

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: BANK OF NOVA SCOTIA
SPOOFING LITIGATION

Civil Action No. 3:20-11059 (MAS) (RLS)

**STIPULATION AND
AGREEMENT OF
SETTLEMENT**

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the “**Agreement**” or “**Settlement Agreement**”) is made and entered into on November 1, 2022. This Settlement is entered into by Plaintiffs Casey Sterk, Kevin Maher, Jeffery Tomasulo, Christopher DePaoli, Don Tran, Mark Serri, ML Options Trading, LLC, Robert Charles Class A, L.P., and Port 22, LLC (collectively, “**Class Plaintiffs**”), for themselves and on behalf of each Settling Class Member (as defined in Section 1(MM) herein), by and through Lead Counsel (as defined in Section 1(W) herein), on the one hand, and Defendants Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., and The Bank of Nova Scotia Trust Company of New York (collectively, “**BNS**”), and Corey Flaum (“**Flaum**” and together with BNS, “**Defendants**” and together with BNS and Class Plaintiffs, “**the Parties**”) by and through their respective undersigned counsel of record in this Action (as defined in Section 1(A) herein), on the other hand.

WHEREAS, Class Plaintiffs have filed a civil class action captioned *In re Bank of Nova Scotia Spoofing Litig.*, 3:20-cv-11059 (MAS) (RLS) (D.N.J.) and allege, among other things, that Defendants (as defined in Section 1(L) herein), from approximately January 1, 2008 through July 31, 2016, acted unlawfully by, *inter alia*, manipulating the prices of Precious Metals Futures and Options on Precious Metals Futures in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* (the “**CEA**”) and the common law;

WHEREAS, on August 19, 2020, BNS entered into a Deferred Prosecution Agreement with the U.S. Department of Justice (“**DOJ**”) that resolved the DOJ’s investigation into manipulation in the markets for Precious Metals Futures from January 2008 until July 2016, and, as part of that Deferred Prosecution Agreement, agreed to pay \$6,622,190, which the DOJ will distribute to compensate victims for their losses;

WHEREAS, Class Plaintiffs further contend that they and the Settlement Class are entitled to monetary damages as a result of Defendants' conduct;

WHEREAS, Defendants maintain that they have good and meritorious defenses to the claims of liability and damages made by Class Plaintiffs;

WHEREAS, arm's-length settlement negotiations, facilitated by Jed D. Melnick, Esq. ("**Mediator**"), have taken place among the Parties, and this Settlement Agreement has been reached, subject to the final approval of the Court;

WHEREAS, Lead Counsel, after having conducted an investigation of the facts and the law regarding the Action, including the Mediation Information (as defined in Section 1(X) herein) provided by BNS, consider the Settlement set forth herein to be fair, reasonable, adequate and in the best interests of Class Plaintiffs and the Settlement Class, and have therefore determined that it is in the best interests of Class Plaintiffs and the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of complex litigation and to assure a benefit to Class Plaintiffs and the Settlement Class;

WHEREAS, Defendants, while maintaining that they are not liable to Class Plaintiffs and that they have good and meritorious defenses to Class Plaintiffs' claims, have nevertheless agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Settling Class Member, and Defendants agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of law or liability or wrongdoing by any Party, or of the validity of any of Class Plaintiffs'

claims, and that neither this Settlement Agreement nor any statement made in negotiation thereof may be used or offered in any proceeding for any purpose, except to enforce the terms of the Settlement; and

WHEREAS, the Parties enter into the Settlement with full knowledge that adverse or favorable court decisions and/or other events may take place in the future that might affect the positions of the Parties, including prior to the entry of the Final Approval Order and Final Judgment, and they intend to be bound by this Settlement Agreement, subject to final approval of the Court, notwithstanding the possibility or occurrence of any such future events or changes in position;

NOW, THEREFORE, Class Plaintiffs, on behalf of themselves and the Settlement Class by and through Lead Counsel, and Defendants, by and through their respective undersigned counsel, agree that the Action and Released Claims (as defined in Section 1(E) herein) be settled, compromised, and dismissed on the merits, with prejudice and without costs, on the following terms and conditions, subject to the approval of the Court:

1. Terms Used In This Agreement

The words and terms used in this Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them.

(A) “**Action**” means *In re Bank of Nova Scotia Spoofing Litig.*, 3:20-cv-11059 (MAS) (RLS) (D.N.J.).

(B) “**Agreement**” or “**Settlement Agreement**” means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(C) “**Alternative Judgment**” means a form of final judgment entered by the Court herein that is in a form other than the form of Final Approval Order and Final Judgment provided for in this Settlement Agreement, but which does not differ materially from the substance of the Final Approval Order and Final Judgment provided for in this Settlement Agreement.

(D) “**Authorized Claimant**” means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

(E) “**Business Days**” means Monday through Friday, inclusive, of each week unless such day is a public holiday in the United States.

(F) “**Class**” or “**Settlement Class**” means all persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract (together “**Precious Metals Futures**”), or any option on those futures contracts (“**Options on Precious Metals Futures**”), during the period of at least January 1, 2008 through at least July 31, 2016 (the “**Class Period**”). Excluded from the Class are Defendants, their officers and directors, management, employees, subsidiaries, and affiliates. Also excluded from the Class is the Judge presiding over this Action, his or her law clerks, spouse, any other person within the third degree of relationship living in the Judge’s household, the spouse of such person, and the U.S. government.

(G) “**Class Member**” means a person or entity that is a member of the Class.

(H) “**Class Notice**” means the form of notice of the proposed Settlement to be distributed to the Settlement Class as provided in this Settlement Agreement and the Preliminary Approval Order, in substantially the form attached hereto as Exhibits C and D.

(I) “**Class Period**” is defined in Section 1(F).

(J) “**Class Plaintiffs**” means Casey Sterk, Kevin Maher, Jeffery Tomasulo, Christopher DePaoli, Don Tran, Mark Serri, ML Options Trading, LLC, Robert Charles Class A, L.P., and Port 22, LLC. This Settlement Agreement is entered into with each Class Plaintiff. In the event that a Class Plaintiff fails to secure court approval to act as a Class Plaintiff, the validity of this Settlement Agreement as to the remaining Class Plaintiffs, the Settlement Class, and Lead Counsel shall be unaffected.

(K) “**Court**” means the United States District Court for the District of New Jersey.

(L) “**Defendants**” means Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., The Bank of Nova Scotia Trust Company of New York, and Corey Flaum.

(M) “**Distribution Plan**” means the plan of allocation of the Net Settlement Fund, which will be developed by Lead Counsel and will be submitted to the Court for approval, or any revised plan of allocation, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

(N) “**Effective Date**” means the date when this Settlement Agreement becomes final as set forth in Section 16 hereof.

(O) “**Escrow Account**” means an interest-bearing account mutually agreeable to the Parties and administered by the Escrow Agent.

(P) “**Escrow Agent**” means any Person designated by Lead Counsel with the consent of BNS and approved by the Court to act as escrow agent for the Settlement Fund. Lead Counsel anticipates the Escrow Agent will be The Huntington National Bank.

(Q) “**Execution Date**” means the date on which this Agreement is executed by the last Party to do so.

(R) “**Fairness Hearing**” means a hearing scheduled by the Court following the issuance of the Preliminary Approval Order and provision of notice to the Settlement Class to consider the fairness, adequacy and reasonableness of the proposed Settlement and this Settlement Agreement.

(S) “**Fee and Expense Application**” means any application by Lead Counsel for approval of an award of attorneys’ fees, payment of litigation expenses and costs, and/or a Service Award from the Settlement Fund.

(T) “**Final**” means, with respect to any court order, including, without limitation, the Final Approval Order and Final Judgment, or if applicable the Alternative Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further review by appeal or petition for certiorari has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further review by appeal or petition for certiorari has expired. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan and/or any order issued in respect to the Fee and Expense Application pursuant to Sections 4 and 5 below shall not in any way delay or prevent the Final Approval Order and Final Judgment, or if applicable the Alternative Judgment, from becoming Final.

(U) “**Final Approval Order and Final Judgment**” means the order of the Court approving the Settlement following (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness

Hearing, and ordering judgment and dismissal of the Action and the Released Claims with prejudice and without costs as to the Released Parties, in substantially the form attached hereto as Exhibit B.

(V) “**Individual Defendant**” means Corey Flaum.

(W) “**Lead Counsel**” means Scott+Scott Attorneys at Law LLP, Nussbaum Law Group, P.C., Robbins Geller Rudman & Dowd LLP, and Korein Tillery LLC.

(X) “**Mediation Information**” means the following data and/or documents BNS has provided or agrees to provide subject to confidentiality provisions contained in a Mediation Confidentiality Agreement to which they have separately agreed: data reflecting executed and cancelled orders during the Class Period in COMEX gold or silver futures or NYMEX platinum or palladium futures by the traders referenced in the Deferred Prosecution Agreement entered into between the DOJ and BNS in *United States v. The Bank of Nova Scotia*, No. 20-707 (D.N.J.).

(Y) “**Net Settlement Fund**” means the Settlement Fund less Court-approved disbursements, including (i) notice, claims administration and escrow costs; (ii) taxes; (iii) any attorneys’ fees and/or expenses awarded by the Court; (iv) any Service Award(s) awarded by the Court; and (v) all other expenses, costs, and other charges approved by the Court.

(Z) “**Parties**” means Defendants and Class Plaintiffs collectively, and “**Party**” applies to each individually.

(AA) “**Person**” means a natural person, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship, municipality, state, state agency, entity that is a creature of any state, any government, governmental or quasi-governmental body or political subdivision, authority, office, bureau,

agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouse, heir, predecessor, successor, representative or assign of any of the foregoing.

(BB) “**Plaintiffs’ Counsel**” means Lead Counsel and Carella Byrne Cecchi Olstein Brody & Agnello, P.C., Kirby McInerney LLP, Cafferty Clobes Mariwether & Sprengel LLP, Kessler Topaz Meltzer & Check, LLP, and Robins Kaplan LLP.

(CC) “**Preliminary Approval Order**” means an order of the Court, in substantially the form attached as Exhibit A, issued in response to the Motion for Preliminary Approval described in Section 12.

(DD) “**Proof of Claim and Release**” means the form to be sent to potential Class Members, upon order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

(EE) “**Released Claims**” means any and all manner of claims, causes of action, cross-claims, counter-claims, charges, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, taxes, attorneys’ fees, and damages, whenever incurred, known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively, or in any capacity, against the Released Parties arising from or relating in any way to the factual predicate of the Action or which were or could have been asserted in the Action.

(FF) “**Released Parties**” or “**Released Party**” means Defendants, their predecessors, successors and assigns, their direct and indirect parents, subsidiaries and affiliates, and each of their respective current and former officers, directors, employees (including, but not limited to, named Defendant Corey Flaum), managers, members, partners, agents (in their capacity as agents of Defendants), shareholders (in their capacity as shareholders of Defendants), attorneys, insurers, or legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this provision, “affiliates” means agents, and entities controlling, controlled by, or under common control with a Released Party.

(GG) “**Releasing Parties**” or “**Releasing Party**” means each and every Class Plaintiff and each and every Settling Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such. As used in this provision, “affiliates” means agents, and entities controlling, controlled by, or under common control with a Releasing Party.

(HH) “**Service Award**” means any award by the Court to Class Plaintiffs as described in Section 4.

(II) “**Settlement**” means the settlement of the Released Claims set forth herein.

(JJ) “**Settlement Administrator**” means any Person that the Court approves to perform the tasks necessary to provide notice of the Settlement to the Class and to otherwise administer the Settlement Fund, as described further herein.

(KK) “**Settlement Amount**” means six million six hundred thousand U.S. dollars (\$6,600,000.00).

(LL) “**Settlement Fund**” means the Settlement Amount plus any interest that may accrue.

(MM) “**Settling Class Members**” means Class Plaintiffs and other Class Members who do not timely and validly exclude themselves from the Settlement pursuant to FED. R. CIV. P. 23(c) and in accordance with the procedure to be established by the Court.

(NN) “**BNS**” means Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., and The Bank of Nova Scotia Trust Company of New York.

2. Settlement Class

For settlement purposes only, Class Plaintiffs will move the Court for, and Defendants will not oppose, certification of the Settlement Class as described herein pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Settlement Class includes Persons and entities wherever located, and the interests of Class Members wherever they are located are served by the Settlement because the location of a Class Member does not impact a Class Member’s alleged damages.

By entering into this Settlement Agreement, Defendants consent to the certification of the Settlement Class in this Action for settlement purposes only and shall not be estopped from challenging class certification in the event this Settlement is terminated, or the Settlement is not finally approved by the Court.

3. Settlement Payment

(A) BNS shall pay the Settlement Amount into the Escrow Account controlled by Lead Counsel in accordance with the terms of this Agreement and the supervision of the Court, within

ten (10) Business Days after the Court preliminarily approves the Settlement, provided that within five (5) Business Days after the Court preliminarily approves the Settlement, Lead Counsel must provide BNS with all information necessary to fund the Escrow Account, including without limitation wire instructions. All interest earned on any portion of the Settlement Amount paid into the Escrow Account shall be added to and become part of the Settlement Fund. Other than the payment of the Settlement Amount as set forth in this Section 3, BNS shall have no responsibility or obligation for any interest, costs, or other monetary payment, including any attorneys' fees and expenses, taxes, Service Award, or costs of notice or claims administration, except that BNS shall pay any costs associated with notice as required by 28 U.S.C. § 1715, as set forth in Section 13(C). Defendants shall have no liability, obligation, or responsibility with respect to the investment, allocation, use, disbursement, administration, or oversight of the Settlement Fund. In no event shall any Defendant other than BNS be required to make payments or incur any expenses pursuant to the Settlement.

