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February 5, 2021

**VIA ECF**

Hon. Valerie E. Caproni  
United States District Court for the Southern  
District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, New York, NY 10007

Re: *In re Commodity Exch., Inc. Gold Futures & Options Trading Litig.*, No. 14-MD-2548

Dear Judge Caproni:

Plaintiffs and the Deutsche Bank and HSBC settling Defendants write jointly in response to the Court's order, Dkt. No. 504, following the January 14, 2021, hearing on Plaintiffs' requests in connection with the proposed HSBC and Deutsche Bank settlements.

***Attached as Exhibit 1 are Plaintiff and HSBC's changes to the HSBC settlement agreement and its three attachments.***<sup>1</sup> To be clear, with respect to the change to paragraph 10 of the proposed form for final judgment—regarding the treatment of opt-outs—Plaintiffs also conferred with Deutsche Bank, as its form of final judgment would also be potentially impacted. The proposed changes are limited to the line-edits the Court identified and other ministerial issues.

With respect to HSBC paragraph 13(f), the parties believe that continuing to work together avoids the risk of creating a discovery dispute where none currently exists. In the unlikely event there is a future dispute about the scope of cooperation, the parties expect their correspondence could then be presented to provide the Court with a basis for understanding the issues in dispute.

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<sup>1</sup> The attached redline for the preliminary approval order compares to the version of the order attached as Exhibit B to the December 7, 2020 Davidoff declaration, Dkt. No. 487. A slightly different, older version was separately included as an attachment to the settlement agreement and thus appeared within Exhibit A to the Davidoff declaration.

***Attached as Exhibits 2 and 3 are Plaintiffs’ revised proposals for the long-form and short-form notices***, all being made in response to the Court’s requests. We only note separately here that in these documents, and others, Plaintiffs propose the following schedule:

Plaintiffs’ motions for approval/fees.	July 9, 2021 (90 days prior to October 7)
Objections and opt-outs.	August 6, 2021 (62 days prior to October 7)
Claims submission.	August 23, 2021 (45 days prior to October 7)
Plaintiffs’ reply briefs/responses.	September 16, 2021 (21 days prior to October 7)
Fairness Hearing.	October 7, 2021 at 10:00 a.m.

***Attached as Exhibit 4 is Plaintiffs’ revised proposal for the claim form.*** In addition to implementing the Court’s direct line-edits, Plaintiffs have revised the form such that it now requires gold ETF transactions to be listed separately, and also invites class members to contact the administrator if they believe ETFs other than SPDR Gold Trust (ticker name “GLD”) and iShares Gold Trust (ticker name “IAU”) should qualify.

***Attached as Exhibit 5 is Plaintiffs’ revised proposal for the Plan of Allocation.*** In addition to the Court’s requested changes, a change was made on page 7 to clarify that automatic receipt confirmations are only generated if the class member submits the claim form via the website, as class members are also able to physically mail their claim forms. More substantively, Plaintiffs’ adjustment to separately account for gold ETF transactions required small changes throughout the document.

The main other substantive change Plaintiffs are proposing is to the “Litigation Multiplier.” In sum, claims that were dismissed by this Court—all ETF transactions and all transactions of any type in 2013—are now provided the lowest multiplier, .25.<sup>2</sup> Non-ETF claims that the Court upheld but may need to rely more on fraudulent concealment principles are provided a middle multiplier, .5. And non-ETF claims from 2010 to 2012 are provided the highest multiplier, 1.0. Plaintiffs hope the Court finds this regime to be more in line with the risks as identified in the Court’s dismissal orders,<sup>3</sup> and thus to represent an even-more-fairly balanced Plan of Allocation.

Finally, the Court will see that Plaintiffs are not proposing any changes to the 20% reservation for Fix-Linked Transactions. As explained at the hearing, Plaintiffs maintain that

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<sup>2</sup> In recognition of their potential value in, among other things, a potential appeal, courts routinely allow settlement plans to provide for claims tied even to dismissed theories or transactions. *See, e.g., In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at \*3 (N.D. Cal. July 22, 2019). The preliminarily approved *Silver* plan proposed an identical .25 multiplier for claims arising out of periods this Court had already dismissed. *See Silver* Dkt. No. 450 at 8.

<sup>3</sup> Though the Court initially dismissed claims arising from transactions in 2004 and 2005, Plaintiffs later amended the complaint to include additional evidence of wrongdoing in that early period. Defendants did not seek to have those amended claims re-dismissed, and the Court allowed the additional allegations. Dkt. 258, at 7 (granting motion for leave to amend, and noting “that there were statistically significant cumulative returns around the PM Fixing in 2004 and 2005” in the proposed Third Amended Complaint).

other contracts were impacted, too. Plaintiffs also understand, of course, neither the Court nor a jury has provided a final word on that issue. *See generally In re Commodity Exchange, Inc.*, 213 F. Supp. 3d 631, 656-57 (S.D.N.Y. Oct. 3, 2016) (while finding “at least some” plaintiffs were efficient enforcers for pleading purposes, noting that “[t]he most direct victims . . . would presumably be sellers who transacted at the Fix Price”). Plaintiffs respectfully submit that providing some downside protection to Fix-Linked Instruments provides those transactions with some benefit in light of their arguably lower litigation risk, without tipping the scales too far in light of Plaintiffs’ litigation position as to how prices actually behaved.

***Attached as Exhibit 6 is Plaintiffs’ revised proposed order approving the notice plan.***

The changes again track those requested by the Court, and again include the above proposed deadlines. The proposal also removes a strict 10-day requirement for completing the publication of notice in all outlets, because some of the proposed publications may not run frequently enough for that to technically occur depending on when the “Notice Date” now eventually falls.

In light of the Court’s comments and conferral progress made since the hearing, Plaintiffs have removed the request for an order requiring notice assistance within 7 days. Instead, paragraphs 5 and 6 now provide that mailing of notice shall begin 30 days from the Court’s order, and completed within 60 days of the Court’s order, absent good cause shown. Plaintiffs have consulted with all relevant Defendants, and none have objected to this proposal.

***Finally, as seen in Exhibit 7***, a non-Settling Defendant has requested the right to include in their mailing of the Notice a supplemental notice regarding foreign banking secrecy and privacy laws. Plaintiffs take no position on its necessity or accuracy. But in order to help secure an even-wider dissemination of the Notice, Plaintiffs are willing to allow the requesting non-Settling Defendant to include the requested supplemental notice in the mailing to its customers.

The attached proposed order approving the notice plan (Exhibit 6) does not expressly address this issue, due to the sensitivities discussed at the hearing. But to be clear, absent Court guidance otherwise, Plaintiffs intend to allow the assisting Defendant to include the requested supplemental notice in mailings to its customers.

***In sum***, we appreciate the Court’s attention to these important matters, and hope our proposed changes respond to its concerns. If Your Honor has any additional questions or comments, we are available at the Court’s convenience. And of course, for the proposed orders or any other documents, Plaintiffs can promptly provide “clean” and/or Word-file versions upon request.

Respectfully submitted,



Jeremy D. Andersen  
Merrill G. Davidoff  
*Counsel for Plaintiffs*

# **EXHIBIT 1**

**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)

**STIPULATION AND AGREEMENT OF SETTLEMENT WITH  
HSBC BANK PLC**

**1. RECITALS**

This Stipulation and Agreement of Settlement (“Agreement”) is made and entered into on November 10, 2020 (“Execution Date”), between (i) on the one hand, Co-Lead Counsel in the Action, as defined below, on behalf of Plaintiffs 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 (collectively, “Class Plaintiffs”), for themselves individually and, subject to Court approval, on behalf of all Settlement Class Members as defined herein, and, (ii) on the other hand, Defendant HSBC Bank plc (“Settling Defendant”). Class Plaintiffs and Settling Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, beginning in and around March 2014, numerous class actions were filed against Settling Defendant and other Defendants (the “Actions”);

WHEREAS, on July 22, 2014, the Court appointed Quinn Emanuel Urquhart & Sullivan, LLP and Berger & Montague, P.C. as Interim Class Co-Counsel (“Co-Lead Counsel”).

