

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

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IN RE JPMORGAN PRECIOUS METALS  
SPOOFING LITIGATION

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THIS DOCUMENT RELATES TO:  
ALL ACTIONS

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Case No.: 1:18-cv-10356  
Hon. Gregory H. Woods

**DECLARATION OF VINCENT BRIGANTI IN SUPPORT OF CLASS PLAINTIFFS'  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT  
WITH DEFENDANT JPMORGAN CHASE & CO.**

Pursuant to 28 U.S.C. § 1746, I, Vincent Briganti, hereby declare as follows:

1. I am Chairman and a shareholder of the law firm Lowey Dannenberg, P.C., Court-appointed interim lead class counsel (“Lowey” or “Lead Counsel”) in the above-referenced Action. See ECF No. 18.<sup>1</sup> Lowey has significant experience litigating complex Commodity Exchange Act class actions.

2. I submit this Declaration in connection with Class Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement with JPMorgan Chase & Co. (“JPMorgan”).

3. All capitalized terms not defined here have the same meaning as defined in the Stipulation and Agreement of Settlement with JPMorgan dated September 1, 2021.

4. Annexed hereto are true and correct copies of the following documents:

<b>TABLE OF EXHIBITS</b>	
Exhibit 1	Stipulation and Agreement of Settlement with JPMorgan dated September 1, 2021 (the “Settlement Agreement”).
Exhibit 2	Declaration of Linda V. Young, dated November 8, 2021.
Exhibit 3	Proposed mailed notice.
Exhibit 4	Proposed publication notice.
Exhibit 5	Proof of Claim and Release form.
Exhibit 6	Proposed Distribution Plan.
Exhibit 7	Lowey’s firm resume.

**I. Procedural History**

5. On November 7, 2018, Plaintiff Dominick Cognata filed the initial complaint against Defendant JPMorgan and certain of its employees in the U.S. District Court for the Southern District of New York alleging Defendants violated the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (“CEA”), and the common law by intentionally manipulating the prices of COMEX Gold futures contracts, COMEX Silver futures contracts, NYMEX Platinum futures

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<sup>1</sup> Unless otherwise noted, all docket citations are to the docket in this Action, 18-cv-10356 (GHW) (S.D.N.Y.).

contracts, NYMEX Palladium futures contracts (collectively, “Precious Metals Futures”), and options on those contracts (“Options on Precious Metals Futures”), which are each traded on United States-based exchanges, from March 1, 2008 through August 31, 2016 (the “Class Period”).<sup>2</sup> ECF No. 1.

6. Plaintiff Cognata alleged that JPMorgan intentionally manipulated the prices of Precious Metals Futures and Options on Precious Metals Futures through a technique called “spoofing,” which is the intentional placing of orders with the intent to cancel prior to execution to send false and illegitimate supply and demand signals to an otherwise efficient market. Plaintiff Cognata alleged that JPMorgan’s spoofing practices caused Precious Metals Futures and Options on Precious Metals Futures prices to be artificial throughout the Class Period to benefit JPMorgan’s trading positions financially, at the expense of other investors.

7. Subsequently, related actions were filed in this District. On February 5, 2019, all actions were consolidated into this action, and Lowey was appointed as interim lead class counsel. *See* ECF No. 18; *see also* ECF No. 34 (consolidating actions filed after the initial consolidation motion was pending).<sup>3</sup>

8. Class Plaintiffs are sophisticated investors with significant financial expertise who have decades of collective experience trading Precious Metals Futures and Options on Precious Metals Futures.

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<sup>2</sup> The initial proposed class period was January 1, 2009 through December 31, 2015, ECF No. 1 ¶ 1, but has been extended to reflect the period covered by the Settlement Agreement.

<sup>3</sup> The consolidated actions are: *Cognata v. JPMorgan Chase & Co., John Edmonds*, 18-cv-10356 (S.D.N.Y.); *Melissinos Trading, LLC v. JPMorgan Chase & Co., John Edmonds*, 18-cv-10628 (S.D.N.Y.); *Sterk and Maher v. JPMorgan Chase & Co., John Edmonds*, 18-cv-10634 (S.D.N.Y.); *Ryan v. JPMorgan Chase & Co., John Edmonds*, 18-cv-10755 (S.D.N.Y.); and *Robert Charles Class A., L.P., and Robert L. Teel v. JPMorgan Chase & Co., John Edmonds*, 18-cv-11115 (S.D.N.Y.); *Serri, et al., v. JPMorgan Chase & Co., et al.*, No. 18-cv-11458 (S.D.N.Y.); and *Alishaev, et al., v. JPMorgan Chase & Co., et al.*, No. 18-cv-11629 (S.D.N.Y.).