(B) The Settlement Fund shall be invested by the Escrow Agent in United States agency or Treasury securities or other instruments backed by the full faith and credit of the United States government or an agency thereof, or fully insured by the United States government or an agency thereof, regardless of maturity, and the proceeds of these instruments shall be reinvested in similar instruments at their then-current market rates as they mature. In the event that the yield on securities identified herein is negative, in lieu of purchasing such securities, all or any portion of the Settlement Fund held may be deposited in a non-interest-bearing account that is fully insured by the Federal Deposit Insurance Corporation. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this Paragraph shall be borne by the Settlement Fund.

(C) All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds are either returned to BNS pursuant to Section 20 of this Agreement or distributed subsequent to the Effective Date pursuant to a plan of distribution approved by the Court or pursuant to other orders of the Court.

4. Payment of Attorneys' Fees and Litigation Expenses, and Application for Service Awards

(A) Subject to Court approval, Class Plaintiffs and Lead Counsel shall be paid solely out of the Settlement Fund for all attorneys' fees and litigation expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any Service Awards approved by the Court. Defendants shall have no responsibility for any costs, fees, or expenses, and any Service Awards approved by the Court. Defendants shall have no responsibility for any costs, fees, or expenses incurred for or by Class Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date for BNS's payments as set forth in Section 3.

(B) Lead Counsel, on behalf of all Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus accrued interest at the same net rate as is earned by the Settlement Fund.

(C) The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, litigation expenses, or any Service Awards that the Court may award in the Action.

(D) The procedures for and the allowance or disallowance by the Court of any Fee and Expense Application are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness,

and adequacy of the Settlement set forth in this Agreement. No order of the Court concerning any Fee and Expense Application or the Distribution Plan nor any modification or reversal on appeal of any such order of the Court shall constitute grounds for termination of this Agreement or affect or delay the finality of the Final Approval Order and Final Judgment, or if applicable the Alternative Judgment, and the Settlement of the Action as set forth herein.

(E) Prior to the Fairness Hearing, Lead Counsel and Class Plaintiffs shall file any motions seeking awards from the Settlement Fund for payment of attorneys' fees and litigation costs and expenses, and for the payment of Service Awards as follows:

(i) Lead Counsel shall seek attorneys' fees of no more than one-third (33 1/3 %) of the Settlement Fund;

(ii) Lead Counsel shall seek payment for their costs and expenses incurred as of the date the Motion for Final Approval and Entry of Final Judgment is filed pursuant to Section 14; and

(iii) Class Plaintiffs may make an application to the Court for awards in connection with their representation of the Settlement Class in this litigation, which amounts constitute the Service Awards.

(F) Following entry by the Court of (i) an order granting final approval to the material terms of the Settlement (and even if such order is subject to appeal) and (ii) an order approving an award of attorneys' fees, costs and expenses, such approved amounts from Subsections (E)(i) and (E)(ii) shall be paid from the Escrow Account within five (5) Business Days subject to Plaintiffs' Counsel's agreement to repay such fees and expenses (in whole or in part) to the Escrow Account, plus accrued interest at the same net rate as is earned by the Settlement Fund, in the event the award of such amounts does not become Final pursuant to Section 16 or if Plaintiffs or BNS

terminate the Settlement Agreement pursuant to Section 19. Within ten (10) Business Days after Lead Counsel either gives written notice of termination on behalf of Class Plaintiffs or receives notice of such an event from counsel for BNS or from a court of appropriate jurisdiction, Lead Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including any non-refundable expenses described in Section 8(B)) that were withdrawn, plus accrued interest at the same net rate as is earned by the Settlement Fund.

5. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration

Lead Counsel may apply to the Court, at the time of any application for distribution to Authorized Claimants, 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, to the extent extraordinary efforts on the part of Lead Counsel so warrant. Lead Counsel reserves the right to make additional applications to the Court for payment from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred. Any such applications are subject to Court approval, and Defendants take no position on any such applications.

6. No Liability for Fees and Expenses of Lead Counsel

The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Lead Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Action, or for any Service Awards.

7. Distribution of and/or Disbursements from Settlement Fund

The Settlement Administrator, subject to such supervision and direction by the Court and/or Lead Counsel as may be necessary, shall administer the Proof of Claim and Release forms

submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Upon the Effective Date (or earlier if provided in Section 8 herein), the Settlement Fund shall be applied in the order and as follows:

(A) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such taxes;

(B) to pay costs and expenses associated with the distribution of the Class Notice and administration of the Settlement as provided in this Section and Section 8, including all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the Net Settlement Fund at any time after BNS makes the payment described in Section 3;

(C) to pay Escrow Agent costs;

(D) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Section 4;

(E) to pay the amount of any Service Award, as provided in Section 4; and

(F) to pay the Net Settlement Fund to Authorized Claimants as allowed by this Agreement, any Distribution Plan, or order of the Court.

8. Disbursements Prior to Effective Date

(A) Except as provided in Subsection (B) herein or by Court order, no distribution to any Class Member or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, costs and expenses and Service Awards as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Lead Counsel with a copy to BNS, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and

administration may be paid from the Settlement Fund as they become due (up to a maximum of \$500,000) without further order of the Court; (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due without prior order of the Court; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due without prior order of the Court; and (iv) Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court (in accordance with Section 4(F)). In the event the Settlement is terminated or does not become Final for any reason, BNS shall be entitled to return of all such funds, plus all net interest accrued thereon, within ten (10) Business Days, except for up to \$500,000 for reasonable costs of Class Notice and administration that have been paid or incurred prior to the date the Settlement was terminated or otherwise does not become Final for any reason, on the terms specified in Section 20. Following the Effective Date, neither Lead Counsel nor the Escrow Agent shall be obligated to provide BNS with notice of any disbursement from the Settlement Fund.

9. Distribution of Balances Remaining in Net Settlement Fund to Authorized Claimants

(A) Following the Effective Date, the Net Settlement Fund shall be distributed to Authorized Claimants. The distribution to Authorized Claimants shall be in accordance with the Distribution Plan that hereafter is to be approved by the Court upon such notice to the Class as the Court requires. The Distribution Plan will not differentiate among Class Members based on the jurisdiction in which they reside or do business, it being understood for this purpose that the impact of currency fluctuations, differing tax obligations or analogous regulatory distinctions that affect the amount a Class Member actually receives shall not constitute differentiation. Any such Distribution Plan is not a part of this Agreement; however, in connection with requesting Preliminary Approval, Lead Counsel shall submit a proposed Distribution Plan to the Court that,

upon the Court's approval, shall be disclosed to Class Members in the Class Notice. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until (i) the Effective Date and (ii) the date by which the Distribution Plan has received final approval and the time for any further appeals with respect to the Distribution Plan has expired. Should there be any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) after six months from the date of distribution of the Net Settlement Fund, or as reasonably soon thereafter, the Settlement Administrator shall, if logically feasible and economically justifiable, reallocate such balances among Authorized Claimants in an equitable fashion. After any reallocation, or if a reallocation is not undertaken, any balance that still remains in the Net Settlement Fund shall be donated to the Securities Industry and Financial Markets Association Foundation, a 501(c)(3) non-profit organization. Defendants will not be required to have any involvement in (and will have no liability for) selection of any Settlement Administrator, the claims administration process, or any Distribution Plan of the Settlement proceeds.

10. Administration/Maintenance of Settlement Fund

(A) The Settlement Fund shall be maintained by the Escrow Agent and Lead Counsel under supervision of the Court and shall be distributed solely at such times, in such manner, and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Settlement Agreement). The Parties intend that the Settlement Fund be treated as a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B and agree to cooperate to ensure that all requirements for treatment as a qualified settlement fund are met. Lead Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Lead Counsel shall ensure that the Settlement Fund is approved by the Court as a Qualified Settlement Fund and that

any Escrow Agent, Settlement Administrator or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Lead Counsel.

(B) The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Section including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permissible date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing(s) to occur.

(C) For the purpose of § 1.468B of the Internal Revenue Code and the Treasury regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the Settlement Fund. The Escrow Agent shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns shall be consistent with this Section and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(D) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes); (ii) other taxes imposed on or in

connection with the Settlement Fund (collectively, “Taxes”); and (iii) expenses and costs incurred in connection with the operation and implementation of this Section (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described herein) shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

11. Release and Covenant Not To Sue

(A) Upon the Effective Date, 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.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state, or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Agreement, the parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

(C) Upon the Effective Date, Defendants will release Class Plaintiffs, the Settlement Class, and their respective attorneys and agents from all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including FED. R. CIV. P. 11), that arise out of or relate in any way to the institution, prosecution, or settlement of the Action, except for claims relating to the enforcement of the Settlement.

12. Motion for Preliminary Approval

As soon as practicable after the Execution Date, at a time to be mutually agreed by BNS, Flaum, and Lead Counsel, Lead Counsel, on behalf of Class Plaintiffs, shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order in the Action.

13. Class Notice

(A) In the event that the Court preliminarily approves the Settlement, Lead Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure, provide Class Members whose identities can be determined after reasonable efforts with the Class Notice. The Class Notice shall explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the Settlement, request exclusion from the Class and appear at the Fairness Hearing. The text of the Class Notice shall be in substantially the form attached as Exhibits C and D or as otherwise ordered by the Court.

(B) Unless otherwise directed by the Court, the Class Notice shall request that any member of the Settlement Class who or which wishes to exclude himself, herself, or itself from the Settlement Class must request exclusion in writing, which shall: (a) state the name, address, and telephone number of the Person or entity seeking exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such Person or entity requests to be excluded from the Settlement Class in the Action (*In re Bank of Nova Scotia Spoofing Litig.*, 3:20-cv-11059 (MAS) (RLS) (D.N.J.)); (c) provide documents sufficient to prove membership in the Settlement Class; and (d) be signed by such Person or entity requesting the exclusion or an authorized representative, as well as proof of authorization to submit the request for exclusion if submitted by an authorized representative. To facilitate the Supplemental Agreement, the Parties agree that any Class Member seeking to exclude himself, herself, or itself from the Settlement Class will be requested to provide either (i) documentation evidencing eligible trading in Precious Metals Futures and Options on Precious Metals Futures during the Class Period (including contract traded, date(s) and price(s) at which position acquired and subsequently closed out, and trade volume), or (ii) such Class Member's tag50 ID(s) and an executed waiver and

request to the CME Group to unmask such Class Member's account information for verification. In the event that a Class Member validly excludes himself, herself, or itself but information sufficient to effectuate the Supplemental Agreement is lacking, or in the event that the Court is not willing to include in the Class Notice a provision requesting a Class Member to provide the information set forth in subparts (i) or (ii) of this Paragraph, a Party may seek leave of the Court to obtain, through subpoena if necessary, sufficient information to effectuate the Supplemental Agreement, and no other Party shall oppose an adjournment of the Fairness Hearing to allow time for this process to be completed.

(C) BNS shall bear the costs and responsibility for timely serving notice of the Settlement on behalf of all Defendants to the extent required by the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. BNS shall provide certification to Lead Counsel (and, if required, the Court) concerning its compliance with the service of notice pursuant to CAFA.

14. Motion for Final Approval and Entry of Final Judgment

(A) After Class Notice is issued, and prior to the Fairness Hearing, Lead Counsel, on behalf of Class Plaintiffs, shall move for entry of the Final Approval Order and Final Judgment in this Action:

- (i) certifying, solely for settlement purposes, the Settlement Class;
- (ii) finding that the Class Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;
- (iii) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class's claims against Defendants under Rule 23 of the Federal Rules of Civil Procedure;

(iv) directing that, as to the Released Parties, the Action be dismissed with prejudice and without costs as against the Settling Class Members;

(v) discharging and releasing the Released Claims as to the Released Parties;

(vi) barring and enjoining claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(vii) discharging and releasing Class Plaintiffs, the Settlement Class, and their respective attorneys from any claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including FED. R. CIV. P. 11) that arise out of or relate in any way to the institution, prosecution, or settlement of the Action as against Defendants, except for claims relating to the enforcement of the Settlement;

(viii) reserving the Court's continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and

(ix) containing such other and further provisions consistent with the terms of this Agreement to which the Parties expressly consent in writing.

(B) Prior to the Fairness Hearing, as provided in Section 4, Lead Counsel will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan are matters separate and apart from the Settlement between the Parties. If the Fee and Expense Application or the Distribution Plan is not approved, in whole or in part, it will have no effect on the finality of the Final Approval Order and Final

Judgment approving the Settlement and dismissing the Action with prejudice as to the Released Parties.

15. Best Efforts to Effectuate This Settlement

The Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of the Agreement.

16. Effective Date

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the date upon which all of the following conditions have been satisfied:

(A) The Settlement Agreement has been fully executed by Defendants and Class Plaintiffs through their counsel;

(B) The Court has certified the Settlement Class, and entered the Preliminary Approval Order, substantially in the form attached as Exhibit A, preliminarily approving this Settlement Agreement and approving the Class Notice;

(C) The Settlement Amount has been deposited with the Escrow Agent;

(D) Class Notice has been issued in substantially the form attached as Exhibit C and D or as otherwise directed by the Court;

(E) The Court has entered its Final Approval Order and Final Judgment, in substantially the form attached as Exhibit B, or if applicable the Alternative Judgment, finally approving the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action with prejudice as to the Released Parties; however, this

required approval does not include the approval of the Fee and Expense Application and the Distribution Plan; and

(F) The Final Approval Order and Final Judgment, or, if applicable, the Alternative Judgment, dismissing the Action with prejudice as to the Released Parties becomes Final.