WHEREAS, on August 13, 2014, the United States Judicial Panel on Multidistrict Litigation transferred those Actions to the United States District Court for the Southern District of New York for coordinated or consolidated proceedings before Judge Valerie E. Caproni;

WHEREAS, 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 Co-Lead Counsel;

WHEREAS, on December 15, 2014, Class Plaintiffs filed a Consolidated Amended Class Action Complaint against Defendants asserting claims under the Sherman Act, the Commodity Exchange Act, and for unjust enrichment;

WHEREAS, on February 13, 2015, Defendants moved to dismiss the Consolidated Amended Class Action Complaint;

WHEREAS, 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;

WHEREAS, on April 30, 2015, Defendants moved to dismiss the Second Consolidated Amended Class Action Complaint;

WHEREAS, on October 3, 2016, the Court denied the motion to dismiss the Second Consolidated Amended Class Action Complaint;

WHEREAS, on June 16, 2017, Class Plaintiffs filed a Third Consolidated Amended Class Action Complaint against Defendants asserting claims under the Sherman Act, the Commodity Exchange Act, and for unjust enrichment;

WHEREAS, Co-Lead Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, that: (1) it is in the best interest of the Settlement Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by Settling Defendant under this Agreement, are obtained for the Settlement Class; and (2) the settlement set forth in this Agreement is fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23, and in the best interests of the Settlement Class;

WHEREAS, Settling Defendant has denied and continues to deny each and all of the claims and allegations of wrongdoing made by Class Plaintiffs in the Action and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action;

WHEREAS, while Settling Defendant continues to deny that it is liable for the claims asserted against it in the Action it has nevertheless agreed to enter into this Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the claims asserted against Settling Defendant in the Action;

WHEREAS, this Agreement is the product of arm's-length negotiations between Co-Lead Counsel and Settling Defendant's Counsel, and this Agreement embodies all of the terms and conditions of the settlement agreed upon between Settling Defendant and Class Plaintiffs, both for themselves individually and on behalf of the Settlement Class and each member thereof;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Agreement, it is agreed, by and among Class Plaintiffs (for themselves individually and on behalf of the Settlement Class and each member thereof), by and through Co-Lead Counsel, and Settling Defendant that, subject to the approval of the Court, the Action be settled, compromised, and dismissed with prejudice as to Settling Defendant and the other Released Parties only, without costs, except as stated herein, and releases and covenants not to sue be extended, as set forth in this Agreement.

## **2. DEFINITIONS**

As used in this Agreement, the following capitalized terms have the meanings specified below;

- (a) "Action" means *In re Commodity Exchange, Inc., Gold Futures and Options*



*Trading Litigation*, No. 14-MD-2548, which is currently pending in the United States District Court for the Southern District of New York, and includes all actions filed in or transferred to the United States District Court for the Southern District of New York and consolidated thereunder and all actions that may be so transferred and/or consolidated in the future.

- (b) “Agreement” means this Stipulation and Agreement of Settlement, together with any exhibits attached thereto, which are incorporated herein by reference.
- (c) “Authorized Claimant” means any Settlement Class Member who will be entitled to a distribution from the Settlement Fund pursuant to a plan of distribution ultimately approved by the Court.
- (d) “Claims Administrator” means a qualified administrator selected by Lead Counsel, and consented to by the Settling Defendant, which shall not unreasonably withhold such consent.
- (e) “Class Plaintiffs” means 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.
- (f) “Co-Lead Counsel” means Quinn Emanuel Urquhart & Sullivan, LLP and Berger & Montague, P.C.
- (g) “Court” means the United States District Court for the Southern District of New York.
- (h) “Defendants” means The Bank of Nova Scotia, Barclays Bank plc, Deutsche

Bank AG, HSBC Bank plc, Société Générale SA, UBS AG, UBS Securities LLC, and The London Gold Market Fixing Limited (“LGMF”).

- (i) “Effective Date” or “Effective Date of Settlement” means the first business day following the date the Final Judgment and Order of Dismissal has become final and unappealable either because: (i) the prescribed time for commencing any appeal has expired and no appeal has been filed; or (ii) an appeal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind whether by affirmance on or exhaustion of any possible appeal or review, writ of certiorari, lapse of time, or otherwise. The finality of the Final Judgment and Order of Dismissal shall not be affected by any appeal or other proceeding regarding solely an application for attorneys’ fees and expenses.
- (j) “Employee Benefit Plan” means any employee benefit plan within the meaning of Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (2014).
- (k) “Escrow Agent” means The Huntington National Bank.
- (l) “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Agreement shall receive approval pursuant to Federal Rule of Civil Procedure 23.

- (m) “Fee and Expense Application” has the meaning given to it in Paragraph 7(a).
- (n) “Final Judgment and Order of Dismissal” means the final order of the Court, that has not been reversed, vacated, materially modified, or dismissed on appeal in whole or in part and that is no longer appealable, approving the Settlement set forth in this Agreement, certifying the Settlement Class set forth in this Agreement, and dismissing with prejudice the claims of Class Plaintiffs and all Settlement Class Members against Settling Defendant, and which is to be substantially in the form attached hereto as Exhibit B or as modified by agreement of the Parties.
- (o) “Final Order Date” means the date the Court enters the Final Judgment and Order of Dismissal.
- (p) “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.
- (q) “Gold Investment Transaction” means (A) the sale of any physical gold or financial or derivative instrument in which gold is the underlying reference asset including, but not limited to, sales of (i) gold bullion, gold bullion coins, gold

ingots, gold bars, 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 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, which were later exercised, in transactions conducted over-the-counter or in whole or in part on COMEX or any other exchange operated in the United States, or (vi) gold spot, gold forwards or gold swaps traded over-the-counter; or (B) the purchase of (i) gold call options, which were later exercised, sold, or held to expiration, in transactions conducted over-the-counter or in whole or in part on COMEX or on any other exchange operated in the United States, or (ii) 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.

- (r) “Investment Vehicles” means any investment company or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but of which a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest, and (ii) any Employee Benefit Plan as to which a Defendant or its affiliates acts as an investment advisor or otherwise may be a fiduciary.
- (s) “Non-Settling Defendants” mean all of the Defendants other than Settling Defendant.

- (t) “Notice” means the Notice of Proposed Settlement of Class Action to be provided to the Class in a manner acceptable to the Parties and approved by the Court.
- (u) “Parties” means Settling Defendant and Class Plaintiffs.
- (v) “Person” means any individual or entity.
- (w) “Preliminary Approval Order” means an order of the Court that is to be substantially in the form attached hereto as Exhibit A.
- (x) “Released Claims” shall have the meaning specified in Paragraph 4(d) below.
- (y) “Released Parties” means 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 other Defendants.
- (z) “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.

- (aa) “Second Consolidated Amended Class Action Complaint” means the Second Consolidated Amended Class Action Complaint filed in the Action on March 16, 2015.
- (bb) “Settlement” means the settlement and related terms between the Parties as set forth in this Agreement.
- (cc) “Settlement Amount” means the sum of forty-two million United States dollars (\$42,000,000).
- (dd) “Settlement Class” has the meaning given to it in Paragraph 3(a).
- (ee) “Settlement Class Member” means a Person who is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself from the Settlement Class in accordance with the procedures established by the Court.
- (ff) “Settlement Class Notice” means, collectively, the Notice and Summary Notice.
- (gg) “Settlement Fund” means the escrow account established pursuant to Paragraph 5(a) of this Agreement, including all monies held therein in accordance with the terms of this Agreement.
- (hh) “Settling Defendant” means HSBC Bank plc.
- (ii) “Settling Defendant’s Counsel” means King & Spalding LLP, at the addresses

listed in the signature block below.

- (jj) “Settling Defendant’s Claims” means all claims, including Unknown Claims, that the Settling Defendant may have against any Class Plaintiffs and Co-Lead Counsel relating to the institution, prosecution, or settlement of the Action, except for claims relating to the enforcement of the Settlement.
- (kk) “Summary Notice” means the summary notice of proposed settlement and hearing for publication acceptable to the Parties and approved by the Court.
- (ll) “Taxes” has the meaning given to it in Paragraph 9.
- (mm) “Third Consolidated Amended Class Action Complaint” means the Third Consolidated Amended Class Action Complaint filed in the Action on June 16, 2017.
- (nn) “Unknown Claims” means any and all claims which a releasing party does not know or suspect to exist in his, her, or its favor as of the Effective Date, which if known by the releasing party might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all released claims against any and all released parties, the Parties stipulate and agree that, by operation of the Final Judgment and Order of Dismissal, upon the Effective Date, the party providing the release shall have expressly waived the provisions, rights and benefits of Cal. Civ. Code § 1542 or any federal, state or foreign law, rule, regulation or common-law doctrine that is similar, comparable, equivalent or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR OR RELEASING**

**PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

### **3. SETTLEMENT CLASS CERTIFICATION**

(a) The Class Plaintiffs will seek, and Settling Defendant shall not oppose, the Court's certification of a class as to Settling Defendant for settlement purposes only (the "Settlement Class") pursuant to Fed. R. Civ. P. 23(b)(3), which Settlement Class as to Settling Defendant shall be defined as follows:

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, his or 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.

(b) The Parties' agreement as to certification of the Settlement Class is only for purposes of effectuating this Settlement as to Settling Defendant, and for no other purpose. Settling Defendant retains all of its objections, arguments, and defenses with respect to any other request for class certification, and reserves all rights to contest class certification if the Settlement set forth in this Agreement does not receive the Court's final approval, if the Court's



approval is reversed or vacated on appeal, if this Agreement is terminated as provided herein, or if the Settlement set forth in this Agreement otherwise fails to proceed for any other reason.

**4. DISMISSALS, RELEASES, AND COVENANTS NOT TO SUE**

(a) Subject to Court approvals, Class Plaintiffs agree, on behalf of themselves and the Settlement Class Members, that this Agreement shall be in full and final disposition of: (i) the Action against Settling Defendant; and (ii) any and all Released Claims as against all Released Parties.

(b) Upon final approval of the Settlement reflected in this Agreement, and as part of the entry of the Final Judgment and Order of Dismissal, the Action shall be dismissed with prejudice as to Settling Defendant.

