

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE JPMORGAN PRECIOUS METAL
SPOOFING LITIGATION,

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18 Civ. 10356 (GHW)
Telephone Conference

New York, N.Y.
November 29, 2021
3:00 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

LOWEY DANNENBERG, P.C.
Attorneys for Plaintiff
BY: RAYMOND P. GIRNYS
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SETH GINSBERG
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LATHAM & WATKINS LLP
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BY: JEFF G. HAMMEL

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Attorneys for Defendant Nowak
BY: SCOTT D. MUSOFF

1 THE COURT: This is Judge Woods. What I'd like to do
2 is begin by taking appearances from the parties. I'm going to
3 ask that the lead spokesperson for each party or set of parties
4 identify him or herself and the members of her team rather than
5 having each lawyer introduce herself individually.

6 So I'll begin with counsel for plaintiff.

7 Who is on the line for plaintiff?

8 MR. GIRNYS: Good afternoon, your Honor. This is
9 Raymond Girnys of Lowey Dannenberg, and I'm joined by my
10 colleague Sitso Bediako.

11 THE COURT: Very good. Thank you.

12 Who is on the line for defendants?

13 MS. DAVIDOFF: Good afternoon, your Honor. This is
14 Amanda Davidoff from Sullivan & Cromwell, and I'm joined by my
15 partner Bob Sacks of Sullivan & Cromwell.

16 THE COURT: Good. Thank you very much.

17 Is there anyone else on the line on behalf of any
18 defendant?

19 MR. GINSBERG: Yes. This is Seth Ginsberg on behalf
20 of John Edmonds.

21 MR. HAMMEL: Your Honor, this is Jeff Hammel from
22 Latham & Watkins for Robert Gottlieb.

23 THE COURT: Good. Thank you.

24 Is counsel for Mr. Nowak on the line?

25 MR. MUSOFF: Yes. Scott Musoff and Jocelyn Strauber

1 from Skadden Arps.

2 THE COURT: Very good. Thank you very much.

3 Is counsel for the United States on the line?

4 Thank you.

5 I'm not hearing them.

6 Let me begin with a few brief remarks about the rules
7 I'd like the parties to follow during this conference before we
8 turn to the substance of the phone call.

9 At the outset, please remember that this is a public
10 proceeding. Any member of the public or press is welcome to
11 audit this conference. I'm not currently monitoring whether
12 third parties are auditing the proceedings here today, so
13 please just keep that in mind.

14 Second, please keep your devices or telephones on mute
15 at all times except when you are intentionally speaking to me
16 or to a representative of one of the other parties. Please do
17 that even if you don't think that there's background noise
18 wherever you may be. That will help us keep a very clear line
19 and, as a result, I hope, make it easier for our court reporter
20 to understand what we're saying today.

21 Next, please state your name each time that you speak
22 during this conference. Please state your name each time that
23 you speak regardless of whether or not you've spoken
24 previously. Again, I think that will be of assistance to our
25 court reporter.

1 Fourth, I'm inviting our court reporter to let us know
2 if she has any difficulty hearing or understanding anything
3 that we have to say here today. If the court reporter should
4 ask you to do something that will make it easier for her to do
5 her job, please do it to the extent that you can.

6 Finally, I'm ordering that there be no recording or
7 rebroadcast of all or any portion of today's conference.

8 So, counsel, thank you very much for your work in
9 presenting the proposed settlement materials to the Court.
10 I've reviewed them. I have a number of questions about them
11 and some targeted requests.

12 What I think I'd like to do is to begin with some of
13 my questions. I would propose to begin with a form of proposed
14 order and then to work through to the questions that, and
15 comments that I have regarding the notice of process and
16 structure.

17 So, counsel, the first thing that I'd like to ask
18 about is in the proposed order for preliminary approval of the
19 settlement.

20 In the second paragraph of the proposed order, the
21 parties ask that I find that I have personal jurisdiction over
22 all of the class members. I understand those to be, I'll call
23 it a global class, so I'd just like to invite some argument
24 regarding why it is that the parties believe that I have
25 personal jurisdiction over all class members here.

1 MR. BEDIAKO: Your Honor, thank you for the questions.

2 Ultimately, what will end up happening is that the
3 class members who are going to opt, who are part of this class,
4 who are going to participate, who are going to seek to
5 participate in the settlement will have to agree as part of
6 their, as part of the process to submit to the jurisdiction of
7 the court. If there are any class members who do not wish to
8 be part of the settlement, they do have the option of opting
9 out of the settlement, and so that -- therefore, they would not
10 be under the jurisdiction of the class, so we think it's
11 appropriate for such, for this language to be in the order.

12 THE COURT: Counsel, that's not responsive.

13 Why can I find now that I have personal jurisdiction
14 over all members of this class? Can you first confirm that the
15 class is a global class; they're not all located in the
16 Southern District of New York?

17 MR. BEDIAKO: Yes, we can confirm that, your Honor.

18 THE COURT: Thank you.

19 What's the basis for me to conclude that I have
20 personal jurisdiction, under U.S. law, as required, for me to
21 make this statement over all class members at this time?

22 MR. BEDIAKO: Your Honor, the other aspect that we'd
23 like to point out is that the class members would have
24 transacted on the NYMEX or the COMEX to have been part of the
25 class.

1 THE COURT: Thank you.

2 I'm going to invite thorough briefing from all of you
3 on this point, and I will turn momentarily to each of the
4 defendant's counsel here, asking them if they're going to write
5 me briefing, submitting that any person that transacts on the
6 NYMEX is subject to the court's personal jurisdiction.

7 I can tell you that I have not consistently seen that
8 position from the parties represented here on the defendants'
9 side of the V.

10 So counsel, let me hear from -- I've heard from you,
11 counsel for plaintiff. I understand the basis for your
12 contention that I can find that I have personal jurisdiction
13 over all class members, as defined here, is that all class
14 members have transacted business on the NYMEX. Is that right?

15 MR. BEDIAKO: Your Honor, that is correct. Either the
16 NYMEX or the COMEX.

17 THE COURT: Thank you.

18 And can you expand on your argument regarding why it
19 is that that gives rise to personal jurisdiction over all
20 members of the class here?

21 MR. BEDIAKO: Your Honor, it would be plaintiff's
22 contention that it's related conduct that would have occurred
23 on the exchange, and so that in and of itself should give the
24 court jurisdiction over the claims, the claims of those --

25 THE COURT: No, counsel. Not claims.

1 MR. BEDIAKO: Sorry.

2 THE COURT: Counsel.

3 MR. BEDIAKO: Over personal jurisdiction of the
4 parties.

5 THE COURT: Good. Thank you.

6 So, let me turn to Sullivan & Cromwell.

7 Counsel for J.P. Morgan, what's your position
8 regarding the legal basis for the proposed finding that the
9 Court has personal jurisdiction over all members of the class?