9. Class Plaintiffs' allegations and claims in this Action are based on a thorough investigation conducted by Lead Counsel. Lead Counsel, *inter alia*, investigated: (1) the Precious Metals Futures markets, generally; (2) publicly available press releases, news articles, and other media reports related to regulatory and law enforcement investigations into Precious Metals Futures manipulation; (3) publicly available documents concerning JPMorgan's business practices, formal regulatory investigations and enforcement proceedings, including by the U.S. Department of Justice ("DOJ") and Commodity Futures Trading Commission ("CFTC"); (4) JPMorgan's Securities and Exchange Commission filings and other public reports; and (5) consulted with experts and market participants about the foregoing.

10. On February 21, 2019, the DOJ moved to intervene in the case and to stay the action in light of ongoing related criminal prosecutions and a broader ongoing government investigation. ECF No. 26. The Court granted the stay (ECF No. 36) and has extended the stay several times at the request of the DOJ. *See, e.g.*, ECF Nos. 40, 43, 55, 63, 70, 71.

11. During the pendency of the Court's stay, a number of JPMorgan traders investigated by the DOJ have pled guilty, while others are currently awaiting trial.

12. On September 29, 2020, JPMorgan entered into a Deferred Prosecution Agreement (the "DPA") with the DOJ Criminal Division, Fraud Section, and the United States Attorney's Office for the District of Connecticut ("USAOC") to resolve criminal charges, including wire fraud charges relating to a scheme to defraud market participants in thousands of episodes of unlawful trading in the Precious Metals Futures market between at least April 2008 and January 2016.<sup>4</sup>

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<sup>4</sup> Deferred Prosecution Agreement, *U.S. v. JPMorgan Chase & Co.*, No. 20-cr-00175 (D. Conn. Sep. 29, 2020), ECF No. 11; *see also* Information, *U.S. v. JPMorgan Chase & Co.*, No. 20-cr-00175 (D. Conn. Sep. 29, 2020) (the "Information"), ECF No. 1.

13. Under the DPA, JPMorgan paid a total criminal monetary amount of \$920,203,609 in connection with the manipulation of, among other things, the Precious Metals Futures market. Included in this total amount was a criminal monetary penalty of \$436,431,811, a criminal disgorgement amount of \$172,034,790, and a victim compensation payment amount (the “VCPA”) of \$311,737,008 to be distributed at the DOJ and USAOC’s sole discretion. The VCPA will be used to compensate victims of JPMorgan’s alleged manipulation of Precious Metals Futures and Options on Precious Metals Futures, as well as other misconduct covered by the DPA. Specifically, the DOJ and USAOC will distribute approximately \$200 million to compensate victims of JPMorgan’s manipulation of Precious Metals Futures and Options on Precious Metals Futures.

14. JPMorgan admitted responsibility for the acts charged in the Information and as set forth in the Statement of Facts accompanying the Deferred Prosecution Agreement.

15. On September 29, 2020, the CFTC issued an order (the “CFTC Order”) filing and settling charges against JPMorgan for manipulative and deceptive conduct and spoofing that spanned at least 2008 through 2016 and involved hundreds of thousands of spoof orders in Precious Metals Futures and U.S. Treasury futures contracts on the Commodity Exchange, Inc., the New York Mercantile Exchange, and the Chicago Board of Trade.<sup>5</sup>

## **II. Settlement Negotiations**

16. In March 2020, Class Plaintiffs and JPMorgan began discussing the possibility of settlement. In May 2020, the Parties agreed to the selection of the Honorable Diane M. Welsh (Ret.) as a mediator. Judge Welsh is a well-respected and experienced mediator with a track record

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<sup>5</sup> Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, *In the Matter of JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and J.P. Morgan Securities LLC*, Commodity Futures Trading Commission, No. 20-69 (Sept. 29, 2020), *available at*: <https://www.cftc.gov/media/4826/enfjpmorganchaseorder092920/> download.

of successfully helping parties to resolve significant and high-profile disputes, including complex class actions.