(c) The Class Plaintiffs and all Settlement Class Members shall release and shall be deemed to have released all Released Claims against all the Released Parties. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have fully, finally, and forever waived, released, relinquished, and discharged to the fullest extent permitted by law all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim; and (ii) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims or to assist any third party in commencing or maintaining any suit or action against any Released Party related in any way to the Released Claims.

(d) “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.

(e) For the sake of clarity, Released Claims do not include claims based on Gold Investment Transactions by Settlement Class Members where such claims involve all of the following three circumstances: (i) the Settlement Class Members were not domiciled or located in the United States or its territories at the time of the relevant Gold Investment Transactions, (ii) their Gold Investment Transactions were not in, or part of, United States commerce, and (iii) any claims based on such Gold Investments are subject only to foreign law.

(f) The Releasing Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, Class Plaintiffs and the Releasing Parties shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, whether or not concealed

or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs and the Releasing Parties acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Agreement.

(g) Subject to Court approvals, Settling Defendant agrees that this Agreement shall be in full and final disposition of any and all of Settling Defendant’s Claims against Class Plaintiffs and Co-Lead Counsel. Settling Defendant shall release and shall be deemed to have released all Settling Defendant’s Claims against Class Plaintiffs and Co-Lead Counsel. In connection therewith, upon the Effective Date of Settlement, Settling Defendant: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever waived, released, relinquished, and discharged to the fullest extent permitted by law all Settling Defendant’s Claims against Class Plaintiffs and Co-Lead Counsel, regardless of whether Class Plaintiffs execute and deliver a proof of claim; and (ii) agrees and covenants not to sue any of the Class Plaintiffs and Co-Lead Counsel with respect to any Settling Defendant’s Claims or to assist any third party in commencing or maintaining any suit against Class Plaintiffs and Co-Lead Counsel related in any way to any Settling Defendant’s Claims. Settling Defendant may hereafter discover facts other than or different from those which it now knows or believes to be true with respect to the subject matter of Settling Defendant’s Claims. Nevertheless, Settling Defendant shall expressly, fully, finally, and forever settle and release, and upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released any and all Settling Defendant’s Claims, without regard to the subsequent discovery or existence of such different or additional

facts. Settling Defendant acknowledges and shall be deemed to have acknowledged, that the inclusion of this provision was separately bargained for and was a key element of the Agreement.

(h) To the extent the Releasing Parties reach a settlement with LGMF in this Action or a judgment is entered against LGMF in this Action, the Releasing Parties agree that the amount they will collect or enforce from LGMF shall be offset by a monetary amount representing the Released Parties' proportionate share in LGMF, and in no event less than 25% of the full settlement with or judgment against LGMF. Alternatively, the Releasing Parties shall reimburse the Released Parties for any monetary contribution made by the Released Parties to the settlement with or judgment against LGMF. This provision 4(h) shall ensure that the Released Parties are not responsible for contributing any monetary amount to a settlement with or judgment against LGMF in this Action, or alternatively are reimbursed for any monetary contribution the Released Parties make to a settlement with or judgment against LGMF in this Action.

## **5. THE SETTLEMENT FUND**

(a) Settling Defendant shall pay or cause to be paid the Settlement Amount by wire transfer to the Escrow Agent within fifteen (15) days of execution of this Agreement. Before any wire transfer takes place, Co-Lead Counsel shall provide Settling Defendant with information necessary to complete the wire transfer. These wire-transferred funds, together with any interest earned thereon in the escrow account from the date of such wire transfer, shall constitute the Settlement Fund. The Settlement Fund shall be established as an escrow account at The Huntington National Bank and administered by the Escrow Agent, subject to approval by the Court.

(b) Settling Defendant has denied any liability, fault, or wrongdoing of any kind in connection with the allegations in the Action, and as such neither the Agreement, nor any of its terms or provisions, nor any of the negotiations, term sheets, or proceedings connected with it, shall be construed as an admission or concession by Settling Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. Other than payment of the Settlement Amount in accordance with the provisions of Paragraph 5(a) above, neither Settling Defendant nor any of the Released Parties shall have any liability, responsibility, or obligation to pay or reimburse any other amounts to any Person, including but not limited to Class Plaintiffs, Co-Lead Counsel, any Settlement Class Members, or any Releasing Parties in connection with, relating to, or arising out of the Action, the Released Claims, or this Settlement. Settling Defendant shall have no liability, obligation or responsibility whatsoever for making a payment into the Settlement Fund for any other Defendant. Settling Defendant shall have no liability, obligation, or responsibility with respect to the investment, allocation, use, disbursement, administration, or oversight of the Settlement Fund. For the sake of clarity, Settling Defendant shall bear its own cost in complying with its cooperation obligations set forth in Paragraph 13.

(c) The Settlement Fund shall be administered pursuant to this Agreement and subject to the Court's continuing supervision and control. With the sole exception of notice and administration costs described in Paragraph 8, and Taxes as described in Paragraph 9, no monies shall be disbursed from the Settlement Fund prior to the Effective Date and without the specific authorization of the Court, except in the event of termination of this Agreement and return of the Settlement Fund to Settling Defendant pursuant to Paragraph 10(b) below.

(d) If the Settlement Amount is not timely transferred to the escrow account, Co-Lead Counsel may, at their discretion, (i) immediately move the Court to enforce this Agreement or (ii) terminate the Agreement, if, after Co-Lead Counsel provides notice of their intent to terminate, Settling Defendant does not transfer the Settlement Amount to the escrow account within two business days.

(e) The Settlement Fund shall be invested by the Escrow Agent in short term (up to one year maturity) United States agency or Treasury securities or other instruments backed by the full faith and credit of the United States government or an agency thereof, or fully insured by the United States government or an agency thereof, and the proceeds of these instruments shall be reinvested in similar instruments at their then-current market rates as they mature. In the event that the yield on securities identified herein is negative, in lieu of purchasing such securities, all or any portion of the Settlement Fund held may be deposited in a non-interest bearing account that is fully insured by the Federal Deposit Insurance Corporation. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this Paragraph shall be borne by the Settlement Fund.

(f) All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds are either returned to Settling Defendant pursuant to Paragraph 10(b) of this Agreement or distributed subsequent to the Effective Date pursuant to a plan of distribution approved by the Court or pursuant to other orders of the Court.

**6. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING**

(a) Co-Lead Counsel shall submit this Agreement to the Court and shall apply for entry of the Preliminary Approval Order in the form of Exhibit A attached hereto, requesting,

inter alia, the preliminary approval of the Settlement set forth in this Agreement. Though the Parties agree that it is not practical to establish a timeline or to create the detailed contents of a Notice at this time, the eventual Notice, to also be approved by the Court prior to distribution, will set forth a summary of the terms of the Agreement (including a description of the Released Claims), the proposed plan of distribution and Co-Lead Counsel's request for attorneys' fees, costs, and expenses; the date and time of the Settlement Fairness Hearing; the right to object to the Settlement, proposed plan of distribution, or request for fees and expenses; the right to appear at the Fairness Hearing; and the right to request exclusion from the Settlement Class.

(b) It shall be the Claims Administrator's responsibility, under supervision of Co-Lead Counsel, to disseminate the Notice in accordance with this Agreement and as ordered by the Court. Settlement Class Members shall have no recourse as to the Released Parties, counsel for the Released Parties, Plaintiffs, and Plaintiffs' Counsel with respect to any claims they may have that arise from any failure of the notice process.

(c) Co-Lead Counsel shall request that after notice is given to the Settlement Class, the Court hold a hearing (the "Fairness Hearing") and approve the Settlement of the Action as set forth herein. At or after the Fairness Hearing, Co-Lead Counsel also shall request that the Court approve the proposed plan of distribution and the Fee and Expense Application.

(d) If, prior to the Fairness Hearing, one or more members of the Settlement Class timely exercise their rights to be excluded from the Settlement Class, such persons shall be excluded from the Settlement Class with respect to all other Defendants.

## **7. FEE AND EXPENSE APPLICATION**

(a) Co-Lead Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award of attorneys' fees and expenses and service

awards to Class Plaintiffs pertaining to this Settlement or pertaining to the Action more generally. Neither Settling Defendant nor the Released Parties shall have any responsibility for, or liability whatsoever with respect to, any payment of attorneys' fees or expenses to Co-Lead Counsel, or any service awards to Class Plaintiffs, which Co-Lead Counsel and Class Plaintiffs shall seek to have paid only from the Settlement Fund and as approved by the Court.

(b) Any Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or the Settlement as to Settling Defendant, or affect the finality or binding nature of any of the releases granted hereunder.

(c) Settling Defendant shall have no objection to the payment of, or timing for payment of, any attorneys' fees and expenses awarded to Co-Lead Counsel for Class Payments from the settlement fund, or any service awards, should such payments be approved by the Court.

