

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

IN RE:

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

This Document Relates To All Actions

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

Hon. Valerie E. Caproni

**NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF
THE SETTLEMENT AGREEMENT
WITH HSBC BANK PLC**

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, the Declaration of Merrill G. Davidoff and the exhibits attached thereto, and the record herein, Plaintiffs, by and through their undersigned counsel, will respectfully move this Court, before the Honorable Valerie E. Caproni, United States District Judge for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, at a date and time to be determined by this Court, for entry of the [Proposed] Order Preliminarily Approving the HSBC Settlement Agreement, Certifying the Settlement Class, and Appointing Class Representatives for the Settlement Class, pursuant to Rule 23 of the Federal Rules of Civil Procedure. This [Proposed] Order has been agreed to by Plaintiffs and HSBC Bank plc and consists of:

- (1) preliminarily approving the Settlement set forth in the Settlement Agreement;
- (2) preliminarily certifying the following Settlement Class for purposes of settlement only:

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.

- (3) preliminarily appointing Berger & Montague, P.C. and Quinn Emanuel Urquhart & Sullivan, LLP as Co-Lead Counsel for the Settlement Class for purposes of settlement only;
- (4) preliminarily appointing Plaintiffs Michel de Chabert-Ostland; Compañía Minera Dayton SCM; Edward R. Derksen; Frank Flanagan; KPFF Investment, Inc.; Duane Lewis; Larry Dean Lewis; Kevin Maher; Robert Marechal; Blanche McKennon; Kelly McKennon; Thomas Moran; J. Scott Nicholson; Richard White; and David Windmiller as class representatives for the Settlement Class for purposes of settlement only.
- (5) preliminary approving The Huntington National Bank as the Escrow Agent and preliminary approving certain administrative expenses to be paid as agreed to by the parties in the Settlement Agreement;
- (6) preliminary approving the funds in the Escrow Account as Qualified Settlement Funds;
- (7) staying all proceedings in the Action and any other action alleging any claims released by the Settlement Agreement with respect to the Settling Defendant; and
- (8) granting such other and further relief as the Court deems just and proper.

DATED: December 7, 2020

Respectfully submitted,

/s/ Merrill G. Davidoff

/s/ Daniel L. Brockett

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