17. Occurrence of Effective Date

Upon the occurrence of all of the events specified in Section 16, the Net Settlement Fund may be transferred from the Escrow Agent to the Settlement Administrator at the written direction of Lead Counsel.

18. Failure of Effective Date to Occur

If any of the conditions specified in Section 16 is not and cannot be satisfied, then this Agreement shall be terminated, subject to and in accordance with Section 19, unless the Parties mutually agree in writing to continue with this Agreement for a specified period of time.

19. Termination

(A) BNS shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement by providing written notice to Lead Counsel within fifteen (15) Business Days of BNS learning of any of the following events:

(i) the Court declines to enter or modifies the Preliminary Approval Order sought pursuant to Section 12 or the Final Approval Order and Final Judgment (or the Alternative Judgment) sought pursuant to Section 14 in any material respect;

(ii) the Court declines to approve the Settlement Agreement or any material part of it; or

(iii) the Final Approval Order and Final Judgment (or the Alternative Judgment) is modified or reversed or vacated by any appellate court in any material respect.

(B) Lead Counsel, acting on behalf of the Class Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to BNS's counsel within fifteen (15) Business Days of any of the following events:

(i) the Court declines to enter or modifies the Preliminary Approval Order sought pursuant to Section 12 or the Final Approval Order and Final Judgment (or the Alternative Judgment) sought pursuant to Section 14 in any material respect;

(ii) the Court declines to approve the Settlement Agreement or any material part of it; or

(iii) the Final Approval Order and Final Judgment (or the Alternative Judgment) is modified or reversed or vacated by any appellate court in any material respect.

(C) In the event that BNS, for any reason, fails to comply with Section 3 and fails to cure such non-compliance as hereafter provided, then on ten (10) Business Days' written notice to BNS's counsel, during which ten-Business Day period BNS shall have the opportunity to cure the default without penalty, Class Plaintiffs, by and through Lead Counsel, may terminate this Settlement Agreement or may elect to enforce the Settlement Agreement as provided by the Federal Rules of Civil Procedure and any other applicable laws.

(D) Simultaneously herewith, Class Plaintiffs, by and through Lead Counsel, and Defendants, are executing a "Supplemental Agreement," which relates exclusively to certain conditions under which this Settlement may be terminated at the sole discretion of BNS if potential Class Members who meet certain criteria exclude themselves from the Settlement Class. The Supplemental Agreement shall not be filed with the Court except that the substantive contents of the Supplemental Agreement may be brought to the attention of the Court, *in camera*, if so requested by the Court or as otherwise ordered by the Court. The Parties will keep the terms of

the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement or its terms. In the event BNS terminates this Settlement pursuant to the Supplemental Agreement, this Settlement Agreement shall become null and void and of no further force and effect and the Parties shall be returned to the *status quo ante* to the greatest possible extent.

20. Effect of Termination

Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement is terminated or cancelled in accordance with the terms hereof, or otherwise fails to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not finally approved by the Court or the Final Approval Order and Final Judgment, or if applicable the Alternative Judgment, is reversed or vacated following any appeal, then:

(A) Within ten (10) Business Days after written notification of such event is sent by counsel for BNS or Lead Counsel to all Parties and the Escrow Agent, the Settlement Amount, all net interest accrued thereon and any amount required to be refunded by Lead Counsel pursuant to Section 4(F) will be refunded, reimbursed, and repaid by the Escrow Agent to BNS, except as provided in Section 8(B).

(B) The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to BNS, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

(C) The Parties shall be returned, to the maximum extent possible, to their respective positions in the Action as of immediately prior to the execution of the Term Sheet among the

Parties dated August 4, 2022 with all of their respective legal claims, defenses, and rights preserved as they existed at that time; and

(D) Upon termination of this Settlement Agreement with respect to all Parties, then:

(i) this Agreement shall be null and void and of no further effect, and none of Defendants, the Class Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

(ii) any and all releases hereunder shall be of no further force and effect;

(iii) the Parties shall be deemed reverted *nunc pro tunc* to their respective status in the Action as of November 1, 2022 and shall proceed in all respects as if this Settlement Agreement had not been executed, without prejudice in any way from the negotiation, fact or terms of the Settlement, and with all of their respective legal claims, defenses, and rights preserved as they existed on that date; and

(iv) any and all rulings, orders, or judgments entered, altered, amended or vacated by the Court in accordance with the terms of this Settlement Agreement shall be deemed reverted *nunc pro tunc* to their respective status as of November 1, 2022 and shall proceed in all respects as if this Settlement Agreement had not been executed, without prejudice in any way from the negotiation, fact or terms of the Settlement.

21. Confidentiality Protection

Class Plaintiffs, Lead Counsel, Plaintiffs' Counsel, counsel for BNS, BNS, counsel for Flaum, and Flaum agree to maintain the confidentiality of the terms of this Settlement Agreement prior to the filing of a Motion for Preliminary Approval. During this period, this Settlement Agreement and its terms are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other Person, attorney, entity, publication, or member of the

media, except (a) as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement, (b) implement the Class Notice, facilitate the claims and administration process, establish the Settlement Fund, and develop the Distribution Plan, or (c) as otherwise agreed by the Parties. Notwithstanding the foregoing, Defendants may disclose such information to a governmental or regulatory authority, the IRS, their auditors, or their insurance carriers if they determine that disclosure is appropriate or required by applicable law. Further, BNS may disclose such information in its securities filings and/or financial disclosures if it determines that disclosure is appropriate or required by applicable law but shall consult with Class Plaintiffs prior to doing so. The Parties will consult with each other with a view towards coordinating the timing of any public disclosure concerning the fact that the settlement has been reached or the Settlement Amount.

22. Binding Effect

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Defendants, the Released Parties, the Class Plaintiffs, and Releasing Parties.

(B) The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of such breach by any other Party or a waiver by any Party of any other prior or subsequent breach of this Settlement Agreement.

23. Integrated Agreement

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein. This Settlement Agreement supersedes all prior or contemporaneous

discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto. This Settlement Agreement may not be modified in any respect except by a writing executed by all the Parties hereto. Notwithstanding the foregoing, this Settlement Agreement does not modify or alter in any way the Mediation Confidentiality Agreement with the Mediator.

24. Headings

The headings used in this Settlement Agreement are for the convenience of the reader only and shall not have any substantive effect on the meaning and/or interpretation of this Settlement Agreement.

25. No Party is the Drafter

None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision herein for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement Agreement is the result of arm's-length negotiations and that all Parties have contributed substantially and materially to its preparation.

26. Choice of Law

All provisions of this Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles.

27. Execution in Counterparts

This Settlement Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be

deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered to each of the Parties.

28. Submission to and Retention of Jurisdiction

The Parties, Released Parties, and the Releasing Parties irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the District of New Jersey solely for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, or the exhibits hereto. For the purpose of such suit, action, or proceeding, to the fullest extent permitted by law, the Parties, Released Parties and the Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby.

29. No Reservation of Rights

This Settlement Agreement settles and compromises any and all claims by Class Plaintiffs or any Class Member asserted against the Released Parties in the Action and all other Released Claims.

30. Notices

All Notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, *viz*, if to Class Plaintiffs, then to: Thomas Boardman, Scott+Scott Attorneys at Law LLP, The Helmsley Building, 230 Park Avenue, 17th Floor, New York, NY 10169; if to BNS, then to Jamie Dycus, King & Spalding LLP, 1185 Sixth Avenue, New York, NY 10036; and if to Flaum, Nicholas J. Lewin, Krieger Kim & Lewin LLP, 500 Fifth Avenue, 34th Floor, New York, NY

10110; or such other address as each Party may designate for itself, in writing, in accordance with this Settlement Agreement.

31. Authority

In executing this Settlement Agreement, Lead Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of Class Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. BNS represents and warrants that its undersigned counsel is fully empowered to execute the Settlement Agreement on behalf of BNS and that all actions necessary for the execution of this Settlement Agreement have been taken. Flaum represents and warrants that his undersigned counsel is fully empowered to execute the Settlement Agreement on behalf of Flaum and that all actions necessary for the execution of this Settlement Agreement have been taken.

32. Stay

The Parties stipulate and agree that the stay in effect pursuant to the Court's August 8, 2022 Order Granting Letter Motion to Stay (ECF No. 66) shall remain in effect pending the Court's entry of the Preliminary Approval Order. If the Settlement is terminated in accordance with Sections 19 and 20 of this Settlement Agreement, the stay previously in effect pursuant to this Court's August 8 Order, with the expiration date therein, will be automatically reinstated.

33. Tax Advice

No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class

Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

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Dated: November 1, 2022

**SCOTT+SCOTT ATTORNEYS AT LAW
LLP**



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Lead Counsel for Class Plaintiffs

Dated: November 1, 2022

NUSSBAUM LAW GROUP, P.C.

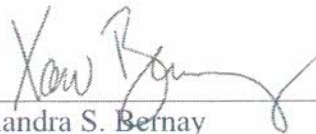


Linda P. Nussbaum
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Lead Counsel for Class Plaintiffs

Dated: November 1, 2022

**ROBBINS GELLER RUDMAN & DOWD
LLP**

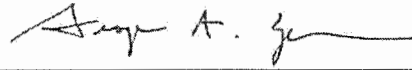


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Lead Counsel for Class Plaintiffs

Dated: November 1, 2022

KOREIN TILLERY

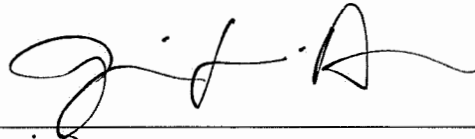


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Lead Counsel for Class Plaintiffs

Dated: November 2, 2022

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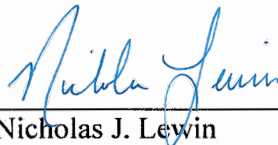


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Counsel for The Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., and The Bank of Nova Scotia Trust Company of New York

Dated: November 2, 2022

KRIEGER KIM & LEWIN LLP



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Counsel for Corey Flaum

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: BANK OF NOVA SCOTIA
SPOOFING LITIGATION

Civil Action No. 3:20-11059 (MAS) (RLS)

EXHIBIT A TO STIPULATION
AND AGREEMENT OF
SETTLEMENT

**[PROPOSED] ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT,
SCHEDULING HEARING FOR FINAL APPROVAL THEREOF, AND
APPROVING THE PROPOSED FORM AND PROGRAM OF NOTICE TO THE CLASS**

Plaintiffs Casey Sterk, Kevin Maher, Jeffery Tomasulo, Christopher DePaoli, Don Tran, Mark Serri, ML Options Trading, LLC, Robert Charles Class A, L.P., and Port 22, LLC (collectively, “Class Plaintiffs”) and the Settlement Class, having applied for an order preliminarily approving the proposed settlement (“Settlement”) of this Action against Defendants Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., and The Bank of Nova Scotia Trust Company of New York (collectively, “BNS”), and Corey Flaum (“Flaum” and together with BNS, “Defendants”) in accordance with the Stipulation and Agreement of Settlement entered into on November 2, 2022 (the “Settlement Agreement”) between Class Plaintiffs and Defendants; the Court having read and considered the Settlement Agreement and accompanying documents; and Class Plaintiffs and Defendants (collectively, the “Parties”) having consented to the entry of this Order,

NOW, THEREFORE, on this ___ day of _____, 20___, upon application of the Parties,

IT IS HEREBY ORDERED that:

1. Except for the terms expressly defined herein, the Court adopts and incorporates the definitions in the Settlement Agreement for the purposes of this Order.
2. The Court finds that it has subject matter jurisdiction to preliminarily approve the Settlement Agreement, including all exhibits thereto, and the Settlement contained therein under 28 U.S.C. §1331, and that it has personal jurisdiction over Class Plaintiffs and Defendants (in this Action only and for purposes of this Settlement only), and all Class Members.
3. Solely for purposes of the Settlement, the Settlement Class is hereby preliminarily certified and maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Court finds that the applicable provisions of Rules 23(a) and 23(b)(3) of the

Federal Rules of Civil Procedure have been satisfied and that the Court will likely be able to approve the Settlement and certify the Settlement Class for purposes of judgment. The Settlement Class is defined as:

All persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract (together “Precious Metals Futures”), or any option on those futures contracts (“Options on Precious Metals Futures”), during the period of at least January 1, 2008 through at least July 31, 2016 (the “Class Period”). Excluded from the Class are Defendants, their officers and directors, management, employees, subsidiaries, and affiliates. Also excluded from the Class is the Judge presiding over this Action, his or her law clerks, spouse, any other person within the third degree of relationship living in the Judge’s household, the spouse of such person, and the U.S. government.

4. The Court hereby appoints Scott+Scott Attorneys at Law LLP, Nussbaum Law Group, P.C., Robbins Geller Rudman & Dowd LLP, and Korein Tillery LLC as Class Counsel to such Settlement Class for purposes of the Settlement, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

5. The Court appoints _____ as Settlement Administrator for purposes of the Settlement.

6. Class Plaintiffs are hereby appointed as representatives of the Settlement Class.

7. A hearing will be held on a date of the Court’s convenience on or after _____, 20__ at ____ [a.m./p.m.] in Courtroom 5W 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 Class Members, other than that which may be posted at the Court or on the Settlement website at www.bankofnovascotiaspoofingsettlement.com.

8. 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.

