

**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

**UPDATED PLAN OF ALLOCATION FOR DEUTSCHE BANK AND HSBC  
SETTLEMENTS**

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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”** (also referred to as the “Settlement Administrator”) means Kroll Settlement Administration.

**“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. 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 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 December 31, 2012, will be 1.0. The Litigation Multiplier for positions opened and closed the same day (“Day-Trade Other Transactions”) will be .25.

**“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. As also provided by Part II of the claim form, although transactions of other qualifying types that were opened and closed the same day are also defined as Other Transactions, they should be listed separately from all other qualifying Other Transactions. As also provided by Part II of the Claim Form, all 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 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, ETF-share Other Transactions, Day-Trade 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, “GLD,” “IAU,” “SGOL,” “PHYS,” “GTU,” and “PHAU” 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 provide 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 Amount separately for Fix-Linked Transactions, non-ETF-share related Other Transactions, ETF-share related Other Transactions, and Day-Trade Other Transactions as part



of the Claim Form. If a Settlement Class Member is unable or unwilling to separate its Day-Trade Other Transactions from its positions held overnight, it may submit all such otherwise qualifying amounts as Day-Trade Other Transactions.

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 Gross Transaction 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 the Claim Form 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 Amount separately, by year, for the Claimant's Fix-Linked Transactions, the Claimant's non-ETF-share Other Transactions, the Claimant's ETF-share Other Transactions, and the Claimant's Day-Trade Other Transactions.

The Transaction Claim Amount for each transaction type is the Gross 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 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.