

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE LONDON SILVER FIXING, LTD.  
ANTITRUST LITIGATION

14-MD-02573-VEC  
14-MC-02573-VEC

This Document Relates to:

The Honorable Valerie E. Caproni

ALL ACTIONS

**NOTICE OF MOTION FOR AN ORDER APPROVING CLASS NOTICE PLAN,  
PRELIMINARILY APPROVING DISTRIBUTION PLAN FOR CLASS ACTION  
SETTLEMENT WITH DEFENDANT DEUTSCHE BANK, AND SCHEDULING  
HEARING FOR FINAL APPROVAL OF THE SETTLEMENT**

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, the Declaration of Vincent Briganti dated June 25, 2020 and the exhibits attached thereto, and the record herein, Plaintiffs Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc. f/k/a KP Investment, Inc., Kevin Maher, J. Scott Nicholson, and Don Tran, 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 an order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure: (1) approving the Class Notice Plan for Plaintiffs' proposed class action settlement with Deutsche Bank AG; Deutsche Bank Americas Holding Corporation, DB U.S. Financial Markets Holding Corporation, Deutsche Bank Securities, Inc.; Deutsche Bank Trust Corporation, Deutsche Bank Trust Company Americas; and Deutsche Bank AG New York Branch, (2) appointing A.B. Data, Ltd. as Settlement Administrator; (3) preliminarily approving a Distribution Plan for use in

distributing the Settlement Fund, and (4) scheduling a Fairness Hearing to consider the fairness, reasonableness, and adequacy of the settlement, and the other relief set forth in the proposed order filed herewith.

Dated: June 25, 2020  
White Plains, New York

**LOWEY DANNENBERG, P.C.**

By: /s/ Vincent Briganti

Vincent Briganti  
Barbara J. Hart  
Geoffrey M. Horn  
Thomas Skelton  
Christian Levis  
44 South Broadway, Suite 1100  
White Plains, New York 10601  
Tel.: 914-997-0500  
Fax: 914- 997-0035  
vbriganti@lowey.com  
bhart@lowey.com  
ghorn@lowey.com  
tskelton@lowey.com  
clevis@lowey.com

Robert Eisler  
Deborah Elman  
GRANT & EISENHOFER P.A.  
485 Lexington Avenue, 29th Floor  
New York, NY 10017  
Tel.: 646-722-8500  
Fax: 646-722-8501  
reisler@gelaw.com  
delman@gelaw.com

*Interim Co-Lead Class Counsel*

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ANTITRUST LITIGATION

14-MD-02573-VEC  
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ALL ACTIONS

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR  
AN ORDER APPROVING CLASS NOTICE PLAN, PRELIMINARILY APPROVING  
DISTRIBUTION PLAN FOR CLASS ACTION SETTLEMENT WITH DEFENDANT  
DEUTSCHE BANK, AND SCHEDULING HEARING FOR FINAL APPROVAL OF  
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## INTRODUCTION

On November 23, 2016, this Court preliminarily approved Plaintiffs'<sup>1</sup> \$38,000,000 Settlement with Deutsche Bank,<sup>2</sup> and conditionally certified the Settlement Class. *See* ECF No. 166. Plaintiffs now propose: (i) a Class Notice Plan<sup>3</sup> to notify Class Members of the Settlement and provide details regarding the claims process; and (ii) a Distribution Plan for distributing the Net Settlement Fund.<sup>4</sup> Both plans warrant court approval.

Interim Co-Lead Counsel selected A.B. Data, Ltd. (“A.B. Data”) to develop the Class Notice Plan following a multi-party request for proposal process based on A.B. Data’s substantial expertise in administering class action settlements involving financial instruments traded in over-the-counter and exchange markets, including futures contracts, options contracts, swaps, and forwards, which are amongst the financial instruments included in the proposed Settlement.<sup>5</sup> *See* Affidavit of Linda

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<sup>1</sup> Plaintiffs are Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc. f/k/a KP Investment, Inc., Kevin Maher, J. Scott Nicholson, and Don Tran.

<sup>2</sup> Unless otherwise noted, capitalized terms used herein have the same meaning as defined in the Stipulation and Agreement of Settlement with Deutsche Bank, dated September 6, 2016 (the “Settlement Agreement” or “Agreement”), attached as Exhibit 1 to the Declaration of Vincent Briganti, Esq. dated October 17, 2016. ECF No. 156-1.

<sup>3</sup> The “Class Notice Plan” consists of the Affidavit of Linda V. Young, which describes the methods for distributing Class Notice, and the forms of notice. *See* Declaration of Vincent Briganti dated June 25, 2020 (“June 2020 Briganti Decl.”), Exs. 1-4.

<sup>4</sup> *See* June 2020 Briganti Decl., Ex. 5.

