

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

IN RE:

COMMODITY EXCHANGE, INC., GOLD  
FUTURES AND OPTIONS TRADING  
LITIGATION

*This Document Relates To All Actions*

Case No. 14-MD-2548 (VEC)  
14-MC-2548 (VEC)

Hon. Valerie E. Caproni

**DECLARATION OF DANIEL L. BROCKETT IN SUPPORT OF MOTION FOR AN  
ORDER PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS AND  
PRELIMINARILY APPROVING PLAN OF ALLOCATION**


Pursuant to 28 U.S.C. § 1746, I, Daniel L. Brockett, declare as follows:

1. I am a member of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”). Quinn Emanuel and Berger Montague are Interim Co-Lead Counsel in the above-captioned action. I respectfully submit this declaration in support of Plaintiffs’ Motion for an Order Providing for Notice to the Settlement Class and Preliminarily Approving Plan of Allocation.
2. Attached hereto as Exhibit 1 is a true and correct copy of the proposed Notice of Proposed Class Action Settlement and Class Members’ Rights.
3. Attached hereto as Exhibit 2 is a true and correct copy of the proposed Proof of Claim and Release form.
4. Attached hereto as Exhibit 3 is a true and correct copy of the Summary Notice of Proposed Class Action Settlement.
5. Attached hereto as Exhibit 4 is a true and correct copy of the proposed Plan of Allocation.

6. Attached hereto as Exhibit 5 is a true and correct copy of the [Proposed] Order Providing for Notice to the Settlement Class and Preliminarily Approving Plan of Allocation.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed December 7, 2020  
New York, New York

  
\_\_\_\_\_  
Daniel L. Brockett

# **EXHIBIT 1**

**IMPORTANT LEGAL NOTICE TO ALL MEMBERS OF THE CLASS  
FORWARD TO CORPORATE HEADQUARTERS/LEGAL COUNSEL**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:

COMMODITY EXCHANGE, INC., GOLD FUTURES  
AND OPTIONS TRADING LITIGATION

*This Document Relates To All Actions*

Case No. 14-MD-2548 (VEC)  
14-MC-2548 (VEC)

Hon. Valerie E. Caproni

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND CLASS MEMBERS' RIGHTS**

TO: All persons or entities who during the period from January 1, 2004 through June 30, 2013, either (A) sold any physical gold or financial or derivative instrument in which gold is the underlying reference asset, including, but not limited to, those who sold (i) gold bullion, gold bullion coins, gold bars, gold ingots or any form of physical gold, (ii) gold futures contracts in transactions conducted in whole or in part on COMEX or any other exchange operated in the United States, (iii) shares in gold exchange-traded funds ("ETFs"), (iv) gold call options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States; (v) gold spot, gold forwards or gold swaps over-the-counter; or (B) bought gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange operated in the United States.

***PLEASE READ THIS ENTIRE NOTICE CAREFULLY.***

***A UNITED STATES FEDERAL COURT AUTHORIZED THIS NOTICE. YOUR RIGHTS MAY BE AFFECTED BY THE PROCEEDINGS IN THIS ACTION. THIS NOTICE ADVISES YOU OF YOUR RIGHTS AND OPTIONS WITH RESPECT TO THIS ACTION, INCLUDING WHAT YOU MUST DO IF YOU WISH TO SHARE IN THE PROCEEDS OF THE SETTLEMENT.***

***If you are a brokerage firm, dealer, or trustee through whom Gold Investments were traded from January 1, 2004 through March 20, 2015, inclusive, on behalf of customers that are members of the Settlement Class as defined in Section I.C. below, please provide the name and last known address of such customers to the Settlement Administrator at the address listed in Section VIII below within two weeks of receiving this Notice. The Settlement Administrator will cause copies of this Notice to be forwarded to each customer identified at the address so designated. In the alternative, contact the Settlement Administrator for physical or electronic copies of this Notice, so that you may send them directly to customers.***

This Notice of Proposed Class Action Settlement and Class Members' Rights ("Notice") is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York (the "Court"). It is not junk mail, an advertisement, or a solicitation from a lawyer. You have not been sued. The purpose of this Notice is to inform you of the pendency of the above-captioned class action and your rights in connection with the proposed Settlement and release of the claims asserted.

A class action is a lawsuit in which one or more representative plaintiffs (in this case, Plaintiffs) bring a lawsuit on behalf of themselves and other similarly situated persons (i.e., a class) who have similar claims against the defendants. The representative plaintiffs, the court, and counsel appointed to represent the class have a responsibility to make sure that the interests of class members are adequately represented.

Questions? Call **1-000-000-0000** or Visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com)

You are receiving this Notice because records indicate that you may have transacted in one or more Gold Investments during the Settlement Class Period and may be a Settlement Class Member in this class action.

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.** Inquiries concerning this Notice or any other questions by Settlement Class Members should be directed to:

**Gold Fixing Settlement c/o Heffler Claims Group**

P.O. Box 0000,

Philadelphia, PA 00000-0000

Tel.: 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000)

Email: [info@GoldFixSettlement.com](mailto:info@GoldFixSettlement.com)

Website: [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com)

The “Settling Defendants” are (i) Deutsche Bank AG and its subsidiaries and affiliates (“Deutsche Bank”) and (ii) HSBC Bank plc and its subsidiaries and affiliates (“HSBC”). Settling Defendants denied and continue to deny Plaintiffs’ claims. By entering into the proposed Settlements, the Settling Defendants have not admitted to any liability, fault, or wrongdoing of any kind in connection with the allegations in the Action, and nothing in the Settlement Agreements or this Notice shall be construed as such an admission. To resolve all Released Claims against all Released Parties, the Settling Defendants have paid into escrow a total of \$102 million.<sup>1</sup> The Settling Defendants have also agreed to certain cooperation obligations, which have assisted and will continue to assist Plaintiffs in prosecuting the claims against the remaining Non-Settling Defendants.

The Court has preliminarily approved the Settlements with the Settling Defendants. The Court will review and determine whether to grant Final Approval of the Settlements. The Court has appointed the lawyers listed below to represent you and the Settlement Class in this Action (“Co-Lead Counsel”):

<p>Merrill Davidoff Berger Montague PC 1818 Market Street, Suite 3600 Philadelphia, PA 19103</p>	<p>Daniel Brockett Quinn Emanuel Urquhart &amp; Sullivan 51 Madison Avenue, 22nd Floor New York, NY 10010</p>
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**Fairness Hearing and Right to Object.** The Court has scheduled a public hearing on final approval of the Settlements for [Month Day Year] (“Fairness Hearing”). The purpose of the Fairness Hearing is to determine, among other things, whether the Settlement, the Plan of Allocation, and the application by Plaintiffs’ Co-Lead Counsel for attorneys’ fees and payment of expenses are fair, reasonable, and adequate. If you remain in the Settlement Class, then you may object to any aspect of the Settlement, the Plan of Allocation, Plaintiffs’ Co-Lead Counsel’s request for attorneys’ fees and payment of expenses, or any other matters. **All objections must be made in accordance with the instructions set forth below, and they must be filed with the Court and served on or before [Month Day Year] or they will not be considered.** See Section III below.

**Right to Submit a Claim.** If you believe you are a Settlement Class Member and believe you have qualifying transactions, you have the right to submit a Proof of Claim and Release Form to the Claims Administrator. A Proof of Claim and Release Form is attached to this Notice. Proof of Claim and Release Forms must be mailed or submitted electronically by [Month Day Year].

**Right to Exclude Yourself from the Settlement Class.** The Court will exclude you from the Settlement Class if you make a written request for exclusion from the Settlements that is mailed to the Settlement Administrator (Heffler Claims Group) at the address set forth in Section VIII below and received no later than [Month Day Year]. See Section III. **To be valid, the request for exclusion must comply with the requirements set forth in the Court’s Order dated [Month Day Year] (the “Order”) and summarized in Section III below.** If you exclude yourself from the Settlement Class, you will be free to sue the Settling Defendants or any of the other Released Parties on your own for the claims being resolved by the Settlements. However, you will not receive any money from the Settlements, and Co-Lead Counsel will no longer

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meanings assigned to them in the Settlement Agreements, as applicable.

represent you with respect to any claims against the Settling Defendants. Co-Lead Class Counsel will, however, continue to represent you in the continuing litigation against the Non-Settling Defendants. If you exclude yourself from a Settlement Class of which you are a member, you will be excluding yourself from both Settlements. If you want to receive money from the Settlements, do not exclude yourself.

## **I. BACKGROUND OF THE LITIGATION**

### **A. The Nature of the Litigation**

Plaintiffs allege that, from January 1, 2004 through June 30, 2013 inclusive (the “Settlement Class Period”), the Settling Defendants conspired with Barclays Bank plc, Société Générale SA, The Bank of Nova Scotia, and The London Gold Market Fixing Limited (together, “Non-Settling Defendants”) to drive down the price of gold around the time of a daily, secret, and unregulated afternoon meeting (the “PM Gold Fix”). The PM Gold Fix was intended to determine the global benchmark price per ounce of gold (the “Fix price”) based on supply and demand fundamentals stemming from a competitive gold auction among the Fixing members. However, Defendants allegedly capitalized on the lack of regulatory oversight and the private nature of the PM Gold Fix to facilitate Defendants’ agreement to manipulate and fix gold prices and the prices of Gold Investments during the Settlement Class Period. Defendants’ conduct harmed other market participants like Plaintiffs and the Settlement Class. “Gold Investments” means (i) gold bullion, gold bullion coins, gold ingots, gold bars, or any other form of physical gold, (ii) gold futures contracts in transactions conducted in whole or in part on COMEX or any other exchange operated in the United States (iii) shares in gold ETFs, (iv) gold call options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States (v) gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States, and (vi) gold spot, gold forwards, or gold swaps traded over-the-counter.

