

IN RE OPTIVER COMMODITIES LITIGATION

Master File No.
08-CV-6842 (LAP)
ECF Case
Chief Judge Loretta A. Preska

This Document Relates To: All Actions

PROOF OF CLAIM AND RELEASE

If you are a Member of the Settlement Class as defined below, then in order to be entitled to a distribution, **you must complete, sign, notarize and mail this Proof of Claim and necessary supporting documentation to the Settlement Administrator at the following address, postmarked no later than August 3, 2015:**

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

DO NOT SUBMIT YOUR CLAIM TO THE COURT.

The Settlement Class. The Settlement Class¹ is defined as:

All Persons that purchased, sold or held NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts or NYMEX New York Harbor Gasoline futures contracts at any time from March 2, 2007 through March 26, 2007, inclusive. Excluded from the Settlement Class are (i) members of the judiciary assigned to this case, including their immediate family members; (ii) Class Counsel and their employees; (iii) Defendants and any parent, subsidiary, affiliate, employee or agent of any Defendant, including Defendants' counsel; and (iv) Opt Outs (as defined in Section 1(w) of the Stipulation and Agreement of Settlement).

Only Members of the Settlement Class may participate in the Settlement.

If you are a Member of the Settlement Class as described above, then by properly filling out, signing, having notarized and returning this Proof of Claim and furnishing the required supporting documentation, you may be entitled to share in the proceeds from the Net Settlement Fund. However, submission of this Proof of Claim does not assure that you will share in any of the proceeds of the Net Settlement Fund.

Omission of necessary information or supporting documents will make your claim defective so that it may be rejected, in which case you will be notified of such rejection and given an opportunity to remedy same. You must include all trade information for all transactions and all positions held in "Class Contracts" for all accounts you own or control. For purposes of this Proof of Claim, "Class Contracts" shall mean NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts, and NYMEX New York Harbor Gasoline futures contracts, to the extent such contracts were traded or held at any time between March 2, 2007 through March 26, 2007, inclusive.

If you are a Member of the Settlement Class and you fail to submit a valid and timely Proof of Claim pursuant to the instructions set forth herein, or fail to provide adequate documentations of those transactions and holdings, you may be precluded from any recovery from the Net Settlement Fund. However, unless you validly exclude yourself from the Settlement Class, you will be bound by the terms of any judgment entered in the Action **whether or not you submit a proof of claim.**

The completed Proof of Claim and the information submitted therewith will be treated as confidential and will be used solely for purposes of administering the Settlement. Knowingly submitting inaccurate or incomplete information may subject you to civil or criminal penalties.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS PROOF OF CLAIM, WRITE TO, CALL, OR GO ONLINE AT:

IN RE OPTIVER COMMODITIES LITIGATION SETTLEMENT, c/o A.B. DATA, LTD., PO BOX 170500, MILWAUKEE, WI, 1-866-788-9470,
www.nymextassettlement.com

DO NOT CONTACT THE COURT IF YOU HAVE QUESTIONS CONCERNING THIS PROOF OF CLAIM.

¹ Unless otherwise stated, capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated July 24, 2014, available at www.nymextassettlement.com (the "Website").

For official use only

In Re Optiver Commodities Litigation
MASTER FILE No. 8- CV-6842 (LAP)
PROOF OF CLAIM AND RELEASE
Please print or type

MUST BE POSTMARKED NO LATER
THAN AUGUST 3, 2015

STATE OF _____)
COUNTY OF _____)

_____, being duly sworn, deposes and says:
[Full legal name of person filling out this form]

ITEM 1—CLAIMANT IDENTIFICATION

1. Please provide the following information if you or the entity for which you are executing the claim (collectively referred to as “you”) transacted in or held Class Contracts:

The Name of the Person who owns the claim (“Claimant”):

____ Individual ____ Corporation ____ Estate Other (specify) _____

Name of Person Executing Claim:

Capacity of Person Executing Claim:

Claimant’s Address:

City:

State

Zip Code:

Claimant’s Daytime Phone Number:

Claimant’s Social Security, Employer Identification, or Federal Tax Identification Number:

____ — ____ — _____ OR _____ — _____

Claimant’s Email Address:

Nature of Claimant’s Business:

If you require additional space on this or any other section of the Proof of Claim, attach an additional page to the end of the claim form. Do not submit multiple Proofs of Claim.

ITEM 2—LIST OF FUTURES COMMISSION MERCHANTS

2. Please list all futures commission merchants (“FCMs”) at which you maintained accounts in which you traded or held Class Contracts.

ITEM 3—LIST OF ACCOUNT NAMES AND ACCOUNT NUMBERS

3. Please provide a list of all account names and account numbers for each FCM you listed in response to “Item 2” above in which you traded or held Class Contracts.