<sup>5</sup> *See, e.g., Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD) (S.D.N.Y.) (administering settlements covering a class period of January 1, 2006 through June 30, 2011 and including futures contracts price-based on the Tokyo Interbank Offered Rate for the Japanese Yen (“Euroyen TIBOR”), interest rate swaps and swaptions, forward rate agreements, and Yen currency futures contracts and forward agreements price based on the London Interbank Offered Rate for the Japanese Yen (“Yen-LIBOR”)); *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (involving settlements of claims relating to the alleged manipulation of the Euro Interbank Offered Rate (“Euribor”) and the prices of Euribor-based interest rate swaps, forward rate agreements, forwards, futures, and options); *In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 11-md-2262 (NRB) (covering a class period of August 1, 2007 through May 31, 2010 and concerning the alleged manipulation of exchange-based financial products price-based upon U.S. Dollar LIBOR); *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.) (covering a class period of January 1, 2008 through May 15, 2008 and including West Texas Intermediate crude oil futures contracts and option contracts traded on the New York Mercantile Exchange and Intercontinental Exchange); *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (JSR) (S.D.N.Y.) (settlements relating to the alleged manipulation of unsecured government-sponsored enterprise bonds traded over-the-counter during the period of January 1, 2009 through January 1, 2019); *State Street Indirect FX Class Actions*, 11-cv-10230 (MLW) (S.D.N.Y.) (administering settlement covering a class period of January 2, 1998 through December 31, 2009 and including over-the-counter foreign currency transactions).

Young attached as June 2020 Briganti Decl., Ex. 1. As described below, the Class Notice Plan readily satisfies Rule 23's adequacy requirements and due process. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113-14 (2d Cir. 2005).

Likewise, Interim Co-Lead Counsel, in consultation with an industry expert and economist, developed the Distribution Plan to provide a "fair and adequate" distribution of the Net Settlement Fund. *Maley v. Del. Global Tech. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (citation omitted). The Distribution Plan employs a volume-based approach based on each Class Member's transactions in Silver Instruments and distributes the Settlement Fund on a pro rata basis. The Distribution Plan maximizes efficiency and ease of participation for absent Class Members, while minimizing administrative costs. *See* Part II, below; *see also In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 WL 2731524, at \*9 (S.D.N.Y.) ("*CDS Antitrust*") ("A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund."). Similar volume-based plans of allocation have been approved in financial services antitrust cases prosecuted in this District, including by Judge Rakoff in *In re GSE Bonds Antitrust Litig.*, where plaintiffs achieved more than \$386 million in settlements. *See* 414 F. Supp. 3d 686, 695 (S.D.N.Y. 2019) (noting that plan of distribution adopting a volume-based approach "represents a reasonable method of ensuring 'the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.'" (citing *CDS Antitrust*, 2016 WL 2731524, at \*9).

For these reasons, and those discussed below, the Court should approve the Class Notice Plan and the Distribution Plan and set a schedule for a final approval hearing in accordance with the proposed Order filed contemporaneously with this motion.



## ARGUMENT

### **I. The Class Notice Plan satisfies the standard for approval.**

Due process and Rule 23 require that the settlement class receive “adequate” notice of a class action settlement. *See Wal-Mart Stores*, 396 F.3d at 113-14. Whether notice is “adequate” depends on whether it is reasonable given the circumstances. *See* FED. R. CIV. P. 23 (e)(1)(B) (“The court must direct notice in a reasonable manner to all class members who would be bound by the proposal . . . .”); FED. R. CIV. P. 23(c)(2)(B) (Rule 23(b)(3) class members must be given “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.”); *see also Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988) (due process does not require actual notice to every class member, as long as class counsel “acted reasonably in selecting means likely to inform persons affected.”); *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983) (noting the “basic standard to be applied is one of reasonableness.”). Accordingly, courts are afforded “considerable discretion” in fashioning a notice plan. *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 145, 168 (2d Cir. 1987).<sup>6</sup>

Here, the Class Notice Plan comports with the requirements of Rule 23(c)(2)(B) and due process. In particular, the Class Notice carefully details the nature of the Action, identifies in clear and concise terms the make-up of the putative Settlement Class, and includes an ample “Background of the Litigation,” which provides Class Members with an overview of the procedural history of the case, describes the claims, issues, and/or defenses presented in the Action, and explains that, upon approval of the Settlement and entry of the Court’s Final Judgment, the releases will be binding on all Class Members that do not opt out, but remain in the Settlement Class. June

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<sup>6</sup> The Federal Rules require only that the notice include: “(i) the nature of the action; (ii) the definition of the [settlement] class certified; (iii) the class claims, issues, or defenses; (iv) [a directive] that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who [timely] requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members [of the settlement class] under Rule 23(c)(3).” *See* FED. R. CIV. P. 23(c)(2)(B).

2020 Briganti Decl., Ex. 2 at 1-3, 6. The proposed Class Notice also explains that Class Members will release the DB Released Parties from claims arising from the conduct alleged in the Action. *Id.*, Ex. 2 at 5. The Class Notice will allow Class Members to fully consider the details of the proposed Settlement and understand the range of options available to them, including their right to object to or opt out of the Settlement, appear in court concerning the adequacy of the Settlement, or participate in the Settlement.