The Defendants, by virtue of their overt but non-public interactions in connection with the daily Gold Fixing, were uniquely positioned to effectively “name their own” Fix price and thereby to gain an unfair advantage with respect to the contracts, derivatives, and physical positions that they held in the market, all of which were correlated to the Fix price in one way or another. In particular, Plaintiffs allege that Defendants were motivated to profit, and did in fact profit, from their intentional and coordinated suppression of gold prices around the PM Fixing, which had the effect of depressing prices for Gold Investments. Plaintiffs allege that Defendants effectuated their conspiracy in several ways. For example, leading up to the PM Fixing, Defendants allegedly collected confidential client order information and then improperly shared that information amongst themselves in order to compare and coordinate the execution of particularly large sell trades, thereby driving down the gold spot price immediately before and during the Fixing call. During the Fixing window itself, Plaintiffs allege that Defendants offered “rigged” auction rates that were either fabricated or artificially depressed by Defendants’ prior coordination of large sell orders, which had the effect of magnifying a downward effect in the resulting Fix price. Defendants also allegedly communicated with each other throughout the day through phone calls, chat rooms, and other forms of electronic communication to coordinate trading (including to “net off” large buy orders) in order to ensure that their efforts to drive down the gold price were not undone by counteracting trading activity. Plaintiffs further allege that Defendants used manipulative trading tactics such as “spoofing” (sending false signals to the market by placing large orders that were never executed), “wash sales” (placing large orders that are executed and then quickly reversed), and “front running” of customer orders in order artificially to suppress the price of gold.

Plaintiffs have asserted legal claims under federal antitrust law for price fixing and unlawful restraint of trade; under the Commodity Exchange Act for price manipulation, manipulation by false reporting and fraud and deceit, aiding and abetting and principal-agent liability, and under the common law.

Plaintiffs and Plaintiffs’ Co-Lead Counsel believe that Settlement Class Members have been damaged by Defendants’ conduct. The Settling Defendants do not agree with the allegations made by Plaintiffs, believe that they have meritorious defenses to Plaintiffs’ allegations, and believe that certain of Plaintiffs’ claims would have been rejected prior to trial, at trial (had Plaintiffs successfully certified a class and survived summary judgment motions), or on appeal. As a result, the Settling Defendants believe Settlement Class Members would have received nothing if the litigation had continued to trial.

The Court has not decided for or against Plaintiffs or the Settling Defendants. Instead, Plaintiffs’ Co-Lead Counsel engaged in negotiations with the Settling Defendants to reach a negotiated resolution of the claims against the Settling Defendants in this Action. The Settlements allow Plaintiffs and the Settling Defendants to avoid the risks and costs of lengthy litigation and the uncertainty of pre-trial proceedings, a trial, and appeals. If approved, the Settlements would permit eligible Settlement Class Members, who file timely and valid Proof of Claim and Release Forms, to receive

compensation, rather than risk ultimately receiving nothing. Plaintiffs and Plaintiffs' Co-Lead Counsel believe the Settlements are in the best interest of all Settlement Class Members.

Deutsche Bank has paid into escrow a total of \$60 million in cash for the benefit of the proposed Settlement Class. HSBC has paid into escrow a total of \$42 million in cash for the benefit of the proposed Settlement Class. The individual amounts paid by Deutsche Bank and HSBC will be used to create a single \$102 million settlement fund (the "Settlement Fund").

If the Settlements are finally approved, the Settlement Fund, plus interest earned from the date it was established, less any Taxes, any Notice and Administration Costs, any Court-awarded attorneys' fees, litigation costs and expenses, service awards for Plaintiffs, and any other costs or fees approved by the Court (the "Net Settlement Fund"), will be divided among all Settlement Class Members who file valid Proof of Claim and Release Forms.

If the Settlements are finally approved, the Action will conclude against the Settling Defendants, and the Settling Defendants will be released from claims concerning this lawsuit, as described more fully below. If the Settlements are not approved, the Settling Defendants will remain in the Action, and Plaintiffs will continue to pursue their claims against the Settling Defendants.

## **B. Procedural History**

On August 13, 2014, the United States Judicial Panel on Multidistrict Litigation issued a Transfer Order consolidating similar actions pertaining to the downward suppression of gold prices around the PM Fixing before Judge Caproni in the Southern District of New York. On August 20, 2014, the Court ordered that the Actions be consolidated for all pretrial purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and reaffirmed the appointment of Quinn Emanuel Urquhart & Sullivan, LLP and Berger Montague, P.C. as Interim Co-Lead Counsel.

Thereafter, on March 16, 2015, Class Plaintiffs filed a Second Consolidated Amended Class Action Complaint against Defendants asserting claims under the Sherman Act, the Commodity Exchange Act, and for unjust enrichment. On April 30, 2015 Defendants moved to dismiss the Second Consolidated Amended Class Action Complaint

On October 3, 2016, the Court granted UBS's motion to dismiss and granted the Fixing Banks' motion to dismiss in part. Specifically but without limitation, the Court dismissed all claims arising from sales of gold exchange-traded funds, and limited the claims to the period of January 1, 2006 through December 1, 2012. The Court also denied in part the Fixing Bank's motion to dismiss Plaintiffs' antitrust claims for price fixing and unlawful restraint of trade, and Plaintiffs' Commodity Exchange Act claims.

On December 2, 2016, Plaintiffs moved for preliminary approval of the Settlement with Deutsche Bank, which the Court granted on December 9, 2016.

On June 16, 2017, Plaintiffs filed a Third Consolidated Amended Class Action Complaint adding additional allegations against UBS and as to certain years of the class period. On July 25, 2018, the Court granted UBS AG and UBS Securities LLC motion to dismiss Plaintiffs' third consolidated amended class action complaint. Plaintiffs' claims against other non-settling Defendants remain.

On May 24, 2019, the Court entered an amended fact discovery schedule that set a July 31, 2020 fact discovery completion deadline. On February 19, 2020, the Court amended the discovery schedule and set a December 11, 2020 fact discovery completion deadline and a Pretrial Conference date of December 18, 2020. On August 4, 2020, in light of delays caused by the COVID-19 pandemic, the Court amended the discovery schedule and set a May 26, 2021 fact discovery completion deadline and a Pretrial Conference date of June 9, 2021.

On December 7, 2020, Plaintiffs moved for preliminary approval of the Settlement with HSBC, which the Court granted on [Month Day Year].

## **C. The Definition of the Settlement Class**

The Settlement Class is defined as:

All persons or entities who during the period from January 1, 2004 through June 30, 2013, either (A) sold any physical gold or financial or derivative instrument in which gold is the underlying reference asset, including, but not limited to, those who sold (i) gold bullion, gold bullion coins, gold bars, gold ingots or any form of physical

gold, (ii) gold futures contracts in transactions conducted in whole or in part on COMEX or any other exchange operated in the United States, (iii) shares in gold exchange-traded funds (“ETFs”), (iv) gold call options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States; (v) gold spot, gold forwards or gold swaps over-the-counter; or (B) bought gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange operated in the United States.

Excluded from the Settlement Class are Defendants, their officers, directors, management, employees, affiliates, parents, subsidiaries, and co-conspirators, whether or not named in the Action, and the United States Government, and other governments. Also excluded is the Judge presiding over this action, her law clerks, spouse, and any person within the third degree of relationship living in the Judge’s household and the spouse of such a person.

If you are not sure whether you are included in the Class, you can ask for free help. You can call toll-free 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000) or visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) for more information.

## II. SUMMARY OF THE PROPOSED SETTLEMENT

### A. The Settlements

Plaintiffs have entered into two separate Settlement Agreements, one with Deutsche Bank and one with HSBC. The Settling Defendants will collectively pay the Settlement Class \$102 million. The settlement amounts agreed to by each of the Settling Defendants are as follows:

Deutsche Bank	\$ 60,000,000
HSBC	\$ 42,000,000

The individual amounts paid by each Settling Defendant will be used to create a single \$102 million Settlement Fund.

The following description of the proposed Settlements is only a summary. This description and this Notice are qualified in their entirety by the Settlement Agreements which are on file with the Court at the address indicated in this Notice and is available on the official website for the Settlements, at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) (the “Settlement Website”). In the event of any conflict between the Settlement Agreements and this Notice, the terms of the Settlement Agreements shall control.

*No Right to Reversion.* The Settlement Agreements do not provide the Settling Defendants with a right of reversion. That is, no matter how many Settlement Class Members fail to file a Proof of Claim and Release Form or choose to opt-out, if the Settlements are not terminated and are finally approved by the Court, none of the Settlement monies will revert to the Settling Defendants. This is not a claims-made settlement; there will be no reversion.

