

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID B. TRACEY, *et al.*,

*Plaintiffs,*

v.

No. 16-cv-11620-NMG

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

*Defendants.*

**PLAINTIFFS' UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS SETTLEMENT**

Plaintiffs move under Federal Rule of Civil Procedure 23(e) for final approval of the class action settlement and for the Court to enter the proposed Final Order and Judgment. Defendants do not oppose the grant of final approval.

For Plaintiffs' part, this motion is supported by Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Settlement (Doc. 291), Plaintiffs' Memorandum in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs (Doc. 302-01), the Declaration of Dr. Stewart Brown (Doc. 302-08), the Declaration of James C. Sturdevant (Doc. 302-07), the Declaration of Neil Richards (Doc. 302-09), the Declaration of Sanford Rosen (Doc. 302-06), the Statement of Newport Trust Company, serving as the Independent Fiduciary, approving of the Settlement, including attorneys' fees and expenses (attached as Exhibit 1), the Declaration of Analytics Consulting LLC, this Court's Order preliminarily approving this Settlement and setting the final fairness hearing (Doc. 298), as well as Plaintiffs' accompanying memorandum in support of this motion.

Dated: May 12, 2020

/s/ Jerome J. Schlichter

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### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 12, 2020.

/s/ Jerome J. Schlichter

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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MASSACHUSETTS INSTITUTE OF  
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Defendants.

No. 16-cv-11620-NMG

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**

This Settlement provides significant monetary relief, \$18.1 million, and substantial future relief that will benefit virtually every participant in the MIT Supplemental 401(k) Plan (“Plan”). For the reasons described below and those set forth in the Motion, this Court should enter its order approving the Settlement.

Plaintiffs filed this action in August of 2016. Doc. 1. In summary, Plaintiffs claimed that Defendant the Massachusetts Institute of Technology and other Defendants breached their duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) by causing the Plan to pay unreasonable investment management and administrative fees, selecting and retaining underperforming investments and failing to monitor and remedy breaches of other Plan fiduciaries.

Ultimately, the parties reached a settlement in this matter the week prior to trial. The Settlement was the product of extensive arm’s-length negotiations preceded by hard-fought litigation and broad fact and expert discovery. In light of the litigation risks further prosecution of this action would inevitably entail along with the uncertainty of a trial, Plaintiffs request that

the Court grant final approval of the proposed Settlement.

### **BACKGROUND**

On August 9, 2016, Plaintiffs filed their original complaint. Doc. 1. On November 16, 2016, Plaintiffs filed an Amended Complaint. Doc. 32. On October 5, 2016, Defendants filed a motion to dismiss Plaintiffs' amended complaint. Doc. 38. On September 29, 2017, the Court granted in part and denied in part Defendants' motion to dismiss Plaintiffs' amended complaint. Docs. 70 and 75.

On March 1, 2018, Plaintiffs filed a second amended complaint, which is the operative complaint and set forth the surviving claims. Doc. 98. In Count I, Plaintiffs alleged Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by failing to engage in a prudent process to assess the prudence of each investment option in the Plan and failing to remove imprudent investments resulting in the retention of investments in higher costs share classes and investment options with unreasonable expenses, risk and poor performance relative to other investment options that were readily available to the Plan. In Count II, Plaintiffs alleged Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by allowing the Plan's recordkeeper to receive unreasonable compensation, failing to prudently monitor and control recordkeeping expenses, and failing to solicit bids from other recordkeepers. In Count III, Plaintiffs alleged that Defendants committed prohibited transactions under § 1106(a)(1)(C). Under Count V, to the extent Defendants delegated any of their fiduciary duties, Plaintiffs alleged that Defendants failed to prudently monitor the actions of those individuals.

The Court granted class certification on October 19, 2018, certifying the following class:

All participants and beneficiaries of the MIT Supplemental 401(k) Plan from August 9, 2010 through the date of judgment, excluding the Defendants.

Doc. 157. On July 15, 2019, Defendants moved for summary judgment on all claims. Doc. 204.

On September 4, 2019, the Court granted in part and denied in part Defendants' motion for summary judgment. Doc. 274. The Court granted the motion to the extent Plaintiffs alleged under Count III that Defendants engaged in prohibited transactions in violation of 29. U.S.C. §1106(a). *Id.* at 16-7. The Court denied the motion in all other respects. *Id.* Since the filing of this case, the parties engaged in over three years of litigation that included the production of over 185,000 pages of documents and the deposition of 19 fact witnesses and five experts. The parties completed all required pretrial compliance and trial was set to begin on September 16, 2019. Doc. 233.

**The terms of the Settlement.**

In exchange for releases and for the dismissal of the action and for entry of a judgment as provided for in the Settlement, Defendants will make available to Class Members the benefits described below during a Settlement Period of three-years.

**A. Monetary Relief.**

Defendants will deposit \$18,100,000 (the "Gross Settlement Amount") into an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will fund the participants' recoveries, administrative expenses to facilitate the Settlement, and Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Compensation if awarded by the Court. No residual monies remaining in the Gross Settlement Fund will revert back to the Defendants.

The majority of Class Members will automatically receive their distributions directly into their tax-deferred retirement account. Those who already left the Plan and no longer have an active account are given the option to receive their distributions in the form of a check made out to them individually or as a roll-over into another tax-deferred account. As a result, most Class

Members will receive their distributions tax-deferred, further enhancing the significant monetary recovery.

**B. Additional Terms.**

In addition to the monetary component of the Settlement, Defendants agreed to substantial non-monetary terms in accordance with Article 10 of the Settlement Agreement. These terms include:

1. During the Settlement Period, MIT shall provide annual training to Plan fiduciaries on prudent practices under ERISA, loyal practices under ERISA, and proper decision making in the exclusive best interests of Plan participants;
2. No later than one hundred and twenty (120) days from the Settlement Effective Date, the Plan's fiduciaries shall issue a request for proposal for recordkeeping and administrative services for the Plan. The request for proposal shall be made to at least three qualified service providers for administrative and recordkeeping services for the investment options in the Plan, each of which has experience providing recordkeeping and administrative services to plans of similar size and complexity. The request for proposal shall request that any proposal provided by a service provider for basic recordkeeping services to the Plan not express fees based on percentage of Plan assets and be on a per-participant basis. The request for proposal shall include the restrictions described in paragraph 6 below;
3. After conducting the request for proposal for recordkeeping services, the Plan may decide to keep its current recordkeeper or retain a new recordkeeper based on whatever factors, including cost, value, available services, and quality of services, that the Plan fiduciaries deem appropriate under the circumstances. Fees paid to the recordkeeper for basic recordkeeping services will not be determined based on a percentage-of-plan-assets basis;

4. Any revenue sharing related to Plan investments will be deposited in the Plan trust and, to the extent not seasonably used to defray lawful Plan expenses, be returned to Plan participants according to a method of allocation approved by Plan fiduciaries and permitted by ERISA no less frequently than on an annual basis;
5. Plan fiduciaries will determine a method of allocating recordkeeping and administrative expenses that it determines is fair, equitable, and appropriate for Plan participants. This determination will be separate from the flat fee negotiated with the recordkeeper and based on the number of Plan participants;
6. During the Settlement Period, MIT and the Plan's fiduciaries shall continue their current practice of allowing the Plan's recordkeeper to communicate with current Plan participants (in their capacities as such) only at the direction or with the authorization of Plan officials, and prohibiting any communications to Plan participants (in their capacities as such) concerning non-Plan products and services. Such non-Plan products and services shall include, but are not limited to, Individual Retirement Accounts, life or disability insurance, non-Plan investment products, and wealth management services.  
  
Notwithstanding this limitation, the parties understand that the Plan's recordkeeper may address non-Plan products and services in response to a request for information initiated by a Plan participant;
7. Within thirty (30) days of selecting the recordkeeper, MIT shall provide to Class Counsel the final bid amounts that were submitted in response to the request for proposal (without identifying the recordkeepers who submitted those bids), shall identify the selected recordkeeper, and shall (if then available) disclose the final agreed-upon contract for recordkeeping services. If the contract is not available, it will be forwarded to Class

Counsel within 30 days of execution. Class Counsel shall sign any confidentiality agreements the recordkeepers may reasonably require in order to receive such information. MIT also shall provide Class Counsel the current recordkeeping contract for the Plan, to the extent not previously furnished in discovery. All such materials shall be kept confidential by Class Counsel, in accordance with the Protective Order governing confidential discovery material that has been entered in this case;

8. During the Settlement Period, MIT shall continue its current practice of using an independent investment consultant to review all designated investment alternatives in the Plan (excluding the brokerage window) at least annually;
9. The Settling Parties agree that the costs relating to the Plan's use of an investment consultant and the costs of conducting the request for proposal for recordkeeping and administrative services are expenses properly paid for by the Plan under applicable law.

The non-monetary terms are substantial and materially add to the total value of the Settlement.

**Preliminary approval of the Settlement and Plaintiffs' motion for attorneys' fees.**

Plaintiffs filed their motion for preliminary approval of the Settlement on October 28, 2019. Doc. 290. In accordance with the terms of the Settlement, on November 6, 2019 the Settlement Administrator served the CAFA notice to the United States Attorney General, as well as the Attorney Generals for the 50 states and the District of Columbia and Puerto Rico. Decl. of Analytics, ¶3. On January 7, 2020, the Court preliminarily approved the Settlement. Doc. 295. On March 27, 2020, Plaintiffs filed their Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs. Doc. 302.

## ARGUMENT

There is a “presumption of fairness for settlements that are deemed to be the result of ‘arms-length negotiations’ following ‘adequate’ discovery.” *In re Celexa and Lexapro Marketing and Sales Practices Litig.*, No. 09-2067-NMG, 2014 WL 4446464, at \*4 (D.Mass. Sep. 8, 2014) (citing *Nat’l Ass’n of Chain Drug Stores v. New Eng. Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir.2009)); see also *Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992).

Although the First Circuit has not adopted any single list of factors in approving a settlement, Courts in the First Circuit have considered factors such as: “(1) the risk, complexity, expense and duration of the case; (2) comparison of the proposed settlement with the likely result of continued litigation, (3) reaction of the class to the settlement; (4) stage of litigation and the amount of discovery completed; and (5) quality of counsel and conduct during litigation and settlement negotiations.” *In re Celexa and Lexapro Marketing and Sales Practices Litig.*, 2014 WL 4446464, at \*4 (quotations omitted). As previously explained in Plaintiffs’ prior briefing related to this Settlement (Docs. 291, 302-1), and incorporated herein by reference, all relevant factors are met.

