

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GREGORY BOUTCHARD and SYNOVA
ASSET MANAGEMENT, LLC, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

KAMALDEEP GANDHI, YUCHUN MAO
a/k/a BRUCE MAO, KRISHNA MOHAN,
TOWER RESEARCH CAPITAL LLC, and
JOHN DOE Nos. 1 – 5,

Defendants.

Case No. 1:18-cv-07041

Judge. John J. Tharp, Jr.

**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT
WITH TOWER RESEARCH CAPITAL LLC**

Plaintiffs Gregory Boutchard and Synova Asset Management, LLC (collectively, the “Class Plaintiffs”), for themselves and on behalf of each Class Member, having applied for an order preliminarily approving the proposed class action settlement (“Settlement) of this Action against Defendant Tower Research Capital LLC (“Tower”) in accordance with the Stipulation and Agreement of Settlement entered into on January 22, 2021 (the “Settlement Agreement”) between Class Plaintiffs and Tower; the Court having read and considered the Settlement Agreement, Class Plaintiffs’ Motion for Preliminary Approval of the Class Action Settlement with Tower, and accompanying documents; and Class Plaintiffs and Tower (collectively, the “Parties”) having consented to the entry of this Order,

NOW, THEREFORE, on this 4th Day of March, 2021, upon the 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 and the Settlement contained therein under 28 U.S.C. § 1331, and that it has personal jurisdiction over Class Plaintiffs, Tower (in this Action only and for purposes of this Settlement only), and all members of the Settlement Class.

3. Solely for purposes of the Settlement, the Settlement Class is hereby preliminarily certified, and the Action is 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 Court finds that: (1) the Settlement Class is so numerous that joinder is impracticable; (2) questions of law and fact are common to the class; (3) the claims of the Class Plaintiffs are typical of the claims of the Settlement Class; (4) the Class Plaintiffs and Lead Counsel, Lowey Dannenberg, P.C. (“Lowey”), will fairly and adequately protect the interests of the Settlement Class; and (5) that the proposed Settlement Class meets the predominance and superiority requirements of Rule 23(b)(3).

4. The Settlement Class preliminarily certified is defined as:

All persons and entities that purchased or sold any E-mini Index Futures or Options on E-mini Index Futures on the Chicago Mercantile Exchange (“CME”) and/or the Chicago Board of Trade (“CBOT”) from at least March 1, 2012 through October 31, 2014 (the “Class Period”). Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

5. 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 counsel supervised by a mediator and is sufficiently within the range of reasonableness, fairness, and adequacy. 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.

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

7. The Court hereby appoints Lowey 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.

8. The Court appoints A.B. Data, Ltd. as Settlement Administrator for purposes of the Settlement.

9. The Court appoints Citibank, N.A. to act as Escrow Agent for the Settlement Fund.

10. 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. The contents of the Settlement Fund 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 the funds shall be distributed pursuant to the Settlement Agreement, Distribution Plan, and/or further order(s) of the Court.

11. A hearing will be held on July 30, 2021 at 10:00 a.m. in Courtroom 1419 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 members of the Settlement Class, other than that which may be posted at the Court or on the settlement website at www.eminifuturesclassactionsettlement.com ("Settlement Website"). In light of the current

COVID-19 pandemic, the Court reserves the right to conduct the final Fairness Hearing via audio or videoconference.

12. The Court reserves the right to approve the Settlement at or after the Fairness Hearing with any non-material modifications that may be consented to by the Parties and without further notice to the Settlement Class.

13. 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.

14. 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 members of the Settlement Class (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.

15. On or before April 1, 2021 (the “Notice Date”), the Settlement Administrator shall cause copies of the mailed notice, in the form (without material variation) of Exhibit 3 to the Declaration of Vincent Briganti, Esq., dated January 29, 2021 (“Briganti 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 Linda Young, dated January 29, 2021. Briganti Decl. Ex. 2. The foregoing mailings shall be completed no later than May 20, 2021.

16. Brokers and other nominees who transacted in E-Mini Index Futures and Options in E-Mini Index Futures during the Class Period for the benefit of another person or entity shall (a) within seven (7) calendar days of receipt of the mailed notice, request from the Settlement Administrator sufficient paper or electronic copies of the mailed notice to forward to all such beneficial owners and, within seven (7) calendar days of receipt of such copies of the mailed notice, forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the mailed notice, send a list of names and addresses of all such beneficial owners to the Settlement Administrator in which event the Settlement Administration shall promptly send the mailed notice to such beneficial owners. Upon full compliance with this Order, such brokers and nominees may seek reimbursement from the Settlement Administrator of their reasonable out-of-pocket expenses incurred in complying with this Order. Such expenses will be paid from the Settlement Fund upon request and submission of appropriate supporting documentation.

17. No later than the Notice Date, the Settlement Administrator shall cause to be published a publication notice, without material variation from Exhibit 4 to the Briganti Decl., as described in the proposed notice program attached to the Declaration of Linda Young. Briganti Decl. Ex. 2.

18. The Settlement Administrator shall maintain the Settlement Website, www.eminifuturesclassactionsettlement.com, beginning on the Notice Date and remaining until the termination of the administration of the Settlement. The website shall include copies of the Settlement Agreement, this Order, the mailed and publication notices, the motion for preliminary approval and all exhibits attached thereto, and the Distribution Plan, identify important deadlines, and provide answers to frequently asked questions. The Settlement Website may be amended as

appropriate during the course of the administration of the Settlement and shall be searchable on the Internet.

19. 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.