17. Prior to the mediation, Lead Counsel negotiated the exchange by JPMorgan of Precious Metals Futures or Options on Precious Metals Futures trade data for JPMorgan orders and transactions, including data for the full duration of the Class Period (the “Mediation Information”). JPMorgan provided Class Plaintiffs with this data in September 2020. The Mediation Information provided Class Plaintiffs with the ability to assess the scope of JPMorgan’s manipulation and its impact on market participants.

18. On November 17, 2020, the Parties exchanged detailed mediation statements. On November 23, 2020 and December 9, 2020, the Parties participated in day-long Zoom mediation sessions with Judge Welsh that included robust presentations of the Parties’ respective litigation risks—including the existence of the government settlements—and presentations of each Party’s damages analysis, followed by questions and critiques from the opposing Party. These mediation sessions concluded with the Parties unable to reach a settlement.

19. The Parties continued their negotiations through Judge Welsh. On February 19, 2021, Judge Welsh presented the Parties with a mediator’s proposal for a \$60 million settlement that also included further exchange of Mediation Information. Each Party accepted the proposal.

20. After weeks of additional negotiations, on May 20, 2021, Class Plaintiffs and JPMorgan executed a binding settlement term sheet. As part of the term sheet, JPMorgan agreed to provide on or before June 18, 2021 further Mediation Information that included non-privileged chats from various custodians that (a) JPMorgan previously provided to regulators; (b) hit upon relevant search terms used in connection with regulatory productions; (c) hit upon additional search terms relevant to futures contracts and options on futures contracts; and (d) underwent

human review to allow Class Plaintiffs to confirm, along with Class Plaintiffs' analysis of JPMorgan's trade data, that the adequacy of the proposed settlement amount was reasonably supported. This production of further Mediation Information included 170,330 documents consisting of 2,621,654 pages and at least 100,000 e-mails and Bloomberg chats from throughout the relevant time period. Lead Counsel used these documents to evaluate JPMorgan's disclosures regarding the events revealed in the government settlements and the scope of the alleged misconduct.

21. Additionally, trade data produced by JPMorgan and procured from public sources allowed Lead Counsel to work with economic experts to examine the number and impact of the alleged manipulative events on the Precious Metals Futures and Options on Precious Metals Futures markets. Lead Counsel incorporated this analysis into the proposed Distribution Plan, as part of the evaluation of the number and impact of the alleged manipulative events on the Precious Metals Futures and Options on Precious Metals Futures markets. Lead Counsel, in consultation with their experts, were also able to preliminarily estimate class-wide damages of \$915 million, assuming Class Plaintiffs succeed on all triable issues.

22. On July 12, 2021, Class Plaintiffs and JPMorgan reported to the Court that they had reached an agreement in principle to resolve this Action. The Parties requested that the Court partially lift the stay of the Action to the extent necessary for the Parties to finalize a settlement and present it to the Court for preliminary approval, which request the Court granted on July 13, 2021. ECF Nos. 72, 73.

23. The Parties executed the Settlement Agreement on September 1, 2021. When the Settlement Agreement was executed, Lead Counsel and Class Plaintiffs had access to sufficient

information to allow them to conclude that the proposed Settlement was fair, reasonable, and adequate.

24. Negotiations leading to the Settlement were entirely non-collusive and strictly arm's length. And, as discussed above, prior to reaching the Settlement, Class Plaintiffs and Lead Counsel were well-informed regarding the strengths and weaknesses of Class Plaintiffs' claims. Lead Counsel had the benefit of information from our investigations and analyses, regulatory investigations, and settlements involving Defendants.

25. At all times while negotiating and executing the proposed Settlement Agreement with JPMorgan, Class Plaintiffs were represented by Lead Counsel, who have significant experience prosecuting federal class action claims arising under the CEA. *See* Exhibit 7. Defendants were represented by Sullivan & Cromwell LLP, a leading international law firm that has significant experience defending federal class action claims arising under the CEA.