*Settling Defendants’ Potential Right To Reduction or Termination.* In certain circumstances, each Settling Defendant has the right to request a modification of the Settlement Amount or to terminate the Settlement. The right to seek reduction in the Settlement Amount or terminate the Settlement is set forth at Section 10 of the Settlement Agreement entered into by each Settling Defendant. If a Settling Defendant asserts that the total Requests for Exclusion represent a material portion of the transactions during the Settlement Class Period that would be eligible for compensation under the Settlement and such exclusion(s) would materially reduce the value of the Settlement to the Settling Defendant, the Settling Defendant has the option to present the issue to a jointly-selected mediator. In the event the mediator determines some reduction in the Settlement Amount is appropriate, the Settlement Amount may be reduced.

A Settling Defendant may alternately seek to terminate a Settlement by making an application for termination to the mediator. Upon such application, the mediator shall determine if the reduction remedy set forth above is not adequate to preserve the essential benefit of the Settlement to the Settling Defendant making such application. Should a Settlement be terminated, the Parties would revert to their respective status as of the date they executed the Settlement Agreement.

If Settling Defendants do not invoke Section 10 of their respective Settlement Agreement, all Settlement Funds are “non-reversionary,” which means that the Settling Defendants do not have a right to claw back any portion of the Settlement Fund.



*Plan of Allocation.* The amount of your payment will be determined by the Plan of Allocation that the Court approves. The proposed Plan of Allocation will allocate the Net Settlement Fund equitably among Authorized Claimants on a *pro rata* basis based on the total qualifying claim amounts, adjusted for certain factors, such as the time period and type of the Authorized Claimants' transactions. If, as an Authorized Claimant, your total distribution is below a minimum threshold, you may instead receive an Alternative Minimum Payment. The Alternative Minimum Payment will be a set amount for all such Authorized Claimants. For more details and regular updates regarding the Plan of Allocation and the settlement process, please visit the Settlement Website at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

*Changes or Further Orders by the Court.* Any change of the Plan of Allocation, the time and place of the Fairness Hearing, or any other matter, and all further orders or requirements by the Court will be posted on the Settlement Website at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) as soon as practicable. It is important that you refer to the Settlement Website often as no other notice may be published of such changes.

**B. The Release and Covenant Not to Sue under the Settlement Agreement**

**IF YOU HAVE NOT VALIDLY REQUESTED TO BE EXCLUDED FROM THE SETTLEMENT CLASS,  
WHEN THE SETTLEMENT BECOMES FINAL YOU WILL BE RELEASING THE SETTLING  
DEFENDANTS AND THE RELEASED PARTIES FROM THE CLAIMS DESCRIBED BELOW,  
AND YOU WILL BE BOUND BY THE RELEASES IN THE SETTLEMENT AGREEMENT  
INCLUDING THE COVENANT NOT TO SUE THE RELEASED PARTIES**

Unless you exclude yourself, you remain a Settlement Class Member. That means you cannot sue, continue to sue, assist a third-party in suing, or be part of any other lawsuit about the Released Claims in this Action against the Settling Defendant Released Parties. Upon the Effective Date, the Plaintiff Releasing Parties shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Settling Defendant Released Parties, regardless of whether such Plaintiff Releasing Party executes and delivers a Proof of Claim and Release Form.

The capitalized terms used in this paragraph are defined in the Settlement Agreements, Preliminary Approval Orders, or this Notice. For easy reference, certain of these terms are copied below:

- “Released Parties” means each Settling Defendant, and all of its respective past or present direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, successors, and all of their respective officers, directors, partners, managing directors, employees, agents, contractors, attorneys, legal or other representatives, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, shareholders, advisors, and assigns. Released Parties does not include any of the Non-Settling Defendants.
- “Releasing Parties” means individually and collectively each Settlement Class Member, on behalf of themselves and any of their respective past or present officers, directors, stockholders, agents, employees, legal representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, regardless of whether the Settlement Class Member submits any claim for payment or receives any such payment pursuant to any claims process that may be established and approved by the Court. In the case of a Settlement Class Member that is an Employee Benefit Plan (or a fiduciary acting on behalf of an Employee Benefit Plan), the terms of this Agreement shall bind the Employee Benefit Plan and all Persons who may have any claim by reason of their relationship with the Employee Benefit Plan, including all of its fiduciaries, beneficiaries and participants.
- “Released Claims” means any and all manner of claims, causes of action, cross claims, and shall include Unknown Claims, causes of action, crossclaims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, which any Class Plaintiffs or Settlement Class Members ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released

Parties arising from or relating in any way to conduct alleged in the Action or that could have been alleged in the Action, in any event arising from the same factual predicate of the Action, and concerning, relating to or arising out of any Gold Investment Transaction from January 1, 2004 through March 20, 2015.

Unless you exclude yourself from the Settlement Class, you will be bound by past and any future Court rulings, including rulings on the Settlements and Released Claims. Unless you exclude yourself from the Settlement Class, you will not be able to start a lawsuit, continue with a lawsuit, or be a part of any other lawsuit against the Settling Defendants or any of the other Settling Defendant Released Parties on the basis of the Released Claims. The Settlement Agreements do not settle or compromise any claims other than those set out therein. All rights of the Plaintiffs or any Settlement Class Member against any person or entity other than the parties released in the Settlement Agreements are specifically reserved by the Plaintiffs and the Class Members.

### III. YOUR OPTIONS

*Do Nothing.* If you are a Settlement Class Member and you do nothing, you will not get any money from the Settlements. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Settling Defendants or the Released Parties about the legal issues in this case. You will remain in the Settlement Class and be bound by the decisions of the Court in this matter.

*Submit a Claim.* To qualify for payment, you must submit a Proof of Claim and Release Form to the Claims Administrator. A Proof of Claim and Release Form is attached to this Notice. You may also get a Proof of Claim and Release Form electronically through the settlement website, [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com), or by contacting the Settlement Administrator by telephone toll-free at 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000). Proof of Claim and Release Forms must be mailed or submitted electronically by [Month Day Year].

*Object to the Settlement.* If you are a Settlement Class Member and you do not exclude yourself, you can tell the Court what you think about the Settlement. You can object to all or any part of the Settlement, Plan of Allocation, and/or application for attorneys' fees, reimbursement of litigation costs and expenses, and any service awards for Plaintiffs. You can give reasons why you think the Court should approve them or not. The Court will consider your views.

If you want to make an objection in the Action, you may enter an appearance in the Action, at your own expense, individually or through counsel of your own choice, by filing with the Clerk of Court a notice of appearance and your objection, and serving copies of your objection on Plaintiffs' Co-Lead Counsel and the Settling Defendants' Counsel by [Month Day Year] to the following mailing addresses:

<b><i>Plaintiffs' Interim Co-Lead Counsel</i></b>	
Merrill Davidoff Berger Montague PC 1818 Market Street, Suite 3600 Philadelphia, PA 19103	Daniel Brockett Quinn Emanuel Urquhart & Sullivan 51 Madison Avenue, 22nd Floor New York, NY 10010
<b><i>Deutsche Bank Counsel</i></b>	<b><i>HSBC Counsel</i></b>
Robert W. Allen Kirkland & Ellis LLP 601 Lexington Ave. New York, NY 10022	Damien J. Marshall King & Spalding LLP 1185 Avenue of the Americas, 34th Floor New York, NY 10036

If you choose to object, you must file a written objection with the Clerk of the Court. You cannot file an objection by telephone or email. Your written objection must include a statement of the objection, as well as the specific legal and factual reasons for each objection, including all support that the objecting Class Member or the governmental entity wishes to bring to the Court's attention and all evidence the objecting Class Member or governmental entity wishes to introduce in support of his, her, or its objection or motion. The submission must contain: (i) a heading that refers to this Action by case name and case number (IN RE: COMMODITY EXCHANGE, INC., GOLD FUTURES AND OPTIONS TRADING LITIGATION, Nos. 14-MD-2548 (VEC) (S.D.N.Y.)); (ii) a statement of the specific legal and factual basis for each

objection, including whether the objection applies only to the objecting person, a specific subset of the Settlement Class, or the entire Settlement Class; (iii) a statement of whether the objecting person or entity intends to appear at the Fairness Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, address, and telephone number; (iv) a description of any and all evidence the objecting person or entity may offer at the Fairness Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses; all exhibits intended to be introduced at the Fairness Hearing; and documentary proof of the objecting person's membership in the Settlement Class; (v) a description of the Gold Investment transactions entered into by the member of the Settlement Class that fall within the Settlement Class definition; and (vi) a list of other cases in which the objector or counsel for the objector has appeared either as an objector or counsel for an objector in the last five years. Persons who have timely submitted a valid Request for Exclusion are not Class Members and are not entitled to object. All written objections must be signed by the Class Member (or his, her, or its legally authorized representative), even if the Class Member is represented by counsel.

If you do not timely and validly submit your objection, your views will not be considered by the Court or any court on appeal. Check the Settlement Website at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) for updates on important dates and deadlines relating to the Settlement.