### **I. The Settlement is fair because it is the product of extensive arm’s length negotiations.**

There is an initial strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arm’s-length negotiations. *City Pshp. Co. Atlantic Acquisition Ltd. Pshp.*, 100 F.3d 1041, 1043 (1st Cir. 1996) (noting a strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arm’s-length negotiations). The parties reached the Settlement only after lengthy negotiations with the assistance of a nationally recognized mediator extending over a period of approximately four months. Doc. 291

at 9. The parties began settlement discussions in May 2019 but were unable to reach an agreement on all terms, including non-monetary relief, until September 2019. *Id.* Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. *Id.* at 10-12. Indeed, Class Counsel is the preeminent law firm in ERISA fiduciary breach litigation, and pioneered the field. *Id.* All parties' counsel believe that this Settlement is fair and reasonable. *Id.* at 13.

**II. All relevant factors weigh in favor of approving the Settlement.**

**A. The Settlement was executed after significant discovery and lengthy and complex litigation.**

The first and fourth factors examine the risk, complexity, expense and duration of the case, the stage of litigation and the amount of discovery completed. Counsel filed this case over four year ago and settled the claims the week prior to trial in September 2019. Litigating this ERISA 401(k) breach of fiduciary duty case involved managing a case with sparse, yet rapidly evolving law, extremely complex facts, and analysis of a great number of documents. *LaLonde v. Textron, Inc.*, 369 F.3d 1, 6 (1st Cir. 2004) (noting the sparse jurisprudence relating to ERISA breach of fiduciary duty claims)(citing *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 n.13 (S.D.N.Y. 2004)). It requires deep, specialized knowledge of 401(k) industry practices, as demonstrated by the fact that Class Counsel spent a year and nine months investigating the industry before filing any claim. Doc. 302-1 at 17.

In August 2016 Class Counsel became the first law firm in the country to file an excessive fee lawsuit involving a university's retirement plan, including this case. The novelty and difficulty of this case is demonstrated by the fact that the Defendants retained a global law firm that utilized attorneys from multiple offices throughout the nation. *Id.* The subject matter is

highly technical, including facts about prudent investment practices, industry best practices, fiduciary practices, and complex financial matters, requiring use of multiple experts for all parties. *Id.* The necessary expenses incurred by Plaintiffs' counsel to bring this matter to a resolution—\$522,021.93—reflect the complexity of litigating the claims. Given the complexity and expense of the case, the representation was highly risky and Plaintiffs' counsel litigated this matter on a contingent basis with no guarantee of recovery. The risk of non-recovery in this case was significant. Several of the 401(k) cases handled by Class Counsel were dismissed and the dismissals upheld by the Courts of Appeals. *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011). Others had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F.Supp.2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-3194, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 Fed. Appx. 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F.Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F.Supp.2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016); *Cunningham v. Cornell Univ.*, 16-6525, 2019 WL 4735876 (S.D.N.Y. Sep. 27, 2019).

Prior to the Settlement, Plaintiffs' counsel conducted a full investigation of their claims. In addition to a substantial investigation prior to the filing of the complaint, Plaintiffs' counsel completed fact and expert discovery, including obtaining from Defendants and third parties approximately 185,000 pages of documents. Plaintiffs sought and obtained leave to depose five additional fact witnesses beyond the limit of ten. Doc. 158-9, Doc. 184. In total, Plaintiffs deposed 15 fact witnesses and two expert witnesses. Defendants also undertook discovery of the

named plaintiffs. Defendants deposed each of the named plaintiffs and three expert witnesses. The parties completed robust discovery and vigorously litigated the claims at all stages of litigation.

**B. The Settlement is reasonable in light of the likely result of continued litigation.**

The second factor examines the comparison of the proposed settlement with the likely result of continued litigation. The Settlement represents an outstanding recovery in light of both the strength of Plaintiffs' claims but also in light of the strength of Defendants' defenses. The action settled just before trial, a high-stakes endeavor, inherently fraught with risks and bearing enormous consequences, especially in light of the fact that the only university excessive fee to go to trial in history resulted in judgment for the Defendants. *Sacerdote v. New York Univ.*, 328 F.Supp.3d 273 (S.D. N.Y. 2018).

The Settlement is the largest against any university sponsored retirement plan and multiples of settlements in similar cases. Doc. 302-1 at 15-16. Plaintiffs maintain that they have strong underlying claims for breach of fiduciary duty against Defendants. However, the existence of significant legal obstacles and Defendants' legal defenses rendered any recovery in this case uncertain. Doc. 302-1 at 17, 21. This makes the monetary recovery of \$18.1 million highly valuable, even without considering the value of the non-monetary terms and the changes Defendants will make to the Plan as a result of this litigation. Taking into account the benefit of tax deferral and the economic value of the non-monetary relief, the Settlement is valued at up to \$29.4 million. Doc. 302-1 at 23-24. The Settlement also avoids lengthy and costly litigation.

Without this Settlement, the parties would incur very substantial expenses in continuing this litigation due to the complexity of the issues involved. As previously explained by Plaintiffs,

even if Plaintiffs prevailed at trial, further delay in recovery and additional expenses would be incurred through many years of appeal, which has been the experience of Class Counsel. *Id.* at 20-21. There is no reason to believe this case would proceed differently than prior ERISA class actions handled by Class Counsel.

**C. The Class reacted favorably to the Settlement**

The fourth factor examines the reaction of the class to the settlement. As of the objection deadline of April 26, 2020, and as of this filing, of the over 29,000 Class Members who were sent notices, *only two* filed an objection to any aspect of the Settlement, including Plaintiffs’ requested attorneys’ fees and reimbursement of expenses, or the case contribution awards sought for the Named Plaintiffs. A majority of the Class Members—22,690—will receive automatic distributions from the common fund. Many of the remaining 6,877 Former Participants who are required to submit a claims form have done so. As of the date of this filing, 2,430 Former Participants, over 35 percent, have submitted claims and the claims filing deadlines continues until May 16, 2020. In addition to the positive reaction by the Settlement by Class Members, the Independent Fiduciary has thoroughly reviewed all aspects of the Settlement and has approved the Settlement and Plaintiffs’ attorneys’ fees and expenses as reasonable. *See* Ex. 1 (Statement of Newport Trust Company).

**D. The quality of counsel and conduct during litigation and settlement.**

The fifth factor examines the quality of counsel and conduct during litigation and settlement negotiations. Plaintiffs’ counsel is the “preeminent firm” in excessive fee litigation having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at \*3–4 (C.D. Ill Oct. 15, 2013). Courts across the country have recognized the reputation, skill, and determination of Plaintiffs’ counsel in

pursuing relief on behalf of retirement plan participants. Doc. 302-2 at 4-8. Defense counsel is a highly regarded global law firm with significant experience in ERISA litigation. Doc. 302-1 at 13. As reflected by the docket in this case, the parties vigorously litigated this matter to the day of Settlement.

### **CONCLUSION**

The Court should grant final approval of the Settlement.

Dated: May 12, 2020

/s/ Jerome J. Schlichter

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/s/ Jerome J. Schlichter



April 27, 2020

Glen Shor  
Massachusetts Institute of Technology  
Office of the Vice President for Finance  
600 Technology Square  
Building NE49-4000  
Cambridge, MA 02139

Re: Statement of Independent Fiduciary – Settlement of *Tracey, et al. v. Massachusetts Institute of Technology*

Dear Mr. Shor:

This statement is made by Newport Trust Company (“Newport Trust”) in its capacity as independent fiduciary for the MIT Supplemental 401(k) Plan (the “Plan”) in connection with the proposed settlement (the “Settlement”) of the class action lawsuit captioned *Tracey, et al. v. Massachusetts Institute of Technology, et al* No. 1:16-cv-11620-NMG Massachusetts (the “Litigation”), in the United States District Court for the District of Massachusetts.

Newport Trust was engaged by the Massachusetts Institute of Technology (the “Institute”) acting on behalf of the Plan, pursuant to U.S. Department of Labor Prohibited Transaction Class Exemption 2003-39, as amended, 75 Fed. Reg. 33,830 (June 15, 2010) (the “Class Exemption”), to serve as the independent fiduciary for the Plan for the limited purpose of determining whether to authorize the Plan’s participation in the Settlement as described below. Newport Trust has extensive experience in serving in the capacity of an independent fiduciary on behalf of employee benefit plans in connection with the settlement of litigation, and is closely familiar with the fiduciary obligations imposed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

The Class Exemption permits a plan subject to ERISA, such as the Plan, to release a claim against a party in interest in exchange for consideration, provided certain requirements are met. Among these requirements is the authorization of the plan’s participation in the settlement by a fiduciary that “has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person’s best judgment as a fiduciary.” The Class Exemption is designed to ensure that, subject to court approval, a party that is independent of the plan sponsor (here, a defendant in the Litigation) represents the plan’s interests in settling a claim. Absent the Class Exemption, an ERISA plan’s entry into such a settlement could be a prohibited transaction under Section 406 of ERISA, 29 U.S.C. §1106.

In accordance with the conditions of the Class Exemption, Newport Trust may authorize the Plan’s participation in the Settlement if the Settlement satisfies the applicable conditions of the Class Exemption including that: (i) the terms of the Settlement, including the scope of the release of claims; the amount of cash and the value of any non-cash assets and other consideration received by the Plan and the amount of the attorneys’ fees and other amounts paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iii) the transaction isn’t part of an agreement, arrangement, or understanding designed to benefit a party in interest.

Consistent with the requirements of the Class Exemption: (i) Newport Trust has no relationship to, or interest in, any of the parties involved in the Litigation that might affect the exercise of its best judgment as an independent fiduciary; (ii) the terms of the Settlement are specifically described in a written settlement

**Newport Trust Company**

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agreement; (iii) Newport Trust has acknowledged in writing that it is a fiduciary on behalf of the Plan with respect to the Settlement; and (iv) Newport Trust will maintain or cause to be maintained for a period of six years the records described in the Class Exemption.

In making the determinations described above and deciding whether to accept or reject the Settlement on behalf of the Plan, Newport Trust is required to act in accordance with the fiduciary responsibility standards of ERISA. Consistent with the Class Exemption, Newport Trust can authorize the Settlement on behalf of the Plan if, after a review of the Settlement, Newport Trust concludes that the chances of obtaining any further relief for the Plan from the settling defendants are not justified by the expense and risk involved in pursuing such relief. In determining whether the Settlement is reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone, Newport Trust is obligated to weigh these factors pursuant to a prudent decision-making process, given the facts and circumstances of the Litigation.

Newport Trust primarily considered the merits of the parties' claims and their respective arguments; the amount of cash consideration paid and other consideration provided for in connection with the Settlement; and the terms of the Settlement, including but not limited to the scope of the release, the plan of allocation, and the amount of legal fees requested by Plaintiffs' counsel.