**8. NOTICE AND ADMINISTRATIVE COSTS AND ADMINISTRATION OF THE SETTLEMENT**

(a) The Escrow Agent shall be entitled to make the following disbursements from the Settlement Fund for purposes of paying costs (other than attorneys' fees) incurred in preparing and providing the Settlement Class Notice and paying other administrative expenses, including notice and administration expenses of and incurred by the Claims Administrator: (i) up to \$1.5 million prior to the entry of the Final Judgment and Order of Dismissal, unless Court approval is obtained to exceed that amount; and (ii) up to \$2.5 million after entry of the Final Judgment and Order of Dismissal but prior to the Effective Date, unless Court approval is obtained to exceed



that amount. Funds expended pursuant to this Paragraph are not recoverable if this Settlement is terminated or does not become final.

(b) It is anticipated and understood that Co-Lead Counsel and Class Plaintiffs will eventually seek to establish a claims process pertaining to this Settlement or pertaining to the Action more generally, subject to approval by the Court, pursuant to which Settlement Class Members will seek to be included in distributions of funds recovered on their behalf in the Action. Any such claims process shall include required submission of a proof of claim form by each Settlement Class Member, which proof of claim form shall include, *inter alia*, an acknowledgement of an agreement to the releases of all Released Claims against all Released Parties and shall be signed under penalty of perjury by an authorized person. Any Settlement Class Member who does not execute a proof of claim form containing such an acknowledgement and agreement shall not be permitted to receive any distribution from the Settlement Fund or otherwise in connection with the Action and will in any event be barred from bringing any action against the Released Parties concerning the Released Claims.

(c) Settling Defendant shall supply to Co-Lead Counsel in electronic format information that may assist in identifying Settlement Class Members, including names and addresses in its possession, custody or control, that is not privileged and reasonably available to it, and the retrieval and disclosure of which is clearly permitted by law, for purposes of facilitating the provision of notice to Settlement Class Members and the administration of the Settlement. To the extent any further data or information in Settling Defendant's possession, custody, or control becomes reasonably necessary to the notice or claims administration process, Settling Defendant shall confer with Co-Lead Counsel in good faith regarding the potential provision of that data or information. In the alternative to providing contact information for

Settlement Class Members, if reasonably thought to be required due to foreign privacy laws or other restrictions, Settling Defendant can arrange for those Settlement Contact Members to be contacted through mutually acceptable alternative means, such as through the retention of an alternative notice provider. If the Court so approves, reasonable expenses incurred by such an alternative notice provider can be paid out of the Settlement Fund. Settling Defendants shall otherwise bear its own cost in providing notice by such alternative means.

(d) Neither Settling Defendant nor the Released Parties shall have any role in, or responsibility or liability to any person for, the solicitation, review, or evaluation of proofs of claim by Class Plaintiffs, Co-Lead Counsel, or their designated representatives or agents.

(e) All Settlement Class Members whose claims are not approved shall be barred from any participation in distributions from the Settlement Fund, but otherwise shall be bound by all of the terms of this Agreement and the Settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

(f) All proceedings with respect to the administration, processing, and determination of claims and proof of claims by Settlement Class Members and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

(g) Settling Defendant and the Released Parties shall have no liability, obligation, or responsibility for reviewing or challenging claims, or administrating, settling, or disbursing claim distributions from the Settlement Fund.

(h) Other than in the event of the termination of the Settlement pursuant to Paragraph 10(a) and 10(b), Settling Defendant shall not have a reversionary interest in the Settlement Fund.

If there is any balance remaining in the Settlement Fund after a reasonable period of time after the initial date of distribution of the 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 Settlement Fund is *de minimis*, and any such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Co-Lead Counsel and approved by the Court.

**9. TAXES**

(a) The Parties agree that the Settlement Fund is intended to be treated at all times as a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for Taxes (as defined below), and less any funds expended for Settlement Class Notice and claims administration pursuant to Paragraph 8, plus any accrued interest thereon, shall be returned to Settling Defendant, as provided in Paragraph 10(b), if the settlement does not become effective for any reason, including by reason of a termination of this Agreement pursuant to Paragraphs 10(a) or 10(b).

(b) The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of Paragraph 9 of this Agreement including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permissible date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing(s) to occur.

(c) For the purpose of Section 1.468B of the Internal Revenue Code and the Treasury regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the

Settlement Fund. The Escrow Agent shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns shall be consistent with this Paragraph 9 and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(d) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes); (ii) other taxes imposed on or in connection with the Settlement Fund (collectively, “Taxes”); and (iii) expenses and costs incurred in connection with the operation and implementation of Paragraph 9 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described herein (“Tax Expenses”)), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with the Escrow Agent,

each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph.

(e) Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent or any other person, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) any plan of distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

#### **10. TERMINATION OF SETTLEMENT**

(a) Co-Lead Counsel, acting on behalf of Class Plaintiffs and the Settlement Class Members, and Settling Defendant shall each have the right to terminate this Settlement in each of their separate discretions by providing written notice to the other of an election to do so (“Termination Notice”) within thirty (30) days following any of the following events: (i) the Court denies, in whole or in part, the motion to certify the Settlement Class; (ii) the Court enters an order declining to enter the Preliminary Approval Order in any material respect; (iii) the Court enters an order refusing to approve this Agreement or any material part of it; or (iv) the Court, a court of appeal or any higher court enters an order declining to enter, reversing, vacating, materially modifying or dismissing, in whole or in part and in any material respect, the Final Judgment and Order of Dismissal.

(b) Except as otherwise provided herein, in the event the Settlement is terminated in accordance herewith, then the Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, any certification of the Settlement Class

shall be deemed to be vacated automatically, and the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered, provided, however, that in the event of termination of this Settlement, Paragraphs 3(b), 8(g), 9, 10(b), 13(i), and 13(j) shall nonetheless survive and continue to be of effect and have binding force. If Settlement Class Members representing a material portion of transactions during the Settlement Class Period timely opt-out of the Settlement Class, Settling Defendant, in its sole discretion, shall have the right to seek relief as set forth in Exhibit C, which shall, with the approval of the Court, be filed under seal or *in camera*, and publicly only if the Court so directs. Within fifteen (15) days following any notice of termination being delivered to the Escrow Agent, the Settlement Fund shall be returned in its entirety to Settling Defendant (including any accrued interest thereon), less any Taxes due and expenditures made of notice and administrative costs pursuant to Paragraph 8, if any. At the request of Settling Defendant's Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Settling Defendant.

**11. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS**

All rights of any Settlement Class Member against any person or entity other than Settling Defendant and the other Released Parties are specifically reserved by Class Plaintiffs and the Settlement Class Members, including against other Defendants to the Action. For the sake of clarity, claims arising out of all Gold Investment Transactions, even those entered into with Settling Defendant, are still part of the Action, and are not released as against the remaining Defendants or anyone else other than the Released Parties. All transactions thus remain in the case against the other Defendants in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against the other Defendants in the Action or any other persons other than the Released Parties.

**12. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms of this Agreement.

Pursuant to the Class Action Fairness Act (“CAFA”), no later than ten (10) days after this Agreement is filed with the Court, Settling Defendant, at its own cost, shall serve proper notice of the proposed Settlement upon those who are entitled to such notice pursuant to CAFA. Settling Defendant shall provide a declaration certifying completion of such notice.

**13. COOPERATION OBLIGATIONS**

(a) As part of the consideration provided to Class Plaintiffs for the settlement, Settling Defendant will provide unique and reasonable cooperation as described in this Paragraph and as reasonably requested by Co-Lead Counsel unless and until this Agreement is denied final approval, this Agreement is terminated under Paragraph 10(a), or the Action is finally resolved, whichever comes first. In the event Co-Lead Counsel believes that Settling Defendant has failed to perform any of its cooperation obligations and the procedures outlined in paragraph 13(h) failed to resolve the dispute, the sole remedy shall be to seek specific performance.

(b) Settling Defendant agrees to provide interviews with knowledgeable current employees regarding Settling Defendant’s role in the conduct alleged in the Action to the extent permitted by relevant authorities, not unduly burdensome on Settling Defendant, and practicable.

(c) Settling Defendant agrees to use its best efforts to arrange interviews with former employees to the extent such employees are within Settling Defendant’s control, such interviews are permitted by relevant authorities, and Settling Defendant has been paying for such employee’s counsel.

(d) Settling Defendant agrees to produce all materials, information, and documents that Settling Defendant has produced to government regulators or government investigators relating to the conduct alleged in the Action, as of the date of the execution of this agreement, within thirty calendar days of execution of this agreement. If Settling Defendant produces additional materials, information, or documents to government regulators or government investigators relating to the conduct alleged in the Action after the execution of this agreement, Settling Defendant shall give notice to Co-Lead Counsel within three business days of the production, and produce those materials, information, or documents within twenty calendar days of the production.

(e) Settling Defendant shall provide declarations or certifications to establish in discovery, and if necessary at trial that, if believed to be true and accurate, that the documents, electronically-stored information, or data previously produced by Settling Defendant is genuine, authentic, and a record of a regularly conducted activity pursuant to Fed. R. Evid. 803(6), which Co-Lead Counsel identify as necessary for summary judgment and/or trial.

(f) Settling Defendant shall complete the production of transactional data and data fields commenced during discovery in the Action and as discussed in recent communications, and provide additional transactional and other data, as well as explanatory information related to the production of such data to assist in the administration of the notice and claims process as described in Paragraph 8(b).