9. The terms of the Settlement Agreement are hereby preliminarily approved. The Court finds that the Settlement was entered into at arm's length by experienced, well-informed counsel and is sufficiently within the range of reasonableness, fairness, and adequacy, and that the notice of the Settlement should be given as provided in this Order because the Court will likely be able to approve the Settlement under Rule 23(e)(2) of the Federal Rules of Civil Procedure. The terms of the Distribution Plan, the Supplemental Agreement, and the Proof of Claim and Release also are preliminarily approved as within the range of reasonableness, fairness, and adequacy.

10. All proceedings in this Action as to Defendants, other than such proceedings as may be necessary to implement the proposed Settlement or to effectuate the terms of the Settlement Agreement, are hereby stayed and suspended until further order of this Court.

11. All Class Members and their legally authorized representatives, unless and until they have submitted a valid request for exclusion from the Settlement Class (hereinafter, "Request for Exclusion"), are hereby preliminarily enjoined: (i) from filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; and (iii) from attempting to effect

an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the Released Claims.

12. Within _____ () days after entry of this Order, the Settlement Administrator shall cause copies of the mailed notice, in the form (without material variation) of Exhibit C to the Settlement Agreement attached as Exhibit 1 to the Declaration of James Cecchi, dated November 2, 2022 (“Cecchi Decl.”), to begin being mailed by United States first class mail, postage prepaid, as described in the proposed notice program attached to the Declaration of Elaine Pang, dated November 2, 2022 (“Pang Decl.”), Ex. B. The foregoing mailings shall be completed no later than _____ () days after the date of the entry of this Order.

13. Within _____ () days after entry of this Order, the Settlement Administrator shall cause to be published a publication notice, without material variation from Exhibit D to the Settlement Agreement attached as Exhibit 1 to the Cecchi Decl., as described in the proposed notice program attached to the Pang Decl. Pang Decl., Ex. B. All reasonable Notice and Administration Costs up to \$500,000 shall be paid as set forth in the Settlement Agreement without further order of the Court. Any Notice and Administration Costs in excess of \$500,000 may be paid from the Settlement Fund only with the approval of the Court.

14. The Settlement Administrator shall maintain a Settlement website, www.bankofnovascotiaspoofingsettlement.com, beginning on 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 Distribution Plan, and shall 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.bankofnovascotiaspoofingsettlement.com, shall be searchable on the Internet.

15. 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.

16. The Court approves, in form and substance, the mailed notice, the publication notice, and the website as described herein. The Class Notice plan specified herein: (i) is the best notice practicable; (ii) is reasonably calculated, under the circumstances, to apprise Class Members 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.

17. At least _____ () 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 12-15 of this Order.

18. Any Class Member 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 Class Counsel and counsel for Defendants shall be heard and no papers, briefs, pleadings, or other documents submitted by any Class Member or any governmental

entity shall be considered by the Court unless, not later than forty-five (45) days prior to the Fairness Hearing, the Class Member 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 Class Counsel and counsel of record for Defendants) a statement of the objection, as well as the specific legal and factual reasons for each objection, including all support that the objecting Class Member or the governmental entity wishes to bring to the Court's attention and all evidence the objecting Class Member 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 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, telephone number, and e-mail address; (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 Precious Metals Futures or Options on Precious Metals Futures transactions entered into by the Class Member that fall within the Settlement Class definition (including, for each transaction, the identity of the broker, the date of the transaction, the type of the transaction, the counterparty (if any), any transaction identification numbers, the rate, and the notional amount of the transaction); and (6) a list of other cases in which the objector or counsel for the objector 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 Class Members and are not entitled to object.

19. Any objection to the Settlement submitted by a Class Member pursuant to paragraph 18 of this Order must be signed by the Class Member (or his, her, or its legally authorized representative), even if the Class Member is represented by counsel. The right to object to the proposed Settlement must be exercised individually by a Class Member 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 Class Member's legally authorized representative.

20. All objectors shall make themselves available to be deposed by any Party in the District of New Jersey or the county of the objector's residence or principal place of business within (7) days of service of the objector's timely written objection.

21. Any Class Member or governmental entity that fails to object in the manner described in paragraphs 18-20 of this Order shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding related to or arising out the Settlement. Discovery concerning any purported objections to the Settlement and any purported motions to intervene shall be completed no later than fourteen (14) days before the Fairness Hearing. Class Counsel, BNS's counsel, Flaum's counsel, and any other Persons wishing to oppose timely-filed objections in writing may do so not later than five (5) days before the Fairness Hearing.

22. Any Request for Exclusion from the Settlement by a Class Member must be sent in writing by U.S. first class mail or courier service (or, if sent from outside the U.S., by a service that provides for guaranteed delivery within five (5) or fewer calendar days of mailing) to the Settlement Administrator at the address in the mailed notice and received no later than forty-five

(45) 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 Person or entity seeking exclusion, and in the case of entities, the name and telephone number of the appropriate contact person;
- (b) a statement that such Person or entity requests to be excluded from the Settlement Class in this Action (*In re Bank of Nova Scotia Spoofing Litig.*, 3:20-cv-11059 (MAS) (RLS) (D.N.J.)); and
- (c) documents sufficient to prove membership in the Settlement Class, as well as proof of authorization to submit the Request for Exclusion if submitted by an authorized representative. Class Members seeking to exclude himself, herself or itself from the Settlement Class will be requested to provide either: (i) documentation evidencing eligible trading in Precious Metals Futures and Options on Precious Metals Futures during the Class Period (including contract traded, date(s) and price(s) at which position acquired and subsequently closed out, and trade volume), or (ii) such Class Member’s tag50 ID(s) and an executed waiver and request to the CME Group to unmask such Class Member’s account information for verification.

23. Any Request for Exclusion from the Settlement submitted by a Class Member pursuant to paragraph 22 of this Order must be signed by the Class Member (or his, her, or its legally authorized representative) and notarized, even if the Class Member is represented by counsel. The right to be excluded from the proposed Settlement must be exercised individually by a Class Member 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 Class Member’s legally authorized representative. A Request for Exclusion shall not be effective unless it provides all of the required information listed in paragraph 22 of this Order, complies with this paragraph 23, and is received by the Exclusion Bar Date, as set forth in the Class Notice. The Parties may seek discovery, including by subpoena, from any Class Member who submits any Request for Exclusion limited to information the Parties require for purposes of determining whether the confidential provision

setting forth certain conditions under which the Settlement may be terminated if potential Class Members who meet certain criteria exclude themselves from the Settlement Class has been triggered.

24. Any Class Member 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 Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims, and even if such Class Member never received actual notice of the Action or the proposed Settlement.

25. The Settlement Administrator shall promptly log each Request for Exclusion that it receives and provide copies of the log to Class Counsel and counsel for Defendants as requested.

26. The Settlement Administrator shall furnish Class Counsel and counsel for Defendants 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.

27. Within five (5) Business Days following 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 Defendants and Class Counsel with copies of any Requests for Exclusion (including all documents submitted with such requests) and any written revocations of Requests for Exclusion as soon as possible after receipt by the Settlement Administrator and, in any event, within one (1) Business Day after receipt by the Settlement Administrator and, in no event, later than five (5) Business Days after the Exclusion Bar Date. Class Counsel shall file the

opt-out list and affidavit of the Settlement Administrator attesting to the accuracy of such list with the Court.

28. All Proofs of Claim and Release shall be submitted by Class Members to the Settlement Administrator as directed in the mailed notice and must be postmarked no later than thirty (30) days after the Fairness Hearing.

29. 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 Class Members; (b) effectuating the Class Notice plan, including by running potential Class Members' addresses through the National Change of Address Database to obtain the most current address for each person; (c) accepting and maintaining documents sent from Class Members, including Proofs of Claim and Release, and other documents relating to the Settlement and its administration; (d) administering claims for allocation of funds among Class Members; (e) determining the timeliness of each Proof of Claim and Release submitted by Class Members, and the adequacy of the supporting documents submitted by Class Members; (f) corresponding with Class Members regarding any deficiencies in their Proofs of Claim and Release 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 Class Members; (i) preparing the opt-out list and an affidavit attaching and attesting to the accuracy of such list, and providing same to Class Counsel and counsel for Defendants; and (j) providing Class Counsel and counsel for Defendants with copies of any Requests for Exclusion (including all documents submitted with such requests).

30. 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.

31. The Court preliminarily approves the establishment of the Settlement Fund defined in the Settlement Agreement (the “Settlement Fund”) as a qualified settlement fund pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

32. The Court appoints The Huntington National Bank to act as Escrow Agent for the Settlement Fund.

33. Neither the Settlement Agreement (nor any of its exhibits), whether or not it shall become Final, nor any negotiations, documents, and discussions associated with it, nor the Final Approval Order and Final Judgment, are or shall be deemed or construed to be an admission, adjudication, or evidence of: (a) any violation of any statute or law or of any liability or wrongdoing by the Defendants or any Released Party; (b) the truth of any of the claims or allegations alleged in the Action; (c) the incurrence of any damage, loss, or injury by any Person; (d) the existence or amount of any manipulation of the market for Precious Metals Futures or Options on Precious Metals Futures and the prices of Precious Metals Futures or Options on Precious Metals Futures; or (e) the propriety of certification of a class other than solely for purposes of the Settlement. Further, neither the Settlement Agreement (including its exhibits), whether or not it shall become Final, nor any negotiations, documents, and discussions associated

with it, nor the Final Approval Order and Final Judgment, may be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, whether by the Settlement Class or any Person, except if warranted by existing law in connection with a dispute under the Settlement Agreement or an action in which such documents are asserted as a defense. All rights of Defendants and Class Plaintiffs are reserved and retained if the Settlement does not become Final in accordance with the terms of the Settlement Agreement.

34. Class Counsel shall file their motions for payment of attorneys' fees and reimbursement of expenses, service awards, and for final approval of the Settlement at least sixty (60) days prior to the Fairness Hearing.

35. If the Settlement is approved by the Court following the Fairness Hearing, a Final Approval Order and Final Judgment will be entered as described in the Settlement Agreement.

36. The Court may, for good cause, extend any of the deadlines set forth in this Order without notice to Class Members, other than that which may be posted at the Court or on the Settlement website, www.bankofnovascotiaspoofingsettlement.com.

37. In the event that the Settlement is terminated in accordance with its provisions, such terminated Settlement Agreement and all proceedings had in connection therewith, including but not limited to all negotiations, documents, and discussions associated with it, and any Requests for Exclusion from the Settlement previously submitted and deemed to be valid and timely, shall be null and void and be of no force and effect, except as expressly provided to the contrary in the Settlement Agreement, and shall be without prejudice to the *status quo ante* rights of the Parties. Within ten (10) days following any notice of termination being delivered to the Escrow Agent, the Settlement Fund shall be returned in its entirety to BNS (including any accrued interest thereon), less any taxes due and expenditures made of notice and administrative costs. At the request of

BNS's counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to BNS.

38. If the Settlement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation.

39. 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

Signed this _____ day of _____, 20__, at the Courthouse for the United States District Court for the District of New Jersey.

The Honorable Michael A. Shipp
United States District Court Judge

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: BANK OF NOVA SCOTIA
SPOOFING LITIGATION

Civil Action No. 3:20-11059 (MAS) (RLS)

**EXHIBIT B TO STIPULATION
AND AGREEMENT OF
SETTLEMENT**

[PROPOSED] FINAL APPROVAL ORDER AND FINAL JUDGMENT

This matter came before the Court for a duly-noticed hearing on _____, 20__ (the “Fairness Hearing”), upon Class Plaintiffs’¹ Motion for Final Approval of Class Action Settlement with Defendants Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., and The Bank of Nova Scotia Trust Company of New York (collectively, “BNS”), and Corey Flaum (“Flaum” and together with BNS, “Defendants”), which was consented to by Defendants (together with Class Plaintiffs, the “Parties”). Due and adequate notice of the Settlement Agreement² having been given to the Class Members, the Fairness Hearing having been held and the Court having considered all papers filed and proceedings had herein, and otherwise being fully informed in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Final Approval Order and Final Judgment hereby incorporates by reference the definitions in the Settlement Agreement and all terms used herein, except as otherwise expressly defined herein, shall have the same meanings as set forth in the Settlement Agreement.

2. The Court finds that it has subject matter jurisdiction under 28 U.S.C. §1331 to enter this Final Approval Order and Final Judgment and has personal jurisdiction over Class Plaintiffs and Defendants (in this Action only and for purposes of this Settlement only) and all Class Members.

3. For purposes only of the settlement of the Released Claims set forth in the Settlement Agreement (the “Settlement”), the Court hereby finally certifies the Settlement Class, as defined in the Court’s _____, 20__ Order Preliminarily Approving Proposed Settlement,

¹ “Class Plaintiffs” are Casey Sterk, Kevin Maher, Jeffery Tomasulo, Christopher DePaoli, Don Tran, Mark Serri, ML Options Trading, LLC, Robert Charles Class A, L.P., and Port 22, LLC.

² The “Settlement Agreement” is the Stipulation and Agreement of Settlement entered into on November 2, 2022 (ECF No. __).

Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Class (the “Preliminary Approval Order”). ECF No. _____. Based on the record, the Court reconfirms that the applicable provisions of Rule 23 of the Federal Rules of Civil Procedure have been satisfied for purposes of the Settlement only.

