

**IMPORTANT LEGAL NOTICE TO ALL MEMBERS OF THE SETTLEMENT CLASS  
FORWARD TO CORPORATE HEADQUARTERS/LEGAL COUNSEL**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE OPTIVER COMMODITIES LITIGATION

Master File No.  
08-CV-6842 (LAP)  
ECF Case

This Document Relates To: All Actions

Chief Judge Loretta A. Preska

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, MAY 19, 2015 HEARING THEREON,  
AND CLASS MEMBERS' RIGHTS**

**TO: ALL PERSONS WHO PURCHASED, SOLD OR HELD NYMEX LIGHT SWEET CRUDE OIL FUTURES CONTRACTS, NYMEX NEW YORK HARBOR HEATING OIL FUTURES CONTRACTS, OR NYMEX NEW YORK HARBOR GASOLINE FUTURES CONTRACTS AT ANY TIME FROM MARCH 2, 2007 THROUGH MARCH 26, 2007, INCLUSIVE**

*A federal court authorized this Notice. This is not a solicitation from a lawyer. You are not being sued.*

**IF YOU ARE A SETTLEMENT CLASS MEMBER, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT, OR DON'T ACT.**

**If you are a brokerage firm, trustee, or futures commission merchant, through whom any of these futures contracts were bought, sold or held at any time between March 2, 2007 and March 26, 2007, inclusive, then for customers or persons that are potential members of the Settlement Class, as described herein, you should provide the name and last known address for such customers to the Settlement Administrator at the address listed below within two weeks of receiving this Notice. The Settlement Administrator will cause copies of this Notice to be forwarded to each customer so identified.**

**PLEASE READ THIS NOTICE CAREFULLY**

- This Notice provides information about a proposed Settlement of a class action lawsuit concerning whether Optiver US LLC, Optiver Holding B.V., Optiver VOF, Christopher Dowson, Bastiaan van Kempen, and Randal Meijer (collectively, "Defendants") acted unlawfully by allegedly causing and aiding and abetting the causation of artificial prices of certain futures contracts on the New York Mercantile Exchange from March 2-26, 2007, inclusive.
- Defendants deny any wrongdoing that Plaintiffs allege in the lawsuit and maintain that they have complied with their legal obligations.
- The Settlement resolves the lawsuit; it avoids costs and risks to the Plaintiffs (and potential risks to you) from continuing the lawsuit; it pays money to potential Members of the Settlement Class like you; and it releases Defendants from liability.
- Under the Settlement, Defendant Optiver US LLC agreed to pay \$16,750,000 into a Settlement Fund. If the Court approves the Settlement, potential Settlement Class Members who qualify and send in valid Proof of Claim forms will be eligible to receive a share of the Settlement Fund, after the payment of certain expenses described in this notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to ever be a part of any other lawsuit against Defendants about the legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you don't like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve this Settlement. Payments will be made to qualifying persons if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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**BASIC INFORMATION**

**1. Why did I get this notice package?**

You or someone in your family may have purchased, sold or held NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts or NYMEX New York Harbor Gasoline futures contracts at any time from March 2, 2007 through March 26, 2007, inclusive.

A court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give “final approval” to the Settlement. If the Court approves the Settlement Agreement, and after any objections and appeals are resolved, payments will be made to those who qualify.

This notice explains the lawsuit, the Settlement, your legal rights, what benefits are available under the Settlement, who is eligible for them, and how to get them. Any capitalized terms that are not specifically defined in this notice are defined in the Settlement Agreement, which can be found on the internet at [www.nymextassettlement.com](http://www.nymextassettlement.com).

Judge Loretta A. Preska of the United States District Court for the Southern District of New York is overseeing this class action lawsuit. This case is known as *In re: Optiver Commodities Litigation*, Case No. 1:08-cv-06842-LAP. The persons who sued are called the Plaintiffs, and the companies and persons who have been sued, Optiver US LLC, Optiver Holding B.V., Optiver VOF, Christopher Dowson, Bastiaan van Kempen, and Randal Meijer, are called the Defendants.

## 2. What is this lawsuit about?

### A. The Nature of This Lawsuit

Plaintiffs allege that each Defendant, between March 2, 2007 and March 26, 2007, inclusive (the “Class Period”), caused and aided and abetted the causation of artificial prices in NYMEX Light Sweet Crude Oil, NYMEX New York Harbor Heating Oil and NYMEX New York Harbor Gasoline futures contracts (the “contracts”) in violation of the Commodity Exchange Act (“CEA”), the Sherman Act, NYMEX rules and the common law by amassing dominant NYMEX trading at settlement (“TAS”) contract positions and offsetting such positions through NYMEX futures contracts transactions in the opposite direction of the TAS positions during the Closing Period.

Defendants allegedly overpaid to buy and undersold to sell the contracts during the Closing Period and thereby caused the Volume Weighted Average Prices (“VWAP”) of the contracts to be artificial. During the relevant period, NYMEX rules provided that the settlement price of the current delivery of the spot month futures contract was the weighted average price (VWAP) of all outright transactions which occur in that delivery month during the Closing Period.