(g) During the course of the Action, Settling Defendant agrees to meet and confer in good faith regarding requests from Co-Lead Counsel for additional available documents, transaction data, and other information beyond the items above, however, Settling Defendant need not agree to requests that are unreasonable or unduly burdensome.



(h) The Parties agree to coordinate cooperation discovery in a manner designed to avoid unnecessary duplication and expense. Settling Defendant shall have no obligation to produce documents or information that are protected by the attorney-client privilege, the work product doctrine, the bank regulatory, supervisory or examination privilege, secrecy and privacy laws or obligations, or any other applicable privilege or immunity from discovery, or to the extent Settling Defendant is prevented from providing such materials by any court order or any law, regulation, policy, other rule or significant objection of any regulatory agency or governmental body restricting disclosure of such documents. To the extent Settling Defendant believes that a cooperation request is overly broad, unduly burdensome, or otherwise unreasonable, the Parties shall meet and confer in good faith regarding such concern, including to discuss shifting or sharing the expense of responding to such request. To the extent concerns arise regarding the withholding of information or materials, the Parties shall meet and confer in good faith with respect to such concerns. The Court shall resolve any disputes that cannot be resolved by agreement. Settling Defendant's production of non-privileged but confidential, proprietary, or commercially sensitive information shall be subject to a mutually acceptable protective order (if cooperation materials are provided when no discovery stay is in place) or confidentiality agreement (if cooperation materials are provided when a discovery stay is in place) to be negotiated by the Parties in good faith. Settling Defendant makes no representations regarding the existence, content, legibility, usefulness, admissibility, or evidentiary value of any cooperation materials or information except, however, Settling Defendant agrees that, upon request by Class Plaintiffs, it will stipulate to the authenticity and admissibility for the purposes of the Action only.

(i) Class Plaintiffs agree to use cooperation materials and information solely to evaluate and prosecute claims in this Action against the Non-Settling Defendants. Class Plaintiffs shall return or certify the destruction of all cooperation materials and information if the Settlement Agreement is denied final Court approval, if the Settlement Class is not certified, if this Action is finally resolved in its entirety, or if the Settlement Agreement is terminated under Paragraph 10(a).

(j) Settling Defendant will take no adverse position with respect to certification of the Settlement Class, but reserves the right to contest certification of a Litigation Class, to defend all claims in the Action, and to assert any claims, rights and defenses in the Action if the Settlement Agreement is denied final Court approval, if the Settlement Class is not certified, if this Action is finally resolved in its entirety, or if the Settlement Agreement is terminated under Paragraph 10(a).

#### **14. MISCELLANEOUS**

(a) All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein and are material and integral parts hereof.

(b) The Parties agree that the amount paid and the other terms of the settlement were negotiated at arms-length in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

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

(d) The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering all orders relating to matters addressed in this Agreement and enforcing the terms of this Agreement.

(e) For the purpose of construing or interpreting this Agreement, the Parties agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

(f) This Agreement shall constitute the entire, complete, and integrated agreement between the Parties pertaining to the settlement of the Action against Settling Defendant and supersedes any and all prior negotiations and agreements, and is not subject to any condition not explicitly provided for in this Agreement itself. All of the Exhibits to this Agreement are explicitly provided for in this Agreement itself, material and integral parts of it and are incorporated by reference as if fully set forth herein. All terms of this Agreement are contractual and not mere recitals. In entering into and executing this Agreement, each of the Parties respectively warrants that it is acting upon its respective independent judgments and upon the advice of its respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person, other than the warranties and representations expressly made in this Agreement. The terms of this Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

(g) The terms of this Agreement are not severable, but are interdependent and have been agreed to only as a whole by the Parties.

(h) This Agreement may be modified or amended only by a writing executed by Co-Lead Counsel, on behalf of Class Plaintiffs and the Settlement Class Members, and Settling Defendant's Counsel, on behalf of Settling Defendant.

(i) All terms of this Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(j) The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

(k) Each of the Released Parties is intended to be and is a third-party beneficiary of this Agreement and is authorized to enforce the provisions of this Agreement, including without limitation the release of Released Claims against the Released Parties and covenant not to sue the Released Parties, and such other provisions of this Agreement as are applicable to each Released Party.

(l) Settling Defendant, Class Plaintiffs, and Co-Lead Counsel hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement, including, without limitation, any suit, action, proceeding or dispute relating to the release provisions herein.

(m) It is anticipated that Co-Lead Counsel and Class Plaintiffs will eventually submit to the Court a plan of distribution with respect to any funds recovered by them, through settlements or judgments, on behalf of the Settlement Class members, including distribution of the Settlement Fund at some time following the Effective Date. A plan of distribution is not a term of this Agreement, and it is not a condition of this Agreement that any particular plan of

distribution be approved. Any plan of distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a plan of distribution shall not affect the validity or finality of the proposed settlement. Settling Defendant shall have no responsibility, obligations, or liabilities whatsoever with respect to any plan of distribution or implementation thereof, or with respect to any other administration or distribution of the Settlement Fund.

(n) This Agreement may be executed in counterparts by or on behalf of the Parties, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing and enforcing this Agreement.

(o) Class Plaintiffs and Settling Defendant acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so.

(p) Any notice or materials to be provided to the Class Plaintiffs or Co-Lead Counsel pursuant to or relating to this Agreement shall be sent to Daniel L. Brockett and Merrill G. Davidoff, at the addresses listed below, and any notice or materials to be provided to Settling Defendant pursuant to or relating to this Agreement shall be sent to Damien Marshall, at the address listed below.

(q) Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval, and the undersigned Co-Lead Class Counsel represent that they are authorized to execute this Agreement on behalf of Class Plaintiffs and, subject to Court Approval, enter into this Agreement on behalf of the Settlement Class.

(r) If Plaintiffs reach any other settlements in this Action (“Other Settlements”), in the absence of a material change in circumstances due to an amendment of the complaint, a ruling by the Court, a change in the law, or some other event, discovery, or defense argument that in Plaintiffs’ counsel’s good-faith opinion alters the scope or perceived value of the Action, the Settling Parties agree that (a) the class definition, release, and settlement termination provisions applied to HSBC shall be no less favorable than the corresponding provisions applicable to the Other Settlements, and (b) for a period of four months from execution of this agreement, Lead Counsel shall not enter into Other Settlements that provide for a settlement amount of less than \$42 million per Defendant, provided, however, that (i) the \$42 million floor shall be adjusted downward (but not upward) for the other settling Defendants’ relative market share as compared to HSBC’s during the period of January 1, 2008, and June 30, 2013, and (ii) the monetary limitation on settlement shall not apply to any agreement reached with Defendant LGMF, which is in a different financial position than the other Defendants.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

***On behalf of Class Plaintiffs and the Settlement Class:***

***On behalf of HSBC Bank plc:***

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*Counsel for Defendant HSBC Bank plc*

*Counsel for Class Plaintiffs and Interim Co-  
Lead Counsel*

**EXHIBIT A**



**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 PRELIMINARILY APPROVING THE HSBC SETTLEMENT  
AGREEMENT, CERTIFYING THE SETTLEMENT CLASS, AND APPOINTING  
CLASS COUNSEL AND CLASS REPRESENTATIVES  
FOR THE SETTLEMENT CLASS**

WHEREAS, the Action<sup>1</sup> is pending before this Court;

WHEREAS, Plaintiffs<sup>2</sup> have entered into and executed a Stipulation and Agreement of Settlement (the “Settlement Agreement”) with HSBC Bank plc (the “Settling Defendant” and, together with Plaintiffs, “the Settling Parties”), which if finally approved by the Court, will result in the settlement of all claims against the Settling Defendant;

WHEREAS, in full and final settlement of the claims asserted against it in this Action, the Settling Defendant has agreed to pay \$42,000,000 (the “Aggregate Settlement Funds”), and to provide discovery that is likely to assist with the continued prosecution of the Action as set forth in the Settlement Agreement;

WHEREAS, Plaintiffs, having made an application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement Agreement, which sets forth the terms and conditions of the settlement of the Action against the Settling Defendant and for dismissal of the Action against the Settling Defendant with prejudice upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, Plaintiffs have sought, and Settling Defendant has agreed not to object to, the certification of the Settlement Class (as defined below) solely for settlement purposes;

WHEREAS, Plaintiffs have requested that Lead Counsel be appointed as settlement class counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;

WHEREAS, Plaintiffs have requested that they be appointed class representatives of the Settlement Class;

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<sup>1</sup> As defined in the Settlement Agreement, the “Action” means the above-captioned litigation pending in the United States District Court for the Southern District of New York and any other actions that may be transferred or consolidated into this litigation.

<sup>2</sup> As defined in the Settlement Agreement, “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.