In fulfilling its responsibilities and in evaluating the reasonableness of the Settlement, Newport Trust has taken the following actions:

1. Reviewed court documents and other information and documents in the Litigation that it deemed relevant;
2. Interviewed counsel for the parties;
3. Evaluated the strengths and weaknesses of the legal and factual arguments on which the Litigation was based;
4. Reviewed and analyzed the terms of the Settlement, including but not limited to the Settlement consideration and the scope of the Settlement release;
5. Reviewed the plan of allocation proposed by the parties; and
6. Reviewed Plaintiffs' counsel's request for attorneys' fees.<sup>1</sup>

Based on its evaluation of the relevant documents and information associated with the class action and the Settlement, and taking into account the fiduciary obligations imposed by ERISA, Newport Trust has concluded, consistent with the requirements of the Class Exemption, that: (i) the Settlement terms, the \$18.1 million Settlement amount provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the scope of the release of claims is reasonable and is consistent with the release of other ERISA settlements we have reviewed in

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<sup>1</sup> Newport Trust notes that the Court, in its approval of the Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement on January 7, 2020, stated that "the Court will approve an award of attorneys' fees not to exceed \$4,525,000 and will base its final award on a comparison of that amount and fees calculated using the lodestar method." Notwithstanding the Court's directive, Plaintiffs' counsel has requested an award of \$6,032,730 (33.3% of the monetary recovery). Newport Trust recognizes that it is the Court's purview to limit the award of attorneys' fees, and Newport Trust neither purports to question the judgment of the Court nor to second-guess the Court's evaluation of the fairness or adequacy of the Settlement to the Class in accordance with the criteria under Rule 23 of the Federal Rules of Civil Procedure. Rather, Newport Trust has instead reviewed the Settlement, including Plaintiffs' counsel's request for attorneys' fees, solely as independent fiduciary under ERISA in connection with the settlement, giving consideration of the specific criteria prescribed by the Department of Labor, ERISA's primary regulator, in PTE 2003-39.

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the past year; (iii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iv) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

As a result, Newport Trust has determined that the Plan should not object to the Settlement or any portion thereof, including but not limited to the requested attorneys' fees and costs, and as such authorizes the Plan's participation in the Settlement.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William E. Ryan III'.

Name: William E. Ryan III  
Title: President and Chief Fiduciary Officer

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID B. TRACEY, *et al.*,

*Plaintiffs,*

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

*Defendants.*

No. 16-cv-11620-NMG

**[PROPOSED] FINAL ORDER AND JUDGMENT**

Upon consideration of Plaintiffs' Unopposed Motion for Final Approval of the Settlement of this action (the "Class Action") pursuant to the terms of a Class Action Settlement Agreement dated October 28, 2019 (the "Settlement Agreement"), the Court hereby orders and adjudges as follows:

1. For purposes of this Final Order and Judgment, capitalized terms used herein have the definitions in the Settlement Agreement, which is incorporated herein by reference.

2. In accordance with the Court's Orders, and as determined by this Court previously, notice was timely distributed by electronic or first-class mail to all members of the Settlement Class who could be identified with reasonable effort, and notice was published on the website maintained by Class Counsel. In addition, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the states in which a Settlement Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.

3. The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the fairness hearing and the rights of

all Settlement Class Members have been provided to all people, powers and entities entitled thereto.

4. All requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, have been met.

5. Members of the Settlement Class had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

6. Each and every Objection to the settlement is overruled with prejudice.

7. The motion for final approval of the Settlement Agreement is hereby **GRANTED**, the Settlement of the Class Action is **APPROVED** as fair, reasonable and adequate to the Plan and the Settlement Class, and the Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. The operative complaint and all claims asserted therein are hereby dismissed with prejudice and without costs to any of the Settling Parties other than as provided for in this Settlement Agreement.

9. The Class Representatives and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors and assigns) hereby fully, finally, and forever settle, release, relinquish, waive and discharge all Released Parties (including the Defendants) from the Released Claims, regardless of, *e.g.*, whether or not such Class Members have executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys'

Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

10. The Class Members acting individually or together, or in combination with others, are hereby barred and enjoined from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement in accordance with the procedures set forth in the Settlement Agreement.

11. Class Counsel, the Class Representatives or the Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Defendants and the other Released Parties or the decision to release, relinquish, waive, and discharge the Released Claims, or might have affected the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Representative and Class Member has hereby fully, finally and forever settled, released, relinquished, waived and discharged any and all Released Claims, and each Class Representative and Class Member has hereby acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in the Settlement Agreement of which this release is a part.

12. The Class Representatives and Class Members hereby settle, release, relinquish, waive and discharge any and all rights or benefits they may now have, or in the future may have,

under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, 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 and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” The Class Representatives and Class Members with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

13. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

14. Each member of the Class shall hold harmless Defense Counsel and the Released Parties for any claims, liabilities, attorneys’ fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys’ fees and expenses.

15. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant.

16. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.

17. Within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment.

18. Upon entry of this Order, all Class Members shall be bound by the Settlement Agreement as amended and by this Final Order.

**SO ORDERED:**

DATED: \_\_\_\_\_, 20\_\_

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HON. NATHANIEL M. GORTON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DAVID B. TRACEY, *et al.*,

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

Defendants.

No. 16-cv-11620-NMG

**DECLARATION OF ANALYTICS**  
**REGARDING TIMELY COMPLIANCE OF CLASS NOTICE**

I, Christopher D. Amundson, declare as follows:

1. I am a Project Manager at Analytics Consulting LLC (“Analytics”), a firm with offices in Chanhassen, Minnesota that provides consulting services relating to the design and implementation of class action and mass tort litigation settlements and notice programs. I am responsible for Analytics’ consulting services, including the implementation of the notice program in this matter. The following statements are based on my personal knowledge and information provided by other Analytics employees working under my supervision, and if called as a witness, I could and would testify competently thereto.

2. As set forth in paragraph 3.C of the Order Setting Class Action Settlement Fairness Hearing dated February 14, 2020 (the “Settlement Agreement”), Analytics was appointed by the Court to serve as the Settlement Administrator to supervise and administer the notice procedure in the above captioned settlement (the “Settlement”). Section 3 of the Settlement Agreement provides additional direction on the date and manner of the notice procedure. I submit this Declaration in order to provide the Court and the parties to the Settlement with information regarding the mailing of the Notices of Class Action

Settlement and Fairness Hearing (“the Notice”), the Claim Form, and other administrative activities in accordance with the Settlement Agreement.

3. As required by the Class Action Fairness Act (“CAFA”), on November 6, 2019 Analytics caused to be served by Federal Express or Certified Return Receipt Requested First-Class mail, where applicable, a Notice of Proposed Settlement to the United States Attorney General, as well as the Attorney Generals for the 50 states and the District of Columbia and Puerto Rico. A copy of the Notice of Proposed Settlement, excluding exhibits, is attached hereto as **Exhibit A**.

4. Analytics was responsible for providing Notice to Settlement Class Members. Specifically, the Notice was to be sent by electronic means or mailed by first class mail, postage prepaid, to the last known address or e-mail address of each Settlement Class Member who could be identified by the Plan’s recordkeepers.

5. Analytics received from the Plan’s recordkeepers data files containing the names, addresses, e-mail addresses, social security numbers and quarterly Plan balances of members of the Settlement Class. The data was consolidated into a single database, and was updated using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”);<sup>1</sup> certified via the Coding Accuracy Support System (“CASS”);<sup>2</sup> and verified through Delivery Point Validation (“DPV”).<sup>3</sup> This resulted in mailing address or e-mail records for 29,567 Settlement Class Members.

6. On March 27, 2020, Analytics caused Settlement Notice to be mailed to all 29,567 Settlement Class Members as follows: 1.) 6,877 Former Participant Notice and

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<sup>1</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

<sup>2</sup> Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

<sup>3</sup> Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.

Claim Forms were mailed to Class Members whom were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on January 7, 2020 did not have a Plan balance greater than \$0. In addition to the mailed Claims Forms, on March 30, 2020, 5,988 Former Participants for which an e-mail address was provide were e-mailed the Former Participant Notice with a link to an electronic version of the Former Participant Claim Form. 2.) On March 27, 2020, 22,690 Current Participant Notices were mailed to Class Members whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on January 7, 2020 had a positive Plan balance. In addition to the mailed Claims Forms, on March 30, 2020, 21,360 Current Participants for which an e-mail address was provide were e-mailed the Current Participant Notice. Copies of Former Participant Notice and Claim Form as well as the Current Participant Notice in both mail and e-mail format are attached as **Exhibit B**.

7. Analytics developed an electronic Former Participant Claim Form application which was also placed on the website maintained by Class Counsel and referenced in the e-mail version of the Former Participant Notice sent to Class Members. The Former Participant Claim Form application allows Class Members to fill out and electronically submit Former Participant Claim Forms and supporting documentation.

8. As of the date of this declaration, the USPS has returned 67 Notices as undeliverable. Of these undeliverable Notices, Analytics located 34 new addresses through a third-party commercial data source, Experian. Analytics re-mailed the Notices to those 34 Class Members at these updated addresses.

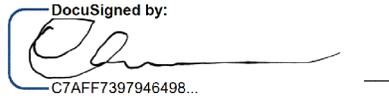
9. Analytics established and is maintaining a toll-free phone number (1-855-965-3704) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on March 27, 2020, and automated service was available twenty-four hours a day, seven days a week. As of the date of this declaration, Analytics has received a total of 755 telephone calls out of which 282 Class Members requested to speak with a customer service representative for

assistance, all of which have been responded to in a timely manner. In response to telephone requests for Notices made directly to Analytics, an additional 9 Notices were mailed.

9. The Settlement Agreement provides that Former Participants must file a completed Claim Form in order to be eligible for a settlement payment by May 16, 2020. As of the date of this declaration, Analytics has received 2,430 completed Claim Forms.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of May, 2020 in Minneapolis, Minnesota.

DocuSigned by:  
  
C7AFF7397946498...

Christopher D. Amundson

Project Manager – Analytics LLC

# **EXHIBIT A**

November 6, 2019

**VIA FEDERAL EXPRESS**

ALABAMA ATTORNEY GENERAL  
STEVE MARSHALL  
501 WASHINGTON AVE  
PO BOX 300152  
MONTGOMERY, AL 36130-0152

Re: *Tracey, et al., v. Massachusetts Institute of Technology, et al.*,  
Case No. 1:16-cv-11620, (D. Mass.), Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

Defendants Massachusetts Institute of Technology, the MIT Supplemental 401(k) Plan Oversight Committee, the Administrative Committee, and individual defendants in the above-referenced class action (collectively “MIT” or “Defendants”) hereby provide this Notice of a Proposed Class Action Settlement in the above-referenced class action pursuant to the Class Action Fairness Act of 2005 (“CAFA”). The proposed settlement will resolve the case.