Notice will be distributed to Class Members through various means. First, the Class Notice Plan contains a direct mail component<sup>7</sup> that involves sending the mailed notice (*id.*, Ex. 2) and the Proof of Claim and Release form (*id.*, Ex. 4) via First-Class Mail, postage prepaid to Class Members including, among others: (i) Deutsche Bank's known counterparties for Silver Instruments during the Class Period based on transactional and other data provided by Deutsche Bank; (ii) A.B. Data's proprietary list of banks, brokers, and other nominees, which are likely to trade or hold Silver Instruments on behalf of themselves and their clients; and (iii) the largest dealers of precious metals. *Id.*, Ex. 1 ¶ 7. These latter two categories of recipients will be asked to forward the mailed notice to their clients or provide their list of clients to A.B. Data for the purpose of sending individual notice. By mailing individual notice to these various persons and entities, notice is reasonably calculated to reach all Class Members that traded Silver Instruments. The database of these recipients will be continually updated to capture any address changes, including any changes to the counterparty information made available to A.B. Data.

Second, the Settlement Administrator will publish the publication notice (*id.*, Ex. 3) in The Wall Street Journal, Investor's Business Daily, The Financial Times, Barron's, Global Capital, Hedge Fund Alert, Grant's Interest Rate Observer, MJSA – Manufacturing Jewelers & Suppliers of

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<sup>7</sup> The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950).

America, and on websites Zacks.com, Traders.com, HFAlert.com, GlobalInvestorGroup.com, GlobalCapital.com, NationalJeweler.com, Kitco.com, KitcoSilver.com, ModernMetals.com, and FFJournal.net. In addition, the Settlement Administrator will publish the notice in e-newsletters from Global Investor Group, Stocks & Commodities, Zacks.com, and Barchart.com, as well as in email “blasts” to subscribers of Stocks & Commodities and Zacks.com. The Settlement Administrator also will disseminate a news release via PR Newswire’s US1 Newswire distribution list to announce the Settlement, which will be distributed to the news desks of approximately 10,000 newsrooms, including print, broadcast, and digital websites across the United States. Any Class Members that do not receive the Class Notice via direct mail likely will receive it through one of the foregoing publications or by word of mouth.

Finally, the Settlement Administrator will maintain a Settlement Website, [www.SilverFixSettlement.com](http://www.SilverFixSettlement.com), that will serve as a source for Class Members to obtain necessary information regarding the Settlement. From the Settlement Website, Class Members can review and obtain: (i) a blank Proof of Claim and Release form for the Settlement; (ii) the full-length mailed and publication notices; (iii) the proposed Distribution Plan; (iv) the Settlement Agreement with Deutsche Bank; and (v) key pleadings and Court orders. These resources will be supplemented by a toll-free telephone number, which Class Members can use to contact the Settlement Administrator with questions and to facilitate the filing of claims. Of course, Interim Co-Lead Counsel will also remain available to answer questions and assist Class Members as needed.

This type of multi-faceted notice program, which combines individual mailed notice and publication notice, has routinely been approved by federal courts in complex class actions, including those prosecuted in this Circuit. *See, e.g., Wal-Mart Stores*, 396 F.3d at 105 (affirming “notice plan that required mailing the settlement notice to class members and publishing a condensed version of the settlement notice in numerous widely-distributed publications.”). Thus, Plaintiffs respectfully request

that the Court approve the proposed Class Notice Plan and appoint A.B. Data as Settlement Administrator.

## II. The Court should preliminarily approve the Distribution Plan.

To warrant approval, the Distribution Plan “must also meet the standards by which the settlement was scrutinized — namely, it must be fair and adequate.” *Maley*, 186 F. Supp. 2d at 367 (citation omitted); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (quoting *Maley*, 186 F. Supp. 2d at 367). “As a general rule, the adequacy of an allocation plan turns on . . . whether the proposed apportionment is fair and reasonable under the particular circumstances of the case.” *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, 2015 WL 5918273, at \*4 (E.D.N.Y. Oct. 9, 2015) (internal quotation omitted). “When formulated by competent and experienced class counsel, a plan for allocation of net settlement proceeds ‘need have only a reasonable, rational basis.’” *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014) (quoting *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004)); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001) (same).

Here, Interim Co-Lead Counsel developed the Distribution Plan based on its decades of experience prosecuting commodities manipulation and financial services antitrust cases,<sup>8</sup> and in consultation with an industry expert and economist. Interim Co-Lead Counsel firmly believe that the Distribution Plan fairly, adequately and rationally distributes the Net Settlement Fund to the Settlement Class, while minimizing administrative costs and the amount of effort required for Class Members to file a Claim. *See CDS Antitrust*, 2016 WL 2731524, at \*9 (“A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.”); *Meredith Corp. v. SESAC, LLC*, 87 F. Supp.