*Request to be Excluded from the Settlement Class for the Settlement Agreements.* You can exclude yourself by sending a written "Request for Exclusion." You cannot exclude yourself by telephone or email. Your written Request for Exclusion must contain: (a) the name, address, and telephone number of the Settlement Class Member; (b) a list of all trade names or business names that the Settlement Class Member requests to be excluded; (c) the name and case number of this Action (*IN RE: COMMODITY EXCHANGE, INC., GOLD FUTURES AND OPTIONS TRADING LITIGATION*, Nos. 14-MD-2548 (VEC) (S.D.N.Y.)); (d) a statement certifying such person is a Settlement Class Member; (e) a description of the Gold Investment transactions entered into by the Settlement Class Member that fall within the Settlement Class definition; and (f) a statement that "I/we hereby request that I/we be excluded from the Settlement Class." If you are unwilling or unable to provide a description of the Gold Investment transactions, your Request for Exclusion must contain a short explanation as to why you are unwilling or unable to do so. The Court will decide on a case-by-case basis, depending on the strength of your explanation, whether your Request for Exclusion is effective despite the lack of disclosure.

A Request for Exclusion that does not include all of the foregoing information (or an explanation as to undisclosed transaction information), that does not contain the proper signature, that is sent to an address other than the one designated below, or that is not sent within the time specified shall be invalid and the person(s) filing such an invalid request shall stay a Settlement Class Member and shall be bound by the Settlement, if approved. Requests for Exclusion from the Settlement Class must be sent by U.S. first class mail (preferably certified mail) (or, if sent from outside the U.S., by a service that provides for guaranteed delivery within five (5) or fewer calendar days of mailing) to the Settlement Administrator at:

Gold Fixing Settlement EXCLUSIONS  
c/o Heffler Claims Group  
P.O. Box 0000, Philadelphia, PA 00000-0000

**Requests for exclusion must be received no later than [Month Day Year].**

If you submit a valid and timely Request for Exclusion in the manner set forth above, you will not be bound by the Settlement Agreement and can independently pursue claims you may have against the Settling Defendants at your own expense. However, if you exclude yourself from the Settlement, you will not be eligible to share in the Net Settlement Fund and shall have no rights under the Settlement. In addition, if you exclude yourself from the Settlement Class, you will not be entitled to object to the Settlement or to appear at the Fairness Hearing. However, excluding yourself from this Settlement does not impact your ability to participate in or exclude yourself from the remainder of the litigation, future settlements, or future judgments.

**IV. ATTORNEYS' FEES AND COSTS**

Settlement Class Members are not personally responsible for payment of attorneys' fees or expenses. As compensation for their time and their risk in prosecuting the litigation on a wholly contingent fee basis for over six years, Plaintiffs' Interim Co-Lead Counsel will ask the Court for an award of attorneys' fees in the amount of no more than \$28.2 million of the Settlement Fund; an award for unreimbursed litigation costs and expenses in the amount of no more than \$11 million; plus interest on such attorneys' fees, costs and expenses at the same rate as the earnings in the Settlement Fund, accruing from the inception of the Settlement Fund until the attorneys' fees and Litigation Expenses are paid, all to be deducted from the Settlement Fund.

Questions? Call **1-000-000-0000** or Visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com)

Additionally, Plaintiffs' Interim Co-Lead Counsel may apply at the time of any application for distribution to qualifying members of the Settlement Class, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement Agreement after the date of the Fairness Hearing. Plaintiffs may seek reimbursement of their own expenses and compensation for their time devoted to this litigation in the aggregate amount to be determined by the Court and paid from the Settlement Fund. This amount constitutes the Incentive Award.

**V. FAIRNESS HEARING AND RIGHT TO OBJECT**

The Court has scheduled a Fairness Hearing for \_\_\_\_\_, 2021 at \_\_\_\_\_ A.M. to be held at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York, Courtroom 443. Given the current COVID-19 situation, the Court reserves the right to conduct the final fairness hearing remotely. At the Fairness Hearing, the Court will determine, among other things, if the proposed Settlement is fair, reasonable, and adequate. The Court will also consider Plaintiffs' Interim Co-Lead Counsel's request for attorneys' fees and reimbursement of litigation expenses.

The time and date of the Fairness Hearing may be continued from time to time without further notice and you are advised to confirm the time and location if you wish to attend; as soon as practicable after any change in the scheduled date and time, such change will be posted on the Settlement Website.

If you are a Class Member, you are entitled to appear, in person or through duly authorized attorneys, and to show cause why the Settlement or other applications should or should not be approved. However, if you wish to appear, you must submit a written statement, along with any materials you wish the Court to consider—see Section III above. This written statement must be received by the Court (at the address provided above) no later than [Month Day Year] or it will not be considered. Such materials must also be served on Plaintiffs' Interim Co-Lead Counsel and counsel of record for Deutsche Bank and HSBC at the addresses set forth in Section III by overnight mail or by hand or they will not be considered.

**VI. CHANGE OF ADDRESS**

If this Notice reached you at an address other than the one on the mailing label, or if your address changes, please enter your current information online at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com), or send it to the Settlement Administrator at the address set forth in Section VIII below.

**VII. THE SETTLEMENT ADMINISTRATOR**

The Court has appointed Heffler Claims Group as the Settlement Administrator. Among other things, the Settlement Administrator is responsible for providing notice of the Settlement to the Settlement Class and processing Proof of Claim and Release Forms. You may contact the Settlement Administrator through the Settlement Website, by telephone toll free at 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000), or by writing to the Settlement Administrator at the following address: Gold Fixing Settlement, c/o Heffler Claims Group, P.O. Box 0000, Philadelphia, PA 00000-0000.

**VIII. ADDITIONAL INFORMATION**

The Settlement Agreement and other important documents related to these Actions are available online at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) and also available for review during normal business hours at the office of the Clerk of Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007-1312. If you have questions about this Notice, the procedure for registering, or the Settlement Agreements, you may contact Plaintiffs' Interim Co-Lead Counsel at the address listed in Section III.

**DO NOT CONTACT THE DISTRICT COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_

BY ORDER OF THE COURT.

Clerk of the United States District Court Southern District of New York

# **EXHIBIT 2**

**In re Commodity Exchange, Inc., Gold Futures and Options Trading  
Litigation**

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF NEW YORK  
Civil Action No.: 14-MD-2548-VEC

**INSTRUCTIONS FOR COMPLETING THE PROOF OF CLAIM AND RELEASE FORM**

1. If between January 1, 2004 and June 30, 2013 you either: (A) sold any physical gold or financial or derivative instrument in which gold is the underlying reference asset, including, but not limited to, selling (i) gold bullion, gold bullion coins, gold bars, gold ingots or any form of physical gold, (ii) gold futures contracts in transactions conducted in whole or in part on COMEX or any other exchange operated in the United States, (iii) shares in gold exchange-traded funds (“ETFs”), (iv) gold call options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States; (v) gold spot, gold forwards or gold swaps over-the-counter; or (B) bought gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange operated in the United States, you may be eligible to receive a payment from settlements reached in this Action.
2. To recover as a Class Member based on your claims in this Action you must complete and sign this Proof of Claim and Release form. If you fail to submit a properly completed and addressed Proof of Claim and Release form, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with settlements the Action.
3. Capitalized terms not defined in this Proof of Claim and Release form have the same meaning as defined in the Notice of Proposed Class Action Settlement and Class Members’ Rights and the Settlement Agreements posted on the Settlement Website, [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com). It is important that you read the Notice of Proposed Class Action Settlement and Class Members’ Rights. By signing and submitting a Proof of Claim and Release Form, you will be certifying that you have read the Notice, including the terms of the releases described in the Notice and provided for in the Settlement Agreements.
4. Separate Proof of Claim and Release forms must be submitted for each separate legal entity.
5. Trustees, executors, administrators, custodians, or other nominees who are completing and signing this Proof of Claim and Release form on behalf of the claimant must also submit:
  - a. A description of the capacity in which they are acting (which must be accompanied by supporting documentation);
  - b. The name, account number, last four digits of social security number, employer identification number, or taxpayer identification number (or for non-U.S. claimants, a comparable government-issued national identification number), address, and telephone number of the person or entity on whose behalf they are acting; and
  - c. Evidence of their authority to bind the person or entity on whose behalf they are acting. Authority to complete and sign a Proof of Claim and Release form cannot be established by brokers demonstrating that only they have discretionary authority to trade in another person’s accounts.
6. Your payment amount, if any, will be determined pursuant to the Plan of Allocation that is approved by the Court based on the Claims Administrator’s review of the Proof of Claim and Release form that you submit. For more information, please refer to the Plan of Allocation available at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com). Submission of this Proof of Claim and Release form does not assure that you will share in the Net Settlement Fund. All forms will be reviewed, and documentation of proof may be requested. This may include, but is not limited to, trade data and other documentation demonstrating your transactions in physical gold and/or gold financial instruments.
7. You should be aware that it will take a significant amount of time to process fully all of the Proofs of Claim and to administer the Settlement. This work will be completed as promptly as possible, given the need to investigate and tabulate each Proof of Claim. Please notify the Claims Administrator of any change of address.
8. DEADLINE: You must submit your completed signed Proof of Claim and Release form either electronically or via mail POSTMARKED no later than [MONTH DATE, 20\_\_] to the below address.