In accordance with its obligations under CAFA, MIT encloses the following:

**(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.**

Plaintiffs’ Class Action Complaint, First Amended Complaint, and Second Amended Complaint can be found on the enclosed CD at “Exhibit 1 - Tracey Complaints.”

**(2) Notice of any scheduled judicial hearing in the class action.**

The Court has not scheduled a preliminary approval hearing or final fairness hearing regarding the settlement. Once set, any such hearing date(s) can be found on PACER as follows: (1) enter PACER through <https://ecf.mad.uscourts.gov/cgi-bin/login.pl>, (2) click on “Query,” (3) enter the civil case number, 1:16-cv-11620, (4) click on “Run Query,” and (5) click on the link “Docket Report.” The order(s) scheduling hearing(s) will be found on the docket entry sheet.

**(3) Any proposed or final notification to class members.**

The proposed Notices of Class Action Settlement as submitted to the Court can be found on the enclosed CD at “Exhibit 2 - Notice of Class Action Settlement and Fairness Hearing to Class Members.”

**(4) Any proposed or final class action settlement.**

The Settlement Agreement entered into by the parties and submitted to the Court can be found on the enclosed CD at “Exhibit 3 - Settlement Agreement.” There are no other

STEVE MARSHALL

November 6, 2019

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agreements contemporaneously made between Class Counsel and counsel for the defendants.

**(5) A final judgment or notice of dismissal.**

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER through <https://ecf.mad.uscourts.gov/cgi-bin/login.pl>, (2) click on “Query,” (3) enter the civil case number, 1:16-cv-11620, (4) click on “Run Query,” and (5) click on the link “Docket Report.” The order(s) entering final judgment will be found on the docket entry sheet.

**(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.**

As of the date of this CAFA Notice, defendants do not yet have information sufficient to identify the names and addresses of all Class Members who reside in each state or the estimated proportionate share of their claims to the entire Settlement. An estimated \_\_\_ Class Members reside in your state. The specific settlement allocation to each Class Member will be determined by a Settlement Administrator appointed by the Court pursuant to the Plan of Allocation set forth in the Settlement Agreement, which plan is subject to Court for approval.

**(7) Any written judicial opinion relating to the materials described in (3) through (5).**

The Court has not yet entered a Preliminary Approval Order, Final Approval Order, Judgment, or any opinions relating to the materials described in sections (3) through (5). Any such order or judgment, once entered, will be available online through the process described in section (5) above.

If you have questions about this notice, the lawsuits, or the enclosed materials, please do not hesitate to contact Chris Amundson, Project Manager at (952) 404-5726 or [camundson@analyticsllc.com](mailto:camundson@analyticsllc.com)

Sincerely,

Office of the Claims Administrator

Enclosures

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID B. TRACEY, *et al.*,

No. 16-cv-11620-NMG

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

Defendants.

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your legal rights might be affected if you are a member of the following class:**

All persons who participated in the Massachusetts Institute of Technology Supplemental 401(k) Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period.

The Class Period is defined as August 9, 2010 through January 7, 2020. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Massachusetts Institute of Technology Supplemental 401(k) ("Plan") against Massachusetts Institute of Technology and certain individuals (collectively "MIT" or "Defendants"), alleging violations of the Employee Retirement Income Security Act ("ERISA"). The Settlement will provide for the allocation of monies directly into the individual accounts of Current Participants in the Plan, and will provide Former Participants in the Plan with either a check mailed to their last known address or a rollover, if elected. Class Members' status as either Current Participants or Former Participants was established as of January 7, 2020.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 28, 2019. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options - and the deadlines to exercise them - are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on May 26, 2020 at 11:00 a.m., before United States District Court Judge Nathaniel M. Gorton in Courtroom 4, United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, 02210.
- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendant's Counsel, as identified below.

- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**According to the Plan's records, you are a Current Participant. If you believe instead that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants currently employed at the Massachusetts Institute of Technology and participants who are no longer employed by the Massachusetts Institute of Technology but continue to have an account balance in the Plan.**

#### **YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:**

**OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT.**

Our records indicate that you are a Current Participant because you had an account balance in the Plan as of January 7, 2020. If, however, you are a Former Participant who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of January 7, 2020 or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically submitted by May 16, 2020 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically submitted by May 16, 2020, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. We have not included a claim form in your notice because Current Participants do not need to submit a claim form, and our records indicate that you are a Current Participant.

However, if you believe you are a Former Participant, a claim form may be obtained by accessing [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com). Even if you intend to

object to any part of the Settlement, you should complete and return the Former Participant Claim form to preserve your right to obtain your share of the Net Settlement Amount.

**YOU CAN OBJECT (NO LATER THAN APRIL 26, 2020).**

If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.

**YOU CAN ATTEND A HEARING ON MAY 26, 2020.**

If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by April 26, 2020, of your intention to appear at the hearing.

**The Class Action**

The case is called *Tracey, et al. v. Massachusetts Institute of Technology, et al.*, Case No. 1:16-cv-11620 (D. Mass.) (the "Class Action"). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Massachusetts Institute of Technology and certain individuals. The Class Representatives' claims are described below, and additional information about them is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**What Does the Settlement Provide?**

The Settlement was reached on September 12, 2019. Class Counsel filed this action on August 9, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze approximately 149,000 pages of documents produced by Defendants and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 15 depositions to support their underlying claims. The Settling Parties participated in a mediation with a nationally

recognized mediator who has extensive experience in resolving complex class action claims. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after extensive arm's length negotiation over a period of approximately four months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$18,100,000 will be established to resolve the Class Action. The Net Settlement Amount is \$18,100,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). The method by which Class Members receive their settlement allocations will depend on whether they are characterized as Current Participants or Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will have their distribution deposited into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Additional Benefits of the Settlement**

In addition to the monetary component of the Settlement, the Parties to the Settlement have agreed to the following additional terms for future years: (1) MIT agrees to comply with the non-monetary terms for a three- year Settlement Period; (2) During the Settlement Period, MIT shall provide annual training to Plan fiduciaries on prudent practices under ERISA, loyal practices under ERISA, and proper decision making in the exclusive best interests of Plan participants; (3) Within one hundred and twenty days from the Settlement Effective Date, the Plan's fiduciaries shall issue a request for proposal for recordkeeping and administrative services for the Plan. The request for proposal shall be made to at least three qualified service providers for administrative and recordkeeping services for the investment options in the Plan, each of which has experience providing recordkeeping and administrative services to plans of similar size and complexity. The request for proposal shall request that any proposal provided by a service provider for

basic recordkeeping services to the Plan not express fees based on percentage of Plan assets and be on a per-participant basis; (4) After conducting the request for proposal for recordkeeping services, the Plan may decide to keep its current recordkeeper or retain a new recordkeeper based on whatever factors, including cost, value, available services, and quality of services, that the Plan fiduciaries deem appropriate under the circumstances. Fees paid to the recordkeeper for basic recordkeeping services will not be determined based on a percentage-of-plan-assets basis; (5) Any revenue sharing related to Plan investments will be deposited in the Plan trust and, to the extent not reasonably used to defray lawful Plan expenses, be returned to Plan participants according to a method of allocation approved by Plan fiduciaries and permitted by ERISA no less frequently than on an annual basis; (6) Plan fiduciaries will determine a method of allocating recordkeeping and administrative expenses that it determines is fair, equitable, and appropriate for Plan participants. This determination will be separate from the flat fee negotiated with the recordkeeper and based on the number of Plan participants; (7) During the Settlement Period, MIT and the Plan's fiduciaries shall continue their current practice of allowing the Plan's recordkeeper to communicate with current Plan participants (in their capacities as such) only at the direction or with the authorization of Plan officials, and prohibiting any communications to Plan participants (in their capacities as such) concerning non-Plan products and services. Such non-Plan products and services shall include, but are not limited to, Individual Retirement Accounts, life or disability insurance, non-Plan investment products, and wealth management services. Notwithstanding this limitation, the parties understand that the Plan's recordkeeper may address non-Plan products and services in response to a request for information initiated by a Plan participant; (8) Within thirty days of selecting the recordkeeper, MIT shall provide to Class Counsel the final bid amounts that were submitted in response to the request for proposal (without identifying the recordkeepers who submitted those bids), shall identify the selected recordkeeper, and shall (if then available) disclose the final agreed-upon contract for recordkeeping services. If the contract is not available, it will be forwarded to Class Counsel within 30 days of execution. Class Counsel shall sign any confidentiality agreements the recordkeepers may reasonably require in order to receive such information. MIT also shall provide Class Counsel the current recordkeeping contract for the Plan, to the extent not previously furnished in discovery. All such materials shall be kept confidential by Class Counsel, in accordance with the Confidentiality Agreement; (9) During the Settlement Period, MIT shall continue its current practice of using an independent investment consultant to review all designated investment alternatives in the Plan (excluding the brokerage window) at least annually.

**Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released

Parties include (a) Defendants and their insurers, (b) Defendants' past, present, and future parent corporation(s), (c) affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns of Defendants (d) with respect to (a) through (c) above, each of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (e) each of the Plan's fiduciaries and consultants.

The Released Claims include any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, arising from the conduct occurring prior to the entry of the Preliminary Order:

(A) That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Second Amended Complaint, in any complaint previously filed in the Class Action; or

(B) That arise out of, relate in any way to, are based on, or have any connection with: (1) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options and service providers; (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Class Member; (3) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (4) the investment options offered to Plan participants; (5) the compensation received by the Plan's service providers; (6) the recordkeeper to the Plan; (7) the services provided to the Plan or the costs of those services; (8) the payment of compensation based on a percentage of total assets; (9) the Plan's tiered investment structure; (10) alleged breaches of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or (11) the use of Plan-related information by any Plan service provider, including in marketing and selling investment and wealth management products to Plan participants; or

(C) That would be barred by res judicata based on entry of the Final Order; or

(D) That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or

(E) That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

"Released Claims" specifically exclude: (1) those claims not related to (A) through (E) above; (2) claims of individual denial of benefits from the Plan under 29 U.S.C. § 1132(a)(1)(B) that do not fall within any of the categories identified in (A) through (E) above; (3) labor or employment claims unrelated to the Plan, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of a similar nature to those set forth in this subpart; and (4) claims arising from conduct occurring after the entry of the Preliminary Order.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**Statement of Attorneys' Fees and Costs Sought in the Class Action**

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed tens of thousands of pages of documents produced in this case, conducted a substantial number of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$6,032,730, in addition to no more than \$525,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by

the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for eight Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel, being deposed by Defense counsel, and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What is the Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, the Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible, as Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA by monitoring, reviewing and evaluating the Plan's investment options, by monitoring, reviewing and evaluating the administrative fees paid

by the Plan, by eliminating or adding investment options when appropriate and by negotiating fees for administrative services for the Plan to ensure that the Plan paid reasonable fees for the services provided.