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<sup>8</sup> *See* Firm Resumes, attached as June 2020 Briganti Decl., Exs. 6-7.

3d 650, 667 (S.D.N.Y. 2015) (“in determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel.”) (internal citations omitted).

To this end, the Distribution Plan adopts a volume-based approach that utilizes information commonly available in the types of trading records maintained by institutional and retail investors alike (*e.g.*, buy/sell, number of contracts or ounces of silver, and transaction date) to allocate the Net Settlement Fund among Class Members based on their pro rata share of the total dollar value of silver traded in eligible transactions. *See* June 2020 Briganti Decl., Ex. 5 at 5. Similar volume-based plans of allocation in financial services antitrust class action have been regularly approved in this District. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 698-99 (finding that under volume-based plan of distribution, “claimants will be treated equitably.”); Order Approving the Plan of Distribution, *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 CIV. 7789 (LGS), ECF No. 1095 (S.D.N.Y. Aug. 6, 2018) (“FX”) (approving plan of distribution based on the relative volume of a claimant’s transactions, *see* ECF No. 875-2, Ex. 4); *CDS Antitrust*, 2016 WL 2731524, at \*9 (holding that a similar allocation scheme “achieves a fair distribution” of the settlement fund); *see also In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 40-41, 47 (E.D.N.Y. 2019) (“*Payment Card*”) (finding that distributing settlement based on volume of interchange fees paid by each class member is “sufficiently equitable.”); *Meredith Corp.*, 87 F. Supp. 3d at 667 (finding that a volume based plan “has an obvious rational basis, appears to treat the class members equitably.”).

Like these (and other) approved volume-based plans, the Distribution Plan achieves a fair, reasonable, and adequate distribution of the Net Settlement Fund that reflects each Settling Class Member’s pro rata share of the total volume of silver traded in eligible transactions after making certain economic and legal adjustments. *See, e.g., FX*, No. 13 CIV. 7789 (LGS), ECF No. 1095 (S.D.N.Y. Aug. 6, 2018) (approving plan that applied economic factors and discounts based on

relative strength of legal claims based on time period of claims, *see* ECF No. 875-2, Ex. 4); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 695 (applying economic adjustment based on the duration of GSE bonds traded in each claim in developing pro rata distribution of net settlement fund). These adjustments will be applied using a two-step process. First, the Settlement Administrator will apply the following economic adjustments to the volume of silver (in ounces) represented by each eligible transaction submitted as part of a valid claim:

- 1) an Instrument Multiplier between 0.05 and 1.0 to reflect how the Silver Instrument involved in that transaction incorporates or is otherwise priced based on the London Silver Fix;
- 2) a Cost Multiplier, represented by the closing price of silver reported by Bloomberg on the day of the trade, to account for the historical value of an ounce of silver during the Class Period; and
- 3) an Exposure Multiplier of 1.0 to transactions resulting in a long exposure to the London Silver Fix and 0.5 to those resulting in a short exposure to the London Silver Fix. *See* June 2020 Briganti Decl., Ex. 5 at 2-3.<sup>9</sup>

Second, after making these economic adjustments, the Settlement Administrator will apply a legal adjustment, consistent with other approved plans of distribution,<sup>10</sup> to reflect the reduced value of claims based on transactions entered during a portion of the Class Period when Plaintiffs' claims were dismissed. *See id.*, Ex. 5 at 3-5. For example, otherwise eligible transactions entered between either: (a) January 1, 1999 and December 31, 2006, or (b) January 1, 2014 and September 6, 2016, will receive a Time Period Multiplier of 0.25, reflecting the Court's decision to dismiss claims during

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<sup>9</sup> Plans using similar economic adjustments have been frequently approved in this District. *See, e.g., In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d at 333-34 (approving a plan of allocation utilizing a calculation methodology based on the type of security purchased and the date it was sold or redeemed); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 462 (holding that the plan of allocation was fair and reasonable where it recognized differences based on the type of security transacted and the timing of each investment decision).

<sup>10</sup> As with the economic adjustments described above, courts in this District recognize the validity of such legal discounts. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12 Civ. 8557 (CM), 2014 WL 7323417, at \*10 (S.D.N.Y. Dec. 19, 2014) ("A reasonable plan may consider the relative strength and values of different categories of claims.") (internal quotation omitted); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 595-96 (S.D.N.Y. 1992) (approving of plan of allocation that distributes greater part of settlement proceeds to those "who have the strongest claim").

those parts of the Class Period. By contrast, eligible transactions entered during the part of the Class Period when claims were sustained (*i.e.*, January 1, 2007 and December 31, 2013) will receive a Time Period Multiplier of 1.0.