4. In so holding, the Court finds that, solely for purposes of settlement, the Settlement Class meets all of the applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3). The Court hereby finds, in the specific context of this Settlement, that: (i) the Settlement Class is so numerous that joinder of all Class Members is impracticable, Fed. R. Civ. P. 23(a)(1); (ii) common questions of law and fact exist with regard to Defendants’ alleged manipulation of the market for Precious Metals Futures or Options on Precious Metals Futures traded on the Commodity Exchange Inc. (“COMEX”) or the New York Mercantile Exchange (“NYMEX”) and the prices of Precious Metals Futures or Options on Precious Metals Futures, Fed. R. Civ. P. 23(a)(2); (iii) Class Plaintiffs’ claims in this litigation are typical of those of the Class Members, Fed. R. Civ. P. 23(a)(3); and (iv) Class Plaintiffs’ interests do not conflict with, and are co-extensive with, those of absent Class Members, all of whose claims rise from the identical factual predicate, and Class Plaintiffs and Class Counsel have adequately represented the interests of all Class members, Fed. R. Civ. P. 23(a)(4). The Court also finds that common issues of fact and law predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. Fed. R. Civ. P. 23(b)(3). Class Plaintiffs are certified as representatives of the Settlement Class. Pursuant to Fed. R. Civ. P. 23(g), Scott+Scott Attorneys at Law LLP, Nussbaum Law Group, P.C., Robbins Geller Rudman & Dowd LLP, and Korein Tillery LLC are certified as class counsel for the Settlement Class.

5. The Court finds that the mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of this Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Distribution Plan, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (c) provided a full and fair opportunity to all Class Members to be heard with respect to the foregoing matters; and (d) met all applicable rules or law. Based on BNS's submission to the Court dated _____, the Court further finds that Defendants have complied with the obligations imposed on them under the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

6. The Court finds that ____ Class Members have validly requested to be excluded from the Settlement Class. Those excluded Class Members are identified at ECF No. _____.

7. The Court finds that ____ timely objections to the proposed Settlement have been submitted. Notwithstanding the [lack of] objections, the Court has independently reviewed and considered all relevant factors and has conducted an independent examination into the propriety of the proposed Settlement. [The Court finds all objections are without merit and they are hereby overruled.]

8. It is hereby determined that Class Plaintiffs and the Releasing Parties are bound by the Settlement Agreement and this Final Approval Order and Final Judgment, and the Action and the Released Claims against any of the Released Parties, as provided under the Settlement Agreement, are hereby dismissed with prejudice and released. The Parties shall bear their own costs, except as otherwise provided in the Settlement Agreement.

9. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally approves the Settlement, as set forth in the Settlement Agreement. This Court finds that the Settlement meets all requirements of Rule 23(e) of the Federal Rules of Civil Procedure and is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class, including Class Plaintiffs. This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced, well-informed counsel representing the interests of the Parties, that Class Counsel and Class Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Settlement Agreement, that the relief provided for the Settlement Class is adequate, and that the Settlement Agreement and Distribution Plan treat Class Members equitably relative to each other. Accordingly, the Settlement embodied in this Settlement Agreement is hereby approved in all respects. The Parties are hereby directed to carry out the Settlement Agreement in accordance with all of its terms and provisions, including the termination provisions.

10. Notwithstanding the entry of this Final Approval Order and Final Judgment, if the Settlement Agreement is validly terminated by Class Plaintiffs or BNS, is disapproved in whole or in part by the Court, any appellate court, or any other court of review, or does not become Final, then the provisions of this Final Approval Order and Final Judgment dismissing Class Plaintiffs' claims shall be null and void with respect to such Settlement; Class Plaintiffs' claims shall be reinstated; Defendants' defenses shall be reinstated; the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, including but not limited to any requests for exclusion from the Settlement previously submitted and deemed to be valid, shall be vacated and be of no force and effect; the Settlement Agreement, including its exhibits, and any and all negotiations, documents, and discussions associated with it and the release

set forth herein, shall be without prejudice to the rights of any Party, and of no force or effect; and the Parties shall be returned to their respective positions before the Settlement Agreement was signed. Notwithstanding the language in this Section, any provision(s) in the Settlement Agreement that the Parties have agreed shall survive its termination shall continue to have the same force and effect intended by the Parties.

11. The Settlement Fund defined in the Settlement Agreement has been established as a trust and shall be established as a fiduciary account (the “Settlement Fiduciary Account”). The Court further approves the establishment of the Settlement Fiduciary Account under the Settlement Agreement as a qualified settlement fund pursuant to §468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

12. Without affecting the finality of the Final Approval Order and Final Judgment for purposes of appeal, the Court reserves exclusive jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement contemplated thereby and over the enforcement of this Final Approval Order and Final Judgment. The Court also retains exclusive jurisdiction to resolve any disputes that arise out of or relate to the Settlement Agreement, the Settlement, or the Settlement Fund, to consider or approve administration costs and fees, including but not limited to fees and expenses incurred to administer the Settlement after the entry of the Final Approval Order and Final Judgment, and to consider or approve the amounts of distributions to Class Members. In addition, without affecting the finality of this Final Approval Order and Final Judgment, Class Plaintiffs, Defendants, and the Settlement Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of New Jersey for any suit, action, proceeding, or dispute arising out of or relating to this Final Approval Order and Final Judgment or the Settlement Agreement. Any disputes involving Class Plaintiffs, Defendants,

or Class Members concerning the implementation of the Settlement Agreement shall be submitted to the Court.

13. Each Class Member must execute a release and covenant not to sue in conformity with the Settlement Agreement, as incorporated into the Proof of Claim and Release form, in order to receive the Class Member's share(s), if any, of the Net Settlement Fund defined in the Settlement Agreement. The Court hereby confirms the appointment of _____ as Settlement Administrator and directs that the Settlement Administrator shall ensure that each Proof of Claim and Release form provided to Class Members contains a copy of such release and covenant not to sue. However, each Class Member's claims shall be released pursuant to §11 of the Settlement Agreement, regardless of whether the Settlement Class Member executes a release and covenant not to sue pursuant to this §13.

14. The Court hereby approves the Releasing Parties'³ releases of the Released Claims⁴ against the Released Parties⁵ as set forth in the Settlement Agreement and this Final Approval Order and Final Judgment and, upon the Effective Date, the Releasing Parties shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Released Parties.⁶

³ "Releasing Parties" or "Releasing Party" means each and every Class Plaintiff and each and every Settling Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries or legal representatives in their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such. As used in this provision, "affiliates" means agents, and entities controlling, controlled by, or under common control with a Releasing Party.

⁴ "Released Claims" means any and all manner of claims, causes of action, cross-claims, counter-claims, charges, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, taxes, attorneys' fees, and damages, whenever incurred, known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively, or in any capacity, against the Released Parties arising from or relating in any way to the factual predicate of the Action or which were or could have been asserted in the Action.

⁵ "Released Parties" or "Released Party" means Defendants, their predecessors, successors and assigns, their direct and indirect parents, subsidiaries and affiliates, and each of their respective current and former officers, directors, employees (including, but not limited to, Defendant Corey Flaum), managers, members, partners, agents (in their capacity as agents of Defendants), shareholders (in their capacity as shareholders of Defendants), attorneys, insurers, or legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this provision, "affiliates" means agents, and entities controlling, controlled by, or under common control with a Released Party.

⁶ Although the foregoing release is not a general release, such release constitutes a waiver of §1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

15. The Court declares that the Settlement Agreement and the Final Approval Order and Final Judgment shall be binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings against a Released Party involving the Released Claims that are maintained by or on behalf of Class Plaintiffs and each Releasing Party, whether or not they object to the Settlement and whether or not they make a claim for payment from the Net Settlement Fund, regardless of whether the Releasing Party previously initiated or subsequently initiates individual litigation or other proceedings involving the Released Claims, and even if such Releasing Party never received actual notice of the Action or this proposed Settlement.

16. The Court permanently bars and enjoins Class Plaintiffs and all Releasing Parties from: (a) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction against the Defendants or any of the Released Parties based on the Released Claims; (b) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration,

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, §1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Agreement, the parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

or other proceeding as a class action on behalf of any Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), against Defendants or any of the Released Parties based on the Released Claims; or (c) organizing Class Members into a separate group, class, or subclass for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) against the Defendants or any of the Released Parties based on the Released Claims.

17. The Court permanently bars and enjoins claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise. To the extent permitted by law, the Court permanently bars and enjoins claims by Defendants and any Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise against: (a) any of the other Defendants currently named in the Action; (b) any other Person formerly named as a party in the Action; or (c) any other Person subsequently added or joined as a party in the Action. Should any court determine that any Defendant is/was legally entitled to any kind of set-off, apportionment, contribution, indemnification, or similar claims against BNS arising out of or related to Released Claims, any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for set-off, apportionment, contribution, indemnification, or similar claims against BNS.

18. Neither the Settlement Agreement (nor its exhibits), whether or not it shall become Final, nor any negotiations, documents exchanged among counsel for Class Plaintiffs and Defendants in connection with settlement discussions, and discussions associated with them, nor the Final Approval Order and Final Judgment are or shall be deemed or construed to be an admission, adjudication, or evidence of: (a) any violation of any statute or law or of any liability or wrongdoing by Defendants or any Released Party; (b) the truth of any of the claims or allegations alleged in the Action; (c) the incurrence of any damage, loss, or injury by any Person; (d) the existence or amount of any manipulation of the market for Precious Metals Futures or Options on Precious Metals Futures traded on COMEX or NYMEX and the prices of Precious Metals Futures or Options on Precious Metals Futures; (e) the propriety of certification of a class other than solely for purposes of the Settlement. Further, neither the Settlement Agreement (nor its exhibits), whether or not it shall become Final, nor any negotiations, documents exchanged among counsel for Class Plaintiffs and Defendants in connection with settlement discussions, and discussions associated with them, nor the Final Approval Order and Final Judgment, may be discoverable, offered or received in evidence, or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, by any Person, except if warranted by existing law in connection with a dispute under the Settlement Agreement or an action (including this Action) in which the Settlement Agreement is asserted as a defense. Notwithstanding anything to the contrary herein, the foregoing provisions do not relieve the Parties of their obligations under the Mediation Confidentiality Agreement, which applies to the Mediation Information provided by BNS to Class Plaintiffs in connection with the Settlement or the Action. The Parties, without the need for approval from the Court, may adopt such amendments, modifications, and expansions of the Settlement Agreement and all exhibits thereto

as (i) shall be consistent in all material respects with the Final Approval Order and Final Judgment; and (ii) do not limit the rights of Settling Class Members.

19. The Court finds that, during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure as to each other. Any data or other information provided by Class Members in connection with the submission of claims shall be held in strict confidence, available only to the Settlement Administrator, Class Counsel, and experts or consultants acting on behalf of the Settlement Class. In no event shall a Class Member's data or personal information be made publicly available, except as provided for herein or upon Court Order for good cause shown.

20. The Proof of Claim and Release form, Distribution Plan, and the Supplemental Agreement referenced in §§7 and 19 of the Settlement Agreement are each approved as fair, reasonable, and adequate.

21. The Settlement Administrator shall administer the claims administration process, including the calculation of claims submitted by Class Members and distribution of the Net Settlement Fund to Authorized Claimants, pursuant to the Court-approved Distribution Plan. All Class Members shall submit Proof of Claim and Release ("Claim") under penalty of perjury by the date set forth in the Notice of Proposed Class Action Settlement, ("Notice") sent to Class Members. Lead Counsel may, in their discretion, accept for processing late-submitted Claims so long as the distribution of the Net Settlement Fund is not materially delayed.

22. If a Claim is deficient, the Settlement Administrator shall send the Class Member a deficiency letter which will give the Class Member at least twenty (20) days to cure the deficiency. If the Class Member fails to cure the deficiency within the specified period, the Settlement Administrator shall send the Class Member a letter notifying the Class Member that

the Claim has been rejected. The rejection letter will advise the Class Member of the reason(s) for the rejection of the Claim and his, her, or its right to review the determination of the Claim. If the Claim is still rejected, the Class member shall then be allowed to move this Court for review no later than seven (7) days after Lead Counsel submits an application for the distribution of the Net Settlement Fund to eligible claimants.

23. Separate orders shall be entered regarding Lead Counsel’s Fee and Expense Application. Such orders shall in no way affect or delay finality of this Final Approval Order and Final Judgment and shall not affect or delay the Effective Date of the Settlement.

24. 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.

25. The Court directs that this Final Approval Order and Final Judgment shall be Final and entered forthwith.

IT IS SO ORDERED

Signed this ____ day of _____, 20__.

The Honorable Michael A. Shipp
United States District Court Judge

EXHIBIT C

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: BANK OF NOVA SCOTIA
SPOOFING LITIGATION

Action No. 3:20-cv-11059 (MAS) (RLS)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract (together “Precious Metals Futures”), or any option on those futures contracts (“Options on Precious Metals Futures”), during the period of at least January 1, 2008 through at least July 31, 2016 (the “Class Period”).

Please read this Notice carefully. This is not junk mail, an advertisement, or a solicitation from an attorney. You have not been sued. This Notice has been authorized by the United States District Court for the District of New Jersey and contains important information as to your rights and options to participate in a proposed class action settlement, make a claim for payment from the settlement, or elect not to be included in the settlement. To claim your share of the settlement, you MUST electronically submit your proof of claim and release form (“Claim Form”) on or before _____ or mail your claim form to the address in Question 11 so that it is postmarked no later than _____.

Your legal rights will be affected regardless of whether or not you act. A Fairness Hearing Is scheduled for _____. Further information is available below.

Please do not contact the Court regarding this Notice. Inquiries concerning this Notice, the Claim Form, or any other questions by Class Members should be directed to:

Bank of Nova Scotia Spoofing Settlement

c/o A.B. Data, Ltd.