### **3. Why is There a Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel over approximately four months, including an all-day session with a private national mediator, and additional arm's length negotiations. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

### **4. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) Current Participant, or (2) an "Authorized Former Participant," meaning a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline, or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

As explained above, under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). Each component shall be calculated as follows:

#### **Per Capita Component**

1. The Settlement Administrator shall allocate 25% of the Net Settlement Amount to Authorized Former Participants and Current Participants in equal shares for every quarter during the Class Period in which they had a positive Plan account balance on the last day of the quarter.

#### **Pro Rata Component**

1. The end-of-quarter balances of Current and Authorized Former Participants, excluding balances in the Bond Oriented Balanced Fund and Diversified Stock Fund, are identified for each quarter during the Class Period;
2. All end-of-quarter balances identified in step 1 are summed together for each Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants, excluding those balances in the Bond Oriented Balanced Fund and Diversified Stock Fund;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

Beneficiaries will receive checks in amounts corresponding to their entitlement as beneficiaries of the Current Participant or the Authorized Former Participant with respect to whom the payment is made. Alternate Payees will receive checks if and to the extent they are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the proposed Plan of Allocation in accordance with the terms of an applicable Qualified Domestic Relations Order. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation as ordered by the Court.

No amount shall be distributed to a Class Member by check that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value.

#### **5. How Can I Receive My Distribution?**

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **According to the**

**Plan's records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Settlement.**

**6. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the second half of 2020.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

**7. Can I Get Out of the Settlement?**

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

**8. Do I Have a Lawyer in the Case?**

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

**9. How Will the Lawyers Be Paid?**

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$6,032,730 in fees and \$525,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

**10. How Do I Tell the Court If I Don't Like the Settlement?**

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Tracey, et al., v. Massachusetts Institute of Technology, et al.*, Case No.1:16-cv-11620 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than April 26, 2020**. The Court's address is Clerk of the Court, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below, **no later than April 26, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

**CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON  
Attn: Massachusetts Institute of  
Technology Settlement  
100 S. Fourth St., Suite 1200  
St. Louis, MO 63102

**DEFENDANTS' COUNSEL**

O'MELVENY & MYERS LLP  
Attn: Brian D. Boyle  
1625 Eye Street, N.W.  
Washington, D.C. 20006

**11. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing at 11:00 a.m. on May 26, 2020 at the United States District Court for the District of Massachusetts, Courtroom 4, 1 Courthouse Way, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

**12. Do I Have to Attend the Fairness Hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the

Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

### **13. May I Speak at the Fairness Hearing?**

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Tracey v. Massachusetts Institute of Technology*, Case No. 1:16-cv-11620." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than April 26, 2020.**

### **14. What Happens If I Do Nothing at All?**

**If you are a "Current Participant" and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. According to the Plan's records, you are a Current Participant.**

If you are a "Former Participant" and you do not complete and return a Former Participant Claim Form, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

### **15. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com), call 1-855-965-3704, or write to the Settlement Administrator at Massachusetts Institute of Technology 401(k) Settlement Administrator, Analytics Consulting LLC, P.O. Box 2005, Chanhassen, MN 55317-2005.

Massachusetts Institute of Technology 401(k) Settlement Administrator | PO Box 2005,  
Chanhassen, MN 55317

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID B. TRACEY, *et al.*,

No. 16-cv-11620-NMG

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

Defendants.

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your legal rights might be affected if you are a member of the following class:**

All persons who participated in the Massachusetts Institute of Technology Supplemental 401(k) Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period.

The Class Period is defined as August 9, 2010 through January 7, 2020. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

File Your Claim

Claim: 0000000  
PIN: abcd1234

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Massachusetts Institute of Technology Supplemental 401(k) (“Plan”) against Massachusetts Institute of Technology and certain individuals (collectively “MIT” or “Defendants”), alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of Current Participants in the Plan, and will provide Former Participants in the Plan with either a check mailed to their last known address or a rollover, if elected. Class Members’ status as either Current Participants or Former Participants was established as of January 7, 2020.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 28, 2019. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on May 26, 2020 at 11:00 a.m., before United States District Court Judge Nathaniel M. Gorton in Courtroom 4, United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, 02210.

- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendant's Counsel, as identified below.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**According to the Plan's records, you are a Former Participant. If you believe instead that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than \$0 as of January 7, 2020.**

**YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:**

**OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY MAY 16, 2020 TO PARTICIPATE IN THE SETTLEMENT**

Our records indicate that you are a Former Participant. You must return a Former Participant Claim Form that is **postmarked by or electronically submitted by May 16, 2020** to receive your share of the Net Settlement Amount. Even if you intend to object to any part of the Settlement, you should complete and return the Former Participant Claim form to preserve your right to obtain your share of the Net Settlement Amount. If you do not complete and return a Former Participant Claim Form that is **postmarked or electronically submitted by May 16, 2020**, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. A claim form is enclosed with this notice but may also be obtained and completed at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

File Your Claim

**Claim:** 0000000  
**PIN:** abcd1234

**YOU CAN OBJECT (NO LATER THAN APRIL 26, 2020)**

If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.

**YOU CAN ATTEND A HEARING ON MAY 26, 2020**

If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by April 26, 2020, of your intention to appear at the hearing.

**The Class Action**

The case is called *Tracey, et al. v. Massachusetts Institute of Technology, et al.*, Case No. 1:16-cv-11620 (D. Mass.) (the “Class Action”). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Massachusetts Institute of Technology and certain individuals. The Class Representatives’ claims are described below, and additional information about them is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**What Does the Settlement Provide?**

The Settlement was reached on September 12, 2019. Class Counsel filed this action on August 9, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze approximately 149,000 pages of documents produced by Defendants and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 15 depositions to support their underlying claims. The Settling Parties participated in a mediation with a nationally recognized mediator who has extensive experience in resolving complex class action claims. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after extensive arm’s length negotiation over a period of approximately four months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$18,100,000 will be established to resolve the Class Action. The Net Settlement Amount is \$18,100,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). The method by which Class Members receive their settlement allocations will depend on whether they are characterized as Current Participants or Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will have their distribution deposited into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Additional Benefits of the Settlement**

In addition to the monetary component of the Settlement, the Parties to the Settlement have agreed to the following additional terms for future years: (1) MIT agrees to comply with the non-monetary terms for a three- year Settlement Period; (2) During the Settlement Period, MIT shall provide annual training to Plan fiduciaries on prudent practices under ERISA, loyal practices under ERISA, and proper decision making in the exclusive best interests of Plan participants; (3) Within one hundred and twenty days from the Settlement Effective Date, the Plan's fiduciaries shall issue a request for proposal for recordkeeping and administrative services for the Plan. The request for proposal shall be made to at least three qualified service providers for administrative and recordkeeping services for the investment options in the Plan, each of which has experience providing recordkeeping and administrative services to plans of similar size and complexity. The request for proposal shall request that any proposal provided by a service provider for basic recordkeeping services to the Plan not express fees based on percentage of Plan assets and be on a per-participant basis; (4) After conducting the request for proposal for recordkeeping services, the Plan may decide to keep its current recordkeeper or retain a new recordkeeper based on whatever factors, including cost, value, available services, and quality of services, that the Plan fiduciaries deem appropriate under the

circumstances. Fees paid to the recordkeeper for basic recordkeeping services will not be determined based on a percentage-of-plan-assets basis; (5) Any revenue sharing related to Plan investments will be deposited in the Plan trust and, to the extent not reasonably used to defray lawful Plan expenses, be returned to Plan participants according to a method of allocation approved by Plan fiduciaries and permitted by ERISA no less frequently than on an annual basis; (6) Plan fiduciaries will determine a method of allocating recordkeeping and administrative expenses that it determines is fair, equitable, and appropriate for Plan participants. This determination will be separate from the flat fee negotiated with the recordkeeper and based on the number of Plan participants; (7) During the Settlement Period, MIT and the Plan's fiduciaries shall continue their current practice of allowing the Plan's recordkeeper to communicate with current Plan participants (in their capacities as such) only at the direction or with the authorization of Plan officials, and prohibiting any communications to Plan participants (in their capacities as such) concerning non-Plan products and services. Such non-Plan products and services shall include, but are not limited to, Individual Retirement Accounts, life or disability insurance, non-Plan investment products, and wealth management services. Notwithstanding this limitation, the parties understand that the Plan's recordkeeper may address non-Plan products and services in response to a request for information initiated by a Plan participant; (8) Within thirty days of selecting the recordkeeper, MIT shall provide to Class Counsel the final bid amounts that were submitted in response to the request for proposal (without identifying the recordkeepers who submitted those bids), shall identify the selected recordkeeper, and shall (if then available) disclose the final agreed-upon contract for recordkeeping services. If the contract is not available, it will be forwarded to Class Counsel within 30 days of execution. Class Counsel shall sign any confidentiality agreements the recordkeepers may reasonably require in order to receive such information. MIT also shall provide Class Counsel the current recordkeeping contract for the Plan, to the extent not previously furnished in discovery. All such materials shall be kept confidential by Class Counsel, in accordance with the Confidentiality Agreement; (9) During the Settlement Period, MIT shall continue its current practice of using an independent investment consultant to review all designated investment alternatives in the Plan (excluding the brokerage window) at least annually.

**Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Defendants and their insurers, (b) Defendants' past, present, and future parent corporation(s), (c) affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns of Defendants, (d) with respect to (a) through (c) above, each of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators,

fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (e) each of the Plan's fiduciaries and consultants.