The result of this two-step process is referred to in the Distribution Plan as the Settlement Transaction Value (“STV”) and can be represented using the following formula:

$$STV = \text{Ounces of Silver} * \text{Instrument Multiplier} * \text{Cost Multiplier} * \text{Exposure Multiplier} * \text{Time Period Multiplier}^{11}$$

Once the STV of each eligible transaction submitted by all Class Members as part of a valid claim has been calculated, the Settlement Administrator will determine the pro rata share of the Net Settlement Fund attributable to each authorized claimant. Pro rata distributions are well-established and have been widely used in antitrust class actions and other complex litigation involving financial instruments. *See, e.g., Payment Card*, 330 F.R.D. at 47 (finding that “pro rata distribution scheme is sufficiently equitable”); *CDS Antitrust*, 2016 WL 2731524, at \*4 (approving plan that estimated price inflation caused by the defendants’ conduct and calculated “each claimant’s recovery based on its pro rata share of the available Settlement Funds in relation to the recoveries to which all claimants who have submitted a valid claim are entitled.”). Here, the Settlement Administrator will determine each authorized Settling Class Member’s pro rata share of the Net Settlement Fund by dividing: (1) the total STV of all eligible transactions submitted by that Settling Class Member, by (2) the total STV of transactions submitted by all authorized claimants.

Additionally, the volume-based approach utilized in the Distribution Plan merits approval because it avoids the pitfalls of undue delay and depletion of the Net Settlement Fund from

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<sup>11</sup> As the Distribution Plan explains: “For a transaction on May 24, 2010 involving the purchase of two “vanilla” call options on COMEX silver futures contracts, the Claims Administrator would multiply: (a) 10,000 (the number ounces of silver involved in two COMEX silver option contracts according to contract specifications); (b) \$17.905 (the closing price of silver as reported by XAG on May 24, 2010); (c) 0.2 (the Instrument Multiplier associated with “vanilla” options); (d) 1.0 (the Time Period Multiplier for transactions occurring between January 1, 2007 and December 31, 2013); and (e) 1.0 (the Exposure Multiplier for transactions that result in long exposure). This calculation results in an STV of \$ 35,810.”

unnecessary administrative costs or complex calculations. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 695 (citing *CDS Antitrust*, 2016 WL 2731524, at \*4); *Meredith Corp.*, 87 F. Supp. 3d at 667 (finding that a volume based plan “has the benefit of simplicity”); *In re AMF Bowling*, 334 F. Supp. 2d 462, 467 (S.D.N.Y. 2004) (approving plan of allocation based upon input from plaintiffs’ expert that resulted in a plan that was simple and straightforward); *In re Airline Ticket Comm’n Antitrust Litig.*, 953 F. Supp. 280, 284-85 (D. Minn. 1997) (approving plaintiffs’ volume based plan as cost-effective, simple and fundamentally fair).

Next, in consultation with Interim Co-Lead Counsel, and consistent with precedent in the Circuit, the Settlement Administrator will implement a reasonable minimum payment threshold of \$15 to ensure that the administrative costs of issuing *de minimis* payments do not needlessly deplete the Net Settlement Fund. *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497-98 (S.D.N.Y. 2009) (approving \$10 minimum payment); *In re Gilat Satellite Networks, Ltd.*, No. 02-cv-1510, 2007 WL 1191048, at \*9-10 (E.D.N.Y. Apr. 19, 2007) (approving a *de minimis* threshold in order to “save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs”); *In re Glob. Crossing Sec. and ERISA Litig.*, 225 F.R.D. at 463 (approving \$10 minimum payment); *In re Nasdaq Mkt.-Makers Antitrust Litig.*, No. 94 CIV. 3996 RWS, 2000 WL 37992, at \*2 (S.D.N.Y. Jan. 18, 2000) (approving \$25 minimum payment).

Unsurprisingly, in addition to Interim Co-Lead Counsel, each Plaintiff who remains in the case<sup>12</sup> endorses the Distribution Plan as fair, reasonable and adequate.

### **CONCLUSION**

Plaintiffs respectfully request that the Court enter the accompanying proposed order that, among other things: (1) approves the proposed forms of Class Notice Plan; (2) appoints A.B. Data

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<sup>12</sup> On September 17, 2019, Plaintiffs Robert Ceru and Eric Nalven withdrew as proposed class representatives for personal reasons. On June 25, 2020, Plaintiff Norman Bailey withdrew as proposed class representative for personal reasons.



as Settlement Administrator; (3) approves the Distribution Plan with respect to the Settlement; and  
(4) sets a schedule leading to the Court's consideration of final approval of the Settlement.