ITEM 4—PROOF OF QUALIFYING TRANSACTIONS

4. Please provide proof of all of your transactions or holdings in Class Contracts between March 2 and March 26, 2007, inclusive. You must provide sufficient documentation to allow the Settlement Administrator to determine whether a transaction in NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts or NYMEX New York Harbor Gasoline futures contracts qualifies as a transaction in or holding of a Class Contract. Such documentation must reflect the information sought in Item 6 below. **The most efficient method for Claimants to support their claim(s) is to provide records from your FCMs or brokerage firm(s) reflecting all transactions or holdings in Class Contracts.**

You must provide proof for each and every transaction in, or holding of, a Class Contract, regardless of whether such transaction resulted in a gain or a loss.

If any such documents are not in your possession, please obtain them or their equivalent from your broker or tax advisor or other sources if it is possible for you to do so.

If you have this information in an electronic form, you are strongly encouraged to submit the information electronically along with the required hard copy printout of your trading records in order to expedite the treatment of your Proof of Claim. The following formats are acceptable: ASCII, MS Excel, and MS Access.

ITEM 5—INSTRUCTIONS FOR LIST OF TRANSACTIONS AND HOLDINGS IN CLASS CONTRACTS

5. The Settlement Administrator will determine your Allowed Claim (as set forth in the Plan of Allocation) by analyzing your transactions in and holdings of Class Contracts. You are required to list each transaction in or holding of Class Contracts in the tables provided in Item 6 below. If additional space is necessary, or if you wish to use a Microsoft Excel format, please go to www.nymextasettlement.com to obtain an electronic filing template.

In listing the information requested in Item 6 below, you should always use trade dates, not settlement dates. Do not offset opening and closing transactions or provide net position or trading information. It is important that you supply the information requested to the fullest extent possible.

ITEM 6—LIST OF HOLDINGS AND TRANSACTIONS IN CLASS CONTRACTS

6(a). The Settlement Administrator will consider any open positions (long or short) in NYMEX Light Sweet Crude Oil futures contracts that you held as of the start of the Class Period on March 2, 2007. This determination shall be based on trade dates, not settlement dates. If you held any such positions, then you must provide the information set forth below in Table I.

TABLE I—HOLDINGS IN NYMEX LIGHT SWEET CRUDE OIL FUTURES CONTRACTS AS OF THE BEGINNING OF THE CLASS PERIOD

Open Positions in NYMEX Light Sweet Crude Oil Futures Contracts As of End of Day on March 1, 2007 (Identify Contract Month)	Short Position (Identify the number of contracts)	Long Position (Identify the number of contracts)	Hedging Transaction? (Yes or No)²	Swap Dealer transaction? (Yes or No)³

6(b). If you purchased or sold a NYMEX Light Sweet Crude Oil futures contract during the Class Period (*i.e.*, March 2, 2007 – March 26, 2007, inclusive), then you must provide the information set forth in the Table II below for all such transactions.

TABLE II—PURCHASE(S) AND SALE(S) OF NYMEX LIGHT SWEET CRUDE OIL FUTURES CONTRACTS DURING THE CLASS PERIOD

Date of Transaction	Contract Month	Number of Contracts In Transaction	Purchase or Sale	Brokerage Firm and Account Number in Which Transaction Was Made	Hedging Transaction? (Yes or No)	Swap Dealer Transaction? (Yes or No)
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/ /						
/ /						

6(c). The Settlement Administrator will consider any open positions (long or short) in NYMEX New York Harbor Heating Oil futures contracts that you held as of the start of the Class Period on March 2, 2007. This determination shall be based on trade dates, not settlement dates. If you held any such positions, then you must provide the information set forth below in Table III.

TABLE III—HOLDINGS IN NYMEX NEW YORK HARBOR HEATING OIL FUTURES CONTRACTS AS OF THE BEGINNING OF THE CLASS PERIOD

Open Positions in NYMEX New York Harbor Heating Oil Futures Contracts As of End of Day on March 1, 2007 (Identify Contract Month)	Short Position (Identify the number of contracts)	Long Position (Identify the number of contracts)	Hedging Transaction? (Yes or No)	Swap Dealer Transaction? (Yes or No)

6(d). If you purchased or sold a NYMEX New York Harbor Heating Oil futures contract during the Class Period (*i.e.*, March 2, 2007 – March 26, 2007, inclusive), then you must provide the information set forth in the Table IV below for all such transactions.

² “Hedging Transaction” shall mean any transaction in Class Contracts that offset, or operated as a hedge (in whole or in part) against, exposures held or acquired in the cash, spot, or physical markets.

³ “Swap Dealer Transactions” shall mean any transaction conducted as a Swap Dealer. A “Swap Dealer” shall mean any person who (i) holds itself out as a dealer in swaps, (ii) makes a market in swaps, (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account, or (iv) engages in activity causing itself to be commonly known in the trade as a dealer or market maker in swaps.

TABLE IV—PURCHASE(S) AND SALE(S) OF NYMEX NEW YORK HARBOR HEATING OIL FUTURES CONTRACTS DURING THE CLASS PERIOD

Date of Transaction	Contract Month	Number of Contracts In Transaction	Purchase or Sale	Brokerage Firm and Account Number in Which Transaction Was Made	Hedging Transaction? (Yes or No)	Swap Dealer Transaction? (Yes or No)
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/ /						
/ /						

6(e). The Settlement Administrator will consider any open positions (long or short) in NYMEX New York Harbor Gasoline futures contracts that you held as of the start of the Class Period on March 2, 2007. This determination shall be based on trade dates, not settlement dates. If you held any such positions, then you must provide the information set forth below in Table V.

