

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

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 08/05/2020

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 5th Day of August, 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 April 8, 2021 at 10:00 A.M. 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. 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. By September 4, 2020 (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 1 to the August 5, 2020 letter to the Court from Vincent Briganti, Esq. and Robert G. Eisler, Esq. (the “August 5 Letter”), 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. *See* Declaration of Vincent Briganti, Esq., dated June 25, 2020 (“June 2020 Briganti Decl.”), Ex. 1. The foregoing mailings shall be completed no later than November 7, 2020 (ninety-four (94) 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 2 to the August 5 Letter, 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, 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, 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 (Exhibit 3 to the August 5 Letter), 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. By January 21, 2021 (at least seventy-seven (77) 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 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 February 11, 2021 (fifty-six (56) 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 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 March 9, 2021 (thirty (30) 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 March 9, 2021 (thirty (30) 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 February 11, 2021 (fifty-six (56) 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. Unless the Court determines otherwise, a Request for Exclusion shall not be effective unless it provides all of the 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. If a member of the Settlement Class is unable or unwilling to disclose transaction information or other information required in paragraph 17(e), the Request for Exclusion must include a concise statement explaining why that member is unable or unwilling to do so and explain why that member should nonetheless be excluded; the Court will determine the effectiveness of such a Request for Exclusion on an individual basis. Any Request for Exclusion from the Settlement submitted by a member of the Settlement Class pursuant to paragraph 17 of this Order must be signed by the member of the Settlement Class (or his, her, or its legally authorized representative). The right to be excluded from the proposed Settlement must be exercised individually by a member of the Settlement Class or his, her, or its attorney, and not as a member of a group, class, or subclass, except that a Request for Exclusion may be submitted by a member of the Settlement Class’s legally authorized representative. The Parties may request leave of the Court to seek discovery from any member of the Settlement Class who submits any Request for Exclusion.

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. By February 19, 2021 (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 February 19, 2021 (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 received no later than March 1, 2021 (approximately forty (40) days prior to 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.

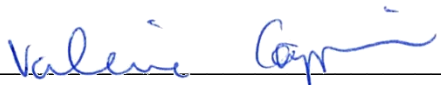
26. Interim Co-Lead Counsel shall file their motions for payment of attorneys' fees and reimbursement of expenses, incentive awards, and for final approval of the Settlement by January 21, 2021 (at least seventy-seven (77) days prior to the Fairness Hearing).

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.

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: August 5, 2020



VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE