled Claims; and (c) agree and covenant not to sue any of the Comerica Releasees and the Munder Releasees on the basis of any Settled Claims or to assist any third-party in commencing or maintaining any suit related to any Settled Claims. Nothing in this Stipulation, Release, or in the definition of Settled Claims shall be a release, waiver, discharge or dismissal by any Named Plaintiff or Class Member or their Related Parties against any of the Comerica Releasees or Munder Releasees of any claim, right, or interest unrelated to the Sigma Notes.

**RELEASE OF CLAIMS BY COMERICA AGAINST CLASS  
MEMBER RELEASEES**

3. Upon the Effective Date, Comerica, on behalf of itself and all of its Related Parties, individually and collectively, (a) shall be deemed by operation of law to have fully, finally and forever released, relinquished, waived, discharged and dismissed any and all Settled Claims against the Class Member Releasees; (b) shall be enjoined from asserting or prosecuting any Settled Claims; and (c) agrees and covenants not to sue any of the Class Member Releasees on the basis of any Settled Claims or to assist any third-party in commencing or maintaining any suit related to any Settled Claims.

Many of the Class Members continue to participate in Comerica's Securities Lending Program and/or other Comerica collective investment vehicles, and/or may have other commercial relationships with Comerica.

Therefore, notwithstanding anything to the contrary in this Settlement, nothing in this Stipulation, Release, or in the definition of Settled Claims, shall be a release, waiver, discharge, or dismissal by Comerica, its officers, directors, agents, successors or assigns, of: (a) any claims against the Class Member Releasees for any failure by any Releasee to satisfy any Sigma Deficiency remaining after the settlement funds are paid or credited pursuant to this Settlement; (b) any fees, interest or compensation due Comerica other than any Sigma Deficiency to the extent such Sigma Deficiency is reduced or eliminated pursuant to this Settlement; (c) any rights of Comerica or obligations owed to Comerica under the terms of any agreement, pledge or commercial relationship except as specifically provided in this Settlement; or (d) any claim, right, or interest unrelated to the Sigma Notes.

**RELEASE OF CLAIMS BY MUNDER AGAINST CLASS MEMBER  
RELEASEES**

4. Upon the Effective Date, Munder, on behalf of itself and all of its Related Parties, individually and collectively, (a) shall be deemed by operation of law to have fully, finally and forever released, relinquished, waived, discharged and dismissed any and all Settled Claims against the Class Member Releasees; (b) shall be enjoined from asserting or prosecuting any Settled Claims; and (c) agrees and covenants not to sue any of the Class

Member Releasees on the basis of any Settled Claims or to assist any third-party in commencing or maintaining any suit related to any Settled Claims.

Many of the Class Members continue to participate in investment programs in which Munder is involved, and/or may have other commercial relationships with Munder. Therefore, notwithstanding anything to the contrary in this Settlement, nothing in this Stipulation, Release, or in the definition of Settled Claims, shall be a release, waiver, discharge, or dismissal by Munder or its Related Parties of: (a) any fees, interest or compensation due Munder or its Related Parties; (b) any rights of Munder or its Related Parties, or any obligations due Munder or its Related Parties, under the terms of any agreement, pledge or commercial relationship; or (c) any claim, right, or interest unrelated to the Sigma Notes.

### **THE SETTLEMENT CONSIDERATION**

5. In consideration of the Settlement, Comerica shall pay or cause to be paid the Settlement Amount in cash into the Escrow Account within ten (10) business days after the entry of the Preliminary Approval Order. Plaintiffs' Counsel shall provide the information necessary to effectuate a transfer of funds, including wiring instructions to include the bank name and ABA routing number, account name and number, and a signed W-9

reflecting a valid taxpayer identification number for the qualified settlement fund in which the Escrow Account has been established.

6. The Settlement Amount is fixed, and is inclusive of attorneys' fees, expenses, costs, Notice and Administration Costs, Taxes, and other payments or costs of any kind. Under no circumstances will Comerica be required to pay or cause to be paid more than the Settlement Amount pursuant to this Stipulation and the Settlement set forth herein.

#### **COURT APPROVAL OF THE SETTLEMENT**

7. Within ten (10) business days after this Stipulation is executed, Named Plaintiffs shall move for entry of a Preliminary Approval Order substantially in the form annexed hereto as Exhibit A, preliminarily certifying the Class for purposes of effectuating the Settlement, preliminarily approving the Settlement, directing that Notice be provided to the Class as set forth therein, and scheduling a Final Approval Hearing.

8. All objections to the Settlement and application for attorneys' fees must be filed with the Court and served on counsel for the Settling Parties by the date set by the Court in the Preliminary Approval Order and specified in the Notice, which shall require that objections must be filed with the Court and served on counsel for the Settling Parties at least twenty eight (28) calendar days prior to the Final Approval Hearing, unless such deadline

is extended by order of the Court. Any Settling Party who wishes to file a reply or response to any objection shall do so at least seven (7) calendar days prior to the Final Approval Hearing.

9. No later than thirty five (35) calendar days prior to the Final Approval Hearing, and unless the Settlement has otherwise been terminated pursuant to this Stipulation, Named Plaintiffs shall move for (a) final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure; (b) entry of a Judgment substantially in the form annexed as Exhibit C; and (c) approval of the Plan of Allocation. Subject to applicable court rules, the Named Plaintiffs shall be entitled to file a Reply Brief in support of their motion 14 days prior to the Final Approval Hearing.

10. As soon as reasonably practicable, but in no event later than one year after the Effective Date, Plaintiffs' Counsel will apply to the Court for a Class Distribution Order: (a) approving the Settlement Administrator's determinations regarding the application of the Plan of Allocation; (b) approving payment of any outstanding administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c) directing payment of the Net Settlement Fund to Authorized Recipients from the Escrow Account after the Effective Date. No payments shall be made to Authorized Recipients from the Net



Settlement Fund before the Class Distribution Order is entered. The Class Distribution Order shall not authorize any payments to Authorized Recipients prior to the Effective Date.

### **USE OF GROSS SETTLEMENT FUND**

11. Except as otherwise provided herein, the Gross Settlement Fund shall be used to pay any: (a) Taxes; (b) Notice and Administration Costs pursuant to the terms of paragraph 14 below and as otherwise approved by the Court; (c) attorneys' fees awarded by the Court; (d) Litigation Expenses awarded by the Court; and (e) other Court-approved deductions.

12. Except as provided herein or pursuant to orders of the Court, the Gross Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent 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 the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in excess of U.S. \$100,000 in United States Treasury Bills having maturities of ninety (90) days or less, or money market mutual funds comprised of investments secured by the full faith and credit of the United States Government, or an account fully insured by the United States Government Federal Deposit Insurance Corporation (FDIC).

Any funds held in escrow in an amount of less than U.S. \$100,000 may be held in an interest-bearing account insured by the FDIC or money market mutual funds comprised of investments secured by the full faith and credit of the United States Government or fully insured by the United States Government. All risks related to the investment of the Gross Settlement Fund shall be borne by the Gross Settlement Fund.

13. (a) Plaintiffs, Comerica and the Escrow Agent shall treat the Escrow Account as a “qualified settlement fund” for purposes of §468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. The Escrow Agent and the Settling Parties shall timely make such elections as are necessary or advisable to carry out the provision of this Paragraph 13, including, without limitation, the “relation-back election” (as described in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) The Escrow Agent shall be the Escrow Account’s “administrator” for the purpose of the Internal Revenue Code §468B and as

that term is used in Treas. Reg. §1.468B-2. As administrator, the Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2, including but not limited to, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing all applicable federal, state or local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)) and paying any Taxes reported thereon. Such returns (as well as the election described in Paragraph 13(a)) shall be consistent with Paragraph 13 and in all events shall reflect that all Taxes, as defined in Paragraphs 1(vv) and 13(c), on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in Paragraph 13(c) hereof.

(c) All (i) Taxes, and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph 13, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 13 (collectively, “Tax Expenses”), shall be paid out of the Gross Settlement Fund; in all events

neither Comerica nor their counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Comerica and their counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Recipients any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Comerica nor their counsel are responsible therefor, nor shall they have any liability therefor. Comerica and Plaintiffs agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 13.

14. Following entry of the Preliminary Approval Order, Plaintiffs' Counsel may pay from the Escrow Account without further approval from Comerica or further order of the Court actual and reasonable Notice and Administration Costs up to \$10,000. In the event that the Settlement is

terminated or nullified pursuant to the terms of this Stipulation, all Notice and Administration Costs actually paid or incurred will not be returned or repaid to Comerica. Prior to final approval of the Settlement, the amount that may be paid for Notice and Administration Costs without further approval from Comerica or further order of the Court pursuant to this paragraph may not exceed \$10,000.

15. The Comerica Releasees and Munder Releasees shall have no liability whatsoever with respect to the maintenance, investment or distribution of the Gross Settlement Fund, the establishment or maintenance of the Escrow Account, the terms or administration of the Plan of Allocation or of any plan of allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, the distribution or disbursement of the Net Settlement Fund, the administration of the Settlement, or any other expenses or losses in connection with such matters. Without limiting the foregoing, the Gross Settlement Fund shall be the sole source of Taxes, Notice and Administration Costs, attorneys' fees and Litigation Expenses, and there shall be no recourse against the Comerica Releasees or Munder Releasees for any such expenses.

16. The Plan of Allocation shall provide that:

(a) All Authorized Recipients shall receive their portion (as a cash payment or credit, as set out below) of the Net Settlement Fund in proportion to their Sigma Deficiency.

(b) Those Authorized Recipients, if any, who are CIFs, shall receive their portion of the Net Settlement Fund in cash. Said cash payment shall be distributed by the Escrow Agent to Charles Moore, as special fiduciary of the CIFs.

(c) Those Authorized Recipients, if any, who have Paid Sigma Deficiencies, shall receive their portion of the Net Settlement Fund in cash. Said cash payment shall be distributed by the Escrow Agent directly to said Authorized Recipients.