*In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*

P.O. Box xxxxxx

Philadelphia, PA xxxxxx=xxxx

9. To submit your claim electronically online visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).



To submit your claim electronically online visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

## **PART II: SCHEDULE OF GOLD TRANSACTIONS**

1. **FIX-LINKED TRANSACTIONS:** “Fix-Linked Transaction” means a contract of any of the gold-related transaction types listed in the definition of Settlement Class, where the price is expressly linked to the London PM Gold Market Fixing.

List all sales that you had annually by year from January 1, 2004 through June 30, 2013 inclusive on the lines below (must be documented).

- **DO NOT INCLUDE POSITIONS THAT WERE OPENED AND CLOSED IN THE SAME DAY.**
- **DO NOT INCLUDE TRANSACTIONS THAT DID NOT OCCUR IN THE UNITED STATES OR ON AN EXCHANGE IN THE UNITED STATES.**

<b>Year of Transaction(s)</b>	<b>Annual Transaction Amount in US \$<sup>1</sup></b>	<b>Type of Supporting Documentation Used to Calculate My Claim</b>
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		
January 1, 2013 through June 30, 2013		

<sup>1</sup> If your transaction was denominated in a currency other than U.S. dollars, convert the transactional amount into U.S. dollars using the historical exchange rate for the applicable currency as close to the date of your transaction as is reasonably possible.



To submit your claim electronically online visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

2. **OTHER TRANSACTIONS:** “Other Transaction” means a contract of any of the gold-related transaction types listed in the definition of Settlement Class, including in the appropriate direction (i.e., buy or sell), that is not a Fix-Linked Transaction.

List all sales that you had annually by year from January 1, 2004 through June 30, 2013 inclusive on the lines below (must be documented).

- **DO NOT INCLUDE POSITIONS THAT WERE OPENED AND CLOSED IN THE SAME DAY.**
- **DO NOT INCLUDE TRANSACTIONS THAT DID NOT OCCUR IN THE UNITED STATES OR ON AN EXCHANGE IN THE UNITED STATES**
- **ALL ETF TRANSACTIONS ARE “OTHER TRANSACTIONS.” DO NOT INCLUDE ETF TRANSACTIONS OTHER THAN “GLD” OR “IAU” ETF TRANSACTIONS.**

Year of Transaction(s)	Annual Transaction Amount in US \$ <sup>2</sup>	Type of Supporting Documentation Used to Calculate My Claim
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		
January 1, 2013 through June 30, 2013		

<sup>2</sup> If your transaction was denominated in a currency other than U.S. dollars, convert the transactional amount into U.S. dollars using the historical exchange rate for the applicable currency as close to the date of your transaction as is reasonably possible.

To submit your claim electronically online visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

**PART III: CLAIMANT CERTIFICATION**

1. I (We) submit this Proof of Claim form under the terms of the Plan of Allocation of Net Settlement Fund described in the Notice of Proposed Class Action Settlement and Class Members’ Rights.
2. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York (the “Court”), with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the releases set forth herein.
3. I (We) further acknowledge that I (we) will be bound by the terms of any judgment entered in connection with the Settlement in the *In re Commodity Exch., Inc., Gold Futures and Options Trading Litigation* Action, including the releases set forth therein.
4. I (We) have read the Notice and Proof of Claim and Release Form, including the descriptions of the releases provided for in the Settlement Agreements.
5. I (We) am (are) a member of the Settlement Class(es), and am (are) not one of the individuals or entities excluded from the Settlement Classes.
6. I (We) have not submitted a request for exclusion.
7. I (We) have made the transactions included in the data submitted with this Proof of Claim and Release Form, and have not assigned the claims against the Released Parties to another.
8. I (We) agree to furnish additional information to the Claims Administrator to support this claim, such as additional documentation for Fix-Linked or Other Transactions if requested to do so, and acknowledge failure to do so may result in a denial of my (our) claim.
9. I (We) have not submitted any other claim covering the same gold transactions and know of no other person having done so on my (our) behalf.
10. I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code. Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding.
11. I (We) hereby warrant and represent that all the transactions listed above occurred in the United States.
12. I (We) acknowledge that, as of the effective date of the Settlements, pursuant to the terms set forth in the Settlement Agreements and by operation of law and the Final Judgments and Orders of Dismissal, I (we) shall be deemed to have, fully, finally, and forever, waived, released, relinquished, and discharged all Released Claims (as defined in the Settlement Agreements), and shall forever be enjoined from prosecuting any or all of the Released Claims against any of the Released Parties (as defined in the Settlement Agreements).
13. By submitting a claim under the Settlements, I (we) consent to the disclosure of and waive any protections provided by applicable bank secrecy law, data privacy law, or any similar confidentiality protections with respect to information relating to my (our) trades in gold and gold instruments to the Court-appointed Claims Administrator and Class Counsel for use in the claims administration process and in further proceedings in the Action against Non-Settling Defendants. I (we) further consent to the release to the Claims Administrator of any and all documents reflecting my transactions or holdings in gold from January 1, 2004 to June 30, 2013, inclusive, that may be obtained from Defendants or third parties, including, but not limited to, my brokerage firm(s).

**UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THE PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT DATA SUBMITTED IN CONNECTION WITH THIS CLAIM FORM ARE TRUE AND CORRECT.**

\_\_\_\_\_  
Signature of Beneficial Owner

\_\_\_\_\_  
Print Beneficial Owner Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Co-Owner (if applicable)

\_\_\_\_\_  
Print Co-Owner Name

\_\_\_\_\_  
Date

# **EXHIBIT 3**

**LEGAL NOTICE**

**If you sold any physical gold or financial or derivative instrument where gold is the underlying reference asset, or you bought gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange in the United States between January 1, 2004 and June 30, 2013, you may be affected by pending class action settlements.**

This Summary Notice is to alert you to two proposed settlements totaling \$102,000,000 reached with Deutsche Bank AG and HSBC Bank plc (together, the “Settling Defendants”). The Settling Defendants deny any liability, fault, or wrongdoing of any kind in connection with the allegations in the Action. By entering into their respective settlements, the Settling Defendants have not admitted to any such liability, fault, or wrongdoing, and nothing in the Settlement Agreements or this Notice shall be construed as such an admission.

The United States District Court for the Southern District of New York (the “Court”) authorized this Notice. The Court has appointed the lawyers listed below to represent the Settlement Class in this Action:

<b>Merrill Davidoff Berger Montague PC 1818 Market Street, Suite 3600 Philadelphia, PA 19103</b>	<b>Daniel Brockett Quinn Emanuel Urquhart &amp; Sullivan 51 Madison Avenue, 22nd Floor New York, NY 10010</b>
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**Who Is a Member of the Settlement Class?**

The proposed Settlement Class includes:

All persons or entities who during the period from January 1, 2004 through June 30, 2013, either (A) sold any physical gold or financial or derivative instrument in which gold is the underlying reference asset, including, but not limited to, those who sold (i) gold bullion, gold bullion coins, gold bars, gold ingots or any form of physical gold, (ii) gold futures contracts in transactions conducted in whole or in part on COMEX or any other exchange operated in the United States, (iii) shares in gold exchange-traded funds (“ETFs”), (iv) gold call options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States; (v) gold spot, gold forwards or gold swaps over-the-counter; or (B) bought gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange operated in the United States.

The capitalized terms used in this Summary Notice if not defined herein are defined in the detailed Notice of Proposed Class Action Settlements and Class Members’ Rights (“Notice”) and the Settlement Agreements, which are available at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

If you are not sure if you are included in the Settlement Class, you can get more information, including the detailed Notice, at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) or by calling toll-free 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000).

**What Is This Lawsuit About and What Do the Settlements Provide?**

This lawsuit alleges that the Defendants engaged in anticompetitive acts that affected the market for gold. To settle the claims in this lawsuit and without admitting any liability, fault, or wrongdoing, Deutsche Bank has agreed to pay \$60 million in cash, and HSBC has agreed to pay \$42 million in cash—for a total of total of \$102 million (the “Settlement Fund”) in cash—for the benefit of the Settlement Class and to provide discovery that is likely to assist with the continued prosecution of the Action. If the Settlements are approved, the Settlement Fund, plus interest earned from the date it was established, less any Taxes, any Notice and Administration Costs, any Court-awarded attorneys’ fees, payment of litigation costs and expenses, and service awards for Plaintiffs, and any other costs or fees approved by the Court (the “Net Settlement Fund”) will be divided among all Settlement Class Members who file valid Proofs of Claim and Release.

**Will I Get a Payment?**

If you are a member of the Settlement Class and do not opt out, you will be eligible to file a Proof of Claim and Release (“Claim Form”). The amount of your payment will be determined by a Plan of Allocation. Details about the Plan of Allocation are available at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) or by calling toll-free 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000). A date for distribution of the Settlement Fund has not been set. Claim Forms must be submitted by [DATE].