P.O. Box 53217

Milwaukee, WI 53217

If you are a brokerage firm, futures commission merchant, nominee or other person or entity who or which entered into Precious Metals Futures contracts or Options on Precious Metals Futures contracts during the Class Period for the beneficial interest of persons or organizations other than yourself, you are requested to, WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, either: (i) provide to A.B. Data, Ltd. (the “Settlement Administrator”) the name and last known address of each person or organization for whom or which you made such Precious Metals Futures contracts or Options on Precious Metals Futures contracts transactions during the Class

Period; or (ii) request from the Settlement Administrator sufficient copies of the Notice to forward directly to beneficial owners of the Precious Metals Futures contracts or Options on Precious Metals Futures contracts transactions. All communications regarding the foregoing should be addressed to the Settlement Administrator at the address listed above.

INTRODUCTION

You are receiving this Notice upon request or because records indicate that you may have traded one or more Precious Metals Futures contracts or Options on Precious Metals Futures contracts during the Class Period and may be a Class Member in this Action.

The purpose of this Notice is to inform you of a proposed settlement in this Action (the “Settlement”) with Defendants Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., and The Bank of Nova Scotia Trust Company of New York (collectively referred to as the “Bank of Nova Scotia”) and Corey Flaum (“Flaum” and, collectively with the Bank of Nova Scotia, “Defendants”). Class Plaintiffs entered into the Settlement Agreement with Defendants on November 2, 2022.

Class Plaintiffs allege that Defendant Bank of Nova Scotia and four of the Bank’s former precious metals traders (including defendant Corey Flaum) unlawfully and intentionally manipulated the prices of Gold Futures contracts and Silver Futures contracts traded on the COMEX and Platinum Futures contracts and Palladium Futures contracts traded on the NYMEX during the Class Period in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* (the “CEA”) and the common law.

The Court has preliminarily approved the Settlement with Defendants. To resolve all Released Claims against all Released Parties, Defendants have agreed to pay a total of \$6.6 million (the “Settlement Amount”). Class Members who or which do not opt out of the Settlement will release their claims against all Defendants in the Action.

The below table contains a summary of your rights and options regarding the Settlement. **Your legal rights will be affected whether or not you act.** More detailed information about your rights, options, and deadlines can be found in the Settlement Agreement and Distribution Plan, which are available at www.bankofnovascotiaspoofingsettlement.com (the “Settlement Website”).

The Court has appointed the lawyers listed below (“Lead Counsel”) to represent you and the Settlement Class in this Action:

Linda Nussbaum Nussbaum Law Group, P.C. 1211 Ave. of the Americas, 40 th Floor New York, NY 10036 (917) 438-9189 lnussbaum@nussbaumpc.com	Patrick Coughlin Robbins Geller Rudman & Dowd, LLP 655 West Broadway Suite 1900 San Diego, CA 92101 (619) 231-1058 pjc@rgrdlaw.com	Christopher Burke Scott+Scott Attorneys at Law LLP 230 Park Avenue 17 th Floor New York, NY 10169 (212) 223-6444 cburke@scott-scott.com	George Zelcs Korein Tillery LLC 205 North Michigan Plaza Suite 1950 Chicago, IL 60601 (312) 641-9750 gzelcs@koreintillery.com
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Your rights and options and the deadlines to exercise them are explained in this Notice. The capitalized terms used in this Notice are explained or defined below or in the Settlement

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

Agreement, which is available on the Settlement Website: www.bankofnovascotiaspoofingsettlement.com

Please visit the Settlement Website regularly for updates relating to the Settlement.

AN OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	If you do nothing in connection with this Settlement, you will receive no payment from the Settlement <i>and</i> you will be bound by past and any future Court rulings, including rulings on the Settlement, if approved, and the settlement release. <i>See</i> question 17.
SUBMIT A CLAIM FORM POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN XXXX, XX XXXX	The only way to receive your share of the Net Settlement Fund is to electronically submit a timely and valid Claim Form to the Settlement Administrator by no later than _____, or to mail your completed Claim Form so that it is postmarked no later than _____. <i>See</i> question 11.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN XXXX, XX XXXX	If you wish to exclude yourself from the Settlement, you must submit by U.S. first class mail (or, if sent from outside the U.S., by a service that provides for guaranteed delivery within five (5) or fewer calendar days of mailing) or deliver a written request to the Settlement Administrator so that it is received by _____. If you exclude yourself, you will not be bound by the Settlement, if approved, or settlement release, and you will not be eligible for any payment from the Settlement. <i>See</i> questions 19-23.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN XXXX, XX, XXXX	If you wish to object to the Settlement, you must file a written objection with the Court and serve copies on Lead Counsel and Defendants' Counsel so that it is received by _____. You must be and remain within the Settlement Class in order to object. <i>See</i> questions 23 and 24.
PARTICIPATE AT THE FAIRNESS HEARING	You may ask the Court for permission to speak about the Settlement at the Fairness Hearing, which may be held remotely by audio teleconference, by including such a request in your written objection, which you must file with the Court and serve on Lead Counsel and Defendants' Counsel so that it is received by _____. The Fairness

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

	Hearing is scheduled for _____. <i>See</i> questions 27-29.
APPEAR THROUGH AN ATTORNEY	You may enter an appearance through your own counsel at your own expense. <i>See</i> question 29.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION..... _____

- 1. What Is A Class Action Lawsuit? _____
- 2. Why Did I Get This Notice?..... _____
- 3. What Are The Definitions Used In This Notice? _____
- 4. What Is This Action About?..... _____
- 5. What Is The History Of This Action? _____
- 6. Why Is There A Settlement? _____

WHO GETS MONEY FROM THE SETTLEMENT..... _____

- 7. How Do I Know If I Am A Class Member? _____
- 8. Are There Exceptions To Being Included In The Settlement Class? _____
- 9. I'm Still Not Sure If I Am Included. _____

THE SETTLEMENT BENEFITS _____

- 10. What Does The Settlement Provide?..... _____
- 11. How Will I Get A Payment? _____
- 12. How Much Will My Payment Be? _____
- 13. What Is The Distribution Plan? _____
- 14. When Will I Receive A Payment?..... _____
- 15. What Do I Have To Do After I File A Claim Form? _____
- 16. What Am I Giving Up To Receive A Payment? _____
- 17. What If I Do Nothing?..... _____

EXCLUDING YOURSELF FROM THE SETTLEMENT..... _____

- 18. What If I Do Not Want To Be In The Settlement Class? _____
- 19. How Do I Exclude Myself?..... _____
- 20. If I Do Not Exclude Myself, Can I Sue Defendants For The Same Thing Later? _____

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

21. If I Exclude Myself, Can I Get Money From The Settlement? __

22. If I Exclude Myself From The Settlement, Can I Still Object? __

OBJECTING TO THE SETTLEMENT..... __

23. How Do I Tell The Court What I Think About The Settlement?..... __

24. What Is The Difference Between Objecting And Excluding Myself? __

THE LAWYERS REPRESENTING YOU __

25. Do I Have A Lawyer In This Case? __

26. How Will The Lawyers Be Paid?..... __

THE COURT’S FAIRNESS HEARING..... __

27. When And Where Will The Court Decide Whether To Approve The Settlement? __

28. Do I Have To Participate At The Fairness Hearing?..... __

29. May I Speak At The Fairness Hearing? __

GETTING MORE INFORMATION..... __

30. How Do I Get More Information?..... __

BASIC INFORMATION

1. What Is A Class Action Lawsuit?

A class action is a lawsuit in which one or more persons (representative plaintiffs) sue not only for themselves, but also for other people who have similar claims against the defendants. These similarly situated persons are referred to individually as class members, and collectively, as a class. The representative plaintiffs, the court, and counsel appointed to represent the class each and all have a responsibility to make sure that the interests of all class members are adequately represented.

Importantly, class members are NOT individually responsible for payment of attorneys’ fees or litigation expenses. In a class action, attorneys’ fees and litigation expenses are paid from the settlement fund (or the court-awarded judgment amount) and must be approved by the court. If there is no recovery on behalf of the class, the attorneys do not get paid.

When a representative plaintiff enters into a settlement with a defendant on behalf of a class, such as in this Settlement with Defendants, the court will require that the members of the class be given notice of the settlement and an opportunity to be heard with respect to the settlement. The court then conducts a hearing (called a Fairness Hearing) to determine, among other things, if the settlement is fair, reasonable, and adequate.

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

2. Why Did I Get This Notice?

You received this Notice either because you requested it or because records indicate that you may be a Class Member. As a potential Class Member, you have a right to know about the proposed Settlement with Defendants before the Court decides whether to approve the Settlement.

This Notice explains the Action, the Settlement, your legal rights, the benefits available, who is eligible for those benefits, and how you can apply to receive your portion of these benefits if you are eligible. The purpose of this Notice is also to inform you of the Fairness Hearing to be held by the Court on _____ to consider the fairness, reasonableness, and adequacy of the Settlement and Distribution Plan and to consider requests for awards of attorneys' fees, litigation expenses and costs, and any Service Awards for Class Plaintiffs from the Settlement Fund.

3. What Are The Definitions Used In This Notice?

This Notice incorporates by reference the definitions in the Stipulation and Agreement of Settlement (the "Settlement Agreement").

The Settlement Agreement and the Court's Preliminary Approval Order are posted on the Settlement Website. All capitalized terms used, but not defined, have the same meanings as in the Settlement Agreement and the Court's Preliminary Approval Order.

4. What Is This Action About?

Class Plaintiffs allege that Defendants (Bank of Nova Scotia and futures traders that Bank of Nova Scotia employed, including defendant Flaum) unlawfully and intentionally manipulated the prices of Precious Metals Futures contracts traded on the COMEX and/or the NYMEX and Options on Precious Metals Futures contracts from at least January 1, 2008 through at least July 31, 2016 (the "Class Period") in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* (the "CEA") and the common law.

Defendants allegedly manipulated the prices of Precious Metals Futures contracts and Options on Precious Metals Futures contracts using a manipulative technique called "spoofing," whereby they placed orders for Precious Metals Futures contracts that they never intended to execute, then canceled them prior to execution in order to send false supply and demand signals to the market. Defendants allegedly caused artificial prices in Precious Metals Futures contracts and Options on Precious Metals Futures contracts throughout the Class Period. This false pricing information allegedly caused the prices of Precious Metals Futures contracts and Options on Precious Metals Futures contracts to move in a direction that was favorable to Defendants' trading positions but harmful to Class Members. Class Plaintiffs allege that they transacted in Precious Metals Futures and Options on Precious Metals Futures hundreds of times during the Class Period, including on days identified as examples of spoofing in regulatory filings against Defendants.

Defendants maintain that they have good and meritorious defenses to Class Plaintiffs' claims and would prevail if the case were to proceed. Nevertheless, to settle the claims in this lawsuit, and thereby avoid the expense and uncertainty of further litigation, Defendants have agreed to pay a total of \$6.6 million (the "Settlement Amount") in cash for the benefit of the proposed Settlement

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

Class. If the Settlement is approved, the Settlement Amount plus interest earned from the date it was established (the “Settlement Fund”), minus any Taxes, the reasonable costs of Class Notice and administration, any Court awarded attorneys’ fees, litigation expenses and costs, Service Awards for Class Plaintiffs, and any other costs or fees approved by the Court (the “Net Settlement Fund”) will be divided among all Class Members who file timely and valid Claim Forms.

If the Settlement is approved, the Action will be resolved against all Defendants. If the Settlement is not approved, the Bank of Nova Scotia and the other defendants will remain as defendants in the Action, and Class Plaintiffs will continue to pursue their claims against them.

5. What Is The History Of This Action?

On August 21, 2020, Plaintiffs Casey Sterk and Kevin Maher filed the initial class action complaint alleging the misconduct described above. *See* ECF No. 1. Thereafter, other plaintiffs filed similar and related actions concerning the same misconduct, and on October 29, 2020, the Court consolidated all of these related cases into this action. *See generally*, ECF No. 17. The Plaintiffs from these now consolidated actions filed a single amended consolidated complaint against Defendants on May 4, 2021. *See* ECF No. 31. Defendants filed motions to dismiss the consolidated complaint on June 18, 2021 and July 2, 2021, respectively, and briefing from both sides concluded on September 15, 2021. *See* ECF 38, 40, 43, 48-49. By order dated January 20, 2022, the Court converted Defendants’ motions to dismiss to motions for summary judgment on the issue of statute of limitations, i.e., whether Class Plaintiffs’ claims were timely brought. ECF No. 50. As part of the January 20, 2022 order, the Court indicated it would grant discovery on the timeliness issue and directed the Parties to file a letter with their respective positions as to the scope of that discovery. *Id.* The Parties thereafter requested and were granted several extensions of their time to file the discovery letter required by the Court so that they could attempt to resolve the case through mediation. *See generally* ECF Nos. 51-54, 57-60. Class Plaintiffs and Bank of Nova Scotia agreed to the selection of Jed Melnick of JAMS as Mediator. After receiving briefing from Class Plaintiffs and Bank of Nova Scotia, the Mediator held a full-day, in person mediation session, which concluded without reaching a settlement. Notwithstanding, Class Plaintiffs and Bank of Nova Scotia continued negotiating at arms’ length with the assistance of the Mediator. On or about July 28, 2022, they were able to reach an agreement in principle to resolve the case for \$6.6 million. On August 4, 2022, Class Plaintiffs and Defendants executed a binding settlement term sheet, and thereafter negotiated a formal Settlement Agreement that was executed on _____.