The Released Claims include any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, arising from the conduct occurring prior to the entry of the Preliminary Order:

(A) That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Second Amended Complaint, in any complaint previously filed in the Class Action; or

(B) That arise out of, relate in any way to, are based on, or have any connection with: (1) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options and service providers; (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Class Member; (3) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (4) the investment options offered to Plan participants; (5) the compensation received by the Plan's service providers; (6) the recordkeeper to the Plan; (7) the services provided to the Plan or the costs of those services; (8) the payment of compensation based on a percentage of total assets; (9) the Plan's tiered investment structure; (10) alleged breaches of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or (11) the use of Plan-related information by any Plan service provider, including in marketing and selling investment and wealth management products to Plan participants; or

(C) That would be barred by res judicata based on entry of the Final Order; or

(D) That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or

(E) That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

“Released Claims” specifically exclude: (1) those claims not related to (A) through (E) above; (2) claims of individual denial of benefits from the Plan under 29 U.S.C. § 1132(a)(1)(B) that do not fall within any of the categories identified in (A) through (E) above; (3) labor or employment claims unrelated to the Plan, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of a similar nature to those set forth in this subpart; and (4) claims arising from conduct occurring after the entry of the Preliminary Order.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**Statement of Attorneys’ Fees and Costs Sought in the Class Action**

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed tens of thousands of pages of documents produced in this case, conducted a substantial number of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys’ Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$6,032,730, in addition to no more than \$525,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys’ Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

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A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What is the Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, the Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible, as Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA by monitoring, reviewing and evaluating the Plan's investment options, by monitoring, reviewing and evaluating the administrative fees paid by the Plan, by eliminating or adding investment options when appropriate and by negotiating fees for administrative services for the Plan to ensure that the Plan paid reasonable fees for the services provided.

### **3. Why is There a Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel over approximately four months, including an all-day session with a private national mediator, and additional arm's length negotiations. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

### **4. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) Current Participant, or (2) an "Authorized Former Participant," meaning a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline, or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

As explained above, under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). Each component shall be calculated as follows:

#### **Per Capita Component**

1. The Settlement Administrator shall allocate 25% of the Net Settlement Amount to Authorized Former Participants and Current Participants in equal shares for every

quarter during the Class Period in which they had a positive Plan account balance on the last day of the quarter.

**Pro Rata Component**

1. The end-of-quarter balances of Current and Authorized Former Participants, excluding balances in the Bond Oriented Balanced Fund and Diversified Stock Fund, are identified for each quarter during the Class Period;
2. All end-of-quarter balances identified in step 1 are summed together for each Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants, excluding those balances in the Bond Oriented Balanced Fund and Diversified Stock Fund;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

Beneficiaries will receive checks in amounts corresponding to their entitlement as beneficiaries of the Current Participant or the Authorized Former Participant with respect to whom the payment is made. Alternate Payees will receive checks if and to the extent they are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the proposed Plan of Allocation in accordance with the terms of an applicable Qualified Domestic Relations Order. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation as ordered by the Court.

No amount shall be distributed to a Class Member by check that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value.

**5. How Can I Receive My Distribution?**

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **According to the Plan's records, you are a Former Participant. Therefore, you need to return a Former Participant Claim Form to receive your share of the Settlement.**

## **6. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the second half of 2020.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

## **7. Can I Get Out of the Settlement?**

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

## **8. Do I Have a Lawyer in the Case?**

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

## **9. How Will the Lawyers Be Paid?**

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$6,032,730 in fees and \$525,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

## **10. How Do I Tell The Court If I Don't Like the Settlement?**

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Tracey, et al., v. Massachusetts Institute of Technology, et al.*, Case No.1:16-cv-11620 (D. Mass.). Be sure to include your name, address, telephone

number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than April 26, 2020**. The Court's address is Clerk of the Court, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below **no later than April 26, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

**CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON  
Attn: Massachusetts Institute of  
Technology Settlement  
100 S. Fourth St., Suite 1200  
St. Louis, MO 63102

**DEFENDANTS' COUNSEL**

O'MELVENY & MYERS LLP  
Attn: Brian D. Boyle  
1625 Eye Street, N.W.  
Washington, D.C. 20006

**11. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing at 11:00 a.m. on May 26, 2020 at the United States District Court for the District of Massachusetts, Courtroom 4, 1 Courthouse Way, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

**12. Do I Have to Attend the Fairness Hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

**13. May I Speak at the Fairness Hearing?**

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *Tracey v. Massachusetts Institute of Technology*, Case No. 1:16-cv-11620.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than April 26, 2020.**

#### **14. What Happens If I Do Nothing at All?**

If you are a “Current Participant” and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

**If you are a “Former Participant” and you do not complete and return a Former Participant Claim Form, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, BUT YOU WILL NOT RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT.**

**According to the Plan’s records, you are a Former Participant, so you will need to submit a Former Participant Claim Form in order to receive your share of the Settlement.**

#### **15. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com), call 1-855-965-3704, or write to the Settlement Administrator at Massachusetts Institute of Technology 401(k) Settlement Administrator, Analytics Consulting LLC, P.O. Box 2005, Chanhassen, MN 55317-2005.

Massachusetts Institute of Technology 401(k) Settlement Administrator | PO Box 2005,  
Chanhassen, MN 55317

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DAVID B. TRACEY, *et al.*,

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

Defendants.

No. 16-cv-11620-NMG

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your legal rights might be affected if you are a member of the following class:**

All persons who participated in the Massachusetts Institute of Technology Supplemental 401(k) Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period.

The Class Period is defined as August 9, 2010 through January 7, 2020. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Massachusetts Institute of Technology Supplemental 401(k) ("Plan") against Massachusetts Institute of Technology and certain individuals (collectively "MIT" or "Defendants"), alleging violations of the Employee Retirement Income Security Act ("ERISA"). The Settlement will provide for the allocation of monies directly into the individual accounts of Current Participants in the Plan, and will provide Former Participants in the Plan with either a check mailed to their last known address or a rollover, if elected. Class Members' status as either Current Participants or Former Participants was established as of January 7, 2020.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 28, 2019. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options - and the deadlines to exercise them - are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on May 26, 2020 at 11:00 a.m., before United States District Court Judge Nathaniel M. Gorton in Courtroom 4, United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, 02210.
- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendant's Counsel, as identified on page 7 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**According to the Plan's records, you are a Current Participant. If you believe instead that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants currently employed at the Massachusetts Institute of Technology and participants who are no longer employed by the Massachusetts Institute of Technology but continue to have an account balance in the Plan.**

**YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:**

<p><b>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT.</b></p>	<p><u>Our records indicate that you are a Current Participant because you had an account balance in the Plan as of January 7, 2020.</u> If, however, you are a Former Participant who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of January 7, 2020 or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically submitted by May 16, 2020 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically submitted by May 16, 2020, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. We have not included a claim form in your notice because Current Participants do not need to submit a claim form, and our records indicate that you are a Current Participant.</p> <p>However, if you believe you are a Former Participant, a claim form may be obtained by accessing <a href="http://www.MIT401KSettlementPlan.com">www.MIT401KSettlementPlan.com</a>. <u>Even if you intend to object to any part of the Settlement, you should complete and return the Former Participant Claim form to preserve your right to obtain your share of the Net Settlement Amount.</u></p>
<p><b>YOU CAN OBJECT (NO LATER THAN APRIL 26, 2020).</b></p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
<p><b>YOU CAN ATTEND A HEARING ON MAY 26, 2020.</b></p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by April 26, 2020, of your intention to appear at the hearing.</p>

**The Class Action**

The case is called *Tracey, et al. v. Massachusetts Institute of Technology, et al.*, Case No. 1:16-cv-11620 (D. Mass.) (the "Class Action"). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Massachusetts Institute of Technology and certain individuals. The Class Representatives' claims are described below, and additional information about them is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**What Does the Settlement Provide?**

The Settlement was reached on September 12, 2019. Class Counsel filed this action on August 9, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze approximately 149,000 pages of documents produced by Defendants and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 15 depositions to support their underlying claims. The Settling Parties participated in a mediation with a nationally recognized mediator who

has extensive experience in resolving complex class action claims. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after extensive arm's length negotiation over a period of approximately four months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$18,100,000 will be established to resolve the Class Action. The Net Settlement Amount is \$18,100,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). The method by which Class Members receive their settlement allocations will depend on whether they are characterized as Current Participants or Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will have their distribution deposited into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

### **Additional Benefits Of the Settlement**

In addition to the monetary component of the Settlement, the Parties to the Settlement have agreed to the following additional terms for future years: (1) MIT agrees to comply with the non-monetary terms for a three- year Settlement Period; (2) During the Settlement Period, MIT shall provide annual training to Plan fiduciaries on prudent practices under ERISA, loyal practices under ERISA, and proper decision making in the exclusive best interests of Plan participants; (3) Within one hundred and twenty days from the Settlement Effective Date, the Plan's fiduciaries shall issue a request for proposal for recordkeeping and administrative services for the Plan. The request for proposal shall be made to at least three qualified service providers for administrative and recordkeeping services for the investment options in the Plan, each of which has experience providing recordkeeping and administrative services to plans of similar size and complexity. The request for proposal shall request that any proposal provided by a service provider for basic recordkeeping services to the Plan not express fees based on percentage of Plan assets and be on a per-participant basis; (4) After conducting the request for proposal for recordkeeping services, the Plan may decide to keep its current recordkeeper or retain a new recordkeeper based on whatever factors, including cost, value, available services, and quality of services, that the Plan fiduciaries deem appropriate under the circumstances. Fees paid to the recordkeeper for basic recordkeeping services will not be determined based on a percentage-of-plan-assets basis; (5) Any revenue sharing related to Plan investments will be deposited in the Plan trust and, to the extent not reasonably used to defray lawful Plan expenses, be returned to Plan participants according to a method of allocation approved by Plan fiduciaries and permitted by ERISA no less frequently than on an annual basis; (6) Plan fiduciaries will determine a method of allocating recordkeeping and administrative expenses that it determines is fair, equitable, and appropriate for Plan participants. This determination will be separate from the flat fee negotiated with the recordkeeper and based on the number of Plan participants; (7) During the Settlement Period, MIT and the Plan's fiduciaries shall continue their current practice of allowing the Plan's recordkeeper to communicate with current Plan participants (in their capacities as such) only at the direction or with the authorization of Plan officials, and prohibiting any communications to Plan participants (in their capacities as such) concerning non-Plan products and services. Such non-Plan products and services shall include, but are not limited to, Individual Retirement Accounts, life or disability insurance, non-Plan investment products, and wealth management services. Notwithstanding this limitation, the parties understand that the Plan's recordkeeper may address non-Plan products and services in response to a request for information initiated by a Plan participant; (8) Within thirty days of selecting the recordkeeper, MIT shall provide to Class Counsel the final bid amounts that were submitted in response to the request for proposal (without identifying the recordkeepers who submitted those bids), shall identify the selected recordkeeper, and shall (if then available) disclose the final agreed-upon contract for recordkeeping services. If the contract is not available, it will be forwarded to Class Counsel within 30 days of execution. Class Counsel shall sign any confidentiality agreements the recordkeepers may reasonably require in order to receive such information. MIT also shall provide Class Counsel the current recordkeeping contract for the Plan, to the extent not previously furnished in discovery. All such materials shall be kept confidential by Class Counsel, in accordance with the Confidentiality Agreement; (9) During the Settlement Period, MIT shall continue its current practice of using an independent investment consultant to review all designated investment alternatives in the Plan (excluding the brokerage window) at least annually.