(d) Those Authorized Recipients, if any, who have Unpaid Sigma Deficiencies, shall receive their portion of the Net Settlement Fund as a credit to their Unpaid Sigma Deficiency. The Escrow Agent shall distribute the funds for this group of Authorized Recipients to Comerica Bank. Comerica will deposit said funds into the appropriate securities lending pool(s) and credit the amount paid against the Authorized Recipients' respective Unpaid Sigma Deficiencies. If an Authorized Recipient's portion of the Net Settlement Fund exceeds its Unpaid Sigma Deficiency, then the difference between the two amounts shall be paid to

that Authorized Recipient in cash. Authorized Recipients, if any, with Remaining Unpaid Sigma Deficiencies shall continue to be responsible for said Remaining Unpaid Sigma Deficiency. In the event that an Authorized Recipient's Outstanding Loan Balance is or becomes less than 110% of that Authorized Recipient's Remaining Unpaid Sigma Deficiency, the Remaining Unpaid Sigma Deficiency shall be Funded, pursuant to the terms of this Agreement.

(e) If a Remaining Unpaid Sigma Deficiency is not Funded by an Authorized Recipient as provided in this Agreement, then Comerica is authorized to offset, liquidate, and/or apply any of the Authorized Recipient's cash (including money market funds and cash equivalents), however held, to satisfy that Authorized Recipient's Remaining Unpaid Sigma Deficiency, and any Authorized Recipient with a Remaining Unpaid Sigma Deficiency shall maintain cash (including money market funds and cash equivalents) with Comerica sufficient to satisfy its Remaining Unpaid Sigma Deficiency. If an Authorized Recipient with a Remaining Unpaid Sigma Deficiency does not maintain such a cash balance, then Comerica is authorized to offset, liquidate, and or apply any of the Authorized Recipient's other collateral, securities, income, and/or distributions, in its sole discretion, to satisfy that Authorized Recipient's Remaining Unpaid

Sigma Deficiency. The foregoing notwithstanding, Comerica will provide the Authorized Recipient three business days notice and a corresponding opportunity to cure before liquidating any of the Authorized Recipient's securities.

17. Each Class Member who is an ERISA entity shall ensure that, for itself, the Plan of Allocation shall be ERISA/OCC compliant.

**ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

18. No later than thirty five (35) calendar days prior to the Final Approval Hearing, Plaintiffs' Counsel may apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel and for reimbursement of Litigation Expenses. Comerica and Munder shall take no position with respect to the amount of attorneys' fees or Litigation Expenses, or to whether the Court should make any or all such awards, provided such application does not seek more than 30 percent of the Gross Settlement Fund in attorneys' fees. The Comerica Releasees and Munder Releasees shall have no responsibility for and shall take no position with respect to the allocation among Plaintiffs' Counsel, and/or any other Person who may assert some claim thereto, of any award of attorneys' fees or Litigation Expenses that the Court may make in the Action.



19. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Plaintiffs' Counsel with the Court's approval from the Escrow Account, immediately upon award (but in no event before the entry of the Judgment), notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof and shall be held in trust by them until the Judgment is Final; *provided, however*, that Plaintiffs' Counsel shall refund or repay all attorneys' fees and Litigation Expenses to the Escrow Account, plus accrued interest at the same net rate as is earned by the Gross Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Judgment is reversed, vacated, or otherwise nullified or the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than fourteen (14) business days after receiving notice of the termination of the Settlement or notice of any reversal, vacation, or nullification of the Judgment or reduction of the award of attorneys' fees and/or Litigation Expenses.

**DISTRIBUTION OF NET SETTLEMENT FUND;  
TERMINATION OF STIPULATION**

20. The Settlement Administrator shall administer the Settlement under Plaintiffs' Counsel's supervision in accordance with this Stipulation and subject to the jurisdiction of the Court. Comerica and Comerica's Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, except that Comerica shall have no obligation to incur any expenses or make any payments other than as provided herein.

21. The Net Settlement Fund shall be distributed to Authorized Recipients according to the Plan of Allocation described herein and in the Notice or according to such other plan of allocation as Court approves, subject to Paragraphs 16 and 22. Aside from the process set forth in Paragraph 16 and the requirement that, for a Class Member with an Unpaid Sigma Deficiency, that Class Member's portions of the Net Settlement Fund shall be credited against its Unpaid Sigma Deficiency before any of the Net Settlement Fund is paid to that Class Member in cash, specifically, which are material terms of this Settlement that cannot be changed without Comerica's approval, the allocation of the Net Settlement Fund among Authorized Recipients is a matter separate and apart from the proposed Settlement between the Settling Parties, and any decision by the Court

concerning the Plan of Allocation, except as provided above, shall not affect the validity or finality of the Settlement.

22. Plaintiffs' Counsel shall cause the Settlement Administrator to mail the Notice as required to all Class Members at the address of each such Person as set forth in the records of Comerica in the manner and within the time set forth in the Preliminary Approval Order. In the event any of the Class Member's initial mailings are returned, the Settlement Administrator shall use all reasonable secondary efforts (e.g., second mailing, telephone call and email) to deliver the Notice as required, to such Class Member.

23. All Requests for Exclusion must be received by the date set by the Court in the Preliminary Approval Order and specified in the Notice, which shall require that Requests for Exclusion must be received at least twenty eight (28) calendar days prior to the Final Approval Hearing, unless such deadline is extended by order of the Court.

24. Each Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to the Settlement, including, but not limited to, the releases provided for herein and in the Judgment.

25. Payment pursuant to the Class Distribution Order shall be final and conclusive against any and all Class Members, and all such Class Members shall be bound by all of the terms of this Stipulation and the

Settlement, including the terms of the Judgment and the releases provided for herein and therein.

26. If neither the Trustees of the Michigan Laborers Pension Fund nor the Trustees of the Michigan Laborers Health Care Fund properly exclude themselves from the Class then, upon entry of the Judgment, their lawsuit against Comerica in the United States District Court for the Eastern District of Michigan, case number 11-cv-13143, and all claims, third-party claims, and third-party counterclaims asserted therein, shall be dismissed with prejudice.

27. No Person shall have any claim against Class Member Releasees, Plaintiffs' Counsel, the Comerica Releasees, Comerica's Counsel, the Munder Releasees or Munder's Counsel based on the administration of the Settlement, including, without limitation, the processing of claims and distributions made in accordance with this Stipulation, the Settlement, the Plan of Allocation, and/or the Class Distribution Order.

28. The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

- (a) the Court has entered the Preliminary Approval Order;

(b) the Court has approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered the Judgment;

(c) the Judgment has become Final, as defined herein; and

(d) Comerica has not exercised its rights under paragraph 31 of this Stipulation.

29. If any of the conditions specified in part (a), (b), or (d) of the preceding paragraph is not met, or if the condition in part (c) of the preceding paragraph is not met and there is no longer any possibility that the condition in part (c) of the preceding paragraph can be met, then the Stipulation shall be canceled and terminated subject to paragraph 32 unless the Settling Parties with respect to conditions identified in Paragraph 28(a)-(c), or Plaintiff's Counsel and Comerica's Counsel with respect to the condition identified in Paragraph 28(d), mutually agree in writing to proceed with the Stipulation.

30. If the Court does not enter the Judgment in the form attached as Exhibit C hereto, or if the Court enters the Judgment and appellate review is sought and, on such review, the entry of the Judgment is finally vacated, modified, or reversed, then this Stipulation and the Settlement incorporated therein shall be cancelled and terminated, unless the Settling Parties who are

adversely affected thereby, in their sole discretion within thirty (30) calendar days from the date of the mailing of such ruling to such parties, provide written notice to all other Settling Parties hereto of their intent to proceed with the Settlement under the terms of the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of the Named Plaintiffs and the Class Members by Plaintiffs' Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than in the form provided and agreed to herein; provided, however, that no order of the Court concerning any applications for attorneys' fees or reimbursement of expenses, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Stipulation by any Settling Party. Without limiting the foregoing, Comerica and Munder shall have, in their sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action against them.

31. If, prior to the Final Approval Hearing, a certain portion of Persons who otherwise would be Class Members have validly requested exclusion from the Class ("Requests for Exclusion") in accordance with the provisions of the Notice or the Preliminary Approval Order, and if the pro

rata share of the Sigma Loss of such Persons, in the aggregate, is equal to or more than a certain specified percentage negotiated by Named Plaintiffs and Comerica and specified in a separate Supplemental Agreement to the Stipulation, then Comerica shall have, in its sole and absolute discretion, the option to terminate this Stipulation on behalf of all Settling Parties in accordance with the procedures set forth in the Supplemental Agreement. Plaintiffs' Counsel shall, however, have an opportunity to seek retraction of any Request for Exclusion until the deadline for such retractions as set forth in the Notice or the Preliminary Approval Order. The Supplemental Agreement shall not be filed with the Court. If required by the Court, the Settling Parties shall request that the Supplemental Agreement and/or any of its terms be disclosed only *in camera* to the Court for purposes of approving the Settlement, and that such disclosure shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to preserve the confidentiality of the Supplemental Agreement, particularly the threshold percentage specified in the Supplemental Agreement. Comerica may request from time to time summaries or copies of any or all Requests for Exclusion received, together with all written revocations of Requests for Exclusion, which shall be delivered to Comerica's Counsel promptly upon request. A listing of all Persons who have validly requested exclusion from

the Class shall be provided to Comerica, Munder, and the Court in connection with and at the time of the Final Approval Hearing.