10 MS. DAVIDOFF: Thank you, your Honor.

11 First of all, I think part of your initial question
12 was having personal jurisdiction over all parties. Of course,
13 our position is that the Court has personal jurisdiction over
14 J.P. Morgan because it can be sued in the Southern District of
15 New York.

16 As to the plaintiffs, personal jurisdiction over the
17 plaintiff, I would like to take the Court up on its offer to
18 brief this issue, but our understanding is that, you know, in
19 the context of a settlement class and an assumption that the
20 plaintiffs have, as a class, come into court and chosen to sue
21 in this location, if the Court certifies the class, then the
22 Court would have personal jurisdiction over any class member
23 who eventually did not opt out of the class.

24 THE COURT: Thank you.

25 And again, just to be clear, as you're presenting the

1 supplemental briefing to the Court, this is a finding that
2 you're asking me to make in the order that I would be issuing
3 before a class is certified here provisionally, before opt-out
4 decisions have been made.

5 Counsel, why is this finding necessary here?

6 Counsel for plaintiff.

7 MR. BEDIAKO: Your Honor, it is our belief that the
8 finding is necessary as part of this order in order to -- in
9 order to make it clear to the -- obviously, to the class
10 members and to anyone who might participate in the settlement,
11 that this -- obviously this Court is -- unless they act
12 otherwise, that they will be subject to the authority of this
13 Court with respect to the settlement.

14 THE COURT: Thank you. Good.

15 Counsel, I'm going to need (inaudible) briefing on
16 this topic. There's nothing in your submissions that have been
17 presented to the Court that provides a legal basis for those
18 findings nor the factual basis for the finding. Nor is there
19 anything here that tells me why it is that this finding
20 regarding the Court having personal jurisdiction over all class
21 members, located wherever they may be in the world, is
22 necessary for purposes of this preliminary order.

23 Of course, the same issue applies in the final order,
24 so I'll come back to this issue, but I'm unwilling to make this
25 finding in the absence of further briefing that would provide a

1 legal basis for the Court to draw the conclusion that I, in the
2 Southern District of New York, essentially have personal
3 jurisdiction over everyone in the world who's participated in
4 either of these markets, regardless of where they may be
5 located, or the nature of their contacts with this
6 jurisdiction. To the extent that's an issue the parties want
7 to provide briefing to me on, I'm going to set a deadline for
8 submission of that briefing, and I will ask for it from both
9 plaintiff's counsel and also each of the defendant's counsel
10 represented here. Again, it hasn't been my experience with the
11 broad position that this degree of contact necessarily gives
12 rise to personal jurisdiction over a person or entity in this
13 district, so I'll come back to this point.

14 Let me turn to paragraph 16 of the proposed order.

15 I have a similar question here.

16 Here, in paragraph 16, counsel for plaintiff, you've
17 asked me to find that the class notice plan that is specified
18 here is the best notice practicable.

19 What's the basis for me to conclude not only that this
20 is reasonable and adequate notice but that it is the best
21 notice practicable? What's the basis for me to reach that
22 conclusion -- again, that this is not merely adequate or
23 sufficient but that it is the best?

24 Counsel for plaintiff.

25 MR. BEDIAKO: Your Honor, again, it is -- we, we put

1 in that language, and it's language that we've used in the
2 sense that we previously had similar plans who, that have been
3 reviewed and that have been deemed to be sort of the best
4 practicable notice under the circumstances. However, given
5 your concerns, we are happy to adjust the language, if need be,
6 if you have any concerns about using that descriptor, rather
7 than just saying that the notice is reasonable and adequate.

8 THE COURT: Thank you.

9 Yes. It's difficult for me to conclude that it is the
10 best notice practicable without a universe of comparators and
11 an explanation of what changes could possibly be made in a
12 practical manner.

13 Paragraph 16iv) asks the Court to conclude not only
14 that the notice process satisfies the requirements of Rule 23
15 of the Federal Rules of Civil Procedure and the constitutional
16 due process but also that it satisfies "any other applicable
17 rules or laws."

18 Counsel for plaintiffs, what are you asking me to find
19 here?

20 MR. BEDIAKO: Your Honor, frankly, it's language that
21 we have added and used in case there are other applicable
22 provisions that we need to comply with. I think in this
23 particular circumstance, we'd be happy to delete that language
24 as well and just sort of rely on Rule 23 and due process as
25 well.

1 THE COURT: Good. Thank you very much.

2 That would be a difficult finding for me to make,
3 since, as I understand it, this is a global class and there may
4 be any number of applicable rules or laws that I might be
5 finding are not violated as a result of the inclusion of that
6 language in the proposed order.

7 Counsel, in paragraph 18 of the proposed order, you've
8 established a period requiring that the objections be provided
9 no later than 45 days prior to the fairness hearing. I don't
10 have a substantial issue regarding that time period; that is,
11 the 45 days prior to the fairness hearing.

12 What I wanted, though, to ask is about the parties'
13 views regarding the amount of time prior to this deadline that
14 you believe the class members will and should have under this
15 notice structure prior to this trigger date.

16 Counsel for plaintiffs, how long will your clients,
17 the members of the class, have with the distributed notice
18 before this trigger date occurs; that is, the trigger date for
19 objections?

20 MR. BEDIAKO: Your Honor, based on the calendar that
21 we've developed, class members will have, if we've measured
22 from the notice date to the deadline for the opt-out, it's 105
23 days.

24 THE COURT: Good. Thank you very much.

25 Let me turn to paragraph 20 of the proposed order.

1 Here, the parties have asked that I order that all
2 objectors, regardless of the nature of the objections, the
3 location of the objector, and the like, make themselves
4 available to be deposed here or wherever they may be.

5 Counsel, let me hear about this. Why is this mandate
6 appropriate under these circumstances as opposed to, I'll call
7 it a more targeted approach to discovery in the event that
8 there are objections targeted based on the nature of the
9 objection?

10 Counsel, first, for plaintiff.

11 MR. BEDIAKO: Thank you, your Honor.

12 I think our position on this is we recognize that the
13 Court's concerned. This provision isn't intended to require
14 that every single objector -- it's to require that we require
15 discovery from every single objector, but what we do is we want
16 to have the language in the order so that it's clear that, to
17 the extent that it is necessary, that objectors are aware that
18 their depositions or their -- or some information, they may,
19 deposition may be necessary and in which case the circumstances
20 under which the deposition would occur.