6. Why Is There A Settlement?

Class Plaintiffs and Lead Counsel believe that Class Members have been damaged by Defendants’ conduct. Defendants believe they have meritorious defenses to Class Plaintiffs’ allegations and believe that Class Plaintiffs’ claims would have either been rejected prior to trial, at trial (had Class Plaintiffs successfully certified a class and survived summary judgment motions), or on appeal. As a result, Defendants believe Class Plaintiffs would have received nothing if the litigation had continued to trial.

The Court has not decided in favor of either Class Plaintiffs or Defendants. Instead, the Parties reached a negotiated resolution of the Action. The Settlement allows both sides to avoid the risks

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

and costs of lengthy litigation and the uncertainty of pre-trial proceedings, a trial, and appeals, and, if approved, will permit eligible Class Members who file timely and valid Claim Forms to receive some compensation, rather than risk ultimately receiving nothing. Class Plaintiffs and Lead Counsel believe the Settlement is in the best interest of all Class Members.

Defendants have agreed to pay a total of \$6.6 million in cash for the benefit of the proposed Settlement Class. If the Settlement is approved, the Net Settlement Fund will be divided among all Class Members who file timely and valid Claim Forms pursuant to the Distribution Plan.

If the Settlement is approved, the Action will be resolved against all Defendants. If the Settlement is not approved, the Bank of Nova Scotia and Individual Defendant Corey Flaum will remain as defendants in the Action, and Class Plaintiffs will continue to pursue their claims against them.

WHO GETS MONEY FROM THE SETTLEMENT

7. How Do I Know If I Am A Class Member?

In the Preliminary Approval Order, the Court preliminarily approved the following Settlement Class:

All persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract (together “Precious Metals Futures”), or any option on those futures contracts (“Options on Precious Metals Futures”), during the period of at least January 1, 2008 through at least July 31, 2016 (the “Class Period”).

Not everyone who fits this description will be a Class Member. Please see question 8 for a discussion of exclusions from the Settlement Class.

8. Are There Exceptions To Being Included In The Settlement Class?

Yes. You are not included in the Settlement Class if you are a Defendant or any parent, subsidiary, affiliate or agent of the Bank of Nova Scotia. In addition, the United States government is excluded from the Settlement Class.

9. I’m Still Not Sure If I Am Included

If you are still not sure whether you are included, you may ask for free help. You can call toll-free 1-877-388-1727 (if calling from outside the United States or Canada, call _____) or visit the Settlement Website, www.bankofnovascotiaspoofingsettlement.com for more information.

THE SETTLEMENT BENEFITS

10. What Does The Settlement Provide?

Defendants have paid \$6.6 million into a fund to be held for disbursement to the Settlement Class and to pay for Court-approved fees and expenses if the Settlement is approved. This is not a claims-

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

made settlement, and Defendants are not involved in the development of the Distribution Plan for the Settlement. The Parties' expectation is that the Net Settlement Fund will be fully distributed to Settling Class Members.

The Settlement does not bar Class Members from filing victim impact statements with the DOJ to participate in the DOJ's victim compensation program, created in connection with the DOJ's deferred prosecution agreement with the Bank of Nova Scotia relating to criminal charges for conduct similar to that alleged in this Action. See <https://www.justice.gov/criminal-vns/bank-nova-scotia-deferred-prosecution-agreement-dpa>.

11. How Will I Get A Payment?

If you are a Class Member and do not exclude yourself, you are eligible to file a Claim Form to receive your share of money from the Net Settlement Fund. Claim Forms must be submitted online at the Settlement Website **on or before 11:59 p.m. Eastern Time** on _____, **OR** postmarked by _____ and mailed to:

Bank of Nova Scotia Spoofing Settlement

c/o A.B. Data, Ltd.

P.O. Box 53217

Milwaukee, WI 53217

Following the timely submission and receipt of your Claim Form, the Settlement Administrator will send you a "Confirmation of Claim Receipt," which will acknowledge receipt of your Claim and will inform you of important next steps.

Please keep all data and documentation related to your eligible Precious Metals Futures contracts and Options on Precious Metals Futures contracts. Having data and documentation may be important to substantiating your Claim Form.

If you do not file a Claim Form, you will not receive any payments under the Settlement.

12. How Much Will My Payment Be?

The amount of your payment will be determined by the Distribution Plan, if it is approved, or by such other plan of distribution that is approved by the Court. At this time, it is not known precisely how much each Authorized Claimant will receive from the Net Settlement Fund or when payments will be made. For more information on the Distribution Plan see question 13.

13. What Is The Distribution Plan?

The Distribution Plan is available for review on the Settlement Website: www.bankofnovascotiaspoofingsettlement.com. Changes, if any, to the Distribution Plan based on newly available data or information or any Court order will be promptly posted on the Settlement Website. Please check the Settlement Website for the most up-to-date information about the Distribution Plan.

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

14. When Will I Received A Payment?

The Court will hold the Fairness Hearing on _____ to decide whether to approve the Settlement and Distribution Plan. Even if the Court approves the Settlement and Distribution Plan, there may be appeals after that. It can sometimes take a year or more for the appellate process to conclude.

Please be patient. Status updates will be posted on the Settlement Website

15. What Do I Have To Do After I File A Claim Form?

After you file a Claim Form, the Settlement Administrator will evaluate your Claim Form to determine if you have provided sufficient information to validate your membership in the Settlement Class and your claim. If the Settlement Administrator determines that your Claim Form is deficient or defective, it will contact you. If you subsequently provide information that satisfies the Settlement Administrator concerning the validity of your Claim Form, you will not have to do anything else. If any disputes cannot be resolved, Lead Counsel will submit them to the Court, and the Court will make a final determination of the validity of your Claim Form. Please keep all data and documentation related to your eligible transactions in Precious Metals Futures and Options on Precious Metals Futures. Having data and documentation may be important to substantiating your Claim Form.

16. What Am I Giving Up To Receive A Payment?

Unless you exclude yourself, you remain a Class Member. That means you can't sue, continue to sue, or be part of any other lawsuit about the Released Claims in this Action against the Defendants and any of the Released Parties. Upon the Effective Date of the Settlement, Class Plaintiffs and each of the Releasing Parties shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Released Parties.

The capitalized terms used in this paragraph are defined in the Settlement Agreement, Preliminary Approval Order, or this Notice. For easy reference, certain of these terms are copied below:

- “Released Parties” means Defendants, their predecessors, successors and assigns, their direct and indirect parents, subsidiaries and affiliates, and each of their respective current and former officers, directors, employees (including but not limited to, Flaum), managers, members, partners, agents (in their capacity as agents of Defendants), shareholders (in their capacity as shareholders of Defendants), attorneys, insurers, or legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this provision, “affiliates” means agents, and entities controlling, controlled by, or under common control with a Released Party.
- “Releasing Parties” means each and every Class Plaintiff and each and every Settling Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their current and former officers, directors, employees, agents, principals, members, trustees, participants, representatives, fiduciaries, beneficiaries or legal representatives in

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

their capacity as such, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing in their capacity as such. As used in this provision, “affiliates” means agents, and entities controlling, controlled by, or under common control with a Releasing Party.

- “Released Claims” means any and all manner of claims, causes of action, cross-claims, counter-claims, charges, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class, derivative, or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, taxes, attorneys’ fees, and damages, whenever incurred, known or unknown, suspected or unsuspected, asserted or unasserted, which Settling Class Members or any of them ever had, now has, or hereafter can, shall or may have, representatively, derivatively or in any other capacity, against the Released Parties arising from or relating in any way to the factual predicate of the Action or which were or could have been asserted in the Action.

Upon the effective date of the settlement, Defendants will also release Class Plaintiffs, the Settlement Class, and their respective attorneys and agents from all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including Fed. R. Civ. P. 11), that arise out of or relate in any way to the institution, prosecution, or settlement of the Action, except for claims relating to the enforcement of the settlement.

17. What If I Do Nothing?

You are automatically a member of a Settlement Class if you fit the Settlement Class description. However, if you do not submit a timely and valid Claim Form, you will not receive any payment from the Settlement. You will be bound by past and any future Court rulings, including rulings on the Settlement and release. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be a part of any other lawsuit against the Defendants or any of the other Released Parties on the basis of the Released Claims. Please see question 16 for a description of the Released Claims.

18. What If I Do Not Want To Be In The Settlement Class?

If you are a Class Member, do not want to remain in the Settlement Class, and do not want a payment from the Settlement, then you must take steps to exclude yourself from the Settlement. This is also sometimes referred to as “opting out” of a class. See question 19.

If you act to exclude yourself from the Settlement Class of which you would otherwise be a member, you will be free to sue the Bank of Nova Scotia or any of the other Released Parties on your own for the claims being resolved by the Settlement. However, you will not receive any money from the Settlement, and Lead Counsel will no longer represent you with respect to any claims against the Bank of Nova Scotia.

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

If you want to receive money from the Settlement, do not exclude yourself. You must file a Claim Form in order to receive any payment from the Settlement.

19. How Do I Exclude Myself?

You can exclude yourself by sending a written “Request for Exclusion.” You cannot exclude yourself by telephone or email. Your written Request for Exclusion must be mailed by U.S. first class mail (or, if sent from outside the U.S., by a service that provides for guaranteed delivery within _____ or fewer calendar days of mailing) or delivered so that it is received by _____, to:

Bank of Nova Scotia Spoofing Settlement

EXCLUSIONS

c/o A.B. Data, Ltd.

P.O. Box 173001

Milwaukee, WI 53217

and (a) state the name, address, and telephone number of the Person or entity seeking exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such Person or entity requests to be excluded from the Settlement Class in the Action (*In re Bank of Nova Scotia Spoofing Litigation*, Case No. 3:20-cv-11059 (MAS) (RLS) (D.N.J.)); and (c) may provide one or more document(s) sufficient to prove membership in the Settlement Class, as well as proof of authorization to submit the Request for Exclusion if submitted by an authorized representative.

With respect to the kinds of documents that are requested under subsection (c) in the preceding paragraph, any Class Member seeking to exclude himself, herself or itself from the Settlement Class will be requested to and may opt to provide either: (i) one or more document(s) evidencing eligible trading in Precious Metals Futures and Options on Precious Metals Futures during the Class Period (including the type and number of contract(s) traded, and the date(s) and (if available) price(s) at which the position was acquired or sold), or (ii) such Person or entity’s tag50 ID(s) and an executed waiver and request to the CME Group (“CME Waiver”) to unmask such Person or entity’s account information for verification. A sample copy of the CME Waiver to be used by Class Members will be posted on the Settlement website, www.bankofnovascotiaspoofingsettlement.com. Any Request for Exclusion must be signed by such Person or entity requesting the exclusion or an authorized representative and include proof of authorization to submit the Request for Exclusion if submitted by an authorized representative. The Parties may seek leave of the Court to ask any Person or entity that seeks to be excluded from the settlement to provide documents sufficient to prove membership in the Settlement Class.

A Request for Exclusion that does not include all of the required information, does not contain the proper signature, is sent to an address other than the one designated above, or is not sent within the time specified shall be invalid and the person(s) filing such an invalid request shall be a Class Member and shall be bound by the Settlement, if approved.

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

All persons who submit valid and timely Requests for Exclusion in the manner set forth above shall have no rights under the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement. In addition, such persons will not be entitled to object to the Settlement or participate at the Fairness Hearing.

20. If I Do Not Exclude Myself, Can I Sue The Defendants And The Other Released Parties For The Same Thing Later?

No. Unless you exclude yourself from this Settlement, you give up any right to sue Defendants and the other Released Parties for the Released Claims that the Settlement resolves. If you decide to exclude yourself from this Settlement, your decision will apply to Defendants and the other Released Parties.

21. If I Exclude Myself, Can I Get Money From The Settlement?

No. You will not get any money from the Settlement if you exclude yourself.

22. If I Exclude Myself From The Settlement, Can I Still Object?

No. If you exclude yourself, you are no longer a Class Member and may not object to any aspect of the Settlement.

23. How Do I Tell The Court What I Think About The Settlement?

If you are a Class Member and you do not exclude yourself, you can tell the Court what you think about the Settlement. You can object to all or any part of the Settlement, Distribution Plan, and/or application for attorneys’ fees, payment of litigation expenses and costs, and any Service Awards for Class Plaintiffs. You can give reasons why you think the Court should approve them or not. The Court will consider your views. If you want to make an objection, you may enter an appearance in the Action, at your own expense, individually or through counsel of your own choice, by filing with the Clerk of United States District Court for the District of New Jersey a notice of appearance and your objection, and serving copies of your objection on Lead Counsel and Defendants’ Counsel such that it is received by _____ to the following email and physical addresses:

<i>Lead Counsel</i>	<i>Defendants’ Counsel</i>	
Christopher Burke Scott+Scott Attorneys at Law LLP <i>Co-Lead Counsel</i> 230 Park Avenue 17th Floor New York, NY 10169 (212) 223-6444 cburke@scott-scott.com	Jamie Dycus King & Spalding LLP <i>Attorneys for the Bank of Nova Scotia</i> 1185 Sixth Avenue New York, NY 10036 (212) 556-2211 jdycus@kslaw.com	Nicholas Lewin Krieger Kim & Lewin LLP <i>Attorneys for Corey Flaum</i> 500 Fifth Avenue 34th Floor New York, NY 10110 (212) 390-9559 nick.lewin@kkl1lp.com

Any Class Member who does not enter an appearance will be represented by Lead Counsel.