Plaintiffs allege that the large trading by Defendants during the Closing Period consistently caused a statistically significant, persistent and non-transitory impact on prices for NYMEX Crude Oil, Heating Oil and Gasoline futures contracts. Plaintiffs allege that Defendants’ conduct caused Plaintiffs and others similarly situated to transact in an artificial and manipulated market at manipulated and artificial prices during the Class Period. Plaintiffs further allege that Plaintiffs and Settlement Class Members who held positions in Class Contracts at the times that Defendants allegedly manipulated the prices of those contracts and thereafter liquidated their positions in such contracts at artificial prices suffered damages even if such liquidations occurred after the Class Period. Plaintiffs also allege that Defendants’ alleged manipulation constituted a contract, combination or conspiracy to restrain trade and an attempt to manipulate the market for the contracts.

A critical issue in these claims is whether Defendants’ trading strategy was manipulative. Defendants argued, and some contemporaneous evidence indicated, that their trading strategy did **not** inject artificial forces of supply or demand into the market, and that Defendants did not intend to inject any such forces into the market. Instead, Defendants traded with others in one market (TAS) and then transferred that supply or demand into the futures market. Plaintiffs argued, and certain email and other evidence indicated, that Defendants calculated the transfer of the supply or demand in a particular market in a way to have a greater impact on prices in the futures market than legitimate trading would have had. To that extent, Plaintiffs alleged and argued that Defendants’ trading was manipulative or artificially impacted prices.

Defendants have consistently and vigorously denied Plaintiffs’ claims. By entering into the Settlement Agreement with Plaintiffs, Defendants do not admit and continue to deny that they engaged in any unlawful conduct, and that any Member of the Settlement Class suffered compensable damages. Absent a settlement, Defendants would continue to vigorously oppose Plaintiffs’ claims and allegations of damages.

### B. Procedural History of the Action

On July 30, 2008, Plaintiff Roberto Calle Gracey filed an initial class action complaint against Defendants in the District Court. *Gracey v. Optiver US, LLC et al.*, 08-CV-6842 (S.D.N.Y.), ECF No. 1. On August 5, 2008, Plaintiff Richard White filed a class action complaint against Defendants in the District Court. *White v. Optiver US, LLC, et al.*, 08-CV-6976 (S.D.N.Y.), ECF No. 1. On August 13, 2008, Plaintiff Brendan Cody filed a class action complaint against Defendants in the District Court. *Cody v. Optiver US LLC, et al.*, 08-CV-7216 (S.D.N.Y.), ECF No. 1.

By order dated February 11, 2009, the Court consolidated these cases and appointed Lovell Stewart Halebian Jacobson LLP, Lowey Dannenberg Cohen & Hart, P.C., and Labaton Sucharow LLP as interim co-lead counsel for the class. ECF No. 15 at ¶13. (On February 27, 2013, upon motion, the Court entered an order substituting Robins, Kaplan, Miller & Ciresi LLP in the place of Labaton Sucharow LLP as one of the three interim co-lead counsel. ECF No. 46.)

On May 14, 2009, the Court entered an order setting the dates for the filing of Plaintiffs’ consolidated class action complaint and Defendants’ responses to such complaint. See ECF No. 17.

During the course of this litigation, Plaintiffs and Defendants have held ongoing settlement negotiations. On November 12, 2009, April 29, 2010, November 15, 2010, January 31, 2011, March 4, 2011, and May 5, 2011, the Court entered orders re-setting the dates for the filing of Plaintiffs’ consolidated class action complaint and Defendants’ responses to such complaint. ECF Nos. 19, 20, 24, 28, 29, 30.

On June 21, 2011, the Court entered an order staying this Action pending the Court-ordered mediation in the related matter captioned *U.S. Commodity Futures Trading Commission v. Optiver US, LLC, Optiver Holding B.V., Optiver VOF, Christopher Dowson, Bastiaan van Kempen, and Randal Meijer*, 08-CV-6560 (LAP)(S.D.N.Y.) (the “CFTC Action”). ECF No. 31. On April 19, 2012, pursuant to a settlement between Defendants and the CFTC, the Court in the CFTC Action entered a final consent order and permanent injunction, civil monetary penalty and other relief as to the defendants in that action. CFTC Action, ECF No. 45. In connection with the settlement of the CFTC Action, Defendants did not admit or deny the allegations against them in that action. *Id.*

On April 30 and June 25, 2012, the Court entered orders staying this Action until June 25 and July 25, 2012, respectively. ECF Nos. 32, 33. These orders provided, among other things, that the Parties report to the Court within ten days thereafter as to a schedule for proceeding in this Action.