Dated: June 25, 2020  
White Plains, New York

**LOWEY DANNENBERG, P.C.**

By: /s/ Vincent Briganti  
Vincent Briganti  
Geoffrey M. Horn  
Thomas Skelton  
Christian Levis  
44 South Broadway, Suite 1100  
White Plains, New York 10601  
Tel.: 914-997-0500  
Fax: 914- 997-0035  
vbriganti@lowey.com  
ghorn@lowey.com  
tskelton@lowey.com  
clevis@lowey.com

Robert Eisler  
Deborah Elman  
GRANT & EISENHOFER P.A.  
485 Lexington Avenue, 29th Floor  
New York, NY 10017  
Tel.: 646-722-8500  
Fax: 646-722-8501  
reisler@gelaw.com  
delman@gelaw.com

*Interim Co-Lead Class Counsel*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE LONDON SILVER FIXING, LTD.  
ANTITRUST LITIGATION

14-MD-02573-VEC  
14-MC-02573-VEC

This Document Relates to:

The Honorable Valerie E. Caproni

ALL ACTIONS

**[PROPOSED] ORDER APPROVING CLASS NOTICE PLAN, PRELIMINARILY  
APPROVING DISTRIBUTION PLAN FOR CLASS ACTION SETTLEMENT WITH  
DEFENDANT DEUTSCHE BANK, AND SCHEDULING HEARING FOR FINAL  
APPROVAL OF THE SETTLEMENT**

This matter having come before the Court by way of Plaintiffs' Motion for an Order Approving Class Notice Plan, Preliminarily Approving Distribution Plan for Class Action Settlement with Defendant Deutsche Bank, and Scheduling Hearing for Final Approval of the Settlement (the "Motion");

The above-captioned matter is a putative class action before this Court;

The Court finding that the proposed forms of Class Notice and the proposed Class Notice Plan are reasonable and rational, and the proposed Distribution Plan is reasonable and rational and should be sent to Class Members for their review prior to the Fairness Hearing:

NOW, THEREFORE, this \_\_\_\_ Day of \_\_\_\_\_, 2020:

**IT IS HEREBY ORDERED** that:

1. Except for the terms expressly defined herein, the Court adopts and incorporates the definitions in the Stipulation and Agreement of Settlement, dated September 6, 2016. ECF No. 156-

1.

2. A hearing will be held on a date of the Court's convenience on or after \_\_\_\_\_, 2020 at \_\_\_\_\_ [a.m./p.m.] (at least 141 days after entry of this Order) in Courtroom 443 of this Courthouse before the undersigned, to consider the fairness, reasonableness, and adequacy of the Settlement (the "Fairness Hearing"). The foregoing date, time, and place of the Fairness Hearing shall be set forth in the Class Notice, which is ordered herein, but shall be subject to adjournment or change by the Court without further notice to the members of the Settlement Class, other than that which may be posted at the Court or on the Settlement website at [www.SilverFixSettlement.com](http://www.SilverFixSettlement.com). Given the current COVID-19 situation, the Court reserves the right to conduct the final fairness hearing remotely.

3. The Court reserves the right to approve the Settlement at or after the Fairness Hearing with such modifications as may be consented to by the Parties and without further notice to the Settlement Class.

4. The Court appoints A.B. Data, Ltd. as Settlement Administrator for purposes of the Settlement.

5. The terms of the Distribution Plan are preliminarily approved as within the range of reasonableness, fairness, and adequacy.

6. Within thirty (30) days after entry of this Order, the Settlement Administrator shall cause copies of the mailed notice, in the form (without material variation) of Exhibit 2 to the Declaration of Vincent Briganti, Esq., dated June 25, 2020 ("June 2020 Briganti Decl."), to begin being mailed by United States first class mail, postage prepaid, as described in the proposed notice program attached to the Declaration of Linda Young, dated June 24, 2020. June 2020 Briganti Decl., Ex. 1. The foregoing mailings shall be completed no later than sixty-four (64) days after the date of the entry of this Order.

7. As soon as practicable after the entry of this Order, the Settlement Administrator shall cause to be published a publication notice, without material variation from Exhibit 3 to the June 2020 Briganti Decl., as described in the proposed notice program attached to the Declaration of Linda Young. June 2020 Briganti Decl., Ex. 1.

8. The Settlement Administrator shall maintain a Settlement website, [www.SilverFixSettlement.com](http://www.SilverFixSettlement.com), beginning no later than the first date of mailing notice to the Class and remaining until the termination of the administration of the Settlement. The website shall include copies of the Settlement Agreement (including exhibits), this Order, the mailed and publication notices, the motion for preliminary approval and all exhibits attached thereto, and the motion for issuance of the class notice plan and preliminary approval of the distribution plan, identify important deadlines, and provide answers to frequently asked questions. The website may be amended as appropriate during the course of the administration of the Settlement. The Settlement website, [www.SilverFixSettlement.com](http://www.SilverFixSettlement.com), shall be searchable on the Internet.

9. The Settlement Administrator shall maintain a toll-free interactive voice response telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to speak to live operators or to leave messages in a voicemail box.

10. The Court approves, in form and substance, the mailed notice, the publication notice, the Proof of Claim and Release form, and the website as described herein. The Class Notice specified herein (i) is the best notice practicable; (ii) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency and status of this Action and of their right to object to or exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the Fairness Hearing; and (iv) fully satisfies all applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, Due Process, and any other applicable rules or laws.

11. At least forty-eight (48) days prior to the Fairness Hearing, the Settlement Administrator shall serve and file a sworn statement attesting to compliance with the notice provisions in paragraphs 6-9 of this Order.