### **Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Defendants and their insurers, (b) Defendants' past, present, and future parent corporation(s), (c) affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns of Defendants (d) with respect to (a) through (c) above, each of their respective boards of

trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (e) each of the Plan's fiduciaries and consultants.

The Released Claims include any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, arising from the conduct occurring prior to the entry of the Preliminary Order:

- (A) That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Second Amended Complaint, in any complaint previously filed in the Class Action; or
- (B) That arise out of, relate in any way to, are based on, or have any connection with: (1) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options and service providers; (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Class Member; (3) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (4) the investment options offered to Plan participants; (5) the compensation received by the Plan's service providers; (6) the recordkeeper to the Plan; (7) the services provided to the Plan or the costs of those services; (8) the payment of compensation based on a percentage of total assets; (9) the Plan's tiered investment structure; (10) alleged breaches of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or (11) the use of Plan-related information by any Plan service provider, including in marketing and selling investment and wealth management products to Plan participants; or
- (C) That would be barred by res judicata based on entry of the Final Order; or
- (D) That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or
- (E) That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

"Released Claims" specifically exclude: (1) those claims not related to (A) through (E) above; (2) claims of individual denial of benefits from the Plan under 29 U.S.C. § 1132(a)(1)(B) that do not fall within any of the categories identified in (A) through (E) above; (3) labor or employment claims unrelated to the Plan, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of a similar nature to those set forth in this subpart; and (4) claims arising from conduct occurring after the entry of the Preliminary Order.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

#### **Statement of Attorneys' Fees and Costs Sought in the Class Action**

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed tens of thousands of pages of documents produced in this case, conducted a substantial number of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$6,032,730, in addition to no more than \$525,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for eight Class Representatives who took

on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel, being deposed by Defense counsel, and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

## **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## **2. What is the Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, the Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible, as Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA by monitoring, reviewing and evaluating the Plan's investment options, by monitoring, reviewing and evaluating the administrative fees paid by the Plan, by eliminating or adding investment options when appropriate and by negotiating fees for administrative services for the Plan to ensure that the Plan paid reasonable fees for the services provided.

## **3. Why is There a Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel over approximately four months, including an all-day session with a private national mediator, and additional arm's length negotiations. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

## **4. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) Current Participant, or (2) an "Authorized Former Participant," meaning a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline, or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

As explained above, under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). Each component shall be calculated as follows:

### **Per Capita Component**

1. The Settlement Administrator shall allocate 25% of the Net Settlement Amount to Authorized Former Participants and Current Participants in equal shares for every quarter during the Class Period in which they had a positive Plan account balance on the last day of the quarter.

### **Pro Rata Component**

1. The end-of-quarter balances of Current and Authorized Former Participants, excluding balances in the Bond Oriented Balanced Fund and Diversified Stock Fund, are identified for each quarter during the Class Period;
2. All end-of-quarter balances identified in step 1 are summed together for each Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end- of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants, excluding those balances in the Bond Oriented Balanced Fund and Diversified Stock Fund;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

Beneficiaries will receive checks in amounts corresponding to their entitlement as beneficiaries of the Current Participant or the Authorized Former Participant with respect to whom the payment is made. Alternate Payees will receive checks if and to the extent they are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the proposed Plan of Allocation in accordance with the terms of an applicable Qualified Domestic Relations Order. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation as ordered by the Court.

No amount shall be distributed to a Class Member by check that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value.

### **5. How Can I Receive My Distribution?**

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **According to the Plan's records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Settlement.**

### **6. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the second half of 2020.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

### **7. Can I Get Out of the Settlement?**

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

### **8. Do I Have a Lawyer in the Case?**

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **9. How Will the Lawyers Be Paid?**

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$6,032,730 in fees and \$525,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

### **10. How Do I Tell the Court If I Don't Like the Settlement?**

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Tracey, et al., v. Massachusetts Institute of*

*Technology, et al.*, Case No.1:16-cv-11620 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than April 26, 2020**. The Court's address is Clerk of the Court, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below, **no later than April 26, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Massachusetts Institute of Technology Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102	O'MELVENY & MYERS LLP Attn: Brian D. Boyle 1625 Eye Street, N.W. Washington, D.C. 20006

### 11. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at 11:00 a.m. on May 26, 2020 at the United States District Court for the District of Massachusetts, Courtroom 4, 1 Courthouse Way, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

### 12. Do I Have to Attend the Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

### 13. May I Speak at the Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Tracey v. Massachusetts Institute of Technology*, Case No. 1:16-cv-11620." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than April 26, 2020**.

### 14. What Happens If I Do Nothing at All?

**If you are a "Current Participant" and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. According to the Plan's records, you are a Current Participant.**

If you are a "Former Participant" and you do not complete and return a Former Participant Claim Form, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

### 15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com), call 1-855-965-3704, or write to the Settlement Administrator at Massachusetts Institute of Technology 401(k) Settlement Administrator, Analytics Consulting LLC, P.O. Box 2005, Chanhassen, MN 55317-2005.

**Massachusetts Institute of Technology**  
**Supplemental 401(k) Plan Settlement Administrator**  
Analytics Consulting LLC  
P.O. Box 2005  
Chanhassen, MN 55317-2005

ABC1234567890 - Claim Number 1111111



JOHN Q CLASSMEMBER  
123 MAIN ST  
ANYTOWN, ST 12345

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DAVID B. TRACEY, *et al.*,

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, *et al.*,

Defendants.

No. 16-cv-11620-NMG

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your legal rights might be affected if you are a member of the following class:**

All persons who participated in the Massachusetts Institute of Technology Supplemental 401(k) Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period.

The Class Period is defined as August 9, 2010 through January 7, 2020. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Massachusetts Institute of Technology Supplemental 401(k) (“Plan”) against Massachusetts Institute of Technology and certain individuals (collectively “MIT” or “Defendants”), alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of Current Participants in the Plan, and will provide Former Participants in the Plan with either a check mailed to their last known address or a rollover, if elected. Class Members’ status as either Current Participants or Former Participants was established as of January 7, 2020.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 28, 2019. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on May 26, 2020 at 11:00 a.m., before United States District Court Judge Nathaniel M. Gorton in Courtroom 4, United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, 02210.

- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendant’s Counsel, as identified on page 8 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

**According to the Plan’s records, you are a Former Participant. If you believe instead that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than \$0 as of January 7, 2020.**

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY MAY 16, 2020 TO PARTICIPATE IN THE SETTLEMENT</b>	<p><u>Our records indicate that you are a Former Participant.</u> You must return a Former Participant Claim Form that is <b>postmarked by or electronically submitted by May 16, 2020</b> to receive your share of the Net Settlement Amount. <u>Even if you intend to object to any part of the Settlement, you should complete and return the Former Participant Claim form to preserve your right to obtain your share of the Net Settlement Amount.</u> If you do not complete and return a Former Participant Claim Form that is <b>postmarked or electronically submitted by May 16, 2020</b>, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. A claim form is enclosed with this notice but may also be obtained and completed at <a href="http://www.MIT401KSettlementPlan.com">www.MIT401KSettlementPlan.com</a>.</p>
<b>YOU CAN OBJECT (NO LATER THAN APRIL 26, 2020)</b>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
<b>YOU CAN ATTEND A HEARING ON MAY 26, 2020</b>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by April 26, 2020, of your intention to appear at the hearing.</p>

**The Class Action**

The case is called *Tracey, et al. v. Massachusetts Institute of Technology, et al.*, Case No. 1:16-cv-11620 (D. Mass.) (the “Class Action”). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entity and individuals

they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Massachusetts Institute of Technology and certain individuals. The Class Representatives' claims are described below, and additional information about them is available at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

### **What Does the Settlement Provide?**

The Settlement was reached on September 12, 2019. Class Counsel filed this action on August 9, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze approximately 149,000 pages of documents produced by Defendants and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 15 depositions to support their underlying claims. The Settling Parties participated in a mediation with a nationally recognized mediator who has extensive experience in resolving complex class action claims. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after extensive arm's length negotiation over a period of approximately four months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$18,100,000 will be established to resolve the Class Action. The Net Settlement Amount is \$18,100,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the "Per Capita Component"), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the "Pro Rata Component"). The method by which Class Members receive their settlement allocations will depend on whether they are characterized as Current Participants or Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will have their distribution deposited into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

### **Additional Benefits Of the Settlement**

In addition to the monetary component of the Settlement, the Parties to the Settlement have agreed to the following additional terms for future years: (1) MIT agrees to comply with the non-monetary terms for a three- year Settlement Period; (2) During the Settlement Period, MIT shall provide annual training to Plan fiduciaries on prudent practices under ERISA, loyal practices under ERISA, and proper decision making in the exclusive best interests of Plan participants; (3) Within one hundred and twenty days from the Settlement Effective Date, the Plan's fiduciaries shall issue a request for proposal for recordkeeping and administrative services for the Plan. The request for proposal shall be made to at least three qualified service providers for administrative and recordkeeping services for the investment options in the Plan, each of which has experience providing recordkeeping and administrative services to plans of similar size and complexity. The request for proposal shall request that any proposal provided by a service provider for basic recordkeeping services to the Plan not express fees based on percentage of Plan assets and be on a per-participant basis; (4) After conducting the request for proposal for recordkeeping services, the Plan may decide to keep its current recordkeeper or retain a new recordkeeper based on whatever factors, including cost, value, available services, and quality of services, that the Plan fiduciaries deem appropriate under the circumstances. Fees paid to the recordkeeper for basic recordkeeping services will not be determined based on a percentage-of-plan-assets basis; (5) Any revenue sharing related to Plan investments will be deposited in the Plan trust and, to the extent not reasonably used to defray lawful Plan expenses, be returned to Plan participants according to a method of allocation approved by Plan fiduciaries and permitted by ERISA no less frequently than on an annual basis; (6) Plan fiduciaries will determine a method of allocating recordkeeping and administrative expenses that it determines is fair, equitable, and appropriate for Plan participants. This determination will be

separate from the flat fee negotiated with the recordkeeper and based on the number of Plan participants; (7) During the Settlement Period, MIT and the Plan's fiduciaries shall continue their current practice of allowing the Plan's recordkeeper to communicate with current Plan participants (in their capacities as such) only at the direction or with the authorization of Plan officials, and prohibiting any communications to Plan participants (in their capacities as such) concerning non-Plan products and services. Such non-Plan products and services shall include, but are not limited to, Individual Retirement Accounts, life or disability insurance, non-Plan investment products, and wealth management services. Notwithstanding this limitation, the parties understand that the Plan's recordkeeper may address non-Plan products and services in response to a request for information initiated by a Plan participant; (8) Within thirty days of selecting the recordkeeper, MIT shall provide to Class Counsel the final bid amounts that were submitted in response to the request for proposal (without identifying the recordkeepers who submitted those bids), shall identify the selected recordkeeper, and shall (if then available) disclose the final agreed-upon contract for recordkeeping services. If the contract is not available, it will be forwarded to Class Counsel within 30 days of execution. Class Counsel shall sign any confidentiality agreements the recordkeepers may reasonably require in order to receive such information. MIT also shall provide Class Counsel the current recordkeeping contract for the Plan, to the extent not previously furnished in discovery. All such materials shall be kept confidential by Class Counsel, in accordance with the Confidentiality Agreement; (9) During the Settlement Period, MIT shall continue its current practice of using an independent investment consultant to review all designated investment alternatives in the Plan (excluding the brokerage window) at least annually.