On July 13, 2012, Plaintiffs informed the Court, on behalf of the Parties, that Plaintiffs believed that they needed to better assess the scope and size of the alleged impact and alleged damages involved in Plaintiffs’ claims in order to attempt to make further progress in settlement negotiations and sought to modify the stay to the extent of issuing a subpoena to the NYMEX to obtain the listing of all of the

trades of Defendants' on a daily basis for NYMEX Crude Oil, Heating Oil and Gasoline futures contracts during the Class Period. ECF No. 34. On July 23, 2012, the Court entered an endorsement of Plaintiffs' July 13, 2012 letter and required that Co-Lead Counsel detail the discovery sought and the necessity for same at that stage of the litigation. *Id.*

On July 30, 2012, pursuant to the Court's endorsement dated July 23, 2012, Co-Lead Counsel provided the Court with the details relating to the NYMEX's chronological listing of Defendants' trades and Plaintiffs' expert's proposed use of standard tools of market microstructure economics to examine that list to analyze the amount of impact given trades had on prices.

On August 6, 2012, the Court entered an order directing the Parties to confer with the NYMEX, and to propose a schedule regarding the production of documents in response to the subpoena to be issued to NYMEX and regarding the settlement discussions that would follow that production. See ECF No. 35.

On August 31, 2012, Plaintiffs informed the Court that NYMEX had advised the Parties that it would produce the requested materials on September 7, 2012. The Parties requested and the Court "so ordered" that, on or before September 21, 2012, Plaintiffs and Defendants jointly propose a schedule for settlement negotiations between the Parties. ECF No. 36.

On September 21, 2012, pursuant to the Court's endorsement dated September 4, 2012, Co-Lead Counsel informed the Court that Plaintiffs' expert estimated that such expert would require approximately six weeks to review and analyze the information produced by the NYMEX and that the Parties estimated they would require approximately 45 days from the date on which Plaintiffs' expert reported to Plaintiffs in order for the Parties to determine whether they could resolve the case by settlement. The Parties requested that they be given until December 20, 2012, to reach such a determination and report to the Court on the status of their efforts. The Court "so ordered" the request of the Parties. ECF No. 37.

On December 13, 2012, Plaintiffs, on behalf of the Parties, requested an adjournment of the time to report to the Court to March 11, 2013 because the NYMEX production did not include some of Defendants' relevant trades. Plaintiffs promptly requested the missing information from the NYMEX. The Court "so ordered" the request of the Parties to adjourn their time to report to the Court on the status of their settlement efforts. ECF No. 38.

On March 19, 2013, the Court entered an order dated March 14, 2013, terminating the stay in this Action. ECF No. 47. Among other things, the order directed that Plaintiffs file their consolidated class action complaint within 60 days of the date of such order. *Id.*

On May 14, 2013, Plaintiffs filed a consolidated amended class action complaint, which, among other things, added Plaintiffs Michael Amdur and Charles Hynes. See ECF No. 49. On June 12, 2013, pursuant to the Court's March 14, 2013 order, Defendants notified Plaintiffs of several alleged deficiencies in the consolidated amended class action complaint and that Defendants would move to dismiss the consolidated amended complaint. The Court's March 14, 2013 order gave Plaintiffs the right to stand on their amended complaint or to file a further amended complaint. Plaintiffs elected to file a further amended complaint, which would be the final amendment allowed under the Court's March 14, 2013 order.

On July 24, 2013, prior to the time Plaintiffs were due to file a further amended consolidated complaint, the Parties informed the Court that they had been pursuing settlement negotiations and requested a limited adjournment of time for the filing of such complaint. See ECF No. 52.

On July 26, 2013, Plaintiffs and Defendants informed the Court that the Parties had reached an agreement in principle, including as to the amount of the Settlement and the key terms between the Parties.

On October 11, 2013, Defendants produced to Plaintiffs all of the remaining documents produced by Defendants to the CFTC in connection with the CFTC Action ("Remaining CFTC Documents").

On February 6, 2014, Defendants produced to Plaintiffs recordings overlooked by Defendants in their October 11, 2013 production of the Remaining CFTC Documents.

On March 17, 2014, the Court entered an order dated March 14, 2014, which directed the Parties to confer and inform the Court by letter no later than March 24, 2014, of the status of the "Action/remaining claims/Defendants." ECF No. 53.

On March 24, 2014, Plaintiffs, on behalf of the Parties, informed the Court in writing that the parties had been continuing to pursue the settlement process, including the negotiation of settlement documents and Plaintiffs' review of confirmatory discovery. The Court "so ordered" the Plaintiffs' request for additional time until April 7, 2014, in order to complete such review and provide the Court with either an estimated date by which settlement documents would be executed and a preliminary approval motion filed with the Court, or a schedule for Plaintiffs' final amended complaint and for Defendants' response to that complaint.