21 THE COURT: Thank you.

22 My concern about this language is that it is -- may be
23 viewed as discouraging to objectors; in other words, that it
24 may have a chilling effect because I am telling them that the
25 cost of objecting is that they will need to be deposed. I

1 don't know that that will be necessary in all circumstances.
2 So, counsel for plaintiffs, do you have a concern that the,
3 I'll call it the clear statement here that any objector must be
4 deposed or make themselves available to be deposed will have a
5 chilling effect on potential objectors?

6 MR. BEDIAKO: Your Honor, we're not concerned about
7 having a chilling effect on receiving objections. At least in
8 past instances, in past cases where this has been used, it
9 definitely does not discourage people from objecting if they
10 have a well-founded objection. However, if there is some
11 concern on behalf of the Court, we can consider trying to
12 modify the language a bit in a way that -- and hopefully it
13 will not strike the Court as potentially chilling, having a
14 chilling effect on objectors.

15 That said, though, we also would want to consult with
16 J.P. Morgan to see if they have any concerns with respect to
17 altering or changing that language as well.

18 THE COURT: Good. Thank you.

19 Counsel for J.P. Morgan, let me hear from you.

20 MS. DAVIDOFF: Your Honor, we would have no concerns
21 about modifying that language to address the concern you raised
22 in consultation with plaintiffs.

23 THE COURT: Good. Thank you very much. I appreciate
24 that.

25 I'll invite the parties to do that.

1 My next question is in paragraph 22, and it relates to
2 subparagraph (c), which requires the production of to a number
3 of documents in order to effectively exclude oneself from the
4 class.

5 Counsel for plaintiffs, can I hear from you about
6 this?

7 Again, my underlying concern regarding what I will
8 describe as the burden of producing these documents is that it
9 will make it unduly burdensome for potential (inaudible) who
10 are seeking exclusion to do so because there will be I's that
11 they may not have properly dotted in order to exclude
12 themselves.

13 What can you tell me about this subparagraph (c)? Why
14 is it here, and why is it necessary for someone to be able to
15 effectively exclude themselves or properly exclude themselves
16 from the class?

17 MR. BEDIAKO: Your Honor, the language that you
18 referenced here in paragraph 22(c) is necessary simply just to
19 understand that a person is opting out, that they are a member
20 of the class.

21 There are, as we've indicated in the preliminary
22 approval papers, J.P. Morgan does have a qualified right to
23 terminate the settlement if a certain number of people opt out
24 of the settlement, and for that purpose, it's important to be
25 able to verify and understand exactly that if a person is

1 submitting an opt-out, that they are, in fact, a member of the
2 class and such that that information would be counted towards,
3 as a valid opt-out -- they're a valid class member, so
4 therefore, there's a valid opt-out that may impact the right
5 that J.P. Morgan has. There have definitely been occasions
6 when people have sent opt-outs for cases, and when we've gotten
7 information from them, it's clear that either, for whatever
8 reason, they're confused about the claim case or some other
9 purpose, that they weren't actually class members, and so it is
10 helpful to be able to ask them to provide some information that
11 at least substantiates the fact that they consider themselves a
12 class member in the case.

13 THE COURT: Thank you.

14 I understand the concern. Can I ask whether the
15 burden is allocated in the right point, I'll call it in time;
16 in other words, is it this spares the parties the work required
17 to chase down whether or not a given objector was properly a
18 member of the class to the extent it has an impact on the
19 hurdle rate that the parties have established in the documents
20 unseen by the Court, and I appreciate that it reduces the
21 burden on chasing that information down after the fact on --
22 for the parties and their counsel. On the flip side, it does
23 impose a substantial burden on people who want to exclude
24 themselves, basically requiring that they take all the steps
25 that they would take otherwise to include themselves in order

1 to exclude themselves.

2 So I just want to engage in a conversation about
3 whether or not this is a proper allocation of the burden
4 associated with the particular problem that you're describing.
5 In other words, first, does this have a chilling effect; and
6 second, are -- is this the right allocation of the burden to
7 address the concern that you've articulated?

8 Counsel for plaintiff.

9 MR. BEDIAKO: Thank you, your Honor.

10 In terms of the burden, we are not seeking that the
11 person who wants to opt out provide sort of all extensive
12 information. This hurdle is intended to provide just some
13 basic elements of information that shows that they're a class
14 member. So it could be simply a single transaction. It could
15 be that we give the option of class members providing their
16 tag50 IDs so that we can then go to the CME and endeavor and
17 undertake that effort to confirm that they are class members.
18 So we are (inaudible) measured in terms of the approach that we
19 took to request the opt-out information, and so we don't think
20 that it should create a substantial burden. And I think I can
21 leave that as -- I'll leave it right there.

22 Thank you.

23 THE COURT: Good. Thank you.

24 I recognize that (i) and (ii) in this subparagraph (c)
25 are alternatives, in other words, that a class member can do

1 either one or two.

2 Two refers to a particular executed waiver and request
3 to CME Group to unmask the class member's account information
4 for verification. There's no specific form of executing waiver
5 and request that's been provided together with these documents.

6 Is there a particular form of waiver that you have in
7 mind or that this is referring to? And did you give any
8 thought to providing this kind of information to potential
9 opt-outs?

10 Counsel. Counsel for plaintiff.

11 MR. BEDIAKO: Thank you, your Honor.

12 In terms of that waiver and request, there isn't a --
13 there isn't a predetermined form. We have developed something
14 that we will have available for class members to use so that
15 should they choose, which we can make available to the Court,
16 but honestly, your Honor, I think it can be anything, any form
17 of a waiver or a letter that provides that we can identify them
18 through the tag50 ID would be sufficient. We're not trying,
19 again, we're not trying to sort of (inaudible) burden so high,
20 but we do have something contemplated that we're happy to share
21 with the Court if the Court requires.

22 THE COURT: Good. Thank you.

23 Counsel, let me just follow up in (i).

24 Here, the request is that the person who is seeking to
25 exclude themselves provide information to show that they've

1 traded on the relevant exchanges in the relevant goods. I
2 understood from your argument that the purpose of this was not
3 to be onerous but rather just to ensure that they traded some
4 of the relevant products on the relevant market. The
5 parenthetical, however, is something that I read to require
6 detailed documentation regarding all of the contracts traded,
7 the date, price, and the like.

8 What can you tell me about that parenthetical, and how
9 is it consistent with your argument that this is just designed
10 to check the box to ensure that they did some amount of trading
11 during the relevant period?

12 MR. BEDIAKO: Your Honor, the information in the
13 parenthetical would be of the type of information that would be
14 typically available to a trader and would actually be part of
15 just the regular transaction record. So it's not that we're
16 asking for something that would be beyond what would be on a
17 statement or on a monthly report with respect to their trading
18 information.