### **Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Defendants and their insurers, (b) Defendants' past, present, and future parent corporation(s), (c) affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns of Defendants, (d) with respect to (a) through (c) above, each of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (e) each of the Plan's fiduciaries and consultants.

The Released Claims include any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, arising from the conduct occurring prior to the entry of the Preliminary Order:

- (A) That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Second Amended Complaint, in any complaint previously filed in the Class Action; or
- (B) That arise out of, relate in any way to, are based on, or have any connection with: (1) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options and service providers; (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Class Member; (3) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (4) the investment options offered to Plan participants; (5) the compensation received by the Plan's service providers; (6) the recordkeeper to the Plan; (7) the services provided to the Plan or the costs of those services; (8) the payment of compensation based on a percentage of total assets; (9) the Plan's tiered investment structure; (10) alleged breaches of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or (11) the use of Plan-related information by any Plan service provider, including in marketing and selling investment and wealth management products to Plan participants; or
- (C) That would be barred by res judicata based on entry of the Final Order; or

- (D) That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or
- (E) That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

“Released Claims” specifically exclude: (1) those claims not related to (A) through (E) above; (2) claims of individual denial of benefits from the Plan under 29 U.S.C. § 1132(a)(1)(B) that do not fall within any of the categories identified in (A) through (E) above; (3) labor or employment claims unrelated to the Plan, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of a similar nature to those set forth in this subpart; and (4) claims arising from conduct occurring after the entry of the Preliminary Order.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

### **Statement of Attorneys’ Fees and Costs Sought in the Class Action**

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed tens of thousands of pages of documents produced in this case, conducted a substantial number of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys’ Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$6,032,730, in addition to no more than \$525,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys’ Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for the Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel, being deposed by Defense counsel, and providing information for the case. Any Class Representatives’ Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will be filed with the Court and made available on the Settlement Website, [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).

## **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan’s records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## 2. What is the Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, the Defendants violated the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible, as Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA by monitoring, reviewing and evaluating the Plan’s investment options, by monitoring, reviewing and evaluating the administrative fees paid by the Plan, by eliminating or adding investment options when appropriate and by negotiating fees for administrative services for the Plan to ensure that the Plan paid reasonable fees for the services provided.

## 3. Why is There a Settlement?

The Court has not reached a final decision as to the Class Representatives’ claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants’ counsel over approximately four months, including an all-day session with a private national mediator, and additional arm’s length negotiations. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

## 4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan’s recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) Current Participant, or (2) an “Authorized Former Participant,” meaning a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline, or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

As explained above, under the proposed Plan of Allocation, 25% of the Net Settlement Amount will be allocated to Class Members based simply on the number of quarters during the Class Period in which they participated in the Plan in any amount (the “Per Capita Component”), and 75% of the Net Settlement Amount will be allocated to Class Members based on the actual amount of their investments in Plan funds over the Class Period, taking into account quarterly balances in all Plan funds except for those in the Bond Oriented Balanced Fund and the Diversified Stock Fund (the “Pro Rata Component”). Each component shall be calculated as follows:

### **Per Capita Component**

1. The Settlement Administrator shall allocate 25% of the Net Settlement Amount to Authorized Former Participants and Current Participants in equal shares for every quarter during the Class Period in which they had a positive Plan account balance on the last day of the quarter.

### **Pro Rata Component**

1. The end-of-quarter balances of Current and Authorized Former Participants, excluding balances in the Bond Oriented Balanced Fund and Diversified Stock Fund, are identified for each quarter during the Class Period;
2. All end-of-quarter balances identified in step 1 are summed together for each Participant;

3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants, excluding those balances in the Bond Oriented Balanced Fund and Diversified Stock Fund;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

Beneficiaries will receive checks in amounts corresponding to their entitlement as beneficiaries of the Current Participant or the Authorized Former Participant with respect to whom the payment is made. Alternate Payees will receive checks if and to the extent they are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the proposed Plan of Allocation in accordance with the terms of an applicable Qualified Domestic Relations Order. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation as ordered by the Court.

No amount shall be distributed to a Class Member by check that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value.

## 5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **According to the Plan's records, you are a Former Participant. Therefore, you need to return a Former Participant Claim Form to receive your share of the Settlement.**

## 6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the second half of 2020.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

## 7. Can I Get Out of the Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

## 8. Do I Have a Lawyer in the Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 9. How Will the Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$6,032,730 in fees and \$525,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

## 10. How Do I Tell The Court If I Don't Like the Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Tracey, et al., v. Massachusetts Institute of Technology, et al.*, Case No.1:16-cv-11620 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than April 26, 2020**. The Court's address is Clerk of the Court, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below **no later than April 26, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Massachusetts Institute of Technology Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102	O'MELVENY & MYERS LLP Attn: Brian D. Boyle 1625 Eye Street, N.W. Washington, D.C. 20006

## 11. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at 11:00 a.m. on May 26, 2020 at the United States District Court for the District of Massachusetts, Courtroom 4, 1 Courthouse Way, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

## 12. Do I Have to Attend the Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

## 13. May I Speak at the Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Tracey v. Massachusetts Institute of Technology*, Case No. 1:16-cv-11620." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than April 26, 2020**.

## 14. What Happens If I Do Nothing at All?

If you are a "Current Participant" and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

**If you are a "Former Participant" and you do not complete and return a Former Participant Claim Form, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if**

**the Settlement is finally approved, BUT YOU WILL NOT RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT.**

**According to the Plan's records, you are a Former Participant, so you will need to submit a Former Participant Claim Form in order to receive your share of the Settlement.**

### **15. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com), call 1-855-965-3704, or write to the Settlement Administrator at Massachusetts Institute of Technology 401(k) Settlement Administrator, Analytics Consulting LLC, P.O. Box 2005, Chanhassen, MN 55317-2005.

## **SPECIAL TAX NOTICE FROM THE SETTLEMENT ADMINISTRATOR**

### **YOUR ROLLOVER OPTIONS**

You are receiving this notice because all or a portion of a payment you are receiving as a result of the Settlement may be eligible to be rolled over to an individual retirement account (“IRA”) or an employer-sponsored retirement plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Settlement that are not from a designated Roth account (a type of account with special tax rules in some employer plans).

Rules that apply to most payments are described in the “General Information About Rollovers” section below. Special rules that only apply in certain circumstances are described in the “Special Rules and Options” section below.

*This Notice does not constitute legal or tax advice, and you should consult with a professional tax advisor if you have specific questions about your specific tax situation.*

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### **GENERAL INFORMATION ABOUT ROLLOVERS**

#### **How can a rollover affect my taxes?**

You will be taxed on a payment from the Settlement if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception applies).

#### **Where may I roll over the payment?**

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

#### **How do I do a rollover?**

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Settlement Administrator will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment from the Settlement Administrator to deposit it into the IRA or eligible employer plan. If you do not do a direct rollover, the Settlement Administrator is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

#### **How much may I roll over?**

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover.

**If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?**

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Settlement (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the payment not rolled over.

**Will I owe state income taxes?**

This notice does not describe any state or local income tax rules (including withholding rules).

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**SPECIAL RULES AND OPTIONS**

**If you miss the 60-day rollover deadline**

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

**If you were born on or before January 1, 1936**

If you were born on or before January 1, 1936, and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

**If you roll over your payment to a Roth IRA**

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to \$10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment to a designated Roth account in an employer plan.

**If you are not a Plan participant**

Payments after death of the Plan participant. If you receive a distribution after the Plan participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

**If you are a surviving spouse**

If you receive a payment from the Settlement as the surviving spouse of a deceased Plan participant, you have the same rollover options that the Plan participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the Plan participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the Plan participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the Plan participant would have been age 70½.

**If you are a surviving beneficiary other than a spouse**

If you receive a payment from the Settlement because of the Plan participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

**Payments under a qualified domestic relations order**

If you are the spouse or former spouse of the Plan participant who receives a payment from the Settlement under a QDRO, you generally have the same options the participant would have (for example, you may rollover the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

**If you are a nonresident alien**

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Settlement is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

**Other special rules**

If your payments for the year are less than \$200 (not including payments from a designated Roth account in the Plan), the Settlement is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

**FOR MORE INFORMATION**

You may wish to consult with the Settlement Administrator, or a professional tax advisor before taking a payment from the Settlement. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORM.

**Massachusetts Institute of Technology**  
**Supplemental 401(k) Plan Settlement Administrator**  
**Analytics Consulting LLC**  
**P.O. Box 2005**  
**Chanhassen, MN 55317-2005**  
**www.MIT401KSettlementPlan.com**

**FORMER PARTICIPANT CLAIM FORM**

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who did not have a plan account with a balance greater than \$0 as of January 7, 2020.

This form must be completed, signed and electronically submitted online at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com) using the Claim Number and PIN atop this form by **May 16, 2020** or mailed with a postmark date no later than **May 16, 2020** to the Settlement Administrator in order for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

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**PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT CLAIM FORM**

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records.
2. Submit your completed Former Participant Claim Form electronically at [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com) using the Claim Number and PIN atop this form on or before **May 16, 2020** or mail your completed Former Participant Claim Form postmarked no later than **May 16, 2020** to the Settlement Administrator at the following address:

**Massachusetts Institute of Technology Supplemental 401(k) Plan Settlement Administrator**  
**Analytics Consulting LLC**  
**P.O. Box 2005**  
**Chanhassen, MN 55317-2005**

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.

3. Other Reminders:
  - You must provide date of birth, signature and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
  - If you desire to do a rollover and you do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, you will receive a check in the mail.
  - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
  - **Timing Of Payments To Eligible Settlement Class Members.** Please note that Settlement payments are subject to the Settlement Agreement receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than the second half of 2020 due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at 1-855-965-3704. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, Settlement administration, and claim processing is available on the lawsuit website, [www.MIT401KSettlementPlan.com](http://www.MIT401KSettlementPlan.com).