On April 7, 2014, Plaintiffs, on behalf of the Parties, informed the Court that the Parties believed that they had been able to resolve all of their significant differences but must complete their negotiations about the terms of the written Settlement Agreement and other related documents. The Parties also informed the Court that they believed they would finalize these negotiations and be able to present to the Court the Settlement Agreement and related documents with 60 days. The Court "so ordered" the Parties' request for a further 60-day extension, until June 9, 2014, in order to seek to complete the work on the Settlement Agreement and related Settlement documents and to prepare the Motion for Preliminary Approval.

On June 6, 2014, Plaintiffs, on behalf of the Parties, informed the Court that the Parties had made substantial progress in resolving the remaining issues relating to the Settlement Agreement and would be able to finalize all settlement documentation within 45 days. The Court "so ordered" the Parties' request for a further 45-day extension until July 24, 2014, to complete the work on the Settlement Agreement and related settlement documents and to prepare the motion for preliminary approval.

On July 24, 2014, after more than five years of arms'-length negotiations, Plaintiffs and Defendants entered into the Settlement Agreement.

### **3. Why is this a class action?**

In a class action lawsuit, one or more people called "Class Representatives" (in this case, Michael Amdur, Brendan Cody, Charles Hynes and Richard White, also referred to as "Plaintiffs") sue on behalf of people who have similar claims. All these people are a "Class" or "Class Members." One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class. In the context of a settlement, the Class is referred to as a "Settlement Class," and Class Members are referred to as "Settlement Class Members."

### **4. Why is there a settlement?**

Both sides agreed to a settlement to avoid the cost, delay, and uncertainty of further litigation. The Plaintiffs and Class Counsel think that the Settlement is in the best interest of the Settlement Class and that the Settlement is fair, adequate, and reasonable.

### **WHO IS IN THE SETTLEMENT?**

To see if you are eligible under this Settlement, you first have to decide if you are a Member of the Settlement Class explained below.

### **5. How do I know if I am part of the Settlement?**

The Settlement Class includes all persons who purchased, sold or held NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts or NYMEX New York Harbor Gasoline futures contracts at any time from March 2, 2007 through March 26, 2007, inclusive.

For purposes of this definition, "person" means an individual, corporation, partnership, association, proprietorship, trust, governmental or quasi-governmental body or political subdivision or any agency or instrumentality thereof, or any other entity or organization.

Likewise, for purposes of this notice, the phrase "Class Contracts" shall mean NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts, and NYMEX New York Harbor Gasoline futures contracts, to the extent such contracts were traded or held at any time between March 2, 2007 through March 26, 2007, inclusive.

### **6. Are there exceptions to being included?**

Yes. Excluded from the Settlement Class are (i) members of the judiciary assigned to this case, including their immediate family members; (ii) Class Counsel and their employees; (iii) Defendants and any parent, subsidiary, affiliate, employee or agent of any Defendant, including Defendants' counsel; and (iv) Opt Outs (as defined in Section 1(w) of the Settlement Agreement).

### **7. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can get free help. You can call the Settlement Administrator toll-free at 866-778-9470; send an e-mail to [info@nymextassettlement.com](mailto:info@nymextassettlement.com); or visit [www.nymextassettlement.com](http://www.nymextassettlement.com) for more information.

### **THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

### **8. What does the Settlement provide?**

Defendant Optiver US LLC, on behalf of all Defendants, has agreed to make a payment in the amount of \$16,750,000 within seven days of the Court's Order requiring that notice be sent for the Settlement Class. This payment, plus interest that will accrue thereon after it is made, constitutes the Settlement Fund, from which will be deducted: (a) up to \$250,000 to pay reasonable and appropriate costs associated with giving notice to the Settlement Class and administration of the Settlement; (b) any amounts necessary to pay Taxes assessed on the Settlement Fund; (c) the Attorneys' Fees Award and any Incentive Award for the Plaintiffs (see Question 20 for an explanation of these terms); (d) the amount necessary to cover the attorneys' fees for services performed by Class Counsel and expenses incurred by Class Counsel after the Fairness Hearing (explained below); and (e) the costs reasonably incurred and reasonably expected to be incurred by the Settlement Administrator after the Fairness Hearing. The amounts remaining in the Settlement Fund after these deductions shall constitute the Net Settlement Fund. Qualifying Settlement Class Members will receive a share of the Net Settlement Fund if the Court approves the Settlement, in an amount to be calculated as described in this notice and in greater detail in the Plan of Allocation found at [www.nymextassettlement.com](http://www.nymextassettlement.com).

### **9. How much will my payment be?**

The exact amount each qualifying Settlement Class Member will receive from the Net Settlement Fund cannot be calculated until (1) the Court approves the Settlement; (2) the amounts identified in categories (a) through (e) in Question 8 are deducted from the Settlement Fund; and (3) the number of participating Class Members and the amount of their Allowed Claims are determined. In addition, each Settlement Class Member's share, if any, of the Net Settlement Fund will vary depending on the information the Settlement Class Member provides on the Proof of Claim form attached to this notice.