19 THE COURT: Thank you.

20 Are you asking for them to provide all of the
21 contracts traded?

22 MR. BEDIAKO: Your Honor, that -- that's not indicated
23 by the order. We are simply asking for them to provide
24 sufficient information to establish that they are a class
25 member in the case. So in that respect, it would not -- that

1 would not necessarily -- that would not require them to show us
2 all of their transaction data.

3 THE COURT: Thank you.

4 But in order to satisfy this parenthetical, a
5 respondent would need to go through their trading records and
6 find their buy and sell dates, is that right?

7 MR. BEDIAKO: Your Honor, can you repeat that question
8 one more time?

9 THE COURT: In order to satisfy this, a trader would
10 have to go through their trading records and find the records
11 for both their buy and sell dates for any given trade that's
12 reported pursuant to this provision, is that right?

13 MR. BEDIAKO: That would be correct, your Honor, based
14 on this provision, yes.

15 THE COURT: Thank you.

16 Why is that, again, necessary here?

17 MR. BEDIAKO: Your Honor, we -- for this, in this
18 particular case, what I would say, what I would say is the
19 anticipation was that this would normally be on a regular
20 report and so that would have that information anyway, but what
21 we can do --

22 THE COURT: Let me just remind you, counsel, as I
23 understand it, individuals are members of this proposed class
24 as well. Is that right?

25 MR. BEDIAKO: That is correct, your Honor.

1 THE COURT: Thank you.

2 So, you're an individual. Imagine that you're a
3 casual trader, not a professional. Imagine that this is one of
4 the assets in which you trade rather than it being your
5 principal area of work. So I'm largely focused on that kind of
6 person for whom accumulating this information may be a
7 substantial burden.

8 Please go ahead, counsel. I apologize for
9 interrupting.

10 MR. BEDIAKO: No, your Honor. That's fine.

11 What I wanted to say is even with the individual
12 investor, like, we would expect that their reports, their
13 statements from their brokers would have this information. But
14 what we can do is we can go back and review this language, and
15 we'll also discuss it with J.P. Morgan to see if maybe there's
16 a way of narrowing that so that maybe perhaps it's not
17 necessary to have both the buying and selling, the buy and the
18 sell information available. But we'd want to take a little bit
19 more of a closer look.

20 Our initial thinking as we prepared this is that we
21 didn't think that would be a burden because it's information
22 that would be readily available, but we can take another look
23 and either propose additional language or if we think that it
24 is necessary, we could come back to the Court with a further
25 explanation for why we think both would be necessary.

1 THE COURT: Good. Thank you. I would appreciate
2 that.

3 I take it from your comments earlier -- *i.e.*, that
4 your experience has been that this can be a difficult thing to
5 chase down in circumstances -- that this is not a provision
6 that exists in all such settlements. I have not seen it in a
7 lot of these, which is part of the reason why it jumped out at
8 me.

9 Counsel, how frequently do you see such a document
10 requirement in a class settlement of this type?

11 MR. BEDIAKO: Your Honor, in our, in our experience,
12 in our commodity litigation work, we do see this frequently.

13 THE COURT: Thank you.

14 Frequently, but not universally, is that right?

15 MR. BEDIAKO: Your Honor, I couldn't claim to know the
16 entire universe of requested information, so I don't want to
17 make that broad of a claim, but we do see it frequently enough
18 because there is -- because there oftentimes is -- there is
19 oftentimes a next step that they some of this information or to
20 establish whether someone's a class member.

21 THE COURT: Good. Thank you.

22 Let me hear from counsel for J.P. Morgan.

23 Counsel, anything that you'd like to add on this? I'm
24 happy to ask the parties to confer about whether or not there's
25 anything that, in view of this language that would address the

1 concerns that I've articulated. But if there's anything you'd
2 like to say now, I invite it.

3 MS. DAVIDOFF: Thank you, your Honor.

4 The only point I would add is that, and I believe
5 Mr. Bediako covered this, that, you know, there are two
6 separate requirements. Point (c) of paragraph 22 is a document
7 sufficient to prove membership requirement. The paragraph that
8 follows that is a request, so it would be a request to those
9 seeking exclusion to provide that additional information, not a
10 requirement to provide that additional information. So I
11 believe our understanding was that, you know, for those who
12 have that information readily available, they might choose to
13 provide it. You know, for those who didn't, it wouldn't be a
14 requirement.

15 THE COURT: Oh, that's interesting. Could you expand
16 on that? So, I'm looking at the introductory language for (a),
17 (b), and (c), which says that a request for exclusion must
18 contain the following information -- (a), (b), (c). It sounds
19 as though you're viewing this as an option rather than a
20 mandatory feature. Can you expand on that?

21 MS. DAVIDOFF: Sure, and you know, obviously to the
22 extent the plaintiffs don't read it this way, we should hear
23 from them, but I believe we had read this to say that any
24 request for exclusion must contain what is listed in (a), (b),
25 and (c). As part of (c), there is a -- that next sentence

1 after (c) reads: "A class member seeking to exclude himself,
2 herself or itself from the settlement class are also requested
3 to provide either" and, you know, one and two follow that. So
4 I believe our interpretation had been that that was a request
5 to those seeking to opt out, not a requirement.

6 THE COURT: Oh, good. Thank you very much. That's
7 very helpful. That was a helpful clarification, counsel. To
8 the extent that's the parties' understanding, I think that this
9 will be an easy conversation, and I think that modification, if
10 any, to be presented to the Court would be readily implemented.
11 I appreciate your point, counsel. I understand that it is a --
12 (c) is something that could be requested but not as mandated
13 under all circumstances. That certainly substantially
14 mitigates my concerns.

15 Thank you, counsel for J.P. Morgan.

16 Counsel, let me turn to paragraph 33. I'm not going
17 to read it to you. You know what it says. The fundamental
18 question that I have here is why I should order this in the
19 context of this preliminary order.

20 Counsel for plaintiff.

21 MR. BEDIAKO: Thank you, your Honor.

22 And I'm just reacquainting myself briefly so I can
23 make sure I'm referencing the right paragraph.

24 In terms of why it makes sense and why it's
25 appropriate to include this in the preliminary approval order,

1 it is something that has been generally included in preliminary
2 orders and also final approval orders in the event that -- we
3 don't anticipate anything happens, obviously, but in the event
4 that the settlement should get terminated for some reason, we
5 also just want to protect and make clear and make sure we
6 reinforce through the settlement privilege that has existed
7 while this process was undertaken and such that nothing is
8 being presented in front of the Court can be misconstrued or
9 sort of used as evidence that would otherwise suggest the
10 culpability or the liability of J.P. Morgan or any -- or any
11 issues with our case with respect to the underlying action
12 itself. And so this is just language that is, that we
13 typically add just to ensure that that, that the settlement is
14 read in that lens.