32. Unless otherwise ordered by the Court, in the event the Settlement as described herein is not approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom or this Stipulation shall terminate, or be canceled, or otherwise fail to become effective, then:

(a) within five (5) business days after written notification of such event is sent by Comerica's Counsel or Plaintiffs' Counsel to the Escrow Agent, all funds disbursed from the Gross Settlement Fund, except for (i) actual and reasonable costs incurred in connection with providing Notice to the Class, not to exceed \$10,000, and (ii) Taxes and Tax Expenses, shall be returned to the Escrow Agent by the party or parties to whom the disbursement(s) were made, except that attorneys' fees and Litigation Expenses may be returned within the time limit set forth in paragraph 19. Within seven (7) business days after said written notification is sent, the Gross Settlement Fund (including accrued interest), except for (i) actual and reasonable costs incurred in connection with providing Notice to the Class, not to exceed \$10,000, and (ii) Taxes and Tax Expenses will be refunded,



reimbursed, and repaid by the Escrow Agent to Comerica. Past due amounts shall bear interest at a rate of 10% per annum;

(b) at the request of Comerica's Counsel, the Escrow Agent or its designee shall apply for any Tax refund owed on the Gross Settlement Fund and pay the proceeds to Comerica after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund pursuant to such written request;

(c) the Settling Parties shall be restored to their respective positions in the Action as of August 29, 2013 with all of their respective claims and defenses preserved as they existed on that date;

(d) the terms and provisions of the Stipulation shall be null and void and shall have no further force and effect with respect to the Settling Parties, and neither the existence nor the terms of this Stipulation (nor any negotiations preceding this Stipulation nor any acts performed pursuant to, or in furtherance of, this Stipulation) shall be used in this Action or in any other proceeding for any purpose; and

(e) any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

33. Except as otherwise provided herein, in the event the Settlement is terminated, the Settlement shall be without prejudice, and none of the

terms shall be effective or enforceable and the fact and terms of the Settlement shall not be admissible in any trial of the Action or in any other litigation or proceeding, and, except as otherwise expressly provided, this Stipulation shall be null and void and shall have no further force or effect, and the Settling Parties and Class Members shall proceed in all respects as if this Stipulation and any related orders had not been entered.

### **NO ADMISSIONS**

34. 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 admissible in any action or proceeding for any reason, other than an action to enforce the terms of this Stipulation or the Comerica-Munder Agreement; and (b) is not, and shall not be deemed, described, construed, offered or received as evidence of any presumption, concession, or admission by any Person of the truth of any fact alleged in the Action; the validity or invalidity of any claim or defense that was or could have been asserted in the Action or in any litigation; the amount of damages, if any, that would have been

recoverable in the Action; or any liability, negligence, fault, or wrongdoing of any Person.

### **MISCELLANEOUS PROVISIONS**

35. All of the following exhibits attached hereto are hereby incorporated by reference as though fully set forth herein: proposed Preliminary Approval Order (Exhibit A), Notice (Exhibit B), and the proposed Judgment (Exhibit C).

36. The Settling Parties intend this Settlement to be a final and complete resolution of all disputes asserted or that could be asserted with respect to the Settled Claims. Accordingly, the Settling Parties agree that the Settlement Amount and the other terms of this Settlement were negotiated at arm's length and in good faith, including in connection with the mediation conducted by the Honorable Layn R. Phillips, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel. The Settling Parties shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure, or any other law or rule governing litigation conduct, relating to the maintenance, defense or settlement of the Action.

37. This Stipulation, including the exhibits to this Stipulation and the Supplemental Agreement, may not be modified or amended, nor may

any of its provisions be waived, except by a writing signed by the Settling Parties. Any condition in this Stipulation may be waived by the party entitled to enforce the condition in a writing signed by that party or its counsel. The waiver by any party of any breach of this Stipulation by any other party shall not be deemed a waiver of the breach by any other party, or a waiver of any other prior or subsequent breach of this Stipulation by that party or any other party. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

38. The headings herein are used for the purpose of convenience only and are not meant to have legal effect. This Stipulation, its exhibits and the Supplemental Agreement constitute the entire agreement among the Settling Parties concerning this Settlement and/or the Action, except that the Comerica-Munder Agreement is also part of the agreement between Comerica and Munder concerning the same, and no representations, warranties or inducements have been made by any Settling Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

39. Nothing in this Stipulation is intended, or shall be construed, to affect any rights or obligations of any Person that is a client of Comerica's Securities Lending Program other than the Class Members.

40. This Stipulation may be executed in one or more original, e-mailed and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

41. This Stipulation shall be binding upon, and inure to the benefit of, the successors, trustees, assigns, and legal representatives of the parties hereto. The Stipulation and the obligations hereunder may not be assigned without the express written consent of the Settling Parties.

42. All disputes and proceedings with respect to the administration of the Settlement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the timeliness, validity and amounts of claims, shall be subject to the jurisdiction of the Court, except as provided in the following Paragraph 43. The Settling Parties waive any right to trial by jury of any dispute arising under or relating to this Stipulation or the Settlement.

43. If any disputes arise between the Settling Parties relating to the finalization of the Stipulation or the Settlement itself, those disputes will be resolved by the Hon. Layn R. Phillips (Ret.) first by way of expedited

telephonic mediation and, if those efforts are unsuccessful, then by way of final, binding, non-appealable resolution. Notwithstanding the foregoing, any disputes between Comerica and Munder shall be resolved in accordance with the Comerica-Munder Agreement.

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

45. All counsel and any other Person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms. The Settling Parties each represent and warrant that they hold the Settled Claims being released in the Settlement and that they have full authority to release such Settled Claims.

46. The Settling Parties stipulate and agree that all litigation activity in the Action, except that contemplated herein and in the Preliminary Approval Order, the Notice, and the Judgment, shall be stayed

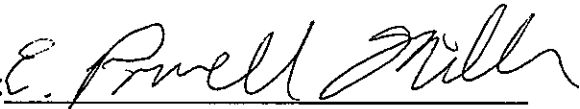
and all hearings, deadlines, and other proceedings in the Action, except a preliminary approval hearing (if any) and the Final Approval Hearing, shall be taken off the Court's calendar.

47. If any party is required to give notice to the other parties under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt by hand delivery or electronic mail to the recipients in the signature block below.

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Dated: 9-27-13

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**INDEX OF EXHIBITS**

- Exhibit A- Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Setting Date for Hearing on Final Approval of Settlement
- Exhibit B- Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing, and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses
- Exhibit C- Final Order and Judgment

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE BOARD OF TRUSTEES OF THE  
CITY OF BIRMINGHAM EMPLOYEES'  
RETIREMENT SYSTEM, ET AL,

Case No. 09-cv-13201

Hon. Stephen J. Murphy, III

Plaintiffs,

**EXHIBIT A**

v.

COMERICA BANK,

Defendant/Third-Party Plaintiff,

v.

MUNDER CAPITAL MANAGEMENT,

Third-Party Defendant.

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**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, APPROVING FORM AND MANNER OF  
NOTICE AND SETTING DATE FOR HEARING ON FINAL  
APPROVAL OF SETTLEMENT**

WHEREAS, this Action involves class action lawsuits brought by the Board of Trustees of the City of Birmingham Employees' Retirement System, the Board of Trustees of the Road Commission for Oakland County Retirement System, the Board of Trustees of the Iron Workers' Local No. 25 Pension Fund, the Board of Trustees of the Iron Workers' Health Fund of Eastern Michigan, the Board of Trustees of the Roofers Local No. 149 Pension Fund, the Board of Trustees of Carpenters Pension Fund Trust-Detroit & Vicinity, and the Board of Trustees of Line Construction Benefit Fund (together, the "Named Plaintiffs"), on behalf of themselves and as representatives of a class described herein (the "Class") (collectively, "Plaintiffs") against defendant Comerica Bank ("Comerica") for claims of declaratory judgment, breach of fiduciary duty under common law, ERISA violations, violations of the Michigan Public Employee Retirement System Investment Act, breach of contract, and breach of the implied covenant of good faith and fair dealing arising out of Comerica's investment of its Securities Lending Program's assets in the Sigma Notes;<sup>1</sup>

WHEREAS, (i) Plaintiffs, (ii) defendant/third-party plaintiff Comerica, (iii) third-party defendant Munder Capital Management ("Munder") (collectively, the "Settling Parties") reached a preliminary agreement to settle the Settled Claims and the Action and all claims asserted therein;

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed

WHEREAS, the Settling Parties executed a Stipulation of Settlement (“Stipulation”) on September \_\_, 2013;

WHEREAS, the Stipulation, together with the exhibits thereto, set forth the terms and conditions for the proposed settlement (the “Settlement”) of the claims alleged in Plaintiffs’ Consolidated Class Action Complaint (the “Complaint”); and

WHEREAS, the Settling Parties having presented the Settlement of the Action to the Court for preliminary approval, pursuant to Rule 23 of the Federal Rules of Civil Procedure, in accordance with the Stipulation.

Now, pursuant to Plaintiffs’ Motion for Preliminary Approval and the Memorandum in Support thereof, the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the Class. Upon reviewing the Settlement, Plaintiffs’ Motion for an Order Preliminarily Approving Settlement, Approving the Form and Manner of Notice, and Setting Final Approval Hearing Date, and the supporting memorandum of law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Stipulation unless otherwise defined herein.

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to them in the Stipulation.



2. The Court hereby preliminarily certifies, for settlement purposes only, a Class pursuant to Rules 23(a) & (b)(3) of the Federal Rules of Civil Procedure consisting of:

all participants in Comerica's securities lending program that, through one or more of the investment vehicles offered or managed by Comerica or its affiliates, incurred losses relating to investments in the Sigma Notes and that have not previously released Comerica from all liability related to such losses.

3. For purposes of effectuating the Settlement, the Court appoints the Named Plaintiffs as Class Representatives and appoints Plaintiffs' Counsel (The Miller Law Firm, P.C.; Glancy Binkow & Goldberg LLP; Robbins Geller Rudman & Dowd LLP; and Sullivan, Ward, Asher & Patton, P.C.) as Class Counsel.

4. The Court preliminarily finds and concludes that the requirements of Rule 23(a) & (b)(3) of the Federal Rules of Civil Procedure are satisfied as: (a) the members of the Class are so numerous and geographically dispersed that joinder of all members of the Class is impracticable; (b) there are questions of law and fact common to the Class, and those common issues predominate over any individual issues; (c) the claims of the Named Plaintiffs are typical of the claims of the Class; (d) Named Plaintiffs and Plaintiffs' Counsel have and will continue to fairly and adequately represent and protect the interests of all members of the Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the members of the

Class in individually controlling the prosecution of separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Class, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. The Court preliminarily finds that (i) the proposed Settlement resulted from extensive arms'-length negotiations; (ii) the proposed Settlement was agreed to after Plaintiffs' Counsel had conducted extensive legal and factual research and discovery regarding the strengths and weaknesses of Named Plaintiffs' and the Class's claims; (iii) Plaintiffs' Counsel have concluded that the proposed Settlement is fair, reasonable and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable and adequate to warrant sending notice of the proposed Settlement to the Class. Having considered the essential terms of the Settlement under the recommended standards for preliminary approval of settlements as set forth in relevant jurisprudence, the Court finds that those members of the Class whose claims would be settled, compromised, dismissed and/or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

6. Plaintiffs' Counsel is authorized to act on behalf of the Class with respect to all acts required by, or which may be given pursuant to, the Stipulation,

or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

7. The Court appoints Garden City Group as Settlement Administrator to supervise and administer the Notice, receive Requests for Exclusion and make payments to Authorized Recipients. The Settling Parties and their counsel shall not be liable for any act or omission of the Settlement Administrator.

8. The Court appoints Garden City Group as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Escrow Agreement. The Settling Parties and their counsel shall not be liable for any act or omission of the Escrow Agent.

9. The Court preliminarily approves: (a) the Settlement of the Action as set forth in the Stipulation, and (ii) the Notice, subject to the right of any member of the Class to challenge the fairness, reasonableness and adequacy of the Settlement, Stipulation or the proposed Plan of Allocation, and to show cause, if any exists, why a final judgment dismissing the Action based on the Stipulation should not be ordered herein after adequate notice to the Class has been given in conformity with this Order.

10. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing (the "Final Approval Hearing") shall be held on \_\_\_\_\_, 2013 at \_\_\_:\_\_\_

\_\_\_m., in the United States District Court for the Eastern District of Michigan, the Honorable Stephen J. Murphy, III presiding, to:

a. determine whether the Settlement should be approved by the Court as fair, reasonable and adequate, and in the best interests of the Class;

b. determine whether the notice method utilized by the Settling Parties:

(i) constituted the best practicable notice;

(ii) constituted notice reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing;

(iii) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to notice; and

(iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether the Judgment should be entered pursuant to the Stipulation, *inter alia*, dismissing the Action against Comerica with prejudice, extinguishing and releasing all Settled Claims as set forth in the Stipulation and barring all claims as set forth in the Stipulation;

d. determine whether the Class preliminarily certified for purposes of effectuating the Settlement should be finally certified pursuant to Rules 23(a) & (b)(3) of the Federal Rules of Civil Procedure;

e. determine whether to approve the Plan of Allocation;

f. determine whether the applications for attorneys' fees and Litigation Expenses are fair and reasonable and should be approved; and

g. rule on such other matters as the Court may deem appropriate.

11. The Court reserves the right to adjourn the Final Approval Hearing or any aspect thereof, including the consideration of the application for attorneys' fees and reimbursement of expenses, without further notice to the Class.

12. The Court reserves the right to approve the Settlement at or after the Final Approval Hearing without further notice to the Class.

13. Named Plaintiffs have presented to the Court proposed a form of Notice, appended to the Stipulation as Exhibit B. The Court finds that such Notice fairly and adequately: (a) describes the terms and effect of the Settlement and the Plan of Allocation; (b) notifies the Class that Plaintiffs' Counsel will seek attorneys' fees and reimbursement of Litigation Expenses from the Gross Settlement Fund; (c) gives notice to the Class of the time and place of the Final Approval Hearing; (d) describes how Class Members may exclude themselves

from the Class and the Settlement; and (e) describes how Class Members may object to all or any aspect of the Settlement.

14. Named Plaintiffs have proposed the following manner of communicating the Notice to members of the Class:

a. By no later than thirty (30) calendar days after the date of this Order, Plaintiffs' Counsel shall cause the Notice, with such non-substantive modifications thereto as may be agreed upon by the Settling Parties, to be (i) provided by first-class mail, postage prepaid, to the last known address of each member of the Class who can be identified by reasonable effort; (ii) placed on the dedicated website for this Action; and (iii) in the event any of the Class Member's initial mailings are returned, delivered using all reasonable secondary efforts (e.g. second mailing, telephone call and email);

b. Within ten (10) business days from the date of this Order, Comerica shall provide Plaintiffs' Counsel, in electronic format, the names and last known addresses of the members of the Class and also shall timely respond to any reasonable written requests for accessible data in Comerica's custody or control necessary to allow Plaintiffs' Counsel or the Settlement Administrator to effectuate notice and to implement, enforce or determine the administrability of a Plan of Allocation (as described and/or provided for herein); and

c. The Settling Parties shall reasonably cooperate with one another to accomplish the requirements of this paragraph, as provided in the Stipulation. The costs and expenses of preparing and disseminating the Notice shall be paid from the Gross Settlement Fund, as provided in the Stipulation.

15. The form and method of Notice specified herein is the best notice practicable, shall constitute due and sufficient notice to all Persons entitled to receive such notice, and fully satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

16. Class Members that wish to be excluded from the Settlement pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure must submit to the Settlement Administrator a written Request for Exclusion. Requests for Exclusion must be received at least twenty eight (28) calendar days prior to the Final Approval Hearing to the address below. In order to be valid, each Request for Exclusion must set forth the name and address of the Person requesting exclusion, must state clearly that such Person requests exclusion from the Class and the Settlement, and must be signed by a representative of the Person requesting exclusion. Requests for Exclusion must be mailed to the Settlement Administrator at:

*In re Comerica Securities Lending Litig.*  
Claims Administrator  
c/o GCG  
P.O. Box 35100

Seattle, WA 98124-1100

Class Members that request exclusion (a) will not participate in any distribution of the Net Settlement Fund and will not receive a Settlement payment; (b) will not be bound by the terms of the Settlement, including the releases, and will retain the right, if any, to file their own lawsuits concerning the Settled Claims; and (c) will not be able to object to the Settlement. Each member of the Class that does not request exclusion from the Class in a valid and timely manner will be considered a Class Member and will be bound by the Settlement.

17. Any Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to any term of the Settlement, to the Plan of Allocation, or to the proposed award of attorneys' fees and expenses may file an objection. An objector must file with the Court and serve upon counsel as listed in the Notice: (a) a written notice containing the Person's name, address, telephone number and signature; (b) a statement of such Person's objection(s) to any matters before the Court specifying the ground(s) or reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection.

The objector or his, her or its counsel (if any) must effect service of copies of the objection on counsel as outlined in the Notice and file it with the Court at



least twenty eight (28) calendar days prior to the Final Approval Hearing. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel as outlined in the Notice and file it with the Court at least twenty eight (28) calendar days prior to the Final Approval Hearing. Any member of the Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived and shall be foreclosed from raising any objection to the Settlement, and any untimely objection shall be barred absent an Order from the Court. Any Settling Party who wishes to file a reply or response to any objection shall do so at least seven (7) calendar days prior to the Final Approval Hearing.

18. Any objector who files and serves a timely, written objection in accordance with this Order and the Notice above may also appear at the Final Approval Hearing, either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Final Approval Hearing must comply with the Local Rules of this Court and must effect service of a notice of intention to appear setting forth the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on the counsel for the Settling Parties (at the addresses set out in the Notice) and file it with the Court at least twenty

eight (28) calendar days prior to the Final Approval Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Final Approval Hearing, except by Order of the Court for good cause shown.

19. No later than thirty five (35) calendar days prior to the Final Approval Hearing, Named Plaintiffs and Plaintiffs' Counsel shall file their motion for (a) final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, (b) entry of a Judgment substantially in the form annexed as Exhibit C to the Stipulation, (c) approval of the Plan of Allocation, (d) a collective award of attorneys' fees to Plaintiffs' Counsel, and (e) reimbursement of Litigation Expenses. Plaintiffs' Counsel shall also post such motion on the dedicated website for this Action as soon thereafter as possible. Subject to applicable court rules, the Named Plaintiffs shall be entitled to file a Reply Brief in support of their motion 14 days prior to the Final Approval Hearing.

20. If this Settlement is not approved by the Court, is terminated in accordance with the terms of the Stipulation or otherwise does not become Final for any reason whatsoever, the Settlement, the Stipulation, the preliminary class certification set forth in this Order and any actions taken or to be taken in connection therewith (including this Order and any Judgment entered herein), shall be terminated and shall become void and of no further force and effect, except that

any obligations or provisions relating to payment of Notice and Administration Costs, and any other obligation or provision that is expressly designated in the Stipulation to survive termination of the Settlement, shall survive termination of the Stipulation and Settlement.

21. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Named Plaintiffs and all members of the Class are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class or other Person, any Settled Claim against any Comerica Releasee or Munder Releasee.

22. The Stipulation, whether or not consummated, and the negotiations thereof and any related communications made, proceedings taken, or orders entered pursuant thereto, is not admissible as evidence for any purpose against any of the Settling Parties in any pending or future litigation involving any of the Settling Parties, other than an action to enforce the terms of the Stipulation or the Comerica-Munder Agreement.

23. The Court authorizes payment out of the Gross Settlement Fund of the Notice and Administration Costs as set forth in the Stipulation.

24. The passage of title and ownership of the Gross Settlement Fund to the Escrow Agent in accordance with the terms of the Stipulation is approved. No Person that is not a Class Member or counsel for Named Plaintiffs shall have any right to any portion of, or in the distribution of, the Gross Settlement Fund or Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

25. This Order supercedes any prior orders regarding the subject matters herein.

26. The Court hereby retains jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement reflected in the Stipulation, including enforcement of the releases provided for in the Stipulation.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without further written notice.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Stephen J. Murphy, III  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE BOARD OF TRUSTEES OF THE  
CITY OF BIRMINGHAM EMPLOYEES'  
RETIREMENT SYSTEM, ET AL,

Case No. 09-cv-13201

Hon. Stephen J. Murphy, III

Plaintiffs,

**EXHIBIT B**

v.

COMERICA BANK,

Defendant/Third-Party Plaintiff,

v.

MUNDER CAPITAL MANAGEMENT,

Third-Party Defendant.

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**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT,  
FINAL APPROVAL HEARING, AND MOTION FOR ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*  
Your legal rights are affected whether you act, or don't act.  
Read this Notice carefully.