The Parties have agreed on a Plan of Allocation that will be used to calculate each Settlement Class Member's Allowed Claim. The Allowed Claim represents the maximum possible payment each Settlement Class Member could receive from the Net Settlement Fund based on their transactions or holdings in Class Contracts. A copy of the Plan of Allocation that has been preliminarily approved by the Court is attached to the Settlement Agreement along with the other exhibits thereto, and can be found by visiting the Settlement Website,

[www.nymextassettlement.com](http://www.nymextassettlement.com); calling the Settlement Administrator toll free at 866-778-9470; or emailing the Settlement Administrator at [info@nymextassettlement.com](mailto:info@nymextassettlement.com).

Examples of potential computations under the Plan of Allocation are available on the Settlement Website at [www.nymextassettlement.com](http://www.nymextassettlement.com).

The Plan of Allocation may be changed by the Court without providing further notice.

## HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

### 10. How can I get a payment?

To qualify for payment, you must complete and send in the Proof of Claim form. You may get a Proof of Claim form on the internet at [www.nymextassettlement.com](http://www.nymextassettlement.com); by calling the Settlement Administrator toll free at 866-778-9470; or by emailing the Settlement Administrator at [info@nymextassettlement.com](mailto:info@nymextassettlement.com). Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it as directed, postmarked no later than August 3, 2015.

### 11. When would I get my payment?

The exact date that qualifying Settlement Class Members will receive credits or checks (the “Distribution Date”) is not known at this time.

The Court will hold a hearing on May 19, 2015 at 1:00 p.m., to decide whether to approve the Settlement. If the Court approves the Settlement (see the section “The Court’s Fairness Hearing,” below), there may be appeals. It’s always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year.

If the Court approves the Settlement, and the Settlement becomes final (in other words, any appeals have been finally resolved), the Distribution Date will be after the Settlement becomes final.

The Settlement Website ([www.nymextassettlement.com](http://www.nymextassettlement.com)) will post updates on the Distribution Date. Please be patient.

### 12. What if I disagree with the amount of my payment?

Settlement Class Members have the right to object before the Court regarding the Settlement Administrator’s calculation of their payment or the decision whether they are eligible for payment. Any such objection must be filed with the Court within 21 days after the determination(s) of the Settlement Administrator. The Court’s decision with respect to any such objection shall be final, binding and non-appealable.

### 13. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Settlement Class, and all of the Court’s orders will apply to you and legally bind you.

**WHEN THE SETTLEMENT BECOMES FINAL YOU WILL BE RELEASING DEFENDANTS FOR THE CLAIMS DESCRIBED BELOW, AND YOU WILL BE BOUND BY THE RELEASES IN THE SETTLEMENT AGREEMENT INCLUDING THE COVENANT NOT TO SUE—EVEN IF YOU DO NOT FILE A PROOF OF CLAIM AND EVEN IF YOU FILE A CLAIM BUT ARE NOT AWARDED A PAYMENT OUT OF THE SETTLEMENT FUND OR ARE AWARDED LESS THAN THE AMOUNT YOU EXPECT.**

As a condition of receiving any payment from the Settlement Fund, Members of the Settlement Class will need to sign a formal release of their claims against Defendants arising in any way out of any losses or transactions in Class Contracts arising in any way from the facts alleged or at issue or underlying the Action, whether or not asserted in the Action (the “Released Claims”), as is more fully set forth below. Members of the Settlement Class will also need to sign a covenant not to sue the Defendants and others, as set forth more fully below. However, regardless of whether a Settlement Class Member signs the release or covenant not to sue, that Settlement Class Member’s claims will be released pursuant to Section 8 of the Settlement Agreement, and the Settlement Class Member shall be barred from initiating any future lawsuit arising out of or related to the claims asserted in this lawsuit.

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#### Release Language:

Upon the Effective Date, each and every Settlement Class Member who has not timely excluded himself, herself or itself from the Settlement, pursuant to Section 10 of the Settlement Agreement, and each of that Settlement Class Member’s past, present or future parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, attorneys, spouses, insurers, beneficiaries, employees, officers, directors, agents, independent contractors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, trustees, associates, heirs, executors, administrators and/or assigns and each and any of their respective parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, attorneys, insurers, beneficiaries, employees, officers, directors, agents, independent contractors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, trustees, associates, heirs, executors, administrators and/or assigns (together the “Releasing Parties”), releases and forever discharges, to the fullest extent permitted by law, the Released Parties from and against any and all present, past, or future claims, demands, debts, damages, losses, offsets, obligations, warranties, costs, fees, penalties, expenses, whenever incurred, rights of action, suits, and causes of action of every kind and nature whatsoever, whether based on contract, tort, federal, state or foreign law, statutory, or other legal or equitable theory of recovery, liabilities of any nature and kind whatsoever, whether known or unknown, suspected or unsuspected, existing, or claimed to exist, and whether arising in the past or future, in law or in equity, that such Settlement Class Member ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, in any way arising from

or related to, in full or in part and whether or not asserted in the Action, (i) any of the facts alleged in the Action or (ii) holding or transacting in Class Contracts (collectively, the “Released Claims”). Each Releasing Party further covenants not to sue any of the Released Parties for any of the Released Claims. The “Released Parties” shall mean Defendants, each of their past, present or future parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, attorneys, spouses, insurers, beneficiaries, employees, officers, directors, agents, independent contractors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, trustees, associates, heirs, executors, administrators and/or assigns, and each and any of their respective shareholders, parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, assigns, attorneys, insurers, beneficiaries, employees, officers, directors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, alter egos, trustees, associates, heirs, executors, administrators and/or assigns.

