

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

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

This Document Relates To All Actions

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

Hon. Valerie E. Caproni

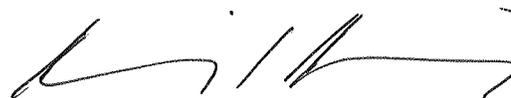
**DECLARATION OF MERRILL G. DAVIDOFF
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
THE SETTLEMENT AGREEMENT WITH DEUTSCHE BANK AG**

Pursuant to 28 U.S.C. § 1746, I, Merrill G. Davidoff, declare under penalty of perjury that the following is true to the best of my knowledge and belief:

1. I am a Managing Shareholder of the law firm Berger & Montague, P.C. My firm serves as court-appointed interim Co-Lead Counsel in this action.
2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of the Settlement Agreement with Deutsche Bank AG.
3. Attached hereto as Attachment A is a true and correct copy of the Settlement Agreement between Plaintiffs and Deutsche Bank AG.

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

Executed on December 1, 2016



Merrill G. Davidoff

ATTACHMENT A

**UNITED STATES DISTRICT COURT
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**STIPULATION AND AGREEMENT OF SETTLEMENT WITH
DEUTSCHE BANK AG**

1. RECITALS

This Stipulation and Agreement of Settlement (“Agreement”) is made and entered into on August 24, 2016 (“Execution Date”), between (i) on the one hand, Co-Lead Counsel in the Action, as defined below, on behalf of Plaintiffs American Precious Metals, Ltd.; Norman Bailey; Patricia Benvenuto; Michel de Chabert-Ostland; Edward R. Derksen; Frank Flanagan; Quitman D. Fulmer; Thomas Galligher; KPFF Investment, Inc.; Duane Lewis; Larry Dean Lewis; Kevin Maher; Robert Marechal; David Markun; Trieste Matte; Blanche McKennon; Kelly McKennon; Thomas Moran; Eric Nalven; Nando, Inc.; J. Scott Nicholson; Ken Peters; Santiago Gold Fund LP; Albert Semrau; Steven E. Summer; Richard White; White Oak Fund LP; 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 Deutsche Bank AG (“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, 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 American Precious Metals, Ltd.; Norman Bailey; Patricia Benvenuto; Michel de Chabert-Ostland; Edward R. Derksen; Frank Flanagan; Quitman D. Fulmer; Thomas Galligher; KPFF Investment, Inc.; Duane Lewis; Larry Dean Lewis; Kevin Maher; Robert Marechal; David Markun; Trieste Matte; Blanche McKennon; Kelly McKennon; Thomas Moran; Eric Nalven; Nando, Inc.; J. Scott Nicholson; Ken Peters; Santiago Gold Fund LP; Albert Semrau; Steven E. Summer; Richard White; White Oak Fund LP; 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.
- (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 sixty million United States dollars (\$60,000,000).
- (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 Deutsche Bank AG.
- (ii) “Settling Defendant’s Counsel” means Kirkland & Ellis 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) “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 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

**RELEASE, WHICH IF KNOWN BY HIM OR HER
MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.**

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.

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 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.

(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(j), and 13(k) 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, the sole remedy shall be to seek specific performance.

(b) Settling Defendant agrees to provide an attorney proffer as to Settling Defendant's conduct as it relates to the conduct alleged in the Action.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) Settling Defendant shall provide transactional and other data to assist in the administration of the notice and claims process as described in Paragraph 8(b).

(h) 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.

(i) 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 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.

(j) 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).

(k) 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 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 Robert Khuzami, at the address listed below.

(q) Each of the undersigned attorneys represents that he or she is fully authorized to 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, on behalf of the Settlement Class.

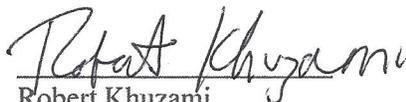
IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

On behalf of Class Plaintiffs and the Settlement Class:

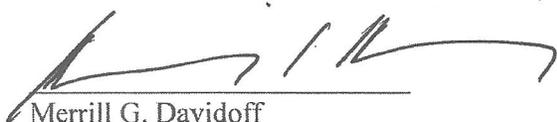
On behalf of Deutsche Bank AG:



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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)

**[PROPOSED] ORDER PRELIMINARILY
APPROVING THE DEUTSCHE BANK
SETTLEMENT AGREEMENT,
CERTIFYING THE SETTLEMENT
CLASS, AND APPOINTING CLASS
COUNSEL AND CLASS
REPRESENTATIVES FOR THE
SETTLEMENT CLASS**

Hon. Valerie E. Caproni

WHEREAS, the Action¹ is pending before this Court;

WHEREAS, Plaintiffs² have entered into and executed a Stipulation and Agreement of Settlement (the “Settlement Agreement”) with Deutsche Bank AG (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 \$60,000,000 (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;

¹ 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.