WHEREAS, the Settling Parties have agreed to the entry of this [Proposed] Order Preliminarily Approving the HSBC Settlement Agreement, Certifying the Settlement Class, and Appointing Class Counsel and Class Representatives for the Settlement Class (the “Order”); and

WHEREAS the Court has read and considered the Settlement Agreement and the exhibits annexed thereto and other documents submitted in connection with Plaintiffs’ Motion for Preliminary Approval of the Settlement Agreement, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

**I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

2. Pursuant to Fed. R. Civ. P. 23(e)(1)(B), based on the showing that the Court will likely be able to approve the proposed settlement under Rule 23(e)(2) and certify the class for purposes of judgment on the proposed settlement, the Court hereby preliminarily approves the Settlement Agreement, subject to further consideration at the Fairness Hearing described below. The Court preliminarily finds that the settlement encompassed by the Settlement Agreement satisfies the requirements of Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure and due process so that an appropriate notice of the Settlement Agreement should be given, subject to the Court’s approval of a notice plan as provided in this Order.

**II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, solely for settlement purposes, a Settlement Class defined as follows:

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, his or 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.

4. Solely for purposes of the settlement, the Court preliminarily finds that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied, as follows: (a) the members of the Settlement Class are so numerous that joinder of all members of the Settlement Class is impracticable; (b) questions of law and fact common to the Settlement Class predominate over any individual questions; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering (i) the interests of members of the Settlement Class in individually controlling the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by members of the Settlement Class; (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and (iv) the likely difficulties in managing this Action as a class action.

5. The Court's certification of the Settlement Class as provided herein is without prejudice to, or waiver of the rights of any Non-Settling Defendant to contest certification of any other class proposed in this Action. The Court's finding in this Order shall have no effect on the Court's ruling on any motion to certify any class in this Action; and no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class.

6. If the Effective Date does not occur because of the failure of a condition that affects the Settlement Agreement, this conditional certification of the Settlement Class shall be

deemed null and void as to the Settling Parties without the need for further action by the Court or the Settling Parties. In such circumstances, the Settling Parties shall retain their rights to seek or to object to certification of this litigation as a class action under Rule 23 of the Federal Rules of Civil Procedure, or under any other state or federal rule, statute, law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any other grounds.

### **III. CLASS COUNSEL AND CLASS REPRESENTATIVES**

7. The law firms of Quinn Emanuel Urquhart & Sullivan, LLP and Berger & Montague, P.C. are preliminarily appointed, solely for settlement purposes, as Lead Counsel for the Settlement Class.

8. Plaintiffs are preliminarily appointed, solely for settlement purposes, as class representatives for the Settlement Class.

### **IV. PLAN OF DISTRIBUTION, NOTICE, AND FAIRNESS HEARING**

9. Contemporaneously with this [Proposed] Order, Plaintiffs are submitting for the Court's approval a proposed notice plan for purposes of advising members of the Settlement Class, among other things, of their right to object to the Settlement Agreement, their right to exclude themselves from the Settlement Class, the procedure for submitting a request for exclusion, the time, date, and location of the Settlement Fairness Hearing to be scheduled by the Court, and their right to appear at the Settlement Fairness Hearing.

10. Contemporaneously with this [Proposed] Order, Plaintiffs are submitting for the Court's approval a proposed plan of allocation of the Aggregate Settlement Funds (and including all interest and income earned thereon after being transferred to the Escrow Account).

11. At or after the Settlement Fairness Hearing, the Court shall determine whether the Settlement Agreement, the proposed plan of allocation, any application for service awards, and any application for attorneys' fees and/or expenses for Plaintiffs' Counsel should be finally approved.

**V. OTHER PROVISIONS**

12. The notice requirements of the Class Action Fairness Act, 28 U.S.C. §1715, have been met.

13. The Court approves Plaintiffs' designation of Heffler Claims Group as the Claims Administrator. Absent further order of the Court, the Claims Administrator shall have such duties and responsibilities as are set forth in the Settlement Agreement.

14. The Court approves Plaintiffs' designation of The Huntington National Bank as Escrow Agent. Absent further order of the Court, the Escrow Agent shall have such duties and responsibilities in such capacity as are set forth in the Settlement Agreement.

15. The Court approves the establishment of an escrow account under the Settlement Agreement as Qualified Settlement Funds ("QSFs") pursuant to Internal Revenue Code § 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formulation or administration of the QSFs. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and further order(s) of the Court.

16. All reasonable expenses incurred in identifying and notifying potential Settlement Class Members as well as administering the Aggregate Settlement Funds shall be paid, as set forth herein and in Paragraph 8(a) of the Settlement Agreement. In the event the Court does not approve the Settlement Agreement or if the Settlement Agreement otherwise fails to become effective, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred or disbursed pursuant to Paragraph 8(a) of the Settlement Agreement.

17. In the event that the Settlement Agreement is terminated, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Settling Parties shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, such parties shall proceed in all respects as if such Settlement Agreement and any related orders had not been entered, and such Settlement

Agreement (including any amendment(s) thereto) and this Order shall be null and void, of no further force or effect, and without prejudice to any such Settling Parties, and may not be introduced as evidence or referred to in any actions or proceedings by any Person; provided, however, that in the event of termination of a Settlement Agreement, Paragraphs 3(b), 8(g), 10(b), 13(i), and 13(j) of such Settlement Agreement shall nonetheless survive and continue to be of effect and have binding force. Within fifteen (15) days following any notice of termination being delivered to the Escrow Agent, the Settlement Fund shall be returned in its entirety to Settling Defendant (including any accrued interest thereon), less any Taxes due and expenditures made of notice and administrative costs pursuant to Paragraph 8 of the Settlement Agreement, if any. At the request of Settling Defendant's Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Settling Defendant.

18. The Settling Defendant has denied and continues to deny each and all of the claims and allegations of wrongdoing made by Class Plaintiffs in the Action and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action. As such, nothing in the Settlement Agreement constitutes an admission by the Settling Defendant as to the merits of the allegations made in the Action, the validity of any defenses that could be or have been asserted, or the appropriateness of certification of any class other than the Class under Federal Rule of Civil Procedure 23 for purposes of settlement only.

19. All proceedings in the Action with respect to the Settling Defendant are stayed until further order of the Court. Such stay does not apply, however, to the extent actions are necessary to implement the terms of the Settlement Agreement or comply with their terms.

20. All Class Members shall be bound by all determinations and judgments in the Action concerning the settlement set forth in the Settlement Agreement, whether favorable or unfavorable to the Settlement Class.

21. Any member of the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. Any

member of the Settlement Class who does not enter an appearance will be represented by Lead Counsel.

IT IS SO ORDERED.

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

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



# **EXHIBIT B**

**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)

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL**

Hon. Valerie E. Caproni

This matter came before the Court for hearing pursuant to Plaintiffs' application for final approval of the settlement set forth in the Stipulation and Agreement of Settlement with the HSBC Bank plc, dated November \_\_, 2020 (the "Settlement Agreement"). The Court has considered all papers filed and proceedings held herein and is fully informed of these matters. For good cause shown, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used, but not defined, herein shall have the same meanings as in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. The notice provisions of the Class Action Fairness Act, 28 U.S.C. §1715, have been satisfied.

4. Based on the record before the Court, including the Preliminary Approval Order, the submissions in support of the settlement between Plaintiffs,<sup>1</sup> for themselves individually and on behalf of each Settlement Class Member in the Action, and HSBC Bank plc (the "Settling Defendant" and together with Plaintiffs, the "Settling Parties"), and any objections and responses thereto, pursuant Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure the Court hereby certifies solely for settlement purposes the following Settlement Class:

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

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<sup>1</sup> 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.

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, his or 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.

5. The requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied, as follows: (a) the members of the Settlement Class are so numerous that joinder of all members of the Settlement Class in the Action is impracticable; (b) questions of law and fact common to the Settlement Class predominate over any individual questions; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering (i) the interests of members of the Settlement Class in individually controlling the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by members of the Settlement Class; (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and (iv) the likely difficulties in managing this Action as a class action.

6. The law firms of Quinn Emanuel Urquhart & Sullivan, LLP and Berger & Montague, P.C. are appointed, solely for settlement purposes, as Lead Counsel for the Settlement Class.

7. Plaintiffs 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 are appointed, solely for settlement purposes, as class representatives for the Settlement Class.

8. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court grants final approval of the Settlement set forth in the Settlement Agreement on the basis that the settlement is fair, reasonable, and adequate as to, and in the best interests of, all Settlement Class Members, and is in compliance with all applicable requirements of the Federal Rules of Civil Procedure. In reaching this conclusion, the Court considered the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000). Moreover, the Court concludes that:

a. The Settlement set forth in the Settlement Agreement was fairly and honestly negotiated by counsel with significant experience litigating antitrust class actions and other complex litigation and is the result of vigorous arm's-length negotiations undertaken in good faith;

b. This Action is likely to involve contested and serious questions of law and fact, such that the value of an immediate monetary recovery outweighs the mere possibility of future relief after protracted and expensive litigation;

c. Success in complex cases such as this one is inherently uncertain, and there is no guarantee that continued litigation would yield a superior result; and

d. The Settlement Class Members' reaction to the Settlement set forth in the Settlement Agreement is entitled to great weight.

9. Except as to any individual claim of those Persons (identified in Exhibit 1 hereto) who have validly and timely requested exclusion from the Settlement Class ("Opt-Outs"), the Action and all claims contained therein, as well as all of the Released Claims, against HSBC Bank plc by the Plaintiffs and Releasing Parties are dismissed with prejudice. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement and the orders of this Court.

10. The Opt-Outs identified in Exhibit 1 hereto have timely and validly requested exclusion from the Settlement Class and are excluded from the Settlement Class for all purposes, are not bound by this Final Judgment and Order of Dismissal, and may not make any claim or receive any benefit from the Settlement Agreement or any other settlement being jointly administered with this Settlement Agreement from which members of Settlement Class are entitled to recover.

11. Upon the Effective Date: (i) Plaintiffs, each of the Settlement Class Members, and all Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged against HSBC Bank plc and the Released Parties (whether or not such Plaintiff, Settlement Class Member, or Releasing Party executes and delivers a Proof of Claim and Release form) any and all Released Claims (including, without limitation, Unknown Claims); and (ii) Plaintiffs, each of the Settlement Class Members, and all Releasing Parties, and anyone claiming through or on behalf of them, shall be permanently barred and enjoined from the commencement, assertion, institution, maintenance or prosecution of any of the Released Claims against HSBC Bank plc or any Released Party in any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or forum of any kind. This Final Judgment and Order of Dismissal shall not affect in any way the right of Plaintiffs or Releasing Parties to pursue claims, if any, outside the scope of the Released Claims. Claims to enforce the terms of the Settlement Agreement are not released.

12. Upon the Effective Date, HSBC Bank plc: (i) shall be deemed to have, and by operation of the Judgment and Order of Dismissal shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs, each and all of the Settlement Class Members, and Plaintiffs' Counsel from any and all Settling Defendant's Claims (including, without limitation, Unknown Claims); and (ii) shall be permanently barred and enjoined from the commencement, assertion, institution, maintenance or prosecution of Settling Defendant's Claims against Class Plaintiffs and Co-Lead Counsel in any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or forum of any kind. This Final Judgment and Order

of Dismissal shall not affect in any way the right of HSBC Bank plc to pursue claims, if any, outside the scope of the Released Defendants' Claims. Claims to enforce the terms of the Settlement Agreement are not released.

13. All rights of any Settlement Class Member against (i) any of the other Defendants currently named in the Action; (ii) any other Person formerly named in the Action; or (iii) any alleged co-conspirators or any other Person subsequently added or joined in the Action, other than HSBC Bank plc or the Released Parties with respect to Released Claims are specifically reserved by Plaintiffs and the Settlement Class Members. To the extent permitted and/or authorized by law, all transactions relating to or arising from entry into, receipt of payments on, or terminations of any Gold Investments with HSBC Bank plc, remain in the case against (i) any of the other Defendants currently named in the Action; (ii) any other Person formerly named in the Action; or (iii) any alleged co-conspirators or any other Person subsequently added or joined in the Action, other than HSBC Bank plc and the Released Parties, as a potential basis for damage claims and may be part of any joint and several liability claims.

14. The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort and the publication of the Summary Notice satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

15. The Plan of Allocation submitted by Plaintiffs is approved as fair, reasonable, and adequate.

16. Neither the Settlement Agreement nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim, or of any wrongdoing or liability of HSBC Bank plc; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of HSBC Bank plc in any civil, criminal, or administrative proceeding in any court,

administrative agency, or other tribunal. The Settlement Agreement may be filed in an action to enforce or interpret the terms of the Settlement Agreement, the Settlement contained therein, and any other documents executed in connection with the performance of the Settlement embodied therein. HSBC Bank plc may file the Settlement Agreement and/or this Final Judgment and Order of Dismissal in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. Without affecting the finality of this Final Judgment and Order of Dismissal in any way, this Court retains continuing and exclusive jurisdiction over: (a) implementation of the Settlement set forth in the Settlement Agreement; (b) any award, distribution, or disposition of the Settlement Fund, including interest earned thereon; (c) hearing and determining applications for attorneys' fees, costs, expenses including expert fees, and incentive awards; and (d) all Settling Parties, Released Parties, and Releasing Parties for the purpose of construing, enforcing, and administering the Settlement Agreement.

18. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Final Order and Judgment of Dismissal shall be rendered null and void and shall be vacated. In such event, all orders entered and releases delivered in connection herewith shall be null and void, and the Settling Parties shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Settling Parties shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered; provided, however, that in the event of termination of the Settlement, Paragraphs 3(b), 8(g), 10(b), 13(i), and 13(j) of the Settlement Agreement shall nonetheless survive and continue to be of effect and have binding force.



19. The Settling Parties are directed to consummate the Settlement according to the terms of the Settlement Agreement. Without further Court order, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

20. There is no just reason for delay in the entry of this Final Judgment and Order of Dismissal. The Clerk of the Court is directed to enter this Final Judgment and Order of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure immediately.

IT IS SO ORDERED.

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

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

**EXHIBIT C**

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)

**OPT-OUT TERMINATION PROVISION**

Hon. Valerie E. Caproni

Pursuant to Paragraph 10(b) of the Settlement Agreement, if, prior to the **Settlement Fairness** Hearing, one or more putative members of the Settlement Class timely exercise their rights to be excluded from the Settlement Class (“Opt-Outs”), the processes set forth herein shall apply.

Plaintiffs shall provide a list of those Persons, if any, who have filed a request to be excluded from the Settlement Class (“Request for Exclusion”), together with all such Requests for Exclusion, to counsel for Settling Defendant within twenty (20) days of the deadline set by the Court for the filing of Requests for Exclusion. If, after Settling Defendant receives the list of the Opt-Outs, it decides to request some relief, the Settling Parties shall first meet and confer in good faith. If the Settling Parties are unable to reach agreement and Settling Defendant asserts that the total Requests for Exclusion represent a material portion of transactions during the Settlement Class Period that would be eligible for compensation under the Settlement, and their exclusion would materially reduce the value of the Settlement to Settling Defendant (the “Materiality Threshold”), then Settling Defendant may present the issue of whether the total Requests for Exclusion meet the Materiality Threshold and, if so, the issue of the appropriate remedy to an independent and neutral mediator (the “Mediator”) to be selected in good faith by mutual agreement of the Settling Parties. The Mediator’s determinations shall be binding on the Settling Parties.

The Mediator shall have sole discretion to determine what, if any, reduction remedy is warranted due to a material impact on the value of the Settlement to Settling Defendant by the Requests for Exclusion. If the Mediator in her sole discretion selects some reduction as the appropriate remedy, she may not provide for a reduction in the Settlement Amount greater than a one-to-one ratio: that is, she may not reduce the Settlement Amount by more than the Opt-Outs would likely have been eligible to receive collectively (but for their exclusion) from the Settlement Fund (assuming all putative class members submitted claims). The Mediator is not required to grant any reduction or to impose a one-to-one ratio if she determines no such reduction is appropriate.

In the event the Mediator determines some reduction is appropriate, the amount of the reduction shall be paid to Settling Defendant from the Settlement Fund.

In the alternative to seeking a reduction, Settling Defendant may seek to terminate the Settlement if, upon application from the Settling Defendant, the Mediator determines in her sole discretion that the reduction remedy is not adequate to preserve the essential benefits of the Settlement to Settling Defendant. Any application by Settling Defendant for termination relief under this Paragraph must be made in writing within twenty (20) days following the receipt from Plaintiffs of the list of Opt-Outs, or within seven (7) days of a determination on the reduction remedy by the Mediator, whichever is later. If termination relief is granted to Settling Defendant, any termination shall be effected solely in accordance with the termination provisions of this Agreement.

Promptly after receipt of any such materials, Lead Counsel shall deliver to Settling Defendant's counsel copies of all (i) Requests for Exclusion received (including all information provided by the Persons or entities making the requests concerning their transactions and/or potential claims), (ii) information the Claims Administrator possesses concerning the volume of trading within the scope of the Released Claims by Persons who have timely requested exclusion, and (iii) written revocations of Requests for Exclusion.

The Settling Parties and their respective counsel agree that they will make no effort to suggest, solicit, facilitate or otherwise encourage potential Settlement Class Members to exclude themselves.

# **EXHIBIT 2**

**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.

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.

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

**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”):

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
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**Fairness Hearing and Right to Object.** The Court has scheduled a public hearing on final approval of the Settlements for October 7, 2021 [~~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] August 6, 2021, 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] August 23, 2021.

**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] August 6, 2021. 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 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

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

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]~~August 23, 2021.

*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]~~August 6, 2021 to the following mailing addresses:

<i>Plaintiffs' Interim Co-Lead Counsel</i>	
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
<i>Deutsche Bank Counsel</i>	<i>HSBC Counsel</i>
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}~~ August 6, 2021.**

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. 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.