In addition, upon the Effective Date, each Releasing Party hereby expressly waives and releases any and all provisions, rights, and benefits conferred by §1542 of the California Civil Code, which reads:

**Section 1542. General release; extent.** 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.

From the Effective Date, each Releasing Party also expressly waives and releases any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code.

Each Releasing Party may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of Section 8 of the Settlement Agreement, but each Releasing Party, through the Settlement Agreement, and with the ability to seek independent advice of counsel, expressly waives and fully, finally and forever settles and releases, as of the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. From the Effective Date, the releases herein given by the Releasing Parties shall be and remain in effect as full and complete releases of the claims set forth in the Action, notwithstanding the later discovery or existence of any additional or different facts relative hereto or the later discovery of any additional or different claims that would fall within the scope of the release provided in Section 8(a) of this Settlement Agreement, as if such facts or claims had been known at the time of this release.

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The Settlement Agreement does not settle or compromise any claims other than those set forth therein. All rights of the Plaintiffs or any Member of the Settlement Class against any other person or entity other than the Released Parties are specifically reserved by the Plaintiffs and the Members of the Settlement Class.

A complete copy of the Settlement Agreement can be obtained at [www.nymextassettlement.com](http://www.nymextassettlement.com). The Settlement Agreement specifically describes the Released Claims in necessarily accurate legal terminology. Talk to Class Counsel (see the section on “The Lawyers Representing You”) or your own lawyer if you have questions about the Released Claims or what they mean.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don’t want a payment from this Settlement, but you want to keep the right to sue Defendants on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as “opting out” of the Settlement Class.

**14. How do I get out of the Settlement?**

Each Settlement Class Member who wishes to exclude himself, herself or itself from the Settlement Class must submit a timely, written Request for Exclusion form. To be effective, such Request for Exclusion form must be mailed to the Settlement Administrator at the following address and must be postmarked no later than April 14, 2015 (see Question 23 for a definition of that term):

IN RE OPTIVER COMMODITIES LITIGATION SETTLEMENT  
c/o A.B. DATA, LTD.  
EXCLUSIONS  
PO BOX 170500  
MILWAUKEE, WI 53217-8091

A Settlement Class Member’s Request for Exclusion must be in writing in the form (without material variation) of Exhibit 4 to the Settlement Agreement (available at [www.nymextassettlement.com](http://www.nymextassettlement.com)) and should include all of the information requested in the form, which includes, but is not limited to the following:

- the Settlement Class Member’s name, address, telephone number, Social Security or Federal Tax Identification Number, and email address;
- a statement certifying such person is a Member of the Settlement Class;
- a list of all of the Settlement Class Member’s (a) transactions at any time during the Class Period in NYMEX Light Sweet Crude Oil, New York Harbor Heating Oil, and New York Harbor Gasoline futures contracts; and (b) positions (long or short) held in those contracts at any time during the Class Period (alternatively, the Settlement Class Member may provide copies of account statements that reflect all such transactions and holdings);

- a statement that “I/we hereby request that I/we be excluded from and hereby acknowledge that I am/we are voluntarily excluding myself/ourselves the Settlement Class in *In re Optiver Commodities Litigation*, Master File No. 08-CV-6842 (LAP) (S.D.N.Y.)”; and
- the notarized signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member, even if the Settlement Class Member is represented by counsel.

Again, your Request for Exclusion must be in writing (without material variation) of Exhibit 4 to the Settlement Agreement (available at [www.nymextassettlement.com](http://www.nymextassettlement.com)).

Requests for Exclusion must be exercised individually by the Settlement Class Member, not as or on behalf of a group, class, or subclass, except that such Requests for Exclusion may be submitted by a Settlement Class Member’s Legally Authorized Representative (see Question 15 for a definition of that term).

You can’t exclude yourself on the phone, by e-mail, or on the Settlement Website. If you ask to be excluded, you will not get any money from the Settlement, and you cannot object to the Settlement or intervene in the case. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendants.

**15. What is a “Legally Authorized Representative”?**

“Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Class Member; or any other legally appointed person or entity responsible for handling the business affairs of a Member of the Settlement Class.

**16. If I don’t exclude myself, can I sue the Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit.

Remember, the exclusion deadline is **April 14, 2015**.

**17. If I exclude myself, can I get a payment from this Settlement?**

No. If you exclude yourself, you are not eligible for a payment under the Settlement. But you may sue, continue to sue, or be part of a different lawsuit against Defendants, subject to applicable laws and court rules.