If you choose to object, you must file a written objection. You cannot make an objection by telephone or email. Your written objection must include: (i) the name, address, telephone number,

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

and email address of the Person or entity objecting and must be signed by the Class Member (an attorney's signature is not sufficient); (ii) the name of the Action (*In re Bank of Nova Scotia Spoofing Litigation*, Case No. 3:20-cv-11059 (MAS) (RLS) (D.N.J.)); (iii) a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; (iv) whether the objection applies only to the Class Member, a specific subset of the Settlement Class, or the entire Settlement Class; (v) documents sufficient to prove the Class Member's membership in the Settlement Class; (vi) a statement of whether you intend to participate at the Fairness Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, address, telephone number, and email address; and (vii) a list of other cases in which you or your counsel has appeared either as an objector or counsel for an objector in the last five years. If you enter an appearance and desire to present evidence at the Fairness Hearing in support of your objection, you must also include in your written objection or notice of appearance the identity of any witnesses you may call to testify and any exhibits you intend to introduce into evidence at the hearing. Objectors may, in certain circumstances, be required to make themselves available for a deposition by any Party to take place within the Court's federal district in New Jersey or in the county of the objector's residence or principal place of business within _____ days of service of the objector's timely written objection.

If you do not timely and validly submit your objection, your views will not be considered by the Court. Check the Settlement Website, www.bankofnovascotiaspoofingsettlement.com for updates on important dates and deadlines relating to the Settlement.

24. What Is The Difference Between Objecting And Excluding Myself?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you remain a Class Member and do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be a part of the Settlement Class. If you exclude yourself, you have no right to object to the Settlement because it no longer affects you.

25. Do I Have A Lawyer In This Case?

The Court has appointed the lawyers listed below to represent you and the Settlement Class in this Action: Linda Nussbaum, Nussbaum Law Group, P.C., 1211 Ave. of the Americas - 40th Floor, New York, NY 10036, (917) 438-9189, lnussbaum@nussbaumpc.com; Patrick Coughlin, Robbins Geller Rudman & Dowd, LLP, 655 West Broadway - Suite 1900, San Diego, CA 92101, (619) 231-1058, pjc@rgrdlaw.com; Christopher Burke, Scott+Scott Attorneys at Law LLP, 230 Park Ave. - 17th Floor, New York, NY 10169, (212) 223-6444, cburke@scott-scott.com; and, George Zelcs, Korein Tillery LLC, 205 North Michigan Plaza - Suite 1950, Chicago, IL 60601, (312) 641-9750, gzelcs@koreintillery.com.

These lawyers are called Lead Counsel. Lead Counsel may apply to the Court for payment of attorneys' fees and litigation expenses and costs from the Settlement Fund. You will not otherwise be charged for Lead Counsel's services. If you want to be represented by your own lawyer, you may hire one at your own expense

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

26. How Will The Lawyers Be Paid?

To date, Lead Counsel have not been paid any attorneys' fees or received payment for any out-of-pocket costs. Any attorneys' fees and litigation expenses and costs will be awarded only as approved by the Court in amounts determined to be fair and reasonable. The Settlement provides that Lead Counsel may apply to the Court for an award of attorneys' fees and litigation expenses and costs out of the Settlement Fund. Prior to the Fairness Hearing, Lead Counsel will move for an award of no more than one-third of the Settlement Fund in attorneys' fees, plus payment of litigation expenses and costs and for interest on such attorneys' fees and litigation expenses and costs at the same rate as the earnings in the Settlement Fund, accruing from the inception of the Settlement Fund until the attorneys' fees and litigation expenses and costs are paid. Lead Counsel may allocate any award of attorneys' fees and payment of litigation expenses and costs among Plaintiffs' Counsel in proportion to their contributions to the case. Class Plaintiffs may also seek Service Awards from the Settlement Fund of up to \$2500.00 each.

This is only a summary of the request for attorneys' fees and litigation expenses and costs. Any motions in support of the requests will be available for viewing on the Settlement Website after they are filed. If you wish to review the motion papers, you may do so by viewing them at the Settlement Website, www.bankofnovascotiaspoofingsettlement.com.

The Court will consider the motion for attorneys' fees and litigation expenses and costs at or after the Fairness Hearing.

THE COURT'S FAIRNESS HEARING

27. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold the Fairness Hearing by _____ on _____ Eastern Time, from the United States District Court for the District of New Jersey, at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Courtroom 5W, Trenton, NJ 08608. Given the ongoing COVID-19 pandemic, the Fairness Hearing may be conducted remotely. Any Class Member who wants to participate at the Fairness Hearing can do so remotely by calling the following toll-free number _____ (if calling from outside the United States or Canada, call _____) on the date and time of the Fairness Hearing. The Fairness Hearing may be moved to a different date or time without notice to you; any changes to the date, time, or telephone number of the Fairness Hearing will be posted to the Settlement Website. Although you do not need to participate, if you plan to do so, you should check the Settlement Website for any changes concerning the Fairness Hearing. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider whether to approve the Distribution Plan and requests for attorneys' fees, litigation expenses and costs, and any Service Awards for Class Plaintiffs. If there are any objections, the Court will consider them at this time. We do not know how long the Fairness Hearing will take or when the Court will make its decision. The Court's decision may be appealed.

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

28. Do I Have To Participate At The Fairness Hearing?

No. Lead Counsel will answer any questions the Court may have. You are, however, welcome to participate at the Fairness Hearing. If you send an objection, you do not have to participate at the Fairness Hearing to talk about it. As long as you file and serve your written objection on time, the Court will consider it. You may also hire your own lawyer to participate, but you are not required to do so.

29. May I Speak At The Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. If you want to participate at the Fairness Hearing, you may also enter an appearance in the Action at your own expense, individually, or through counsel of your own choice, by filing with the Clerk of Court a notice of appearance and your objection and serving copies of your objection on Lead Counsel and Defendants' Counsel at the addresses set forth in question 23, such that they are received no later than _____, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Lead Counsel. You may request to speak at the Fairness Hearing by telephone.

30. How Do I Get More Information?

The Court has appointed A.B. Data, Ltd. as the Settlement Administrator. Among other things, the Settlement Administrator is responsible for providing this Notice of the Settlement and processing Claim Forms.

This Notice summarizes the Settlement Agreement. More details are in the Settlement Agreement and Distribution Plan, which are available for your review at the Settlement Website, www.bankofnovascotiaspoofingsettlement.com. The Settlement Website also has answers to common questions about the Settlement, Claim Form, and other information to help you determine whether you are a Class Member and whether you are eligible for a payment. You may also call toll-free 1-877-388-1727 (if calling from outside the United States or Canada, call _____) or write to the Settlement Administrator at:

Bank of Nova Scotia Spoofing Settlement

c/o A.B. Data, Ltd.

P.O. Box 53217

Milwaukee, WI 53217

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 the Settlement Website or send it to the Settlement Administrator at the address set forth above in the event the Settlement Administrator needs to contact you.

******* Please do not contact the Court or the Clerk's Office regarding this Notice or for additional information. *******

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

DATED: _____

BY ORDER OF THE COURT

Questions? Visit www.BankofNovaScotiaSpoofingSettlement.com, email info@BankofNovaScotiaSpoofingSettlement.com, or call toll free at 1-877-1727.

EXHIBIT D

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: BANK OF NOVA SCOTIA
SPOOFING LITIGATION

Action No. 3:20-cv-11059 (MAS) (RLS)

SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract, or any option on those futures contracts, during the period of at least January 1, 2008 through at least July 31, 2016, your rights may be affected by a pending class action settlement, and you may be entitled to portion of the settlement fund.

This Summary Notice is to alert you to a proposed Settlement totaling \$6,600,000 (the “Settlement Amount”) reached with The Bank of Nova Scotia (together with affiliated entities, “BNS”) in a pending class action (the “Action”).

The United States District Court for the District of New Jersey (the “Court”) authorized this Summary Notice and has appointed the lawyers listed below to represent the Settlement Class in this Action:

Linda Nussbaum Nussbaum Law Group, P.C. 1211 Ave. of the Americas, 40 th Floor New York, NY 10036 (917) 438-9189 lnussbaum@nussbaumpc.com	Patrick Coughlin Robbins Geller Rudman & Dowd, LLP 655 West Broadway Suite 1900 San Diego, CA 92101 (619) 231-1058 pjc@rgrdlaw.com	Christopher Burke Scott+Scott Attorneys at Law LLP 230 Park Avenue 17 th Floor New York, NY 10169 (212) 223-6444 cburke@scott-scott.com	George Zelcs Korein Tillery LLC 205 North Michigan Plaza Suite 1950 Chicago, IL 60601 (312) 641-9750 gzelcs@koreintillery.com
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Who is a member of the Settlement Class?

The proposed Settlement Class consists of all Persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, NYMEX Palladium Futures contract (together “Precious Metals Futures”), or any option on those futures contracts (“Options on Precious Metals Futures”), during the period of at least January 1, 2008 through at least July 31, 2016 (the “Class Period”). Excluded from the Class are Defendants, their officers and directors, management, employees, subsidiaries, and affiliates. Also excluded from the Class is the Judge presiding over this action, his or her law clerks, spouse, any other person within the third degree of relationship living in the Judge’s household, the spouse of such person, and the U.S. government.

“Precious Metals Futures” means Gold Futures contract(s), Silver Futures Contract(s), Platinum Futures contract(s) or Palladium Futures contract(s), and “Options on Precious Metals Futures” means any option on Precious Metals Futures.

The other capitalized terms used in this Summary Notice are defined in the detailed Notice of Proposed Class Action Settlement and in the Settlement Agreement, both of which are available at www.bankofnovascotiaspoofingsettlement.com.

If you are not sure if you are included in the Settlement Class, you can get more information, including the detailed Notice, at www.bankofnovascotiaspoofingsettlement.com or by calling toll-free 1-877-388-1727 (if calling from outside the United States or Canada, call _____).

What is this Action about and what does the Settlement provide?

Class Plaintiffs allege that Defendant Bank of Nova Scotia and four of the Bank's former precious metals traders (including defendant Corey Flaum) unlawfully and intentionally manipulated the prices of Gold Futures contracts and Silver Futures contracts traded on the COMEX and Platinum Futures contracts and Palladium Futures contracts traded on the NYMEX during the Class Period in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* (the "CEA") and the common law.

Defendants maintain that they have good and meritorious defenses to Class Plaintiffs' claims and would prevail if the case were to proceed. Nevertheless, to settle the claims in this lawsuit, and thereby avoid the expense and uncertainty of further litigation, Defendants have agreed to pay a total of \$6.6 million (the "Settlement Amount") in cash for the benefit of the proposed Settlement Class. If the Settlement is approved, the Settlement Amount plus interest earned from the date it was established (the "Settlement Fund"), minus any Taxes, the reasonable costs of Class Notice and administration, any Court awarded attorneys' fees, litigation expenses and costs, Service Awards for Class Plaintiffs, and any other costs or fees approved by the Court (the "Net Settlement Fund") will be divided among all Class Members who file timely and valid Claim Forms.

If the Settlement is approved, the Action will be resolved against all Defendants. If the Settlement is not approved, Bank of Nova Scotia and the other defendants will remain as defendants in the Action, and Class Plaintiffs will continue to pursue their claims against them.

Will I get a payment?

If you are a member of the Settlement Class and do not opt out, you will be eligible for a payment under the Settlement if you file a Claim Form. You may obtain more information at www.bankofnovascotiaspoofingsettlement.com or by calling toll-free 1-877-388-1727 (if calling from outside the United States or Canada, call _____).

Claim Forms must be postmarked by _____ or submitted online at www.bankofnovascotiaspoofingsettlement.com on or before **[time]** Eastern Time on **[date]**.

What are my rights?

If you are a member of the Settlement Class and do not opt out, you will release certain legal rights against Bank of Nova Scotia, the other defendants, and Released Parties as explained in the detailed Notice and Settlement Agreement, which are both available at www.bankofnovascotiaspoofingsettlement.com. If you do not want to take part in the proposed Settlement, you *must* opt out by **[Date]**. You may object to the proposed Settlement, the

Distribution Plan, and/or Lead Counsel's request for attorneys' fees, payment of litigation costs and expenses, and any Service Awards to Class Plaintiffs. If you want to object, you must do so by **[same date]**. Information on how to opt out or object is contained in the detailed Notice, which is available at www.bankofnovascotiaspoofingsettlement.com.

When is the Fairness Hearing?

The Court will hold the Fairness Hearing by _____ on _____ Eastern Time, from the United States District Court for the District of New Jersey, at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Room 2020, Trenton, NJ 08608. Given the current COVID-19 pandemic, the Fairness Hearing may be conducted remotely. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider whether to approve the Distribution Plan and requests for attorneys' fees, litigation expenses and costs, and any Service Awards for Class Plaintiffs. If there are any objections, the Court will consider them at this time. Any Class Member who wants to participate at the Fairness Hearing can do so remotely by calling the following toll-free number 1-877-388-1727 (if calling from outside the United States or Canada, call _____) on the date and time of the Fairness Hearing. The Fairness Hearing may be moved to a different date or time without notice to you; any changes to the date, time, or telephone number of the Fairness Hearing will be posted to the Settlement Website. Although you do not need to participate, if you plan to do so, you should check the Settlement Website for any changes concerning the Fairness Hearing. We do not know how long the Fairness Hearing will take or when the Court will make its decision. The Court's decision may be appealed.

For more information, call toll-free 1-877-388-1727 (if calling from outside the United States or Canada, call _____) or visit www.bankofnovascotiaspoofingsettlement.com

******* Please do not contact the Court or the Clerk's Office regarding this Notice or for additional information. *******