### **III. Key Settlement Terms**

26. JPMorgan has agreed to pay \$60,000,000 to Class Plaintiffs and the Settlement Class. The Settlement Class is defined as:

All Persons and entities wherever located that purchased or sold any Precious Metals Futures or Options on Precious Metals Futures on the New York Mercantile Exchange ("NYMEX") or Commodity Exchange Inc. ("COMEX") from March 1, 2008 through August 31, 2016 (the "Class Period"). Excluded from the Settlement Class are (i) JPMorgan and any parent, subsidiary, affiliate or agent of JPMorgan, provided, that any Investment Vehicle shall not be excluded from the Settlement Class, but under no circumstances may JPMorgan (or any of its direct or indirect parents, subsidiaries, affiliates, or divisions) receive a distribution for its own account from the Settlement Fund through an Investment Vehicle; and (ii) the United States Government.

*See* Ex. 1 (Settlement Agreement), § 1(F)

27. The consideration that JPMorgan has agreed to pay is within a range that Lead Counsel believes may be found to be fair, reasonable, and adequate at final approval. The



Settlement will also serve to enhance the recovery for Class Members to the extent they are also eligible to receive proceeds from the VCPA administered by the DOJ.

28. The Settlement involves a structure and terms that are common in class action settlements, including a confidential Supplemental Agreement that provides JPMorgan with a qualified right to terminate the Settlement in the event that the volume of Precious Metals Futures or Options on Precious Metals Futures transacted by Class Members who timely exercise their right to request exclusion from the Settlement Class exceeds a certain percentage. *See* Ex. 1 § 19(D).

29. Lead Counsel has strong reason to believe that there are at least 11,000 geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on trading volume data, large trader reports, and expert analysis.

30. Class Members that do not request exclusion from the Settlement Class and submit a valid claim will receive a *pro rata* share of the Net Settlement Fund, based on the volume of their Precious Metals Futures and Options on Precious Metals Futures transactions and adjusted by certain multipliers as described in the accompanying Distribution Plan. *See* Ex. 6 at ¶¶ 1-2.

31. In the event that the Settlement is terminated pursuant to the terms of the Settlement Agreement, any amount paid by JPMorgan into an Escrow Account, less any reasonable costs incurred for notice and claims administration up to \$500,000 will be returned to JPMorgan within 10 business days of termination. *See* Ex. 1 §§ 4(F), 8(B), 20(A).

32. If approved, the Settlement provides that “the Releasing Parties shall release and be deemed to have released and forever discharged and shall be forever enjoined from prosecuting the Released Claims against the Released Parties,” and the Action will be completely resolved. *See* Ex. 1 § 11.

33. Lead Counsel intend to seek attorneys' fees of no more than one-third of the common fund created by the Settlement and reimbursement of no more than \$750,000 for the costs and expenses incurred in litigating this Action. *See* Ex. 1 §4(E); Ex. 3 at ¶ 27.

34. Class Plaintiffs may also request up to \$110,000 in Incentive Awards for their efforts in prosecuting this Action as class representatives. *See* Ex. 1 §4(E); Ex. 3 at ¶ 27.

#### **IV. Distribution Plan**

35. Lead Counsel, together with their consulting experts, developed the proposed Distribution Plan. The Net Settlement Fund will be allocated on a *pro rata* basis according to an estimate of the impact of Defendants' spoofing on market transactions. *See* Exhibit 6. The Distribution Plan calculates an "Instrument Amount" for each Precious Metals Futures or Options on Precious Metals Futures transaction. *See* Ex. 6 at ¶¶ 9-10. The Instrument Amount is determined by multiplying together three metrics: the "Volume Multiplier," "Instrument Multiplier," and "Futures Contract Specification Multiplier." *Id.*

36. The Volume Multiplier reflects the notional value of each transaction, which is equal to the product of (1) the number of contracts purchased or sold, (2) the futures contract price denominated in U.S. dollars per troy ounce, and (3) the futures contract unit denominated in troy ounces per futures contract, and, then dividing that product by 1 million. *See* Ex. 6 at ¶ 11. The Instrument Multiplier assigns a multiplier value depending on whether the transaction involves a futures contract, or option on a futures contract. *See* Ex. 6 at ¶ 12. Finally, the Futures Contract Specification Multiplier accounts for the impact of Defendants' spoofing on specific Precious Metals Futures contracts and Options on Precious Metals Futures contracts. *See* Ex. 6 at ¶ 13.

37. The Instrument Amounts for each transaction will be added together and represent the claimant's Transaction Claim Amount. Under the Distribution Plan, the Net Settlement Fund

will be allocated *pro rata* based on the total Transaction Claim Amounts of all Authorized Claimants. *See* Ex. 6 at ¶¶ 15-16.