**18. If I exclude myself, will Defendants get a refund of my share of the Settlement?**

No.

**THE LAWYERS REPRESENTING YOU**

**19. Do I have a lawyer in this case?**

The Court has appointed the following law firms to represent you and other Class Members

<p>Ian T. Stoll LOVELL STEWART HALEBIAN JACOBSON LLP 61 Broadway, Suite 501 New York, New York 10006</p>	<p>Vincent Briganti LOWEY DANNENBERG COHEN &amp; HART, P.C. One North Broadway White Plains Plaza, 5<sup>th</sup> Floor White Plains, New York 10601</p>	<p>Hollis Salzman ROBINS, KAPLAN, MILLER &amp; CIRESI L.L.P. 601 Lexington Ave., Ste. 3400 New York, New York 10022</p>
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You will not be charged for services performed by Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

**20. How will the lawyers be paid? What is the Incentive Award?**

To date, the attorneys representing the Plaintiffs and the Settlement Class in this Action have not received payment for their services or reimbursement for their expenses. Settlement Class Members are not personally responsible for payment of attorneys’ fees or expenses. As compensation for their time and their risk in prosecuting the litigation on a wholly contingent fee basis for six (6) years, Class Counsel will ask the Court for an award of attorneys’ fees in the amount of no more than one-third (*i.e.*, 33 1/3%) of the Settlement Fund, as a common fund, and for reimbursement of their costs and expenses in the amount of no more than approximately \$275,000—all to be deducted from the Settlement Fund before any payment to Settlement Class Members.

The Plaintiffs similarly will seek reimbursement of their own expenses and compensation for their time devoted to this litigation in the aggregate amount of no more than \$100,000, to be paid from the Settlement Fund. This amount constitutes the Incentive Award. Additionally, Class Counsel may apply at the time of any application for distribution to qualifying Settlement Class Members, for an award from the Settlement Fund of attorneys’ fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement after the date of the Fairness Hearing.

The Court may award less than these amounts. Defendants have no reason to oppose the foregoing requests for fees and expenses up to these amounts. If you are a Settlement Class Member (or a Settlement Class Member’s Legally Authorized Representative), you can object to the Attorneys’ Fees Award or the Incentive Award by following the procedure for objecting to the Settlement. (See Question 21—“How do I tell the Court I don’t like the Settlement?”)

## OBJECTING TO THE SETTLEMENT

If you are a Settlement Class Member and do not exclude yourself, you can tell the Court that you don't agree with the Settlement or some part of it.

**21. How do I tell the Court that I don't like the Settlement?**

If you're a Settlement Class Member (or a Settlement Class Member's Legally Authorized Representative, see Question 15), and you haven't excluded yourself from the Settlement, you can object to the proposed Settlement if you don't like it, or you can try to intervene in the case. However, you cannot object if you have excluded yourself. In other words, you must stay in the case as a Settlement Class Member in order to object or to intervene in the case.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or any term or aspect of the proposed Settlement, the application for attorneys' fees and expenses, or the Final Order and Judgment, or if you wish to intervene in the Action, you must prepare an objection or motion to intervene in writing, in accordance with the following instructions. Each written objection or motion to intervene must contain:

- (i) a heading that refers to the Action by case name and Case Number;
- (ii) a statement of the specific legal and factual basis for each objection or intervention argument;
- (iii) a statement whether the objecting or intervening person or entity intends to attend the Fairness Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number;
- (iv) a description of any and all evidence that 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; and
- (v) 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.

In addition, any motion to intervene must comply with the Federal Rules of Civil Procedure and the Local Rules of the Court.

After preparing the appropriate document, you will need to file it with the Court no later than April 27, 2015, and serve the same on or before the date of such filing by hand or overnight mail on Class Counsel and Defendants' counsel.

All objectors shall make themselves available to be deposed by any Party in the county of the objector's residence within seven (7) days of service of the objector's timely written objection.

All objections to the proposed Settlement must be signed by the Settlement Class Member (or his, her or its Legally Authorized Representative), even if the Settlement Class Member is represented by counsel. The right to object to the proposed Settlement or to intervene must be exercised individually by a Settlement Class Member or his, her, or its 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 Settlement Class Member's Legally Authorized Representative.

Any Member of the Settlement Class that fails to object in the manner described in this document (or the Preliminary Approval and Scheduling Order entered by the Court on January 7, 2015) 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.