This notice ("Notice") advises you of a proposed settlement (the "Settlement") of a class action lawsuit brought by Named Plaintiffs<sup>1</sup> on behalf of themselves and the Class described herein (the "Plaintiffs") against Comerica Bank ("Comerica") regarding certain notes issued by Sigma Finance Corp. and/or Sigma Finance Inc., ("Sigma") that were purchased by Comerica in its Securities Lending Program. The Named Plaintiffs, Comerica and third-party defendant Munder Capital Management ("Munder") are referred to herein as the "Settling Parties." The litigation is referred to as the "Action." The United States District Court for the Eastern District of Michigan (the "Court") has preliminarily approved the Settlement, and has scheduled a hearing to evaluate the fairness and adequacy of the Settlement at which the Court will consider the Named Plaintiffs' motion for final approval of the Settlement, motion for approval of a proposed Plan of Allocation, and motion for an award of attorneys' fees and expenses.

That hearing, before the Honorable Stephen J. Murphy, III, has been scheduled for \_\_\_\_\_ \_\_, 2013, at \_:\_ \_\_.m. in Room 228, of the United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226 (the "Final Approval Hearing"). The terms of the Settlement are contained in a Stipulation of Settlement (the "Settlement" or "Stipulation"), a copy of which is available at [www.GCGINC.com](http://www.GCGINC.com) or by contacting Plaintiffs' Counsel identified below. Capitalized terms used in this Notice and not defined herein have the meanings assigned to them in the Stipulation of Settlement.

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<sup>1</sup> The Named Plaintiffs include the Board of Trustees of the City of Birmingham Employees' Retirement System, the Board of Trustees of the Road Commission for Oakland County Retirement System, the Board of Trustees of the Iron Workers' Local No. 25 Pension Fund, the Board of Trustees of the Iron Workers' Health Fund of Eastern Michigan, the Board of Trustees of the Roofers Local No. 149 Pension Fund, the Board of Trustees of Carpenters Pension Fund Trust-Detroit & Vicinity and the Board of Trustees of Line Construction Benefit Fund.

The Settlement will provide for cash payments or credits to members of the Class as defined below out of a fund of \$11,000,000 dollars. The Settlement is summarized below.

Any questions regarding the Settlement should be directed to Plaintiffs' Counsel: E. Powell Miller, The Miller Law Firm, P.C., 950 West University Drive, Suite 300, Rochester, MI 48307, 248-841-2200. Plaintiffs' Counsel have established a toll-free phone number, (888) 773-9223, if you have any questions.

Please do not contact the Court. They will not be able to answer your questions.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING TO APPROVE OF THE SETTLEMENT. YOU DO NOT HAVE TO DO ANYTHING TO RECEIVE A PAYMENT, BUT MAY EXCLUDE YOURSELF FROM THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

**YOU DO NOT NEED TO TAKE FURTHER ACTION TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A PAYMENT** If the Settlement is approved you do not need to take any further action to receive your *pro rata* payment. The *pro rata* portion of the Net Settlement Fund to which you are entitled will be calculated as part of the administration of the Settlement. However, as described below, if you wish to dispute your predetermined Sigma Deficiency, you must do so within forty five (45) days of the mailing of this Notice.

**OBJECT** If you do not exclude yourself and wish to object to any part of the Settlement, you can write to the Court and counsel and explain why you do not like the Settlement.

**EXCLUDE YOURSELF** If you do not wish to be a member of the Class, you must exclude yourself (as described below in Answer to Question No. 10) and you will not receive any payment from the Settlement. You cannot bring or be part of any other lawsuit or arbitration against any of the Comerica Releasees or Munder

Releasees based on any Settled Claim unless you exclude yourself from the Class.

**GO TO A HEARING**

If you have submitted a written objection to the Court and counsel, as explained below, you can ask to speak in Court at the Final Approval Hearing about the fairness of the Settlement.

**DO NOTHING**

If you do nothing you will be bound by the terms of the Settlement, will be deemed to have released all Settled Claims against all of the Comerica Releasees and Munder Releasees, and will receive your *pro rata* payment.

Deadlines:

File Objection:	_____	, 2013
Request Exclusion	_____	, 2013
<b>Final Approval Hearing:</b>	_____	, 2013

You may exclude yourself from the Settlement. However, if you timely exclude yourself, that is the only thing you can do: you may not object in writing or appear before the Court at the Final Approval Hearing to state any objections.

If you object and do not request exclusion, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.

If you do not timely request exclusion from the Class, you will be bound by the Stipulation of Settlement and its Releases, whether or not you object, except if the Court rejects the proposed Settlement.

These rights and options — *and the deadlines to exercise them* — are explained in this Notice.

The Court presiding over this case must decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and, if there are any appeals, after appeals are resolved. Please be patient.



The Court has authorized this Notice, but no money will be paid until after the Court holds the Final Approval Hearing on the fairness of the Settlement on \_\_\_\_\_, 2013. The Court has not decided the merits of this case.

## WHAT THIS NOTICE CONTAINS

### BASIC INFORMATION

1. Why did I receive this notice package?
2. What is the lawsuit about? What has happened so far?
3. Why is this a class action?
4. Why is there a settlement?
5. How do I know whether I am part of the Class?
6. What does the Settlement provide?
7. What will be my share of the Settlement Fund?
8. How can I get my portion of the recovery?
9. When would I receive my payment?
10. Can I exclude myself from the Settlement?

### THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the case?
12. How will the lawyers be paid?

### OBJECTING TO THE SETTLEMENT

13. How do I tell the Court if I do not like the Settlement?

### THE COURT'S FINAL APPROVAL HEARING

14. When and where will the Court decide whether to approve the Settlement?
15. Do I have to come to the Final Approval Hearing?
16. May I speak at the Final Approval Hhearing?

### IF YOU DO NOTHING

17. What happens if I do nothing at all?

### GETTING MORE INFORMATION

18. How do I get more information?

### UNDERSTANDING YOUR PAYMENT – PLAN OF ALLOCATION

### **SUMMARY OF SETTLEMENT**

This Action is a class action filed in federal district court against Comerica. As described in more detail below, and in the Complaint itself, the Named Plaintiffs allege that Comerica breached its obligations under ERISA, its fiduciary duties, its obligations under the securities lending agreements and committed negligence through Comerica's decision to invest and maintain cash collateral of members of the Class in medium-term notes ("Sigma Notes") issued either by Sigma Finance, Inc. or Sigma Finance Corp. (collectively, "Sigma"). Copies of the operative Complaint, as well as other documents filed in this Action, are available at [www.GCGINC.com](http://www.GCGINC.com). Comerica denies the allegations in the Complaint.

A Gross Settlement Fund will be established consisting of a deposit of \$11,000,000 (eleven million dollars). Your estimated recovery, in cash or as a credit, as set out in the Stipulation of Settlement, before a deduction for costs, expenses and fees as described below, would amount to approximately 23% of the amount of your losses under the Plan of Allocation below. Your actual recovery will be based upon the Net Settlement Fund, which will consist of the Gross Settlement Fund plus interest earned thereon, less certain amounts described in the Settlement (including expenses associated with Notice to the Class, Court-approved attorneys' fees and expenses, Taxes and other costs related to the administration of the Gross Settlement Fund and implementation of the Plan of Allocation), and will be allocated among the Class in accordance with the Plan of Allocation to be approved by the Court as part of the Settlement.

As with any litigation, the Settling Parties would face an uncertain outcome if this Action were to continue. Continued litigation of this Action against Comerica through summary judgment and at trial could result in a judgment or verdict greater or less than the recovery under the Settlement, or in no recovery at all.

This litigation has been hotly contested from the outset. Throughout this litigation, the Named Plaintiffs and Comerica have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Named Plaintiffs were to prevail at trial. Comerica, among other things: (1) has denied, and continues to deny, the material allegations of the Complaint; (2) has denied, and continues to deny, any wrongdoing or liability whatsoever; (3) has contested the propriety of class certification; (4) believes that it acted at all times reasonably and prudently and in accordance with applicable law with respect to its investment of cash collateral in Sigma Notes on behalf of the Class; (5) would assert certain other defenses and counterclaims if this Settlement is not consummated; and (6) is entering into the Settlement solely to avoid the cost, disruption, and uncertainty of continued litigation. The Settling Parties have taken into account the uncertainty and risks inherent in this litigation, particularly its complex nature, and have concluded that it is desirable that this Action be fully and finally settled on the terms and conditions set forth in the Stipulation.

Named Plaintiffs, on behalf of Plaintiffs' Counsel, will apply to the Court for an Order awarding attorneys' fees not in excess of 30% of the Gross Settlement Fund, plus reimbursement of expenses. The Named Plaintiffs in this Action will share in the allocation of the money paid to the securities lending participants on the same basis and to the same extent as all other members of the Class.

## **BASIC INFORMATION**

### **1. Why did I receive this notice package?**

You received this Notice because records indicate that you are a plan or entity, or represent a plan or entity, for which Comerica, pursuant to a securities lending agreement, purchased Sigma Notes. The Court has directed that this Notice be sent to you because, as a potential member of the Class, you have a right to know about the proposed Settlement with

Comerica before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and any related objections and appeals are favorably resolved, the Net Settlement Fund will be allocated among Class Members according to a Court-approved Plan of Allocation and the Class Member Releasees, Comerica Releasees, and Munder Releasees (the “Released Parties” for purposes of this Notice) will be released from all Settled Claims, as set forth in the Stipulation.

This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how you will receive your portion of the benefits. The purpose of this Notice is to inform you of the Final Approval Hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed Settlement and to consider the application of Plaintiffs’ Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses.

The Final Approval Hearing will be held before the Honorable Stephen J. Murphy, III, on \_\_\_\_\_, 2013, at \_\_\_\_\_.m. in Room 228, of the United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226 to determine:

- (a) whether the Settlement should be approved as fair, reasonable and adequate;
- (b) whether the Complaint should be dismissed with prejudice pursuant to the terms of the Stipulation;
- (c) whether the Notice and the means of dissemination thereof pursuant to the Stipulation: (i) are appropriate and reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (ii) meet all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law; and
- (d) whether the application for attorneys’ fees and reimbursement of expenses filed by Plaintiffs’ Counsel should be approved.