15 THE COURT: Thank you.

16 I understand those arguments with respect to the first
17 sentence. In the second sentence, the parties ask the Court to
18 prohibit anyone from discovering the settlement agreement,
19 including its exhibits, notwithstanding the fact that they're
20 on the public docket of the case. So let me ask you to focus
21 on that second sentence.

22 What's the point of that, and why should I enter it?

23 MR. BEDI AKO: Your Honor, I will agree that,
24 obviously, your Honor, that the settlement agreement, including
25 its exhibits, will have already been on the public docket.

1 What ultimately I think that ends up reaching, is
2 intended to reach is sort of the underlying materials and the
3 negotiations and the discussions that happen around it such
4 that none of the parties can be compelled to sort of disclose
5 that information, what went into the process of that ultimately
6 led to the agreement of the settlement and particular
7 provisions within the settlement.

8 THE COURT: Thank you.

9 What does this have to do with the provisional
10 approval of the settlement? Why is this paragraph necessary
11 for me to help the parties move the case along?

12 MR. BEDIAKO: Your Honor, the language is -- well, I
13 don't want to -- the language is necessary -- and maybe
14 "necessary" is a bit of a strong word, but it provides, in case
15 the, for whatever reason the settlement should get terminated,
16 at least then there is going to be an order in place that does
17 recognize and confer the -- that the information that was used
18 to put together the settlement and the underlying negotiation
19 materials aren't then discoverable and can be used in, for
20 example, the resumption of the litigation should that occur.

21 THE COURT: Thank you.

22 Does this paragraph benefit any plaintiffs, counsel?

23 MR. BEDIAKO: Your Honor, I just want to -- by
24 benefiting plaintiff, are you just talking, generally speaking,
25 like, is this a more plaintiff-focused versus defendant-focused

1 provision, or are you asking something more --

2 THE COURT: It is very general. What's the benefit of
3 this for the plaintiffs? Why are you advocating for this?

4 MR. BEDIAKO: Your Honor, we -- I think this would be
5 something that we would generally advocate for because it helps
6 to ensure -- generally speaking, the negotiation privilege and
7 making sure that our negotiations are -- that we've had are
8 forthright and expansive. We -- you know, we need -- we want
9 to make sure we retain the confidentiality of the negotiation
10 process all the way throughout, because that is actually what
11 leads to us being able to reach a settlement in any -- you
12 know, in this case as well as in any other case.

13 I think in this particular case, we don't want to --
14 as a plaintiff, should, for whatever reason, the settlement be
15 terminated and we have to then reach out and do another, we end
16 up engaging in another set of settlement negotiations with J.P.
17 Morgan, we wouldn't want those hindered by a concern by both
18 sides that whatever we discussed during the negotiation process
19 could ultimately then be discoverable again should there be a
20 reason to terminate the settlement once more.

21 So I think the plaintiffs benefit just as much as the
22 defendants do in terms of making sure we protect the
23 confidentiality of this negotiation process and include the
24 provision in the settlement -- in the proposed order.

25 THE COURT: Thank you.

1 But why should I endorse this? If the parties have
2 the benefit of 408, why do you need a court order as well?

3 MR. BEDIAKO: Your Honor, you know, I -- in terms of
4 why, why it makes sense to include it in the order, you know,
5 frankly, your Honor, the presence of a court order provides
6 sort of a stamp of approval of the process and sort of the
7 additional protection -- again, understanding that 408 would
8 apply -- but it does provide that that -- that clarity and that
9 sort of announcement to anyone who's looking at the case that
10 may want to then start inquiring about the negotiations and the
11 background, that those -- that those settlement discussions are
12 protected.

13 THE COURT: Thank you.

14 Let me hear from you, counsel for J.P. Morgan.

15 MS. DAVIDOFF: Thank you, your Honor.

16 You know, I suppose I echo what Mr. Bediako said in
17 terms of the existence of provisions such as this one being
18 important to defendants in gaining comfort in entering into
19 settlement agreements in class actions. You know, one knows
20 that a court may not approve of a class action or that, of a
21 class action settlement or the settlement may be terminated for
22 some other reason, and there can be a great deal of reluctance
23 to enter into discussions and exchange information unless one
24 is assured that, at the end of the day, if the settlement
25 doesn't succeed, all of those communications and information

1 will be protected. So I think ultimately it does benefit the
2 class because it enables these settlements, which we believe do
3 benefit the class in the end to occur and make them more
4 straightforward and reduces the cost for all parties of getting
5 there.

6 THE COURT: Thank you. All right. Good. So I'll
7 consider those arguments.

8 Let me turn to the final order.

9 Here, I have overlapping observations. I also want to
10 flag, to the extent that this order overlaps the provisions in
11 the preliminary order, I may have similar concerns, for
12 example, with respect to the personal jurisdiction argument you
13 may want to address in your supplemental submission, the
14 personal jurisdiction issue if that stays as well.

15 So the one other thing I wanted to flag in the
16 final -- sorry. There's two other things that I want to flag
17 in the final order.

18 First, the order has me make the finding that's
19 required by the rules; namely, that the parties have complied
20 with the requirements of Rule 11. I just want to highlight for
21 you now that I expect to request affidavits from the parties
22 and their counsel that would permit me to make that finding.
23 In other words, I don't expect to make the finding that no one
24 has violated Rule 11 without a factual basis for it. I can say
25 that I haven't seen you violate Rule 11, but I don't know that

1 I can find that you complied with the requirements of Rule 11
2 without a factual basis to do so. So I just highlight this for
3 you as something that I expect that I will ask of you in the
4 event that we get to the point of a potential final approval of
5 the settlement here.

6 Just a few other brief notes about the proposed final
7 order. Again, these are issues for down the road, but I just
8 want to highlight a couple of things.

9 First, I have a question, which is related to
10 paragraph 13 of the final order.

11 Here, counsel, you've included a mandate that parties
12 also sign a release as well as being barred as a result of the
13 Court's proposed order here.

14 What can you tell me about why you believe that an
15 executed release is necessary in addition to the effect of the
16 Court's order, counsel for plaintiff, mindful of our
17 conversation earlier?

18 Counsel for plaintiff.

19 MR. BEDIAKO: Your Honor, understanding your concern,
20 as I pick up about the burden to plaintiff -- sorry, to class
21 members, the purpose of an executed release is intended to make
22 sure that the class members are fully aware of what rights they
23 are relinquishing by participating in the settlement.
24 Obviously, the final approval order will do that automatically,
25 but we also think it's just good practice and just good for the

1 class members to be aware that, as they're looking through the
2 documents and they're making the decision, it's -- the way it's
3 in practice sort of comes up and the way it's achieved is it's
4 part of the proof of claim and release form that they are
5 filling out, and it's basically, in addition to certifying that
6 the information that they've provided is correct, that they
7 understand that they're releasing the -- their -- any claims
8 they may have had in the action. So it's not intended to be
9 any -- to add additional burden. In fact, it's rolled into
10 what they would normally need to do as part of the proof of
11 claim process anyway, and it's some additional statements that
12 they end up reading before they sign the proof of claim,
13 letting us know that information they provided is correct.