20. The Court approves, in form and substance, the mailed notice, the publication notice, and the Settlement Website as described in the motion for preliminary approval, modified as stated on the record during hearings on the preliminary approval motion on February 25, 2021 and March 4, 2021. The Class Notice plan specified herein (i) is the best notice practicable; (ii) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class 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.

21. No later than June 4, 2021, the Settlement Administrator shall serve and file a sworn statement attesting to compliance with the notice provisions in paragraphs 15-19 of this Order.

22. Any Class Member and any governmental entity that objects to the fairness, reasonableness, or adequacy of any term or aspect of the Settlement, motion for attorneys' fees and expenses, application for Class Plaintiffs' Incentive Award, 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 Tower's counsel 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 June 10, 2021, 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 the Class Counsel and Tower's counsel) a statement of the objection or motion to intervene, as well as the specific legal and factual reasons for each objection or motion to intervene, 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 member of the Settlement Class or governmental entity wishes to introduce in support of his, her, or its objection or motion. Such submission must contain: (1) the name, address, and telephone number of the person or entity objecting and must be signed by the Class Member; (2) the name of the Action (*Boutchard et al. v. Gandhi et al.*, Case No. 18-cv-7041 (N.D. Ill.)); (3) 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 including but not limited to the identity of any witnesses the Class Member may call to testify and any exhibits the Class Member intends to introduce into evidence at the hearing; (4) whether the objection applies only to the Class Member, a specific subset of the Settlement Class, or the entire Settlement Class; (5) documents sufficient to prove the Class Member's membership in the Settlement Class; (6) a statement of whether the Class Member 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, and telephone number; and (7) a list of other cases in which the Class Member or the Class Member's counsel 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 members of the Settlement Class and are not entitled to object.

23. Any objection to the Settlement or motion to intervene 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), even if the Class Member is represented by counsel. The right to object to the proposed Settlement or to intervene must be exercised individually by a Class Member or the Class Member'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.

24. Any motion to intervene must comply with the Federal Rules of Civil Procedure and the Local Rules of the Court.

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

26. Any Class Member or governmental entity that fails to object or move to intervene in the manner described in paragraphs 22-25 of this Order shall be deemed to have waived the right to object or to intervene and shall be forever barred from raising such objection or seeking to intervene in this or any other action or proceeding related to or arising out of the Settlement. Discovery concerning any purported objections to the Settlement and any purported motions to intervene shall be completed no later than July 23, 2021. Class Counsel, Tower's counsel, and any other Persons wishing to oppose timely-filed objections in writing may do so not later than July 23, 2021.

27. Any Request for Exclusion from the Settlement by a Class Member must be sent in writing 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) to the Settlement Administrator at the address in the mailed notice and received no later than June 10, 2021 (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) the name of the Action (*Boutchard et al. v. Gandhi et al.*, Case No. 18-cv-7041 (N.D. Ill.)) and a statement that such person or entity requests to be excluded from the Settlement Class in the Action; (c) 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. 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.

28. 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.

29. Unless the Court determines otherwise, a Request for Exclusion shall not be effective unless it provides all of the information required pursuant to paragraph 27 of this Order, complies with paragraph 28 and this paragraph and is received by the Exclusion Bar Date, as set forth in the Class Notice. 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. Any person or entity who or which submits a timely and valid written Request for Exclusion in compliance with the terms in this Order and is excluded from the Settlement Class shall not be a Class Member, shall not be bound by the terms of the Settlement or any orders or judgment in the Action and shall not receive any payment out of the Net Settlement Fund.

30. The Parties may seek leave of the Court to seek discovery, including by subpoena, from any Class Member who submits any Request for Exclusion.

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

32. No later than June 17, 2021, 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 and an affidavit attesting to the accuracy of the opt-out list. The Settlement Administrator shall provide counsel for Tower 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 no event, later than June 17, 2021. Class Counsel shall file the opt-out list and affidavit of the Settlement Administrator attesting to the accuracy of such list with the Court.

33. All Proofs of Claim and Release shall be submitted by members of the Settlement Class to the Settlement Administrator as directed in the mailed notice and must be electronically submitted or mailed and postmarked no later than August 12, 2021.

34. 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 members of the Settlement Class; (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 the same to Class Counsel and Tower's counsel; and (j) providing Class Counsel and Tower's counsel with copies of any Requests for Exclusion (including all documents submitted with such requests).

35. 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.

36. All reasonable costs incurred in identifying and notifying Class Members of the Settlement, administering the Settlement, and preparing tax returns and paying taxes shall be paid as set forth in the Settlement Agreement without further order of the Court.

37. 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 Tower 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 E-Mini Index Futures and Options on E-Mini Index Futures;

or (e) the propriety of certification of a class other than solely for purposes of the Settlement. Further, any negotiations, non-public documents, and non-public discussions associated with the Settlement Agreement are not discoverable and may not be 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 Class Plaintiffs and Tower are reserved and retained if the Settlement does not become final in accordance with the terms of the Settlement Agreement.

38. Class Counsel shall file their motions for payment of attorneys' fees and reimbursement of expenses, incentive awards, and for final approval of the Settlement no later than May 27, 2021.

39. If the Settlement is approved by the Court following the Fairness Hearing, a Final Approval Order and Final Judgment will be entered.

40. 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.

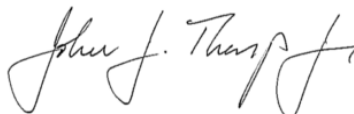
41. If the Settlement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation.

42. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

43. 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 5th day of 2021:

A handwritten signature in cursive script, reading "John J. Tharp, Jr.", written in black ink.

John J. Tharp, Jr.
United States District Judge
United States District Court for the
Northern District of Illinois