The issuance of this Notice is not an expression of the Court’s opinion on the merits of any claim in this Action, and the Court still has to decide whether to approve the Settlement. If

the Court approves the Settlement, payment to Class Members will be made after all related appeals, if any, are favorably resolved. It is always uncertain whether such appeals can be favorably resolved, and resolving them can take time, perhaps more than a year. Please be patient.

**2. What is the lawsuit about? What has happened so far?**

In this Action, Named Plaintiffs allege, among other things, that Comerica breached certain obligations and other duties to properly manage the assets of its securities lending clients by purchasing and holding the Sigma Notes on their behalf. More specifically, the lawsuit alleges that each of the Named Plaintiffs entered into securities lending agreements with Comerica. Pursuant to such agreements, Comerica loaned the Named Plaintiffs' securities to third-party borrowers in return for cash collateral. According to the Complaint's allegations, Comerica acted imprudently and improperly by investing cash collateral posted for the benefit of members of the putative Class in Sigma Notes, and by failing to subsequently sell, trade or otherwise dispose of the Sigma Notes. The Named Plaintiffs assert that Comerica's alleged breaches caused losses to members of the Class when, in late September 2008, Sigma defaulted and subsequently went into receivership.

Comerica has denied all of Named Plaintiffs' allegations of wrongdoing. If the Action were to continue, Comerica would raise numerous defenses to liability and claims against the Named Plaintiffs and Class Members, including without limitation:

- Comerica acted prudently in purchasing and holding the Sigma Notes on behalf of the members of the Class and recommending that its securities lending clients hold them rather than sell them at a price Comerica believed would likely be less than their intrinsic value.
- Comerica acted in accordance with the securities lending agreements, the Employee Retirement Income Security Act ("ERISA"), and all applicable law by purchasing and holding the Sigma Notes.
- Comerica is not liable to the Class or any of its members.

In addition, Comerica has asserted third-party claims against Munder based on the parties' Sub-Advisory Agreement, and Munder has counterclaimed against Comerica based on the same agreement. Named Plaintiffs have not asserted any claims against Munder.

Counsel for the Settling Parties aggressively litigated this case for more than three years. The Settlement is the product of hard-fought, arms'-length negotiations between Plaintiffs' Counsel, Comerica's Counsel and Munder's Counsel spanning mediation sessions, facilitated by nationally recognized mediator, the Hon. Layn Phillips, a former United States Judge and United States Attorney, with substantial experience mediating complex litigations of this type. Counsel for the Settling Parties agreed to this Settlement only after its terms were thoroughly and extensively negotiated.

**3. Why is this a class action?**

Class actions are generally used in lawsuits that affect a large number of individuals; in effect, the class action operates to consolidate into a single action all of the claims of individuals allegedly harmed by the same conduct or course of conduct, thus alleviating the need for members of the class to file their own individual lawsuits to recover for the harm alleged. Once the class is certified, the Court is empowered to resolve all issues on behalf of members of the class, except for those members of the class, if any, who specifically choose to exclude themselves from the class.

The Class has been certified by the Court for purposes of effectuating the Settlement.

**4. Why is there a Settlement?**

The Court did not decide in favor of the Plaintiffs or Comerica. Instead, both sides agreed to a Settlement. This permits them to avoid the cost and uncertainty of a trial, and permits eligible Class Members who submit valid claims to receive compensation. The Named

Plaintiffs and their attorneys believe the Settlement is best for all Class Members. Comerica has concluded that further defense of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. Comerica has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.

As stated above, this Settlement is the product of extensive arms'-length negotiations between the Settling Parties' Counsel, all of whom are very experienced with respect to complex litigation of this type. Plaintiffs' Counsel believes the proposed Settlement is fair, reasonable and adequate and in the best interest of the Class.

**5. How do I know whether I am part of the Class?**

The Class includes *all participants in Comerica's securities lending program that, through one or more of the investment vehicles offered or managed by Comerica or its affiliates, incurred losses relating to investments in the Sigma Notes and that have not previously released Comerica for all liability related to such losses.*

If you are a member of the above Class and do not request exclusion (see Section 10 below), your share of the Net Settlement Fund will be determined by the Court-approved Plan of Allocation, described below. If you would otherwise be a member of the above Class but you have previously released Comerica from any liability for losses related to investments in the Sigma Notes, then you are not bound by any releases effected by the proposed Settlement.

**6. What does the Settlement provide?**

The Settlement will result in a fund of \$11 million in cash. Your estimated recovery, before a deduction for costs, expenses and fees as described below, would be cash or a credit, amounting to approximately 23% of the amount of your losses under the Plan of Allocation

below. Your actual recovery will depend upon the net amount in the Gross Settlement Fund (after disbursements and reserves for certain amounts as described in the Stipulation, including expenses associated with Notice to the Class, Court-approved attorneys' fees and expenses, Taxes and other costs related to the administration of the Gross Settlement Fund and implementation of the Plan of Allocation (the "Net Settlement Fund")), which will be allocated and paid to Class Members in cash or as a credit, according to a Plan of Allocation to be approved by the Court.

In exchange for the Settlement payment, all Class Members and anyone claiming through them are deemed to fully release the Settled Claims, and are forever enjoined from bringing any of the Settled Claims against any of the Releasees. The Comerica Releasees and Munder Releasees are defined in the Stipulation; generally, they are Comerica and Munder and certain affiliated or otherwise related persons and entities. The Settled Claims, also defined in the Stipulation, generally include, subject to certain limitations set forth in the Stipulation, all claims (i) that arise from or relate to the facts alleged in the Complaint and were or could have been asserted in the Action; or (ii) that arise from, or in any matter relate to, any direct or indirect investment by Comerica or Munder in Sigma Notes on behalf of any Class Member through the Securities Lending Program. This means that Authorized Recipients will not have the right to sue the Comerica Releasees and Munder Releasees for any such claims if the Settlement is approved.

The description of the Settlement in this Notice is only a summary. The complete terms, including the definitions of the Releasees and Settled Claims, are set forth in the Stipulation (including its exhibits), which may be obtained at a dedicated Settlement Internet site, [www.GCGINC.com](http://www.GCGINC.com), or by contacting Plaintiffs' Counsel listed below.



**7. What will be my share of the Settlement Fund?**

At the Final Approval Hearing, Plaintiffs' Counsel will request that the Court approve the Settlement, including the Plan of Allocation below. The Plan of Allocation describes the manner by which the Net Settlement Fund will be distributed to Class Members (the "Authorized Recipients"). In general terms, the Net Settlement Fund will be allocated to Authorized Recipients in cash or as a credit, on a *pro rata* basis such that the amount received will depend on an Authorized Recipient's calculated loss, relative to the losses of other Authorized Recipients, related to his, her or its investment in the Sigma Notes. Because the Net Settlement Fund will be less than the total losses alleged to have been suffered in the Action, each Authorized Recipient's proportionate recovery will be less than its, his or her alleged loss. You are not responsible for calculating the amount you may be entitled to receive under the Settlement. This calculation will be done as part of the implementation of the Settlement, and will be based on reasonably available information. The tax treatment of any distribution varies based upon the recipient's tax status and treatment of his, her or its investments. The tax treatment of any distribution from the Net Settlement Fund is the responsibility of each recipient. You should consult your tax advisor to determine the tax consequences, if any, of any distribution to you.

**8. How can I get my portion of the recovery?**

If you do not exclude yourself pursuant to Section 10 below, you do not need to take any further action to receive your portion of the recovery either in the form of cash or a credit, as set forth in Sections 6 and 7 above and the Plan of Allocation below.

**9. When would I receive my payment?**

Payment is conditioned on several matters, including the Court's approval of the Settlement and that approval becoming Final and no longer subject to any appeals. Upon satisfaction of various conditions, the Net Settlement Fund will be distributed to Authorized Recipients in the form of cash or a credit pursuant to the terms of the Plan of Allocation (described in Sections 6 and 7 above and the Plan of Allocation below) as soon as practicable after approval of the Settlement has become Final, including the exhaustion of any appeals. Any appeal of the approval of the Settlement could take more than a year to resolve. Interest accrued on the Gross Settlement Fund will be included in the amount allocated and paid to the eligible Authorized Recipients. The Stipulation may be terminated on several grounds, including if the Court does not approve or otherwise materially modifies the terms of the Settlement. If the Stipulation is terminated, the Settlement will also be terminated, and the Action will proceed as if the Settlement had not been reached.

**10. Can I exclude myself from the Settlement?**

Yes. You may request that you be excluded (also referred to as "opting-out") from the Class and the Settlement. If you request exclusion, (a) you will not participate in any distribution of the Net Settlement Fund and will not receive a Settlement payment; (b) you will not be bound by the terms of the Settlement, including the releases, and you will retain any right to file or continue your own lawsuit concerning the Settled Claims; and (c) you will not be able to object to the Settlement.

In the event you wish to exclude yourself from the Class and the Settlement, you must submit a written Request for Exclusion, which must be received no later than \_\_\_\_\_, 2013, at the address below. In order to be valid, each Request for Exclusion must set forth the name

and address of the plan or entity requesting exclusion, must state clearly that such plan or entity requests exclusion from the Class and the Settlement, and must be signed by a representative of the plan or entity requesting exclusion. Requests for Exclusion must be provided to the Settlement Administrator at:

*In re Comerica Securities Lending Litig.*  
Claims Administrator  
c/o GCG  
P.O. Box 35100  
Seattle, WA 98124-1100

**To be effective, your Request for Exclusion must be received no later than \_\_\_\_\_, 2013.** If you do not timely request exclusion from the Class, you will be considered a Class Member and you will be bound by the Settlement. Do not request exclusion if you wish to participate in the Settlement.

You cannot exclude yourself on the website, by telephone or by email. If you do not follow these procedures—including meeting the date for exclusion set out above—you will not be excluded from the Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement, including the release of claims.