14 THE COURT: Thank you. Good. Yes. I saw that in the
15 form.

16 Let me turn to paragraph 17 here in the final order.
17 And again, I expect that we'll have the opportunity to discuss
18 the final order in the event that we get to that point in the
19 case, but I wanted to ask you about it.

20 Counsel, here, you're asking me to bar claims by any
21 person against the released parties for a number of things.
22 "Any person" is defined broadly to include any person. That
23 includes people who may or may not have notice of this case and
24 my order. So I'd like to hear from you, counsel for
25 plaintiffs, first, about the Court's authority to grant this

1 injunctive relief as to people who are not parties to the
2 litigation and who are not notified of the case or potential
3 claims under it as a result of the notice process that's been
4 put in place here.

5 So let me hear from you, counsel for plaintiff. How
6 can I grant this relief?

7 MR. BEDIAKO: Thank you, your Honor.

8 What I think is the (inaudible) -- the language that
9 we have in paragraph 17 is language that has been generally
10 used in settlements previously.

11 In terms of the question about the Court's authority
12 to grant this injunctive relief, what I can say is -- what I
13 can say is, I think, your Honor, this is -- it is not intended
14 to be extraordinary relief in terms of granting injunctive
15 relief. It's intended to ensure, obviously, that the parties
16 get the benefit of their bargain, and the injunctive relief is
17 necessary in order to ensure that. But in terms of the
18 question about the authority of the Court, what I'd like to at
19 least suggest that I will do for the Court is just get back --
20 as we provide the supplemental information to the Court, we'll
21 give you some more specific details as to the basis on which
22 the Court can use this to apply this relief.

23 THE COURT: Thank you.

24 There is a rule on this, Rule 65, which describes the
25 people I can enjoin.

1 Counsel for J.P. Morgan, what's my authority to enjoin
2 any person?

3 MS. DAVIDOFF: Thank you, your Honor.

4 The bar orders, as I understand it, can be entered by
5 the Court where they're an essential term of the settlement
6 agreement, and, you know, bar orders in a case like this one,
7 we believe, are essential because, again, you know, the
8 defendants entering into settlements like this one, where there
9 is substantial compensation and, you know, a large and disperse
10 class really wouldn't do it if they weren't able to be sure
11 that there wasn't kind of going to be additional liability on
12 the same claims. And, you know, we believe that the sort of
13 extensive notice provided for by the process in this case
14 ensures that those who would be interested in this settlement
15 agreement will get notice of it.

16 All that said, we are, of course, happy to confer with
17 plaintiffs and, you know, discuss the issue and present any
18 additional authority to the Court.

19 THE COURT: Thank you.

20 This is not a release by the releasing parties; that
21 is, class members who don't opt out. These are claims by any
22 person against the released parties for contribution,
23 indemnification, or similar claims, etc., etc. There's also a
24 provision that has me bar the defendants and the released
25 parties for a number of things. I'm really focused in

1 particular on this first sentence. I don't know, as a
2 practical matter, to what extent such claims are likely, but I
3 will invite further thought about that. I understand that the
4 provision that exists in the form. Still, it's not clear to me
5 that I have the authority to enjoin any person.

6 Good. Thank you.

7 So, I'll ask you to follow up on that issue.

8 I'm turning now to the notice plan and the declaration
9 of Ms. Young. This is ECF 79-2, and I'll come back to two
10 other things.

11 The principal question that I have on this notice
12 process is that it seems to be focused on the United States and
13 Canada. I see very little discussion -- really, no
14 discussion -- of notice outside of North America. So I'll just
15 point you, for example, to 79-2, page 2 of 7, page 3 of 7, and
16 page 4 of 7.

17 Page 4 of 7 is a useful place to talk about it just
18 because it talks about digital media, and the digital media
19 strategy describes banner ads appearing in the United States
20 and Canada. The print media that is targeted are all in the
21 U.S. or Canada plus The Financial Times. But I came away from
22 reading the plan of distribution here with a concern that it
23 doesn't seem to address places outside of North America, and I
24 understand that the class is located outside of North America
25 as well.

1 So questions such as whether or not there should be
2 digital media in other jurisdictions came to mind as well as
3 questions, basic questions, like whether or not English and
4 French are the right two languages here or whether or not these
5 are the right print media.

6 So, counsel, can I first confirm with you, counsel for
7 plaintiff, that this is a class that is broader than just North
8 America? Is my understanding correct on that front?

9 MR. BEDIAKO: Your Honor, that is correct.

10 Plaintiffs, the class members may -- they are likely
11 to exist all over the world because people who invest in the
12 COMEX and NYMEX and precious metal futures are located
13 globally.

14 THE COURT: Thank you.

15 That's what I understood.

16 So, I'm looking -- again, I looked at the distribution
17 plan. I didn't see anything about Europe or Asia, which I
18 understand to be also important financial centers on this
19 planet -- only the United States and Canada.

20 Can you tell me how it is that this plan is targeted
21 to provide notices outside of our continent?

22 MR. BEDIAKO: Your Honor, the most -- I think the
23 important concept, the important component of the plan or one
24 of the important components of the plan is the direct mail
25 notice.

1 I think I want to sort of, in terms of looking at this
2 plan, we view the direct mail component as sort of the
3 principal and the most important component, because that is
4 based on information that we're able to gather about people who
5 actually transacted or who likely transacted in these products
6 and we're able to send mail directly to them. And so that
7 direct mail piece will get to people wherever they're located,
8 whether it's the United States, Canada, or abroad. And so we,
9 frankly, rely on that piece as the primary driver of this plan,
10 of the notice plan.

11 What we think of with respect to the publication
12 notice and the digital media is it forms our supplemental --
13 our sort of, our supplemental notice program, which is intended
14 to catch people that we may miss, for whatever reason, through
15 the direct mail piece. And so what we are -- what we try to do
16 in terms of creating this is create a bounds based on our
17 recommendations from the settlement administrator about what
18 would have a good reach as well as costs and what we think of
19 as the perceived impact.

20 And so based on input from the settlement
21 administrator as well as discussions amongst ourselves and even
22 discussions with J.P. Morgan, we focused on the publications
23 that we did, particularly with The Financial Times, having a
24 large global reach, but also knowing that there's a
25 concentration of potential class members in Canada,

1 particularly in the French-speaking provinces, we tried to make
2 sure that we also then made accommodations for that.

