

**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 OF SETTLEMENT WITH TOWER RESEARCH CAPITAL LLC
AND JUDGMENT**

This matter came before the Court in a duly-noticed hearing on July 30, 2021 (the “Fairness Hearing”) upon Class Plaintiffs’ Motion for Final Approval of Class Action Settlement with Tower Research Capital LLC (“Tower”), which was consented to by Tower (together with Class Plaintiffs, the “Parties”).

Due and adequate notice having been given to Class Members, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of the Action and over all the Released Parties and Releasing Parties, including all Class Members.

2. This Order and Judgment hereby incorporates and includes the Stipulation and Agreement of Settlement dated January 22, 2021 (the “Settlement Agreement”) in its entirety. Except as otherwise expressly defined herein, all capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement.

3. For purposes only of the settlement of the Released Claims set forth in the Settlement Agreement (the “Settlement”), the Court hereby finally certifies the Settlement Class, 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. Excluded from the Class are the Defendants, Tower, Kamaldeep Gandhi, Yuchun Mao a/k/a Bruce Mao, and Krishna Mohan, 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. Now also excluded from the Class are those Persons who timely and validly excluded themselves

therefrom—namely, Nordea Bank S.A. and Blue Capital SA (“Excluded Class Members”), and no others.

4. Based on the record, the Court reconfirms that the applicable provisions of Rule 23 of the Federal Rules of Civil Procedure have been satisfied for purposes only of the Settlement.

5. In so holding, the Court finds that, solely for purposes of this Settlement, the Settlement Class meets all of the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3). The Court hereby finds, in the specific context of this Settlement, that: (i) the Settlement Class is so numerous that joinder of all Class Members is impracticable, FED. R. CIV. P. 23(a)(1); (ii) common questions of law and fact exist with regard to Tower’s alleged manipulation of the market for E-Mini Index Futures or Options on E-Mini Index Futures, FED. R. CIV. P. 23(a)(2); (iii) Class Plaintiffs’ claims in this litigation are typical of those of Class Members, FED. R. CIV. P. 23(a)(3); and (iv) Class Plaintiffs’ interests do not conflict with, and are co-extensive with, those of absent Class Members, all of whose claims arise from the identical factual predicate, and Class Plaintiffs and Lead Counsel, Lowey Dannenberg, P.C. (“Lowey” or “Lead Counsel”) have adequately represented the interests of all Class Members, FED. R. CIV. P. 23(a)(4). The Court also finds that common issues of fact and law predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. FED. R. CIV. P. 23(b)(3).

6. The Court finds that the Settlement meets all requirements of FED. R. CIV. P. 23(e) and is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class, including Class Plaintiffs. The Court further finds that: the Settlement set forth in the Settlement Agreement is the result of arm’s-length negotiations between experienced

counsel representing the interests of the Parties; that Lead Counsel and Class Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Settlement Agreement; that the relief provided for the Settlement Class is adequate; and that the Settlement Agreement and Distribution Plan treats Class Members equitably relative to each other. Accordingly, the Settlement embodied in the Settlement Agreement is hereby approved in all respects. The Parties are hereby directed to carry out the Settlement Agreement in accordance with all of its terms and provisions, including the termination provisions.

7. This Court has personal jurisdiction over Tower (in this Action only and for purposes of this Settlement), Class Plaintiffs, and all Class Members and subject matter jurisdiction over the Action to approve the Settlement Agreement and all exhibits attached thereto under 28 U.S.C. § 1331.

8. The Court finds that the mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of this Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Distribution Plan, of Lead Counsel's application for an award of attorneys' fees and payment of expenses associated with the Action, and any Incentive Award; (iii) is reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice of the Fairness Hearing and to be heard with respect to the foregoing matters; 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.

9. The excluded Class Members shall have no rights with respect to the Settlement Agreement, shall receive no payment from the sums provided for in the Settlement Agreement and shall be deemed to have excluded themselves from the Action as against Tower.

10. The Court finds that no timely objections to the proposed Settlement have been submitted. Notwithstanding the lack of timely objections, in approving this Settlement, the Court has independently reviewed and considered all relevant factors and has conducted an independent examination into the propriety of the proposed Settlement.

11. It is hereby determined that Class Plaintiffs and the Releasing Parties are bound by the Settlement Agreement and this Order and Judgment, and the Action is hereby dismissed with prejudice and without costs as against the Settling Class Members.