**What Are My Rights?**

If you are a member of the Settlement Class and do not opt out, you will release certain legal rights against the Settling Defendants, as explained in the detailed Notice and Settlement Agreements, which are available at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com). If you do not want to take part in the Settlements, you must opt out by [DATE]. You may object to the Settlements, Plan of Allocation, and/or application for an award of attorneys’ fees, payment of litigation costs and expenses, and/or service awards for Plaintiffs. If you want to object, you must do so by [DATE]. Information on how to opt out or object is contained in the detailed Notice, which is available at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

**When Is the Fairness Hearing?**

The Court will hold a hearing at the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 000, New York, NY 10007, on [DATE] at [TIME] to consider whether to finally approve these Settlements, the Plan of Allocation, and Co-Lead Counsel’s application for an award of attorneys’ fees, payment of litigation costs and expenses, and any service awards for the Class Plaintiffs. Given the current COVID-19 situation, the Court reserves the right to conduct the final fairness hearing remotely. You or your lawyer may ask to appear and speak at the hearing at your own expense, but you do not have to. Any changes to the time and place of the Fairness Hearing, or other deadlines, will be posted to [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com) as soon as practicable.

**For more information, call toll-free 1-000-000-0000 (if calling from outside the United States or Canada, call 1-000-000-0000) or visit [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).**

***\*\*\*\* Please do not call the Court or the Clerk of the Court for information about the Settlements. \*\*\*\****

# **EXHIBIT 4**

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

IN RE:

COMMODITY EXCHANGE, INC., GOLD  
FUTURES AND OPTIONS TRADING  
LITIGATION

*This Document Relates To All Actions*

Case No. 14-MD-2548 (VEC)  
14-MC-2548 (VEC)

Hon. Valerie E. Caproni

**PLAN OF ALLOCATION**

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**DEFINED TERMS**

For purposes of the Plan of Allocation, the following terms are defined as follows:

**“Authorized Claimant”** means any Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Settlement Agreements and Plan of Allocation approved by the Court.

**“Claimant”** means a Person who submits a Claim Form.

**“Claim Deficiency Notice”** means the notice sent by the Claims Administrator to a Claimant whose Claim Form is deficient in one or more ways such as, for example, failure to provide required information or documentation.

**“Claim Form”** means the proof of claim and release form provided to or requested by members of the Settlement Class.

**“Claims Administrator”** means Heffler Claims Group.

**“Claims Bar Date”** means the deadline established by the Court by which Class Members must submit Claim Forms to the Claims Administrator.

**“Class Counsel”** means Quinn Emanuel Urquhart & Sullivan, LLP, and Berger Montague PC.

**“Class Member”** means a Person who is a member of the Settlement Class and who has not timely and validly excluded himself, herself, or itself in accordance with the procedures approved by the Court.

**“Class Plaintiffs”** are Michel de Chabert-Ostland, Compañía Minera Dayton SCM, Edward R. Derksen, Frank Flanagan, KPFF Investment, Inc., Duane Lewis, Larry Dean Lewis, Kevin Maher, Robert Marechal, Blanche McKennon, Kelly McKennon, Thomas Moran, J. Scott Nicholson, Richard White, and David Windmiller.

**“Court”** means the United States District Court for the Southern District of New York.

**“Fix-Linked Transaction”** means a contract of any of the gold-related transaction types listed in the definition of Settlement Class, including in the appropriate direction (i.e., buy or sell), where the price is expressly linked to the London PM Gold Market Fixing. As provided by Part II of the Claim Form, Fix-Linked Transactions shall be separately listed, by year, in the Claim Form. Also as provided by Part II of the Claim Form, Fix-Linked Transactions shall not include positions that were opened and closed the same day. Also as provided by Part II of the Claim Form, Fix-Linked Transactions must have occurred within the United States.

**“Gross Transaction Amount”** means the amount, in United States dollars, of any of the gold-related transaction types listed in the definition of Settlement Class.

**“Litigation Multiplier”** means a factor that reflects the relative degree of risk that claims arising out of a given year may have faced at trial relative to other transactions occurring in other years. To account for differing statute of limitations risk, the Litigation Multiplier for claims arising out of transactions occurring from January 1, 2004, through December 31, 2009, will be 0.5. The Litigation Multiplier for claims arising out of transactions occurring from January 1, 2010, to June 30, 2013, will be 1.0.

**“Net Settlement Fund”** means the Settlement Fund less payment of attorneys’ and expenses in connection with prosecuting the Action, costs and expenses reasonably and actually incurred in connection with providing class notice and the administration of the settlement, taxes and tax expenses, and any other Court-approved fees and expenses.

**“Other Transaction”** means a contract of any of the gold-related transaction types listed in the definition of Settlement Class, including in the appropriate direction (i.e., buy or sell), that is not a Fix-Linked Transaction. As provided by Part II of the Claim Form, Other Transactions shall be separately listed, by year, in the Claim Form. As also provided by Part II of the Claim

Form, Other Transactions shall not include positions that were opened and closed the same day. As also provided by Part II of the Claim Form, Other Transactions must have occurred within the United States.

**“Person”** means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

**“Settlement Agreements”** means the Stipulation and Agreement of Settlement with Deutsche Bank AG, executed August 24, 2016 (ECF No. 174-1); and the Stipulation and Agreement of Settlement with HSBC Bank plc, executed November 10, 2020.

**“Settlement Class”** means all persons or entities who during the period from January 1, 2004 through June 30, 2013, either (A) sold any physical gold or financial or derivative instrument in which gold is the underlying reference asset, including, but not limited to, those who sold (i) gold bullion, gold bullion coins, gold bars, gold ingots or any form of physical gold, (ii) gold futures contracts in transactions conducted in whole or in part on COMEX or any other exchange operated in the United States, (iii) shares in gold exchange-traded funds (“ETFs”),<sup>1</sup> (iv) gold call options in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States; (v) gold spot, gold forwards or gold swaps over-the-counter; or (B) bought gold put options in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange operated in the United States.

**“Settlement Class Period”** means between January 1, 2004 and June 30, 2013, inclusive.

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<sup>1</sup> Pursuant to Part II in the Claim Form, only “GLD” and “IAU” ETF transactions will be accepted for distribution purposes. For the sake of clarity, no ETF transaction qualifies as a “Fix-Linked Transaction.”

**“Settlement Fund”** means the \$102,000,000 in payments made pursuant to the Settlement Agreements by the Settling Defendants and held in the escrow account established pursuant to the Settlement Agreements, including all monies held therein and interest earned thereon.

**“Settling Defendants”** means Deutsche Bank AG and HSBC Bank plc.

**“Transaction Claim Amount”** is equal to the Gross Transaction Amount for each year and transaction type (Fix-Linked Transaction or Other Transaction), multiplied by the applicable Litigation Multiplier.

Unless otherwise defined, all other capitalized terms have the same meaning as set forth in the Settlement Agreement.

## **I. THE NET SETTLEMENT FUND FOR DISTRIBUTION**

Settling Defendants have entered into Settlement Agreements with Plaintiffs that provides for total payments of \$102,000,000 into the Settlement Fund. If the Settlement Agreements are approved, the Net Settlement Fund (the Settlement Fund less the fees and expenses of litigation and settlement administration, defined *supra*) will be distributed to all Authorized Claimants in accordance with the Plan of Allocation approved by the Court. No funds will revert to the Settling Defendants if the Court grants final approval to the Settlement Agreement.

## **II. ADMINISTRATIVE AND DISTRIBUTION PROCEDURES**

The proceeds of the Net Settlement Fund will be paid to Authorized Claimants who submit valid Claim Forms by the Claims Bar Date. This section describes the administrative procedures that will apply to determine eligibility and the effect of Class Members submitting (or not submitting) Claim Forms. This section then discusses the procedures for distributing funds to Authorized Claimants.

**A. Administrative Procedures**

To be eligible to submit a Claim Form, a Claimant must be a member of the Settlement Class. For purposes of determining whether a Claimant is entitled to be treated as an Authorized Claimant, the following conditions apply:

1. Each Class Member wishing to receive proceeds from the Net Settlement Fund must submit a Claim Form, which, *inter alia*, releases all Released Claims against all Released Parties (as defined in the Settlement Agreement); is signed under penalty of perjury by an authorized Person; and is supported by such documents or proof as described by the Claimant in Part II of the Claim Form.

2. Any Class Member who does not submit a Claim Form by the Claims Bar Date will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by the terms of the Settlement Agreement, including the terms of the final judgments and orders of dismissal to be entered in the Action and the releases provided for therein, and will be enjoined from, and, upon final approval of the Settlement Agreement, barred from bringing any action against any of the Released Parties concerning the Released Claims. Lead Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Claims Administrator, so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed

3. Each Claim Form must be submitted to and reviewed by the Claims Administrator, who will determine: (a) whether the Claimant is an eligible class member, (b) whether the Claim Form is in accordance with the Settlement Agreements and any applicable orders of the Court, and (c) the extent, if any, to which each claim will be allowed, subject to review by the Court.

4. Claim Forms that do not meet the submission requirements may be rejected. Prior to rejection of a Claim Form, the Claims Administrator will provide the Claimant with a Claim Deficiency Notice. The Claim Deficiency Notice will, in a timely fashion and in writing, notify all Claimants whose Claim Forms the Claims Administrator proposes to reject, in whole or in part, and set out the reason(s) therefore, and the Claimant will have an opportunity to respond and/or cure the deficiency.