#### **THE LAWYERS REPRESENTING YOU**

##### **11. Do I have a lawyer in the case?**

The Court appointed the law firms of The Miller Law Firm, P.C.; Glancy Binkow & Goldberg LLP; Sullivan, Ward, Asher & Patton, P.C.; and Robbins Geller Rudman & Dowd LLP to represent you and the other Class Members. These lawyers are called Plaintiffs' Counsel or Class Counsel. You will not be personally liable for the fees and expenses incurred by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**12. How will the lawyers be paid?**

Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees and reimbursement of expenses for their work. The application for attorneys' fees will not exceed 30% of the Gross Settlement Fund plus reimbursement of expenses incurred in connection with the prosecution of this Action. Any award of fees and additional expenses will be paid from the Gross Settlement Fund prior to allocation and payment to Authorized Recipients. The written application for fees and expenses will be filed by \_\_\_\_\_, 2013, and the Court will consider this application at the Final Approval Hearing. A copy of the application will be available at [www.GCGINC.com](http://www.GCGINC.com) or by requesting a copy from Plaintiffs' Counsel.

To date, Plaintiffs' Counsel have not received any payment for their services in prosecuting this Action on behalf of the Class, nor have counsel been reimbursed for their out-of-pocket expenses incurred in connection with litigating this Action. The fee requested by Plaintiffs' Counsel would compensate Plaintiffs' Counsel for their efforts in achieving the Settlement for the benefit of the Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of the award.

**Objecting to the Attorneys' Fees**

By following the procedures described in the answer to Question 13, you can tell the Court that you do not agree with the fees and expenses the attorneys intend to seek and ask the Court to deny their motion or limit the award.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**13. How do I tell the Court if I don't like the Settlement?**

Any Class Member may appear at the Final Approval Hearing and explain why he or she thinks the Settlement of the Action against Comerica as embodied in the Stipulation of Settlement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon, or why the attorneys' fees and expenses should not be awarded, in whole or in part. However, no Class Member shall be heard or entitled to contest these matters unless such Class Member has filed with the Court written objections (which state all supporting bases and reasons for the objection, set forth proof of membership in the Class, clearly identify any and all witnesses, documents and other evidence of any kind that are to be presented at the Final Approval Hearing in connection with such objections, and further describe the substance of any testimony to be given as well as by any supporting witnesses).

To object, you must send a letter or other written statement saying that you object to the Settlement, the attorneys' fee award, and/or expenses in *The Board Of Trustees Of The City Of Birmingham Employees' Retirement System, et al. v. Comerica Bank*, Case No. 09-cv-13201. Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons why you object to the Settlement including all details set forth above. Your written objection must be filed with the Clerk of the Court, and served upon counsel at the addresses listed below by no later than \_\_\_\_\_, 2013:

Clerk of the Court:

Clerk of the Court  
Clerk's Office  
Theodore Levin U.S. Courthouse  
231 W. Lafayette Blvd., Room 564  
Detroit, MI 48226

Plaintiffs' Counsel Designee:

E. Powell Miller, Esq.  
The Miller Law Firm, P.C.

950 West University Drive, Suite 300  
Rochester, Michigan 48307  
(248) 841-2200  
settlements@millerlawpc.com

Comerica's Counsel Designee:

Thomas P. Bruetsch  
Bodman PLC  
1901 St. Antoine Street, 6<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 259-7777

Munder's Counsel Designee:

Linda C. Goldstein  
Dechert LLP  
1095 Avenue of the Americas  
New York, NY 10036  
(212) 698-3500

If you hire any attorney to represent you in filing an objection or appearing at the Final Approval Hearing, that attorney must serve a notice of appearance on the foregoing counsel and file it with the Court at least twenty-eight (28) calendar days prior to the Final Approval Hearing.

UNLESS OTHERWISE ORDERED BY THE COURT, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT OR THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES.

#### **THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

#### **14. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at \_\_\_\_:\_\_\_\_ .m., on \_\_\_\_\_, 2013, in Room 228, of the United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226. At this hearing the Court

will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will also consider how much to award to Plaintiffs' Counsel for fees and expenses, and whether the Plan of Allocation is fair, reasonable and adequate. The Court may decide these issues at the hearing or take them under consideration for a later decision.

**IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED SETTLEMENT OR THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, YOU NEED NOT ATTEND THE FINAL APPROVAL HEARING.**

**15. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**16. May I speak at the Final Approval Hearing?**

If you are a Class Member and you have filed a timely objection, if you wish to speak, present evidence or present testimony at the Final Approval Hearing, you must state in your objection your intention to do so, and must identify any witnesses you intend to call or evidence you intend to present.

The Final Approval Hearing may be rescheduled by the Court without further notice to the Class. If you wish to attend the Final Approval Hearing, you should confirm the date and time with Plaintiffs' Counsel.

**IF YOU DO NOTHING**

**17. What happens if I do nothing at all?**

If you do nothing and the Settlement is approved, you will be bound by the terms of the Settlement, will be deemed to have released all Settled Claims against all of the Comerica

Releasees and Munder Releasees, and will receive your pro rata payment or credit as described in Section 6 and 7 above and the Plan of Allocation attached below.

### **GETTING MORE INFORMATION**

#### **18. Are there more details about the Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation of Settlement dated as of September \_\_\_, 2013. You can obtain a copy of the Stipulation of Settlement or more information about the Settlement by contacting Plaintiffs' Counsel:

E. Powell Miller, Esq.  
The Miller Law Firm, P.C.  
950 West University Drive, Suite 300  
Rochester, Michigan 48307  
(248) 841-2200  
settlements@millerlawpc.com

or the Claims Administrator:

*In re Comerica Securities Lending Litig.*  
Claims Administrator  
c/o GCG  
P.O. Box 35100  
Seattle, WA 98124-1100

or by visiting [www.GCGINC.com](http://www.GCGINC.com).

### **UNDERSTANDING YOUR PAYMENT – PLAN OF ALLOCATION**

The Net Settlement Fund shall be distributed to Class Members who do not opt out, also called Authorized Recipients, pursuant to the Stipulation of Settlement. The allocation and distribution system set forth there is summarized as follows.

Comerica's Securities Lending Program as a whole suffered a "Sigma Loss," meaning the total amount of principal lost by Comerica collective investment vehicles when Sigma failed to repay in full the Sigma Notes, less any prior partial payments made by Sigma's receiver to Comerica and/or its collective investment vehicles. As a Class Member, your "Sigma



Deficiency” is the pro rata amount of the Sigma Loss attributable to you. Your Sigma Deficiency has been initially determined based upon the books and records of Comerica to be \_\_\_\_\_ as of \_\_\_\_\_.

You have an opportunity to challenge your designated Sigma Deficiency within 45 days after mailing of this notice by mailing a statement explaining your challenge to

*In re Comerica Securities Lending Litig.*  
Claims Administrator  
c/o GCG  
P.O. Box 35100  
Seattle, WA 98124-1100

Upon the resolution of all such challenges by the Court (or the forbearance by all Class Members of the opportunity to make such challenges in a timely manner) and the distribution of the Class Members’ respective shares of the Net Settlement Fund, the Sigma Deficiency established for you and each other Class Member shall be final and binding. (The resolution of any such challenge shall not affect the total Settlement Amount, nor shall the resolution of any such challenge change the gross Unpaid Sigma Deficiency as that term is defined in the Stipulation of Settlement.)

Your Sigma Deficiency is either a “Paid Sigma Deficiency,” an “Unpaid Sigma Deficiency,” or some combination of the two. “Paid Sigma Deficiency” refers to the satisfaction of the Sigma Deficiency by certain Class Members prior to the Effective Date set forth in the Stipulation of Settlement, according to the books and records of Comerica. According to Comerica’s books and records, you:

- have a Paid Sigma Deficiency. It is \_\_\_\_\_.
- do not have a Paid Sigma Deficiency.

“Unpaid Sigma Deficiency” refers to Sigma Deficiencies that have not been satisfied by certain Class Members as of the Effective Date, according to the books and records of Comerica. According to Comerica’s books and records, you:

- have an Unpaid Sigma Deficiency. It is \_\_\_\_\_.
- do not have an Unpaid Sigma Deficiency.

The Plan of Allocation is as follows:

(a) All Authorized Recipients shall receive their portion (as a cash payment or credit, as set out below) of the Net Settlement Fund in proportion to their Sigma Deficiency.

(b) Those Authorized Recipients, if any, who are Collective Investment Funds (“CIFs”) of which Comerica Bank & Trust is trustee that participated in Comerica’s securities lending program, shall receive their portion of the Net Settlement Fund in cash. Said cash payment shall be distributed by the Escrow Agent to Charles Moore, as special fiduciary of the CIFs.

(c) Those Authorized Recipients, if any, who have Paid Sigma Deficiencies, shall receive their portion of the Net Settlement Fund in cash. Said cash payment shall be distributed by the Escrow Agent (who is also the Claims Administrator) directly to said Authorized Recipients.

(d) Those Authorized Recipients, if any, who have Unpaid Sigma Deficiencies, shall receive their portion of the Net Settlement Fund as a credit to their Unpaid Sigma Deficiency.

The Escrow Agent shall distribute the funds for this group of Authorized Recipients to Comerica Bank. Comerica will deposit said funds into the appropriate securities lending pool(s) and credit the amount paid against the Authorized Recipients’ respective Unpaid Sigma Deficiencies. If an Authorized Recipient’s portion of the Net Settlement Fund exceeds its Unpaid Sigma

Deficiency, then the difference between the two amounts shall be paid to that Authorized Recipient in cash. Authorized Recipients, if any, with a remaining Unpaid Sigma Deficiency following payment and distribution of the Net Settlement Fund (“Remaining Unpaid Sigma Deficiencies”) shall continue to be responsible for said Remaining Unpaid Sigma Deficiency. In the event that the value of the Authorized Recipient’s securities on loan in Comerica’s Securities Lending program (the “Outstanding Loan Balance”) is or becomes less than 110% of that Authorized Recipient’s Remaining Unpaid Sigma Deficiency, the Remaining Unpaid Sigma Deficiency shall be Funded. “Funded” means (1) payment to Comerica, in cash, of the difference between the Outstanding Loan Balance and 110% of the Authorized Recipient’s Remaining Unpaid Sigma Deficiency, which funds will be credited to that Authorized Recipient’s Unpaid Sigma Deficiency; or (2) payment to Comerica, in cash, of funds sufficient to satisfy the Remaining Unpaid Sigma Deficiency, which funds will be credited to that Authorized Recipient’s Unpaid Sigma Deficiency.