12. Upon the Effective Date, the Releasing Parties shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Released Parties.

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

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

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover

facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

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

15. The Distribution Plan submitted by Lead Counsel is hereby approved for use in distribution of the Settlement. Notwithstanding, any order entered regarding the Distribution Plan shall in no way disturb or affect this Order and Judgment with respect to the Settlement and shall be considered separate from the approval of the Settlement.

16. Notwithstanding the entry of this Order and Judgment, if the Settlement Agreement is validly terminated by Class Plaintiffs or Tower, is disapproved in whole or in part by the Court, any appellate court, or any other court of review, or does not become final, then (i) the provisions of this Order and Judgment dismissing this Action and releasing the Released Claims shall be null and void with respect to the Settlement; (ii) Class Plaintiffs' claims shall be reinstated; (iii) Tower's defenses shall be reinstated; (iv) the certification of the Class for

settlement purposes and final approval of the proposed Settlement, and all actions associated with them, including but not limited to any requests for exclusion from the Settlement previously submitted and deemed to be valid, shall be vacated and be of no force and effect; (v) the Settlement Agreement, including its exhibits, and any and all negotiations, documents, and discussions associated with it and the releases set forth herein, shall be without prejudice to the rights of any Party, and of no force or effect; and (vi) the Parties shall be returned to their respective positions as of July 27, 2020. Notwithstanding the language in this Section, any provision(s) in the Settlement Agreement that the Parties have agreed shall survive its termination shall continue to have the same force and effect intended by the Parties.

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

18. Each Settling Class Member must execute a release and covenant not to sue in conformity with the Settlement Agreement, as incorporated into the Proof of Claim and Release form, in order to receive the Settling Class Member’s share(s), if any, of the Net Settlement Fund defined in the Settlement Agreement. Notwithstanding the foregoing, each Settling Class Member’s claim shall be released pursuant to Section 11 of the Settlement Agreement, regardless of whether the Settling Class Member executes a release and covenant not to sue pursuant to this paragraph 18. The Court hereby confirms the appointment of A.B. Data, Ltd. as Settlement Administrator.

19. As used in this Judgment the following terms have the meanings specified below:

(a) “Released Claims” means any and all manner of all claims, rights, demands, suits, matters, issues, or causes of action, whether class or individual, known or unknown, suspected or unsuspected, asserted or unasserted, that were or could have been asserted in the Action, or that have arisen, could have arisen, arise at any other time prior to preliminary approval of the Settlement by the Court, and relate in any manner to the factual predicate of this Action.

(b) “Released Parties” or “Released Party” means Tower and all other Defendants in the Action as well as 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.

(c) “Releasing Parties” or “Releasing Party” means, individually and collectively, Class Plaintiffs and each Settling Class Member, on behalf of themselves and 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 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, whether or not they object to the Settlement and whether or not they make a claim for payment from the Net Settlement Fund. For the avoidance of doubt, the Releasing Parties will include Class Members and all Persons entitled to bring claims on behalf of Class Members relating to their transactions in E-mini Index Futures or Options on E-mini Index Futures who do not validly opt out of the settlement.

20. Nothing in this Order shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or the Order and Judgment.

21. The terms of the Settlement Agreement and this Order and Judgment are intended by the Court and the Parties to be binding on, and to have res judicata and preclusive effect on, all Released Claims asserted by any Releasing Party.

22. All Releasing Parties are hereby permanently barred and enjoined from suing any Released Parties based on any Released Claims. The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate this Order and Judgment.

23. Without affecting the finality of this Order and Judgment, the Court reserves exclusive jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement contemplated thereby and over the enforcement of this Order and Judgment. Notwithstanding the Order and Judgment and the dismissal with prejudice of this Action, the Court shall retain jurisdiction to enforce or effectuate the terms of the Settlement Agreement. The Court also retains exclusive jurisdiction: to resolve any disputes that arise out of or relate to the Settlement Agreement, the Settlement, or the Settlement Fund; to consider or approve

administration costs and fees, including but not limited to fees and expenses incurred to administer the Settlement after the entry of this Order and Judgment; and to consider or approve the amounts of distributions to Class Members. In addition, without affecting the finality of this Order and Judgment, Class Plaintiffs, Tower, and the Settlement Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois for any suit, action, proceeding, or dispute arising out of or relating to this Order and Judgment or the Settlement Agreement. Any disputes involving Class Plaintiffs, Tower, or Class Members concerning the implementation of the Settlement Agreement shall be submitted to this Court.