12. Any member of the Settlement Class and any governmental entity that objects to the fairness, reasonableness, or adequacy of any term or aspect of the Settlement, the application for attorneys' fees and expenses, or the Final Approval Order and Final Judgment, or who otherwise wishes to be heard or intervene, may appear in person or by his or her attorney at the Fairness Hearing and present evidence or argument that may be proper and relevant. However, except for good cause shown, no person other than Interim Co-Lead Counsel and the Deutsche Bank's counsel shall be heard and no papers, briefs, pleadings, or other documents submitted by any member of the Settlement Class or any governmental entity shall be considered by the Court unless, not later than thirty-five (35) days prior to the Fairness Hearing, the member of the Settlement Class or the governmental entity files with the Court (and serves the same on or before the date of such filing by hand or overnight mail on the Interim Co-Lead Counsel and counsel of record for the Deutsche Bank) a statement of the objection or motion to intervene, as well as the specific legal and factual reasons for each objection or motion to intervene, including all support that the objecting member of the Settlement Class or the governmental entity wishes to bring to the Court's attention and all evidence the objecting member of the Settlement Class or governmental entity wishes to introduce in support of his, her, or its objection or motion. Such submission must contain: (1) a heading that refers to this Action by case name and case number; (2) a statement of the specific legal and factual basis for each objection or intervention argument, including whether the objection applies only to the objecting person, a specific subset of the Class or the entire Class; (3) a statement of whether the objecting or intervening person or entity intends to appear at the Fairness Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by

name, address, and telephone number; (4) a description of any and all evidence the objecting person or entity may offer at the Fairness Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses; all exhibits intended to be introduced at the Fairness Hearing; and documentary proof of the objecting person's membership in the Settlement Class; (5) a description of the Silver Instruments transactions entered into by the member of the Settlement Class that fall within the Settlement Class definition (including, for each transaction, the date and location of the transaction, the instrument type, direction (i.e., purchase or sale) of the transaction, the counterparty, the ounces of silver transacted, and the total transaction amount); and (6) a list of other cases in which the objector or intervenor or counsel for the objector or intervenor has appeared either as an objector or counsel for an objector in the last five years. Persons who have timely submitted a valid Request for Exclusion are not members of the Settlement Class and are not entitled to object.

13. Any objection to the Settlement or motion to intervene submitted by a member of the Settlement Class pursuant to paragraph 12 of this Order must be signed by the member of the Settlement Class (or his, her, or its legally authorized representative), even if the member of the Settlement Class is represented by counsel. The right to object to the proposed Settlement or to intervene must be exercised individually by a member of the Settlement Class or the Person's attorney, and not as a member of a group, class, or subclass, except that such objections and motions to intervene may be submitted by a member of the Settlement Class's legally authorized representative.

14. Any motion to intervene must comply with the Federal Rules of Civil Procedure and the Local Rules of the Court.

15. All objectors shall make themselves available to be deposed by any Party in the Southern District of New York or the county of the objector's residence or principal place of business within five (5) business days of service of the objector's timely written objection.

16. Any member of the Settlement Class or governmental entity that fails to object or move to intervene in the manner described in paragraphs 12-15 of this Order shall be deemed to have waived the right to object (including any right of appeal) or to intervene and shall be forever barred from raising such objection or seeking to intervene in this or any other action or proceeding related to or arising out of the Settlement. Discovery concerning any purported objections to the Settlement and any purported motions to intervene shall be completed no later than seven (7) days before the Fairness Hearing. Interim Co-Lead Counsel, Deutsche Bank's counsel, and any other Persons wishing to oppose timely-filed objections in writing may do so not later than seven (7) days before the Fairness Hearing.

17. Any Request for Exclusion from the Settlement by a member of the Settlement Class must be sent in writing by U.S. first class mail to the Settlement Administrator at the address in the mailed notice and received no later than thirty-five (35) days before the Fairness Hearing (the "Exclusion Bar Date"). Any Request for Exclusion must contain the following information:

- (a) the name, address, and telephone number of the member of the Settlement Class;
- (b) a list of all trade names or business names that the member of the Settlement Class requests to be excluded;
- (c) the name of this Action ("*In re London Silver Fixing, Ltd. Antitrust Litigation*, Nos. 14-MD-02573-VEC; 14-MC-02573-VEC (S.D.N.Y.)");
- (d) a statement certifying such person is a member of the Settlement Class;
- (e) a description of the Silver Instruments transactions entered into by the Settlement Class Member that fall within the Settlement class definition (including, for each transaction, the date and location of the transaction, the instrument type, direction (i.e., purchase or sale) of the transaction, the counterparty, the ounces of silver transacted, and the total transaction amount); and

- (f) a statement that “I/we hereby request that I/we be excluded from the Settlement Class as it relates to the Deutsche Bank Settlement.”