5. If a dispute concerning a Claimant's claim cannot be resolved, Class Counsel will thereafter present such disputes to the Court in Class Plaintiffs' motion for a distribution order.

**B. Claimant's Submission of Documents or Data**

Pursuant to Part II of the Claim Form, Claimants will be required to provide annual Gross Transaction Amounts separately for Fix-Linked Transactions and Other Transactions as part of the Claim Form. Also pursuant to Part II of the Claim Form, Claimants will have to describe the supporting documents and/or data used by the Claimant to calculate the Gross Transactions amounts. The supporting documents shall not be submitted with the Claim Form, but must be available for inspection upon request. A failure to provide sufficient support upon request is, pursuant to Part III, paragraph 8 of the Claim Form, grounds for rejecting or reducing the claim.

**C. Claims Procedures and Timing**

On receipt and processing of a Claimant's Claim Form (and, if requested, its data and records), the Claims Administrator will: determine if a Claim Deficiency Notice is required for any transaction; and calculate the Claimant's Transaction Claim Amount, as described in Part III, *infra*.

Following receipt of a Claimant's Claim Form (and, if requested, its data and records), the Claims Administrator will issue a "Confirmation of Claim Receipt" to the Claimant via an automated email response after the Claim Form is submitted on the Settlement Website.

### **III. CALCULATION OF TRANSACTION CLAIM AMOUNTS**

As provided for in Part II of the Claim Form, each Claimant will submit its total Gross Transactions separately, by year, for the Claimant's Fix-Linked Transactions and the Claimant's Other Transactions.

The Transaction Claim Amount is the Gross Transactions Amount multiplied by the applicable Litigation Multiplier for that year.

### **IV. CALCULATING *PRO RATA* ADJUSTMENTS FOR DISTRIBUTION**

#### **A. Pro Rata Distribution**

After each Authorized Claimant's Transaction Claim Amounts are determined as described in § III, *supra*, and the Court approves the distribution order and all claim disputes are resolved, the Claims Administrator calculates each Authorized Claimant's share of the Net Settlement Fund as follows:

The Net Settlement Fund will be distributed *pro rata* based on the total qualifying Transaction Claim Amounts, regardless of whether the claims arise from Fix-Linked Transactions or from Other Transactions, *provided, however*, that:

If the aforementioned *pro rata* distribution would result in less than 20% of the Net Settlement Fund being distributed in relation to Fix-Linked Transactions, then the following process will be used instead: In this event, 20% of the Net Settlement Fund would be distributed *pro rata* by Transaction Claim Amounts associated only with Fix-Linked Transactions as compared to other Fix-Linked Transactions, while 80% of the Net Settlement Fund would be distributed *pro rata* by Transaction Claim Amounts associated only with Other Transactions as compared to Other Transactions. In this event, no Claimant's total distribution associated with Fix-Linked Transactions shall be greater than the Claimant's total Gross Transaction Amount

associated with Fix-Linked Transactions; the excess distribution to such a Claimant would be provided *pro rata* as part of the distribution of the 80% associated with Other Transactions.

**B. Alternative Minimum Payment**

Where it is reasonably determined that the cost of administering a claim would exceed the value of the claim under the Plan of Allocation, Class Counsel will direct the Claims Administrator to preserve the value of the Settlement Fund and make an alternative minimum payment to satisfy such claims. The alternative minimum payment will be a set amount for all such Authorized Claimants and will be based on the participation rate of the class in the settlement.

**C. Distribution**

Following the Effective Date and the Claims Administrator calculations of each Authorized Claimant's *pro rata* share of the Net Settlement Fund or alternative minimum payment amount, the Claims Administrator shall distribute the Net Settlement Fund to Authorized Claimants pursuant to the Plan of Allocation approved by the Court.

**D. Remaining Balance in the Net Settlement Fund**

If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the initial date of distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible, allocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis*, and any such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Lead Counsel and approved by the Court.



# **EXHIBIT 5**

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

IN RE:

COMMODITY EXCHANGE, INC., GOLD  
FUTURES AND OPTIONS TRADING  
LITIGATION

*This Document Relates To All Actions*

Case No. 14-MD-2548 (VEC)  
14-MC-2548 (VEC)

Hon. Valerie E. Caproni

**[PROPOSED] ORDER PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS  
AND PRELIMINARILY APPROVING PLAN OF ALLOCATION**

WHEREAS, this matter has come before the Court by way of Plaintiffs' Motion for an Order Providing for Notice to the Settlement Class and Preliminarily Approving Plan of Allocation in connection with the settlements with Defendants Deutsche Bank AG ("Deutsche Bank") and HSBC Bank plc ("HSBC," and together, "Settling Defendants");

WHEREAS, the above-captioned matter is a putative class action before this Court;

WHEREAS, the Court has entered orders preliminarily approving the terms of the settlement agreements with Deutsche Bank and HSBC (the "Settlements" or "Settlement Agreements"), preliminarily certifying the proposed Settlement Class, preliminarily appointing Co-Lead Counsel for the Settlement Class, and preliminarily appointing Class Representatives (the "Preliminary Approval Orders").

WHEREAS, the Court finds that the proposed forms of Class Notice and the proposed Class Notice Plan are reasonable and rational, and the proposed Plan of Allocation is reasonable and rational and should be sent to Class Members for their review prior to the Fairness Hearing:

NOW, THEREFORE, this \_\_ day of \_\_\_\_\_, 2020:

**IT IS HEREBY ORDERED** that:

1. Except for the terms expressly defined herein, the Court adopts and incorporates the definitions in the Settlement Agreements and the Preliminary Approval Orders.

2. The Court appoints Heffler Claims Group as Settlement Administrator for purposes of the Settlements.

3. The terms of the Plan of Allocation are preliminarily approved as within the range of reasonableness, fairness, and adequacy.

4. If they have not already done so, Settling Defendants shall comply with the notice requirements of the Class Action Fairness Act, 28 U.S.C. §1715, within 10 days of entry of this Order.

5. The Court understands Settling Defendant Deutsche Bank has already provided its reasonably available contact information. Settling Defendant HSBC and the non-settling bank Defendants shall, within 7 days of this order, provide such data to Plaintiffs or confirm their readiness to proceed with an alternative means of notice. This deadline may be extended by mutual agreement or further Court order. After reviewing the data or alternative-means proposals, Plaintiffs shall promptly certify to the Court they are ready to proceed with the notice program as described herein.

6. Within 7 days of Plaintiffs' certification, absent any Court order to the contrary, Plaintiffs' notice program shall begin (the "Notice Date"). At this time, the Settlement Administrator—or agents of those assisting with the notice program due to foreign privacy restrictions—shall cause copies of the Notice and Claim Form, in the form (without material variation) of Exhibits 1 and 2 to the Declaration of Daniel Brockett, dated December 7, 2020 ("Brockett Declaration"), to begin being mailed by United States first class mail, postage prepaid, as described in Paragraph 14 of the Declaration of Jeanne C. Finegan, dated December

4, 2020 (“Finegan Declaration”). The foregoing mailings shall be completed no later than 30 days after the Notice Date.

7. As of the Notice Date, the Settlement Administrator shall also establish and maintain a Settlement website, [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com), beginning no later than the first date of mailing notice to the Class and remaining until the termination of the administration of the Settlement. The website shall identify important deadlines, provide answers to frequently asked questions, and include copies of the Settlement Agreements (including exhibits), this Order, the mailed and summary notices, the motions for preliminary approval and all exhibits attached thereto, and the motion for issuance of the class notice plan and preliminary approval of the allocation plan. The website may be amended as appropriate during the course of the administration of the Settlement. The Settlement website, [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com), shall be searchable on the Internet.

8. The Settlement Administrator shall maintain a toll-free interactive voice response telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to speak to live operators or to leave messages in a voicemail box.

9. Within 10 days after the Notice Date, the Settlement Administrator shall cause to be published a Summary Notice, without material variation from the summary notice attached as Exhibit 3 to the Brockett Declaration.

10. The Court approves, in form and substance, the Notice, the Summary Notice, the Claim Form, and the website as described herein. The Class Notice specified herein (i) is the best notice practicable; (ii) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency and status of this Action and of their right to object to or

exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the Fairness Hearing; and (iv) fully satisfies all applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, Due Process, and any other applicable rules or laws.

11. Concurrent with the motion for final approval of the Settlements, and with any subsequent updates as necessary, Co-Lead Counsel shall file or cause to be filed a sworn statement attesting to the compliance with the paragraphs in this Order governing the provision of notice.