38. An exception will apply to Class Members whose expected distribution based on their *pro rata* fraction is less than the costs of administering the Claim. These Class Members will receive a Minimum Payment Amount in an amount to be determined after the Claim Forms are reviewed, calibrated to ensure that a minimal portion of the Net Settlement Fund is reallocated toward Authorized Claimants receiving the Minimum Payment Amount. After determining the portion of the Net Settlement Fund that will be used to make the Minimum Payment Amounts, the remainder of the Net Settlement Fund will be reallocated *pro rata* among the remaining Class Members. *See* Ex. 6 at ¶ 17.

39. The Settlement does not bar Class Members from filing a victim impact statement with the DOJ to participate in the DOJ's VCPA, created in connection with the DOJ's DPA with JPMorgan relating to criminal charges for conduct similar to that alleged in this Action.

40. Lead Counsel recommend the proposed Distribution Plan as fair, reasonable, and adequate to the proposed Settlement Class, having determined it to be the most fair and efficient manner for distributing funds to Class Members.

## **V. Notice Plan**

41. The proposed settlement administrator, A.B. Data, Ltd. ("A.B. Data"), developed the proposed Notice Plan in coordination with Lead Counsel. *See* Exhibits 2-5. After considering A.B. Data's experience, institutional knowledge, and price competitiveness, Lead Counsel determined that the selection of A.B. Data was in the best interest of the Settlement Class.

42. A.B. Data's proposal included a detailed understanding of the instruments and trading volume involved, and the need for a noticing process that included publications and mailing

to entities (e.g., brokers). A.B. Data has extensive experience administering class action settlements and designing notice plans that have been approved in numerous complex class actions, including class actions involving commodities and futures contracts, such as *In re Silver Fixing Antitrust Litigation*, Nos. 14-md-02573 & 14-mc-02573 (VEC) (S.D.N.Y.); *Boutchard v. Gandhi et al.*, No. 18-cv-7041 (N.D. Ill.); and *In re LIBOR-Based Financial Instruments Antitrust Litigation*, Nos. 11-md-2262 & 11-cv-2613 (NRB) (S.D.N.Y.). See Exhibit 2.

43. The Declaration of Linda V. Young describes the proposed Notice Plan, which is consistent with notice plans that courts have repeatedly approved in prior CEA manipulation class action settlements. See, e.g., Decl. of Linda Young, *Boutchard et al., v. Gandhi et al.*, No. 18-cv-7041 (JJT) (N.D. Ill. Jan. 29, 2021), ECF No. 125-2 at 14-40; *Boutchard v. Gandhi et al.*, No. 18 Civ. 7041, slip op. (JJT) (N.D. Ill. Mar. 5, 2021), ECF No. 132; Aff. of Eric J. Miller, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (HBP) (S.D.N.Y. Sept. 27, 2016), ECF No. 684, at 4-5; *Laydon v. Mizuho Bank Ltd. et al.*, No. 12-cv-3419, slip op. (S.D.N.Y. Sept. 12, 2017).

44. Lead Counsel also subpoenaed the CME Group Inc. and obtained, *inter alia*, documents sufficient to show the names and addresses of “Large Traders”<sup>6</sup> in Precious Metals Futures on COMEX and NYMEX during the Class Period along with the COMEX and NYMEX clearing members that cleared Precious Metals Futures and Options on Precious Metals Futures. As part of the direct mailing, notice will be sent directly to Large Traders and COMEX, and NYMEX clearing members with the direction that such clearing firms should forward the Class Notice to persons who transacted in Precious Metals Futures and Options on Precious Metals Futures during the Class Period.

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<sup>6</sup> Large traders being defined as those who are required to report under Part 17 of the Commodity Futures Trading Commission’s (CFTC) regulations. Current reporting levels are found in CFTC Regulation 15.03(b).

45. A proposed Proof of Claim and Release form, prepared and recommended by Lead Counsel and A.B. Data, is submitted as Exhibit 5. Lead Counsel developed the Proof of Claim and Release form with the assistance of A.B. Data to ensure it is written in a fashion that will be readily understood by Class Members. Lead Counsel recommend the proposed Proof of Claim and Release form as fair and reasonable.

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

Executed on November 19, 2021  
White Plains, New York

/s/ Vincent Briganti  
Vincent Briganti