24. Neither the Settlement Agreement (nor its exhibits), whether or not it shall become final, nor any negotiations, documents exchanged among counsel for Class Plaintiffs and Tower in connection with settlement discussions, and discussions associated with them, nor the Order and Judgment are or shall be deemed or construed to be an admission or evidence by any Released Party of any violation of any statute or law or of any liability or wrongdoing by Tower or of the truth of any of the claims or allegations in the Action, and neither this Settlement Agreement nor any statement made in negotiation thereof may be used or offered in any proceeding for any purpose, except to enforce the terms of the Settlement.

25. The Court permanently bars and enjoins claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise. To the extent permitted by law, the Court permanently bars and enjoins claims by Tower and any Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of

settlement, judgment, or otherwise against (a) any of the other Defendants currently named in the Action; (b) any other Person formerly named as a party in the Action; or (c) any other Person subsequently added or joined as a party in the Action. Should any court determine that any Defendant is/was legally entitled to any kind of set-off, apportionment, contribution, indemnification, or similar claims from Tower arising out of or related to Released Claims, any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for set-off, apportionment, contribution, indemnification, or similar claims against Tower.

26. The Parties, without the need for approval from the Court, may adopt such non-material amendments, modifications, and expansions of the Settlement Agreement and all exhibits thereto as (a) shall be consistent in all material respects with the Order and Judgment; and (b) do not limit the rights of Settling Class Members.

27. The Court finds that, during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure as to each other.

28. Any data or other information provided by Settling Class Members in connection with the submission of claims shall be held in strict confidence, available only to the Settlement Administrator, Lead Counsel, and experts or consultants acting on behalf of the Settlement Class. In no event shall a Settling Class Member's data or personal information be made publicly available, except as provided for herein or upon Court Order for good cause shown.

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

30. The Settlement Administrator shall administer the claims administration process, including the calculation of claims submitted by Class Members and distribution of the Net Settlement Fund to Authorized Claimants, pursuant to the Court-approved Distribution Plan. All Class Members shall submit a Proof of Claim and Release (“Claim”) under penalty of perjury by the date set forth in the Notice of Proposed Class Action Settlement, July 30, 2021 Fairness Hearing Thereon, and Class Members’ Rights (“Notice”) sent to Class Members. Lead Counsel may, in their discretion, accept for processing late-submitted Claims so long as the distribution of the Net Settlement Fund is not materially delayed.

31. If a Claim is deficient, the Settlement Administrator shall send the Class Member a deficiency letter which will give the Class Member at least twenty (20) days to cure the deficiency. If the Class Members fails to cure the deficiency within the specified period, the Settlement Administrator shall send the Class Member a letter notifying the Class Member that the Claim has been rejected. The rejection letter will advise the Class Member of the reason(s) for the rejection of the Claim and his, her, or its right to review the determination of the Claim. If the Claim is still rejected, the Class Member shall then be allowed to move this Court for review within seven (7) days after Lead Counsel submits an application for the distribution of the Net Settlement Fund to eligible claimants.

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

33. Lead Counsel shall submit a motion to the Court after the amount remaining in the Net Settlement Fund, through distribution(s) to Authorized Claimants and pursuant to the

Court approved Plan of Allocation, has been reduced to a *de minimis* amount to approve the non-profit organization designated by Lead Counsel for receipt of such remaining funds.

34. 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.

35. The Court’s certification of the Settlement Class and appointment of the Class Plaintiffs as class representative, as provided herein, is without prejudice to, or waiver of, the rights of any Defendant to contest any other request by Class Plaintiffs to certify a class. The Court’s findings in this Order and Judgment shall have no effect on the Court’s ruling on any motion to certify any class or to appoint class representatives in the Action or any challenge to Class Plaintiffs’ capacity to litigate or to represent a putative class, and no party may cite or refer to the Court’s approval of the Class as binding or persuasive authority with respect to any such motion or challenge.

IT IS SO ORDERED.

Date: July 30, 2021



JOHN J. THARP, JR.
UNITED STATES DISTRICT JUDGE