(e) If a Remaining Unpaid Sigma Deficiency is not Funded by an Authorized Recipient as provided above, then Comerica is authorized to offset, liquidate, and/or apply any of the Authorized Recipient’s cash (including money market funds and cash equivalents), however held, to satisfy that Authorized Recipient’s Remaining Unpaid Sigma Deficiency, and any Authorized Recipient with a Remaining Unpaid Sigma Deficiency shall maintain cash (including money market funds and cash equivalents) with Comerica sufficient to satisfy its Remaining Sigma Deficiency. If an Authorized Recipient with a Remaining Unpaid Sigma Deficiency does not maintain such a cash balance, then Comerica is authorized to offset, liquidate, and or apply any of the Authorized Recipient’s other collateral, securities, income, and/or distributions, in its sole discretion, to satisfy that Authorized Recipient’s Remaining Unpaid Sigma Deficiency. The

foregoing notwithstanding, Comerica will provide the Authorized Recipient three business days notice and a corresponding opportunity to cure before liquidating any of the Authorized Recipient's securities.

This formula is not an estimate of what a Class Member would have recovered after trial; nor is it the amount that the Authorized Recipient will be paid pursuant to the Settlement.

Distributions will be made to Authorized Recipients after all claims have been processed and after the Court has finally approved the Settlement.

Based on Comerica's books and records, under the Settlement, it is estimated you will receive, before the deduction of attorneys' fees, litigation expenses, and administrative expenses,

Cash in the amount of \$ \_\_\_\_\_ (less Court awarded attorneys fees, litigation expenses and expenses related to the administration of the settlement).

An account credit in the amount of \$ \_\_\_\_\_ (less Court awarded attorneys fees, litigation expenses and expenses related to the administration of the settlement).

Both cash in the amount of \$ \_\_\_\_\_ and an account credit in the amount of \$ \_\_\_\_\_ (less Court awarded attorneys fees, litigation expenses and expenses related to the administration of the settlement).

These numbers *will* change due to the deduction of attorneys' fees, litigation expenses, and administrative expenses, and they *may* change based on the decision by some persons to exclude themselves from the Class or a challenge by a Class Member to the determination of its Sigma Deficiency.

15044197.1.LITIGATION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE BOARD OF TRUSTEES OF THE  
CITY OF BIRMINGHAM EMPLOYEES'  
RETIREMENT SYSTEM, ET AL,

Case No. 09-cv-13201

Hon. Stephen J. Murphy, III

Plaintiffs,

**EXHIBIT C**

v.

COMERICA BANK,

Defendant/Third-Party Plaintiff,

v.

MUNDER CAPITAL MANAGEMENT,

Third-Party Defendant.

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**FINAL ORDER AND JUDGMENT**

WHEREAS, the Settling Parties executed a Stipulation of Settlement (“Stipulation”)<sup>1</sup> on September \_\_, 2013, that provides for the payment of \$11,000,000 and a complete dismissal with prejudice of the claims asserted in the above-referenced litigation against Comerica on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated \_\_\_\_\_, 2013 (the “Preliminary Approval Order”), this Court (a) preliminarily certified, for settlement purposes only, the Class; (b) preliminarily approved the Settlement; (c) ordered that Notice of the proposed Settlement be provided to the Class Members; (d) provided Class Members with the opportunity to exclude themselves from the proposed Settlement; (e) provided Class Members with the opportunity to object to the proposed Settlement; and (f) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Class; and

WHEREAS, the Court conducted a hearing on \_\_\_\_\_, 2013 (“Final Approval Hearing”) to (a) determine whether the Settlement should be approved by the Court as fair, reasonable and adequate; (b) determine whether the Judgment should be entered pursuant to the Stipulation, *inter alia*, dismissing the Action

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Stipulation.

against Comerica with prejudice and extinguishing and releasing all Settled Claims (as defined therein) against all Comerica Releasees, Munder Releasees and Class Member Releasees (“Released Parties”); (c) determine whether the Class should be finally certified for settlement purposes pursuant to Fed.R.Civ.P. Rules 23(a) and (b)(3); (d) rule on Plaintiffs’ Counsel’s application for an award of attorneys’ fees and the reimbursement of Litigation Expenses; and (e) rule on such other matters as the Court may deem appropriate.

The Court has considered all matters submitted to it at the Final Approval Hearing and otherwise, the pleadings on file, the applicable law, and the record.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court, for purposes of this Final Order and Judgment (the “Judgment”) adopts all defined terms as set forth in the Stipulation, and incorporates them herein by reference as if fully set forth.

2. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Class Members.

3. The Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to the Class; (c) the

claims of the Named Plaintiffs are typical of the claims of the Class they seek to represent; (d) the Named Plaintiffs and Plaintiffs' Counsel have at all times fairly and adequately represented the interests of the Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Class Members in individually controlling the prosecution of separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Class, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

4. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court has certified, for settlement purposes only, a Class that shall consist of all participants in Comerica's Securities Lending Program that, through one or more of the investment vehicles offered or managed by Comerica or its affiliates, incurred losses relating to investments in the Sigma Notes and that have not previously released Comerica from all liability related to such losses.

5. The Notice, the publication of the Notice on a dedicated website and the notice methodology implemented pursuant to the Stipulation and the Court's orders (a) constituted the best notice practicable under the circumstances to all Persons within the definition of the Class; (b) constituted notice that was



reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Action, (ii) the effect of the Stipulation, including releases, (iii) their right to object to the proposed Settlement, (iv) their right to participate in the Settlement, (v) their right to exclude themselves from the Class, and (vi) their right to appear at the Final Approval Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law.

6. The Action and the Complaint and all claims included therein, as well as all Settled Claims are dismissed with prejudice. In addition, all third-party claims and counterclaims between Comerica and Munder are dismissed with prejudice.

7. Upon the Effective Date, Named Plaintiffs and each Class Member (other than those entities listed on Exhibit 1 who have timely and validly requested exclusion from the Class), on behalf of themselves and all of their Related Parties, individually and collectively, by operation of law and this Judgment (a) shall be deemed to have fully, finally and forever released, relinquished, waived, discharged and dismissed all Settled Claims (including Unknown Claims) as against each and all of the Comerica Releasees and the Munder Releasees; (b) shall

be enjoined from asserting or prosecuting any Settled Claims; and (c) shall be deemed to have agreed and covenanted not to sue any of the Comerica Releasees or Munder Releasees on the basis of any Settled Claims or to assist any third-party in commencing or maintaining any suit related to any Settled Claim.

8. Upon the Effective Date hereof, Comerica and Munder, on behalf of themselves and all of their respective Related Parties, individually and collectively, by operation of law and this Judgment, (a) shall be deemed to have fully, finally, and forever released, relinquished, waived, discharged and dismissed any and all Settled Claims against the Class Member Releasees; (b) shall be enjoined from asserting or prosecuting any Settled Claims; and (c) shall be deemed to have agreed and covenanted not to sue any of the Class Member Releasees on the basis of any Settled Claims or to assist any third-party in commencing or maintaining any suit related to any Settled Claim.

9. Nothing in this Judgment shall bar any action or claim by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

10. This Judgment and the Stipulation, including the facts and terms of the 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 admissible in any action or proceeding for any reason, other than an action to enforce the terms of the Stipulation or the Comerica-Munder Agreement; and

(b) is not, and shall not be deemed, described, construed, offered or received as evidence of any presumption, concession, or admission by any Person of the truth of any fact alleged in the Action; the validity or invalidity of any claim or defense that was or could have been asserted in the Action or in any litigation; the amount of damages, if any, that would have been recoverable in the Action; or any liability, negligence, fault, or wrongdoing of any Person.

11. The Settling Parties may file the Stipulation and/or the Judgment in any other litigation that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Settlement Administrator are directed to administer the Settlement in accordance with the terms and provisions of the Stipulation.

13. The Court finds that the Settling Parties and their counsel have complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein, and that the Named Plaintiffs and Plaintiffs' Counsel

at all times acted in the best interests of the Class and had a good faith basis to bring, maintain and prosecute this Action as to Comerica in accordance with Federal Rule of Civil Procedure 11. The Court further finds that the Named Plaintiffs and Plaintiffs' Counsel adequately represented the Class Members in entering into and implementing the Settlement.

14. Any further orders or proceedings solely regarding the Plan of Allocation shall in no way disturb or affect this Judgment and shall be separate and apart from this Judgment.

15. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Gross Settlement Fund, including interest earned thereon; (b) disposition of the Gross Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses, including the reimbursement of Litigation Expenses to the Named Plaintiffs, in the Action; and (d) the Settling Parties hereto for the purpose of construing, enforcing and administering the Stipulation.

16. No Person shall have any claim or cause of action, however denominated, whatsoever against the Comerica Releasees or Munder Releasees, or their counsel, arising from or related to any distributions made, or not made, from

the Gross Settlement Fund, and any such claims or causes of action, however denominated, are fully and finally released and discharged.

17. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Gross Settlement Fund, or any portion thereof, is returned to Comerica, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

19. The Court hereby GRANTS Plaintiffs' Counsel attorneys' fees of \_\_\_\_\_% of the Gross Settlement Fund and expenses in an amount of \$\_\_\_\_\_ together with the interest earned thereon for the same time period and at the same rate as that earned on the Gross Settlement Fund until paid. Said fees shall be allocated by Plaintiffs' Counsel amongst counsel in a manner which, in Plaintiffs' Counsel's good-faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action or reflects Plaintiffs' Counsel's agreement. The Court finds that the amount of fees awarded is fair and reasonable in light of the time and labor required, the novelty and difficulty of the

case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Class.

20. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Plaintiffs' Counsel from the Gross Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

21. There is no reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Stephen J. Murphy, III  
United States District Judge

**EXHIBIT 1**

**List of Entities Excluded from the Class in**

*The Board of Trustees of the City of Birmingham Employees' Retirement System, et al. v. Comerica Bank, Case No. 09-cv-13201*

The following entities, and only the following entities, properly excluded themselves from the Class by the \_\_\_\_\_, 2013 deadline pursuant to the Court's Order dated \_\_\_\_\_, 2013:

<b>IN RESPONSE TO THE NOTICE OF PENDENCY OF CLASS ACTION</b>	

15044266.1.LITIGATION