TABLE V—HOLDINGS IN NYMEX NEW YORK HARBOR GASOLINE FUTURES CONTRACTS AS OF THE BEGINNING OF THE CLASS PERIOD

Open Positions in NYMEX New York Harbor Gasoline Futures Contracts As of End of Day on March 1, 2007 (Identify Contract Month)	Short Position (Identify the number of contracts)	Long Position (Identify the number of contracts)	Hedging Transaction? (Yes or No)	Swap Dealer Transaction? (Yes or No)

6(f). If you purchased or sold a NYMEX New York Harbor Gasoline futures contract during the Class Period (*i.e.*, March 2, 2007 – March 26, 2007, inclusive), then you must provide the information set forth in the Table VI below for all such transactions.

TABLE VI—PURCHASE(S) AND SALE(S) OF NYMEX NEW YORK HARBOR GASOLINE FUTURES CONTRACTS DURING THE CLASS PERIOD

Date of Transaction	Contract Month	Number of Contracts In Transaction	Purchase or Sale	Brokerage Firm and Account Number in Which Transaction Was Made	Hedging Transaction? (Yes or No)	Swap Dealer Transaction? (Yes or No)
/ /						
/ /						
/ /						

6(g). For any line above in which you identified Hedging Transactions in Tables I-VI, were all of the transactions in that line Hedging Transactions? YES ____ or NO ____.
If your answer is NO, please list all of your Hedging Transactions in that line that were not Hedging Transactions.

7. Class Counsel and the Settlement Administrator reserve the right to seek further information from you regarding your Proof of Claim.
8. It is important that you accurately disclose all positions in NYMEX Light Sweet Crude Oil futures contracts, NYMEX New York Harbor Heating Oil futures contracts, and NYMEX New York Harbor Gasoline futures contracts that were open as of the start of the Class Period and all transactions in those contracts during the Class Period. You expressly consent to the release to the Settlement Administrator of any and all documents reflecting your transactions or holdings in Class Contracts that may be obtained from third parties, including, but not limited to, your brokerage firm(s), your FCMs, the Commodity Futures Trading Commission (“CFTC”) and/or the CME/NYMEX. By executing this Proof of Claim, you hereby permit the Settlement Administrator to request from your brokerage firm(s), your FCMs, the CFTC or the CME/NYMEX relevant information about your account and trades in order to compute any payment that may be due to you from the Net Settlement Fund.
9. You (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) certify that reasonable efforts have been made to locate all information requested in Items 1-6 above and that all information supplied in connection with this Proof of Claim is true, correct and complete.
10. You understand that the information provided herein is subject to verification, and you (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) agree to cooperate in any such verification, including by furnishing additional information to support this claim and by assisting the Settlement Administrator if requested to do so.
11. You understand that the Settlement Administrator will determine the adequacy of the Claimant’s Proof of Claim and supporting documentation.
12. You (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) consent to the jurisdiction of the Court with respect to this Proof of Claim and for purposes of enforcing the terms of the Settlement Agreement or any order or judgment of the Court.
13. You (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) agree to the terms of the Settlement as set forth in the Settlement Agreement and acknowledge being bound by and subject to the terms of any order or judgment that may be entered in the Action, including the Final Order and Judgment. You may obtain a copy of the Settlement Agreement at www.nymextasettlement.com.
14. You (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) must execute a release and covenant not to sue in conformity with Section 8 of the Settlement Agreement in order to receive the appropriate share, if any, of the Net Settlement Fund. You (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) agree that the submission of this Proof of Claim constitutes a full release of and covenant not to sue on the Released Claims against the Released Parties as set forth in the Settlement Agreement and at the end of this Proof of Claim.
15. You (for yourself, in the event of an individual claim, and for the Claimant in the event of any other claim) certify that you are not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code of 1986, as amended, because: (a) the Claimant is exempt from backup withholding, or (b) the Claimant has not been notified by the Internal Revenue Service (the “I.R.S.”) that the Claimant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the I.R.S. has notified that Claimant that the Claimant is no longer subject to backup withholding.

I declare and affirm under penalties of perjury that the foregoing statements and the documents and information attached hereto, including the Social Security or Employer Identification Number shown on this Proof of Claim, are true, correct and complete, and that I agree to the Release and Covenant Not To Sue which follows. I understand that the withholding or misrepresentation of any information described herein may constitute a criminal offense subject to penalties under the law.

This Proof of Claim was executed this _____ day of _____, 20____ in _____, _____.
(City/Province) (State/Country)

Signature of Claimant

Type or Print Name

Capacity of Person Signing (e.g., President, Trustee, Custodian, etc.)

If you are acting for an entity, please submit proof of your authority (e.g., corporate resolution, trust agreement, etc.).

Sworn to before me this _____ day of _____, 201__.

Notary Public

RELEASES AND COVENANT NOT TO SUE

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

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

Section 1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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

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