12. Any member of the Settlement Class and any governmental entity that objects to the fairness, reasonableness, or adequacy of any term or aspect of the Settlement, the application for attorneys' fees and expenses and any incentive awards, or the Final Approval Order and Final Judgment, or who otherwise wishes to be heard, may appear in person or by his or her attorney at the Fairness Hearing and present evidence or argument that may be proper and relevant. However, except for good cause shown, no person other than Co-Lead Counsel and Settling Defendants' counsel shall be heard and no papers, briefs, pleadings, or other documents submitted by any member of the Settlement Class or any governmental entity shall be considered by the Court unless, not later than 95 days after the Notice Date (the "Objection Deadline"), the member of the Settlement Class or the governmental entity files with the Court (and serves the same on or before the date of such filing by hand or overnight mail on the Co-Lead Counsel and counsel of record for Settling Defendants) a statement of the objection, as well as the specific legal and factual reasons for each objection, including all support that the objecting member of the Settlement Class or the governmental entity wishes to bring to the Court's attention and all evidence the objecting member of the Settlement Class or governmental entity wishes to

introduce in support of his, her, or its objection or motion. Such submission must contain: (1) a heading that refers to this Action by case name and case number; (2) a statement of the specific legal and factual basis for each objection, including whether the objection applies only to the objecting person, a specific subset of the Class or the entire Class; (3) a statement of whether the objecting person or entity intends to appear at the Fairness Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, address, and telephone number; (4) a description of any and all evidence the objecting person or entity may offer at the Fairness Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses; all exhibits intended to be introduced at the Fairness Hearing; and documentary proof of the objecting person's membership in the Settlement Class; (5) a description of the Gold Instruments transactions entered into by the member of the Settlement Class that fall within the Settlement Class definition; and (6) a list of other cases in which the objector or counsel for the objector has appeared either as an objector or counsel for an objector in the last five years. Persons who have timely submitted a valid Request for Exclusion are not members of the Settlement Class and are not entitled to object.

13. Any objection to the Settlement submitted by a member of the Settlement Class pursuant to paragraph 12 of this Order must be signed by the member of the Settlement Class (or his, her, or its legally authorized representative), even if the member of the Settlement Class is represented by counsel. The right to object to the proposed Settlement must be exercised individually by a member of the Settlement Class or the Person's attorney, and not as a member of a group, class, or subclass, except that such objections and may be submitted by a member of the Settlement Class's legally authorized representative.

14. Any member of the Settlement Class or governmental entity that fails to object in the manner described in paragraphs 12-13 of this Order shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding related to or arising out of the Settlement.

15. Any Request for Exclusion from the Settlement by a member of the Settlement Class must be sent in writing by U.S. first class mail to the Settlement Administrator at the address in the mailed notice and received no later than 95 days after the Notice Date (the “Exclusion Bar Date”). Any Request for Exclusion must contain the following information: (a) the name, address, and telephone number of the member of the Settlement Class; (b) a list of all trade names or business names that the member of the Settlement Class requests to be excluded; (c) the name of this Action (“*In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, No. 14-MD-02548-VEC (S.D.N.Y.)”); (d) a statement certifying such person is a member of the Settlement Class; (e) a description of the Gold Instruments transactions entered into by the Settlement Class Member that fall within the Settlement class definition; and (f) a statement that “I/we hereby request that I/we be excluded from the Settlement Class as it relates to the Settlements.”

16. Unless the Court determines otherwise, a Request for Exclusion shall not be effective unless it provides all of the information listed in paragraph 15 of this Order, complies with this paragraph 16, and is received by the Exclusion Bar Date, as set forth in the Class Notice. If a member of the Settlement Class is unable or unwilling to disclose transaction information or other information required in paragraph 15(e), the Request for Exclusion must include a concise statement explaining why that member is unable or unwilling to do so and explain why that member should nonetheless be excluded; the Court will determine the

effectiveness of such a Request for Exclusion on an individual basis. Any Request for Exclusion from the Settlement submitted by a member of the Settlement Class pursuant to paragraph 15 of this Order must be signed by the member of the Settlement Class (or his, her, or its legally authorized representative). The right to be excluded from the proposed Settlement must be exercised individually by a member of the Settlement Class or his, her, or its attorney, and not as a member of a group, class, or subclass, except that a Request for Exclusion may be submitted by a member of the Settlement Class's legally authorized representative. The Parties may request leave of the Court to seek discovery from any member of the Settlement Class who submits any Request for Exclusion.

17. Any member of the Settlement Class who does not submit a timely and valid written Request for Exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in the Action, even if the member of the Settlement Class has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims, and even if such member of the Settlement Class never received actual notice of the Action or the proposed Settlement.

18. The Settlement Administrator shall promptly log each Request for Exclusion that it receives and provide copies of the log to Co-Lead Counsel and Settling Defendants' counsel as requested.

19. The Settlement Administrator shall furnish Co-Lead Counsel and counsel for Settling Defendants with copies of any and all objections, notices of intention to appear, and other communications that come into its possession (except as otherwise expressly provided in the Settlement Agreement) within one business day of receipt thereof.



20. Within five business days after the Exclusion Bar Date, the Settlement Administrator shall prepare an opt-out list identifying all Persons, if any, who submitted a timely and valid Request for Exclusion from the Settlement Class, as provided in the Settlement Agreement, and an affidavit attesting to the accuracy of the opt-out list. The Settlement Administrator shall provide counsel for Settling Defendants and Co-Lead Counsel with copies of any Requests for Exclusion (including all documents submitted with such requests) and any written revocations of Requests for Exclusion as soon as possible after receipt by the Settlement Administrator and, in any event, within one (1) business day after receipt by the Settlement Administrator and, in no event, later than five (5) business days after the Exclusion Bar Date. Co-Lead Counsel shall file the opt-out list and affidavit of the Settlement Administrator attesting to the accuracy of such list with the Court.

21. All Proof of Claim and Release forms shall be submitted by members of the Settlement Class to the Settlement Administrator as directed in the mailed notice and must be postmarked no later than 40 days prior to the Fairness Hearing.

22. To effectuate the Settlement and the notice provisions, the Settlement Administrator shall be responsible for: (a) establishing a P.O. Box (to be identified in the mailed notice and the publication notice), a toll-free interactive voice response telephone system and call center, and a website for the purpose of communicating with members of the Settlement Class; (b) effectuating the Class Notice plan, including by running potential members of the Settlement Class's addresses through the National Change of Address Database to obtain the most current address for each person; (c) accepting and maintaining documents sent from members of the Settlement Class, including Proof of Claim and Release forms, and other documents relating to the Settlement and its administration; (d) administering claims for allocation of funds among

members of the Settlement Class; (e) determining the timeliness of each Proof of Claim and Release submitted by members of the Settlement Class, and the adequacy of the supporting documents submitted by members of the Settlement Class; (f) corresponding with members of the Settlement Class regarding any deficiencies in their Proof of Claim and Release forms and regarding the final value of any allowed claim; (g) calculating each Authorized Claimant's allowed claim pursuant to the Plan of Allocation; (h) determining the timeliness and validity of all Requests for Exclusion received from members of the Settlement Class; (i) preparing the opt-out list and an affidavit attaching and attesting to the accuracy of such list, and providing same to Co-Lead Counsel and counsel for Settling Defendants; and (j) providing Co-Lead Counsel and counsel for Settling Defendants with copies of any Requests for Exclusion (including all documents submitted with such requests).

23. The Settlement Administrator shall maintain a copy of all paper communications related to the Settlement for a period of one year after distribution of the Net Settlement Fund defined in the Settlement Agreements ("Net Settlement Fund"), and shall maintain a copy of all electronic communications related to the Settlements for a period of three years after distribution of the Net Settlement Fund, after which time all such materials shall be destroyed, absent further direction from the Parties or the Court.

24. All reasonable expenses incurred in preparing and providing the Settlement Class Notice and paying other administrative expenses shall be paid from the Settlement Fund, as set forth in Paragraph 8(a) of the Settlement Agreements. In the event the Court does not approve the Settlement Agreements, or if the Settlement Agreements are terminated or otherwise fail to become effective or final, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred or disbursed pursuant to Paragraph 8(a) Settlement

Agreements.

25. Co-Lead Counsel shall file their motions for payment of attorneys' fees and reimbursement of expenses, incentive awards, and for final approval of the Settlements by 60 days after the Notice Date, and any reply papers (which may include a response to objections, if any) shall be filed by 14 days after the Objection Deadline.

26. A hearing will be held on a date of the Court's convenience on or after \_\_\_\_\_, 2021 at \_\_\_ [a.m./p.m.] (at least 21 days after the filing of reply papers in support of motions for payment of attorneys' fees and reimbursement of expenses, incentive awards, and for final approval of the Settlements) in Courtroom 443 of this Courthouse before the undersigned, to consider the fairness, reasonableness, and adequacy of the Settlements (the "Fairness Hearing"). The foregoing date, time, and place of the Fairness Hearing shall be set forth in the Class Notice, which is ordered herein, but shall be subject to adjournment or change by the Court without further notice to the members of the Settlement Class, other than that which may be posted at the Court or on the Settlement website at [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com). The Court reserves the right to conduct the final fairness hearing remotely.

27. The Court reserves the right to approve the Settlements at or after the Fairness Hearing with such modifications as may be consented to by the Parties and without further notice to the Settlement Class.

28. The Court may, for good cause, extend any of the deadlines set forth in this Order without notice to members of the Settlement Class, other than that which may be posted at the Court or on the Settlement website, [www.GoldFixSettlement.com](http://www.GoldFixSettlement.com).

29. Unless otherwise specified, the word “days,” as used herein, means calendar days. In the event that any date or deadline set forth herein falls on a weekend or federal or state legal holiday, such date or deadline shall be deemed moved to the first business day thereafter.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
HON. VALERIE E. CAPRONI  
UNITED STATES DISTRICT JUDGE