18. Any Request for Exclusion from the Settlement submitted by a member of the Settlement Class pursuant to paragraph 17 of this Order must be signed by the member of the Settlement Class (or his, her, or its legally authorized representative) and notarized, even if the member of the Settlement Class is represented by counsel. The right to be excluded from the proposed Settlement must be exercised individually by a member of the Settlement Class or his, her, or its attorney, and not as a member of a group, class, or subclass, except that a Request for Exclusion may be submitted by a member of the Settlement Class’s legally authorized representative. A Request for Exclusion shall not be effective unless it provides all of the required information listed in paragraph 17 of this Order, complies with this paragraph 18, and is received by the Exclusion Bar Date, as set forth in the Class Notice. The Parties may seek discovery, including by subpoena, from any member of the Settlement Class who submits any Request for Exclusion.

19. Any member of the Settlement Class who does not submit a timely and valid written Request for Exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in the Action, even if the member of the Settlement Class has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims, and even if such member of the Settlement Class never received actual notice of the Action or the proposed Settlement.

20. The Settlement Administrator shall promptly log each Request for Exclusion that it receives and provide copies of the log to Interim Co-Lead Counsel and Deutsche Bank’s counsel as requested.

21. The Settlement Administrator shall furnish Interim Co-Lead Counsel and counsel for Deutsche Bank with copies of any and all objections, motions to intervene, notices of intention



to appear, and other communications that come into its possession (except as otherwise expressly provided in the Settlement Agreement) within one (1) business day of receipt thereof.

22. Within five (5) business days after the Exclusion Bar Date, the Settlement Administrator shall prepare an opt-out list identifying all Persons, if any, who submitted a timely and valid Request for Exclusion from the Settlement Class, as provided in the Settlement Agreement, and an affidavit attesting to the accuracy of the opt-out list. The Settlement Administrator shall provide counsel for Deutsche Bank and Interim Co-Lead Counsel with copies of any Requests for Exclusion (including all documents submitted with such requests) and any written revocations of Requests for Exclusion as soon as possible after receipt by the Settlement Administrator and, in any event, within one (1) business day after receipt by the Settlement Administrator and, in no event, later than five (5) business days after the Exclusion Bar Date. Interim Co-Lead Counsel shall file the opt-out list and affidavit of the Settlement Administrator attesting to the accuracy of such list with the Court.

23. All Proof of Claim and Release forms shall be submitted by members of the Settlement Class to the Settlement Administrator as directed in the mailed notice and must be postmarked no later than seventy-five (75) days after the Fairness Hearing.

24. To effectuate the Settlement and the notice provisions, the Settlement Administrator shall be responsible for: (a) establishing a P.O. Box (to be identified in the mailed notice and the publication notice), a toll-free interactive voice response telephone system and call center, and a website for the purpose of communicating with members of the Settlement Class; (b) effectuating the Class Notice plan, including by running potential members of the Settlement Class's addresses through the National Change of Address Database to obtain the most current address for each person; (c) accepting and maintaining documents sent from members of the Settlement Class, including Proof of Claim and Release forms, and other documents relating to the Settlement and its

administration; (d) administering claims for allocation of funds among members of the Settlement Class; (e) determining the timeliness of each Proof of Claim and Release submitted by members of the Settlement Class, and the adequacy of the supporting documents submitted by members of the Settlement Class; (f) corresponding with members of the Settlement Class regarding any deficiencies in their Proof of Claim and Release forms and regarding the final value of any allowed claim; (g) calculating each Authorized Claimant's allowed claim pursuant to the Distribution Plan; (h) determining the timeliness and validity of all Requests for Exclusion received from members of the Settlement Class; (i) preparing the opt-out list and an affidavit attaching and attesting to the accuracy of such list, and providing same to Interim Co-Lead Counsel and counsel for Deutsche Bank; and (j) providing Interim Co-Lead Counsel and counsel for Deutsche Bank with copies of any Requests for Exclusion (including all documents submitted with such requests).

25. The Settlement Administrator shall maintain a copy of all paper communications related to the Settlement for a period of one (1) year after distribution of the Net Settlement Fund defined in the Settlement Agreement ("Net Settlement Fund"), and shall maintain a copy of all electronic communications related to the Settlement for a period of three (3) years after distribution of the Net Settlement Fund, after which time all such materials shall be destroyed, absent further direction from the Parties or the Court.

26. Interim Co-Lead Counsel shall file their motions for payment of attorneys' fees and reimbursement of expenses, incentive awards, and for final approval of the Settlement at least forty-eight (48) days prior to the Fairness Hearing.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without notice to members of the Settlement Class, other than that which may be posted at the Court or on the Settlement website, [www.SilverFixSettlement.com](http://www.SilverFixSettlement.com).

28. Unless otherwise specified, the word “days,” as used herein, means calendar days. In the event that any date or deadline set forth herein falls on a weekend or federal or state legal holiday, such date or deadline shall be deemed moved to the first business day thereafter.

**IT IS SO ORDERED.**

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

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