3 THE COURT: (inaudible) pause you on that. There are
4 more people transacting in the precious metals commodities
5 market in Quebec than in China?

6 MR. BEDIAKO: Your Honor, no, that's not what I --
7 that's not what I intended to say.

8 THE COURT: Counsel, you're focused on Quebec. You
9 think that there's more trading in Quebec than in Europe?

10 MR. BEDIAKO: No, your Honor. No, your Honor.

11 THE COURT: I understand that you're focused in
12 particular on a particular geographic region. As you can tell
13 from my questions, I'm asking why it is that you're focused on
14 Canada when there are other places in the world that I would
15 guess are likely to be places where a substantial amount of
16 precious metals trading happened. So I came away with the
17 distinct impression that this plan was not thinking
18 conscientiously about the rest of the world.

19 The fact that you cannot tell me why it is that you
20 prioritized Quebec over China or Europe just heightens that
21 concern. If you're (inaudible) targeting a particular
22 geographic region not the United States, why would you not
23 target the largest or the largest number of geographic regions.

24 So, counsel for plaintiff, can you confirm that this
25 is an intentional strategy that was designed fully cognizant of

1 the fact that this was a global strategy and that being fully
2 aware of that fact, that the decision was made to target the
3 United States and Canada as opposed to the United States and
4 other economic actors?

5 MR. BEDIAKO: Your Honor, yes. I can say that this
6 was an intentionally designed notice plan, where we considered
7 particularly where our reach should go and what our -- where
8 the publication should be -- what would make most sense for the
9 publication based on obviously reaching traders in the United
10 States but also making sure we reach traders elsewhere,
11 particularly since as we -- as you have been aware and aware in
12 the context of our litigation and our work, that there is a --
13 it leaves a significant presence -- or that we're aware of, of
14 financial investors and traders in Canada who may have and who
15 may have been invested in the precious metals market that we
16 may not -- that we wanted to make sure that we covered in case,
17 for whatever reason, we missed them through the direct mail
18 process.

19 That is not to say that our intent was to ignore the
20 rest of the world. Far from it. We believe that based on the
21 plan that was proposed and the plan that was put together by
22 our notice administrator, that while we -- while there is a
23 focus on the United States and Canada, that nonetheless, that
24 this would have a wide enough global reach to be able to advise
25 people, make people of aware of it such that they would know

1 where to come in terms of looking for the information with
2 respect to the settlement website and if they have any further
3 information or further questions who to reach out to contact
4 about the case and about the settlement as well.

5 Yeah, I mean -- and in addition, in addition to the
6 publications, we're also having a global, global press release,
7 which will go out to about 25,000 newsrooms, including the
8 United States, Canada, South America, Europe, and Asia that
9 will then, as is typical, typically happens, that information
10 in the release will then get filtered into the investment
11 markets so that people are then aware of the case, and if
12 they're at all impacted, they would have the information to at
13 least reach out to either counsel or reach out to the
14 settlement website to get more information about the case.

15 THE COURT: Thank you.

16 First, can you show me where that news release is
17 described here?

18 MR. BEDIAKO: Yes, your Honor, I can. If you look at
19 paragraph 15 in the exhibit, 79-2.

20 THE COURT: Thank you.

21 Yes, I see it.

22 Thank you. So, I'm going to ask for some supplemental
23 information from Ms. Young. I understand that Ms. Young and
24 you, counsel for plaintiff, made a conscious determination that
25 there would be marginal benefit to provide digital media,

1 social media, print media, and Google AdWord search outreach to
2 the United States and Canada but that there would be no
3 incremental, no incremental value to a digital media campaign
4 or social media campaign or Google Ad search campaign focused
5 on the United States -- sorry, focused on any other geographic
6 region other than the United States or Canada.

7 I appreciate the arguments that you've made here,
8 counsel, but I want somebody to swear to what you've just told
9 me; namely, that these useful mechanisms that I think help
10 support a conclusion that the outreach process is adequate are
11 not useful for those other jurisdictions given the nature of
12 the class here. If somebody can swear that to me I will
13 consider the arguments, but again, it's just not clear to me
14 (inaudible) affidavit that that was an intentional conclusion.
15 If that is your intentional conclusion, Ms. Young can include
16 that in her affidavit and explain why it is that digital media
17 outreach, social media outreach, Google Ad search outreach is
18 not useful to the remainder of the world or why it is that
19 excluding that kind of outreach to those jurisdictions still
20 results in an effective strategy.

21 I appreciate the arguments very much, but I am not
22 sure I fully credit them without the benefit of additional
23 sworn facts. So I'll ask you to provide that to me, counsel;
24 in other words, a sworn statement that states what you have
25 told me (inaudible) revised plan, mindful of the fact that this

1 class is not just located in the United States and Canada.

2 So, let me turn to the plan of distribution, or the
3 distribution plan which is at 79-6.

4 The distribution plan is helpful. There are a number
5 of data points included in the distribution plan which I cannot
6 evaluate based on the information provided to me.

7 What am I referring to?

8 I'm largely referring to the multiplier numbers that
9 have been included, for example, on 79-6, page 7 of 10. I'll
10 also note (inaudible) by a million in calculating the
11 (inaudible) multiplier, but the principal thing that I'm
12 focused on is the multiplier figures that are provided in the
13 chart. There's no way for me to get behind those numbers to --
14 more importantly, there's no way for potential class members to
15 get behind these numbers to understand why it is that these are
16 appropriate. You've just given them to us.

17 So, counsel for plaintiffs, can I hear from you about
18 how these multipliers were developed? And what I'm going to
19 ask is whether there's a way for you to provide information to
20 prospective class members and the Court about how these numbers
21 were derived so we can evaluate whether or not they are
22 appropriate.

23 Counsel for plaintiff, can I hear from you on this?

24 MR. GIRNYS: Good afternoon, your Honor.

25 These numbers were derived from a review of J.P.

1 Morgan's transaction records, also CME available data. An
2 analysis was done to determine, in the data set, the most
3 frequent instances of the alleged spoofing by contracts --
4 whether gold, silver, platinum, palladium contract expiry --
5 and these futures contracts specifications are the end result.
6 So the higher the number, the more frequent instances of
7 spoofing was found through our analysis of these transaction
8 records. So those -- that is where those numbers come from.

9 To answer your Honor's second question, in terms of if
10 more information's needed, we can discuss internally and then
11 with the expert as to what information can be provided to
12 address your Honor's question. So if that's something you'd
13 like, we can attempt to do that.