Please use the following addresses for submission of any objection or motion to intervene:

SETTLEMENT ADMINISTRATOR:	CLASS COUNSEL:	COURT:	DEFENDANTS' COUNSEL:
In re Optiver Commodities Litigation Settlement c/o A.B. Data, Ltd. PO Box 170500 Milwaukee, WI 53217-8091	Ian T. Stoll LOVELL STEWART HALEBIAN JACOBSON LLP 61 Broadway, Suite 501 New York, NY 10006  Vincent Briganti LOWEY DANNENBERG COHEN & HART, P.C. One North Broadway White Plains Plaza, 5 <sup>th</sup> Floor White Plains, NY 10601  Hollis Salzman ROBINS, KAPLAN, MILLER & CIRESI L.L.P. 601 Lexington Ave., Ste. 3400 New York, NY 10022	Clerk of the Court UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK Daniel Patrick Moynihan United States Courthouse 500 Pearl Street, New York, NY 10007	Paul E. Dengel Stacie R. Hartman SCHIFF HARDIN LLP 233 S. Wacker Drive, Ste. 6600 Chicago, IL 60606

## 22. What's the difference between objecting and excluding yourself?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object, because the case no longer affects you. If you object, and the Court approves the Settlement anyway, you will still be legally bound by the result.

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing called a "Fairness Hearing" (also known as a "Final Approval Hearing") to decide whether to approve the Settlement. If you have not excluded yourself from the Settlement, you may attend the Fairness Hearing and you may ask to speak, but you don't have to.

## 23. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing to decide whether to finally approve the proposed Settlement on May 19, 2015, before Judge Loretta A. Preska, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, Courtroom 12A, 500 Pearl Street, New York, NY 10007.

At this Hearing, the Court will consider whether the proposed Settlement and all of its terms are adequate, fair, and reasonable. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Settlement Class and whether and how much to award the Plaintiffs for representing the Settlement Class.

Please note that the time and date of the Hearing may be continued from time to time without further notice, and you are advised to confirm the time and location if you wish to attend. As soon as practicable after any change in the scheduled date and time, such change will be posted on the Settlement Website at [www.nymextassettlement.com](http://www.nymextassettlement.com). To keep up on any changes in the deadlines, please contact the Settlement Administrator or review the Settlement Website.

At or after the Hearing, the Court will decide whether to finally approve the proposed Settlement. There may be appeals after that. We do not know how long these decisions will take.

## 24. Do I have to come to the Hearing?

No. Class Counsel will answer any questions asked by the Court. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. So long as you mailed your written objection on time and complied with the other requirements for a proper objection, as set forth above in Question 21, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

## 25. May I speak at the Hearing?

If you are a Member of the Settlement Class, you are entitled to attend the Hearing in person or through duly authorized attorneys, and to show cause why the Settlement or other applications should or should not be approved. However, if you wish to appear you must submit a written statement to the Court (at the address provided above), along with any materials you wish the Court to consider. This written statement must be postmarked no later than April 27, 2015, or it will not be considered and you will not be allowed to raise your concerns. Such materials must also be sent to Class Counsel and counsel for Defendants at the addresses set forth in Question 21 above, or they will not be considered. You cannot speak at the Hearing if you excluded yourself from the Settlement.

### IF YOU DO NOTHING

## 26. What happens if I do nothing at all?

If you do nothing, you'll get no money from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants related to the legal issues in this case, ever again.

### GETTING MORE INFORMATION

## 27. How do I get more information about the Settlement?

You may obtain additional information by:

- Calling the Settlement Administrator toll-free at 866-778-9470 to ask questions and receive copies of documents, or e-mailing the Settlement Administrator at [info@nymextassettlement.com](mailto:info@nymextassettlement.com).
- Writing to the Settlement Administrator at the following address:

IN RE OPTIVER COMMODITIES LITIGATION SETTLEMENT  
c/o A.B. DATA, LTD.  
PO BOX 170500  
MILWAUKEE, WI 53217-8091

- Visiting the Settlement Website, [www.nymextassettlement.com](http://www.nymextassettlement.com), where you will find answers to common questions about the Settlement plus other information to help you.

- Reviewing legal documents that have been filed with the Clerk of Court in this lawsuit at the Court offices stated in Question 21 above during regular office hours.
- Contacting Class Counsel listed in Question 19 above.

**PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK TO ASK QUESTIONS ABOUT THIS LAWSUIT OR NOTICE.**

**THE COURT WILL NOT RESPOND TO LETTERS OR TELEPHONE CALLS. IF YOU WISH TO ADDRESS THE COURT, YOU MUST FILE AN APPROPRIATE PLEADING OR MOTION WITH THE CLERK OF THE COURT IN ACCORDANCE WITH THE COURT'S USUAL PROCEDURES.**

\*\*If this Notice reached you at an address other than the one on the mailing label, or if your address changes, please enter your current information online at [www.nymextasettlement.com](http://www.nymextasettlement.com), or send it to the Administrator at the address set forth above.

IN RE OPTIVER COMMODITIES LITIGATION SETTLEMENT  
c/o A.B. DATA, LTD.  
PO BOX 170500  
MILWAUKEE, WI 53217-8091

**COURT-APPROVED NOTICE REGARDING  
IN RE OPTIVER COMMODITIES LITIGATION**

**DATED MATERIAL—OPEN IMMEDIATELY**  
OPV\_EM\_51243N20