

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

**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 12 day of February, 2021:

**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. Within 30 days of this order (the “Notice Date”), 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 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 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 Declaration of Daniel Brockett, dated December 7, 2020 (“Brockett Declaration”), with the changes in Plaintiffs’ February 5, 2021 submissions.

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 (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. 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 (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.

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, and any reply papers (which may include a response to objections, if any) shall be filed by September 16, 2021.

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. 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: February 12, 2021

A handwritten signature in blue ink, reading "Valerie Caproni". The signature is written in a cursive style with a horizontal line underneath it.

HON. VALERIE E. CAPRONI  
UNITED STATES DISTRICT JUDGE