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

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 October 7, 2021, \_\_\_\_\_, 2021 at 10:00 \_\_\_\_\_ 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. The Court currently expects to allow participants to attend using the following dial-in information: 1-888-363-4749, using the access code 3121171, and the security code 2548. 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. The process for attending remotely may also change without further notice. However, — as soon as practicable after any change in the scheduled date and time or remote-access procedures, 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] August 6, 2021, 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, 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 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 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 [August 23, 2021{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 [August 6, 2021{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 [August 6, 2021{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 [October 7, 2021, at 10:00 a.m. {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. [The Court currently expects to allow participants to attend using the following dial-in information: 1-888-363-4749, using the access code 3121171, and the security code 2548.](#) 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, [or the process for attending remotely](#), 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**

**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\_\_]~~ August 23, 2021 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.**
- **DO NOT INCLUDE TRANSACTIONS IN SHARES OF GOLD ETES.**

<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. NON-ETF 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. Submissions for Other Transactions tied to shares of gold ETFs are to be separately stated in table 3 further below. In this table 2, list all non-ETF share Other Transaction sales that you had annually by year from January 1, 2004 through June 30, 2013 inclusive on the lines below (must be documented).

~~**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.~~

~~**3.** 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<sup>2</sup>.
- ~~ALL ETF TRANSACTIONS ARE “OTHER TRANSACTIONS.” DO NOT INCLUDE ETF TRANSACTIONS OTHER THAN “GLD” OR “IAU” ETF TRANSACTIONS. DO NOT INCLUDE TRANSACTIONS IN SHARES OF GOLD ETES.~~

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		

<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.

2012		
January 1, 2013 through June 30, 2013		

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

**3. ETF OTHER TRANSACTIONS:** For all shares in the gold ETFs “GLD” or “IAU,” list all sales of that you had annually by year from January 1, 2004 through June 30, 2013 inclusive on the lines below (must be documented). If you believe other ETF shares should qualify as “gold ETFs” as described in footnote 1 of the Plan of Allocation, please contact the Claims Administrator.

- **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.**
- **ONLY INCLUDE TRANSACTIONS FOR “GLD” OR “IAU” ETFS BELOW.**

<u>Year of Transaction(s)</u>	<u>Annual Transaction Amount in US \$<sup>3</sup></u>	<u>Type of Supporting Documentation Used to Calculate My Claim</u>
<u>2004</u>		
<u>2005</u>		
<u>2006</u>		
<u>2007</u>		
<u>2008</u>		
<u>2009</u>		
<u>2010</u>		
<u>2011</u>		

<sup>3</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.

<u>2012</u>		
<u>January 1, 2013</u> <u>through</u> <u>June 30, 2013</u>		

[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 5**

**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(s)**” 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. No ETF-share related transactions shall qualify as “Fix-Linked Transactions.” 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 may have, due to a prior court ruling or otherwise. Each transaction is only assigned one Litigation Multiplier, as follows. 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 transactions arising out of shares in gold exchange-traded funds (“ETFs”) for the entire class period, and all other non-ETF-share claims arising out of claims arising out of transactions occurring after December 31, 2012, will be .25. The Litigation Multiplier for claims arising out of non-ETF-share transactions occurring from January 1, 2004, through December 31, 2009, will be 0.5. The Litigation Multiplier for non-ETF-share claims arising out of transactions occurring from January 1, 2010, to ~~June 30~~December 31, 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(s)**” 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. As also provided by Part II of the claim form, although sales that relate to the sale of gold ETF shares are also defined as Other Transactions, they should be listed separately from all other qualifying Other Transactions, 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.

“**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 Transactions, non-ETF-share Other Transactions, and ETF-share ~~Other Transactions~~), multiplied by the applicable Litigation Multiplier.

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

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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. Class Members may contact the Claims Administrator with other gold ETF share transactions they believe should qualify for claims. To qualify, generally the ETF should invest only in gold bullion and the performance of its shares should generally track the price of gold bullion, less the costs of its operations. For the sake of clarity, no ETF share transaction qualifies as a “Fix-Linked Transaction.”



## **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 the annual Gross Transaction Amounts separately for Fix-Linked Transactions, non-ETF-share related Other Transactions, and ETF-share related ~~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 each the ~~Gross Transactions~~ Transaction amounts Amount. 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 if after the Claim Form is was 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 Transaction Amounts separately, by year, for the Claimant's Fix-Linked Transactions, the Claimant's non-ETF-share Other Transactions, and the Claimant's ETF-share Other Transactions ~~and the Claimant's Other Transactions~~.

The Transaction Claim Amount for each transaction type is the Gross ~~Transactions~~ Transaction Amount multiplied by the applicable Litigation Multiplier for that year and product type.

#### 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~~Transactions~~ Amounts 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 this Plan of Allocation, as 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.

**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 \_\_\_\_\_, 20201:

**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.~~

~~5. Within 7 days of Plaintiffs' certification, absent any Court order to the contrary, Plaintiffs' notice program shall begin (the "Notice Date"). Within 30 days of this order (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") Plaintiffs' February 5, 2021, submissions, to begin being mailed by United States first class mail (or its equivalent abroad),~~

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 (i.e., 60 days after this order).

6. As the objection and opt-out date is not until August 6, 2021, if the Settlement Administrator or anyone else who has agreed to provide notice assistance requires additional time, the Court will consider such requests for good cause shown. For the sake of clarity, any such extension should not delay the commencement of Notice by those who are ready to proceed, and would not absent further order of the Court impact any other deadline associated with the Settlements.

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. ~~As soon as is practicable following~~~~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~~Declaration of Daniel Brockett, dated December 7, 2020 (“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 August 6, 2021~~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 (or its equivalent abroad) to the Settlement Administrator at the address in the mailed notice and received no later than August 6, 2021-95 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 electronically submitted or postmarked no later than August 23, 2021 ~~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 July 9, 2021~~60 days after the Notice Date~~, and any reply papers (which may include a response to objections, if any) shall be filed by September 16, 2021~~14 days after the Objection Deadline~~.

26. A hearing will be held on a date of the Court's convenience on or after October 7, \_\_\_\_\_, 2021 at 10:00 a.m. 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, along with expected dial-in information, 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



# **EXHIBIT 7**

## **Special Notice to Customers of Société Générale**

This special notice accompanies the enclosed Notice of Proposed Class Action Settlement and Class Members' Rights (the "Notice") and Proof of Claim and Release Form that has been sent to you as a potential member of the Settlement Class. It is being sent to you because records indicate that you were a Société Générale customer and engaged in certain transactions in gold instruments with Société Générale during the time period covered by the Settlement Agreements between Plaintiffs and Deutsche Bank and HSBC (the "Settlement Agreements"). To be clear, Société Générale is not a party to the Settlement Agreements.<sup>1</sup>

As a customer of a French bank, you have certain secrecy rights under Article L. 511-33 of the French Monetary and Financial Code (the "French Banking Secrecy Law"), which prohibits, subject to certain exceptions, the disclosure of data or documents that reveal the identity of customers and information about their accounts or transactions. The French Banking Secrecy Law protects information of both corporate and individual customers. These protections are separate and distinct from the privacy rights that individuals (and only individuals) have under the European Union's General Data Protection Regulation 2016/679 (the "GDPR"), which protects, subject to certain exceptions, the privacy of the "personal data" of an identified or identifiable natural person. In the course of the Gold Fixing litigation, Société Générale has complied with both of these provisions and taken steps to protect the confidentiality and privacy of its customers and affiliated individuals according to Société Générale's data protection notices available at <http://global.societegenerale.com/en/gdpr/>.

Although the enclosed Notice invites potential Settlement Class Members to submit to the Settlement Administrator, Heffler Claims Group, any inquiries concerning the Notice, the Proof of Claims Form, or any other questions that they may have concerning the Settlement Agreements, please note that *if you communicate with the Settlement Administrator and disclose your identity as a Société Générale customer and/or information about your transactions, you will be giving up (or "waiving") your rights under the French Banking Secrecy Law as outlined above and you may be disclosing personal data to the Settlement Administrator.* This waiver of French Banking Secrecy Law rights and potential disclosure of your personal data would apply no matter what method you use to communicate with Heffler Claims Group, including by telephone, email, post or courier service or by contacting the Settlement Administrator's website. If you disclose personal data to the Settlement Administrator, (i) the Settlement Administrator, and not Société Générale, will be the data controller of the personal data and Société Générale will not be responsible for their processing under the GDPR and (ii) you will transfer personal data outside the European Union. You may then exercise your rights on personal data with the Settlement Administrator.

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<sup>1</sup> This Special Notice has been prepared by Société Générale and may not reflect the views of the U.S. Court, Plaintiffs or their Co-Lead Counsel.

Accordingly, *before* you communicate with the Settlement Administrator, please consider carefully whether you are willing to waive your rights under the French Banking Secrecy Law and to disclose your personal data. If you decide to communicate with the Settlement Administrator regarding any questions you have concerning the Notice, Proof of Claims Form, or anything else concerning the Settlement Agreements, please review and sign the Waiver and Acknowledgment Form and return a copy of it to Heffler Claims Group together with (or separately, in advance of) your initial communication to Settlement Administrator. Please retain a copy of the executed Waiver and Acknowledgment Form for your own records.

**Confidentiality Waiver and Acknowledgment Form for Customers of Société Générale**

By contacting and submitting queries to the Settlement Administrator concerning the Settlements, (i) I (we) consent to the disclosure of and waive any protections provided by applicable bank secrecy law (including the French Banking Secrecy Law) and (ii) I (we) acknowledge disclosing personal data outside the European Union to the Settlement Administrator 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.

\_\_\_\_\_  
Signature of Account Owner

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

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Date