14 THE COURT: Thank you.

15 That would be helpful. I appreciate that there may
16 be -- may want to present this information in a more summary
17 way, but as I said earlier, it's very hard to get behind these
18 numbers in order to determine whether or not they are fair and
19 reasonable without more data, so I think it would be helpful to
20 have more information both for me and, more importantly, for
21 class members who are deciding whether or not they wish to
22 object to this and if they want to participate. So that would
23 be very helpful.

24 Counsel, I said earlier that I'm also curious about
25 the division by 1 million and the volume multiplier. Can I

1 just hear from you about where that number came from? How did
2 that come to pass?

3 MR. GIRNYS: Your Honor, that number is to convert a
4 dollar amount into a point system to get to the ultimate
5 instrument amount. So that's just a conversion metric to get
6 from a dollar amount to a point number.

7 THE COURT: Good. Thank you.

8 Very good.

9 So, yes, it would be helpful for me if you could
10 consider whether there's additional information that you could
11 provide to me and, more importantly, the members of the
12 (inaudible) initially and then, more importantly, the members
13 of the class to evaluate the adequacy and fairness of the
14 futures contract specification multipliers.

15 So, counsel, that concludes my questions and comments
16 on the draft, with two brief exceptions.

17 One, I thought the notices were very good, if not
18 necessarily the best. There are a number of blanks that are
19 included in them that I think could reasonably be included in
20 the draft -- the amount of the fees, for example, that you're
21 going to be seeking or cost reimbursement, rather, that you're
22 going to be seeking if known. So there are some blanks that
23 could be completed.

24 The other, more substantive issue that I wanted to
25 discuss with the parties regarding the notices and the hearing

1 is whether we should schedule the settlement hearing to take
2 place by telephone from the outset. The current notices
3 provide that the fairness hearing will take place here in the
4 Southern District of New York in person. I am here. I will be
5 here in person for the hearing that we schedule, assuming that
6 nothing unforeseen happens. But given the pandemic
7 circumstances, it may be prudent for us to assume that the
8 hearing will take place telephonically rather than in person
9 and, thus, to include information about a telephonic hearing in
10 the notice provision now rather than what I understand to be
11 the case now -- namely, that it will be by default here but
12 that we could change it through notice on the website if
13 circumstances change.

14 I don't want to be pessimistic about the state of the
15 pandemic, but it may be prudent for us to consider scheduling
16 this as a remote fairness hearing under all circumstances.
17 Again, I'm relatively flexible, but I wanted to discuss the
18 topic with all of you.

19 First, counsel for plaintiffs, what do you think?

20 MR. GIRNYS: Your Honor, we're flexible. We are open
21 to whatever your Honor's preference may be, and we will adjust
22 accordingly. But you know, as the notice makes clear,
23 regardless of what path we've dug, if the Court chooses, we
24 will be sure to update the settlement website to the extent
25 there is any change in circumstance. So the plaintiffs defer

1 to your Honor.

2 THE COURT: Thank you.

3 Counsel for J.P. Morgan, what's your view?

4 MS. DAVIDOFF: We are of the same view, your Honor.

5 THE COURT: Good. Thank you.

6 So, let's plan to go forward, then, by remote means,
7 and then we would conduct a hearing telephonically. I've done
8 this for a number of recent class action settlements. In order
9 to do this, I would ask that the parties identify a conference
10 number. Presumably, it will be a system that is hosted by an
11 operator. Presumably, the Court and, perhaps, I assume the
12 parties would join separately and then be connected to the
13 world. I'll leave the logistics to all of you.

14 The one thing that I think is important, however, is
15 that I also leave to you the process of deciding what the right
16 telecommunications service provider is and to identify the
17 correct dial-in number and identification information prior to
18 the distribution of the notices.

19 There are other changes that will flow through to
20 other provisions of the notices. I won't try to point you to
21 all of them. You all do an excellent job, and I'm sure you'll
22 see where other modifications to the notice forms are required
23 in order to implement this change.

24 So, those are all of the issues that I wanted to raise
25 with you, counsel.

1 I think that leaves us with a couple of issues on
2 which I have solicited your feedback -- two legal issues,
3 principally, the personal jurisdiction issue. There may be a
4 desire to follow up as well with respect to the issue in
5 paragraph 17; that is, the bar issue and my authority to bar
6 all persons -- that is, to enjoin all persons.

7 Those are the two legal issues. The parties have been
8 generous and have offered to discuss a number of other
9 provisions in the proposed order with the thought that you may
10 be able to address some of the concerns that I've articulated
11 here through modifications to the proposed language. I'd like
12 to ask you to please do that, with my thanks.

13 And I've also asked that you consider whether there's
14 additional information that you can provide that will help
15 us -- that is, me and the class members -- evaluate the
16 fairness of the distribution plan.

17 What I'd like to do is to ask the parties what kind of
18 time line you'd like to propose for the presentation of that
19 set of information. I've articulated in that series of
20 buckets -- if you'd like to organize each of these things
21 separately, I am happy to hear from you, but the bottom line is
22 that I'd like to hear by when you propose to make any
23 supplemental submissions to the Court in connection with the
24 preliminary approval of this proposed class settlement.

25 Let me begin with you, if I can, counsel for

1 plaintiffs.

2 When would you propose to submit this information to
3 the Court?

4 And separately, I should say, if the parties would
5 like to meet and confer on this question, I'm happy to do that.
6 I would change my question from asking you to tell me what the
7 deadlines are to asking you by when you could submit a joint
8 letter to the Court in which you will propose such deadlines.

9 Counsel for plaintiffs, what's your view?

10 MR. BEDI AKO: Your Honor, I think we will take you up
11 on your offer to allow us to speak to J.P. Morgan just so that
12 we are on the same page to the extent that we need any input in
13 from them, and then we could propose to get a letter to you
14 about when we anticipate getting everything to you. I would
15 anticipate by close of business Wednesday, at the latest.

16 THE COURT: Good. Thank you.

17 Counsel for J.P. Morgan.

18 MS. DAVIDOFF: Thank you, your Honor. That sounds
19 great.

20 THE COURT: Very good.

21 Any other defendant that wishes to be heard on that
22 question?

23 Thank you. Hearing none, that's fine.

24 I look forward to seeing your joint letter.

25 Anything else that we should talk about here before we

1 adjourn?

2 First, counsel for plaintiff.

3 MR. BEDIAKO: Your Honor, we do not have anything to
4 raise with you right now. Thank you, your Honor.

5 THE COURT: Thank you.

6 Counsel for J.P. Morgan.

7 MS. DAVIDOFF: Your Honor, nothing further. Thank
8 you.

9 THE COURT: Very good.

10 Counsel for any other defendants.

11 Thank you.

12 Hearing none, this proceeding is adjourned.

13 Thank you, all.

14 (Adjourned)

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