² As defined in the Settlement Agreement, “Plaintiffs” are American Precious Metals, Ltd.; Norman Bailey; Patricia Benvenuto; Michel de Chabert-Ostland; Edward R. Derksen; Frank Flanagan; Quitman D. Fulmer; Thomas Galligher; KPFF Investment, Inc.; Duane Lewis; Larry Dean Lewis; Kevin Maher; Robert Marechal; David Markun; Trieste Matte; Blanche McKennon; Kelly McKennon; Thomas Moran; Eric Nalven; Nando, Inc.; J. Scott Nicholson; Ken Peters; Santiago Gold Fund LP; Albert Semrau; Steven E. Summer; Richard White; White Oak Fund LP; and David Windmiller.

WHEREAS, the Settling Parties have agreed to the entry of this [Proposed] Order Preliminarily Approving the Deutsche Bank 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. Upon review of the record, the Court preliminarily finds that the Settlement Agreement resulted from arm’s-length negotiations between highly experienced counsel and falls within the range of possible approval. 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 raises no obvious reasons to doubt its fairness and provides a reasonable basis for presuming that 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: (a) the rights of any Non-Settling Defendant to contest certification of any other class proposed in this Action; or (b) the rights or arguments which have been or may be asserted by any Non-Settling Defendant in a motion to dismiss. 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

or on the Court's rulings concerning any Non-Settling Defendant's motion to dismiss; 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 or any Non-Settling Defendant's motion to dismiss.

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. At a later practicable date, Plaintiffs shall submit 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 Hearing to be scheduled by the Court, and their right to appear at the Settlement Hearing.

10. At a later practicable date, Plaintiffs shall also submit 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 Hearing, the Court shall determine whether the Settlement Agreement, the proposed Plan of Distribution, 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 [] 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(j), and 13(k) 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 Deutsche Bank AG, dated August 24, 2016 (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,¹ for themselves individually and on behalf of each Settlement Class Member in the Action, and Deutsche Bank AG (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

¹ Plaintiffs are American Precious Metals, Ltd.; Norman Bailey; Patricia Benvenuto; Michel de Chabert-Ostland; Edward R. Derksen; Frank Flanagan; Quitman D. Fulmer; Thomas Galligher; KPFF Investment, Inc.; Duane Lewis; Larry Dean Lewis; Kevin Maher; Robert Marechal; David Markun; Trieste Matte; Blanche McKennon; Kelly McKennon; Thomas Moran; Eric Nalven; Nando, Inc.; J. Scott Nicholson; Ken Peters; Santiago Gold Fund LP; Albert Semrau; Steven E. Summer; Richard White; White Oak Fund LP; and David Windmiller.

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.

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 American Precious Metals, Ltd.; Norman Bailey; Patricia Benvenuto; Michel de Chabert-Ostland; Edward R. Derksen; Frank Flanagan; Quitman D. Fulmer; Thomas Galligher; KPFF Investment, Inc.; Duane Lewis; Larry Dean Lewis; Kevin Maher; Robert

Marechal; David Markun; Trieste Matte; Blanche McKennon; Kelly McKennon; Thomas Moran; Eric Nalven; Nando, Inc.; J. Scott Nicholson; Ken Peters; Santiago Gold Fund LP; Albert Semrau; Steven E. Summer; Richard White; White Oak Fund LP; 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 Deutsche Bank AG 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 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 Deutsche Bank AG 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 Deutsche Bank AG 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, Deutsche Bank AG: (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 Deutsche Bank AG 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 Deutsche Bank AG 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 Deutsche Bank AG, 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 Deutsche Bank AG 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 Deutsche Bank AG; 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 Deutsche Bank AG 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. Deutsche Bank AG 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(j), and 13(k) 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 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.