

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: AMARANTH NATURAL GAS COMMODITIES LITIGATION This Document Relates To: ALL ACTIONS)))))))))))	MASTER FILE NO. 07 CIV. 6377 (SAS) <u>ECF Case</u>
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[PROPOSED] ORDER CONCERNING PLAN OF ALLOCATION

UPON the Stipulation and Agreement of Settlement dated December 13, 2011 (“Settlement”);

UPON Plaintiffs’ motion for final approval of the Settlement, including the Plan of Allocation [Docket Nos. 365 and 380];

UPON the objections to the Plan of Allocation by the self-described Floor Broker and Allocation Objectors [Docket Nos. 391 and 392];

UPON Plaintiffs’ consolidated response to such objections [Docket No. 397];

UPON the un-docketed letter to the Court from Steven Reed, Esq. dated April 4, 2012;

UPON the Affirmation of Christopher M. McGrath Filed on April 9, 2012;

UPON the fairness hearing held by this Court on April 9, 2012,

UPON the Amended Plan of Allocation attached as Exhibit A hereto;

UPON the joint letter submitted by Class Counsel and counsel for the self-described Floor Broker and Allocation Objectors dated May 21, 2012 wherein such Objectors stated that they have no objections to the Amended Plan of Allocation, and

UPON all papers and proceedings herein:

IT IS HEREBY ORDERED as follows:

1. The Court has considered all papers filed, arguments made, and proceedings herein pertinent to Plaintiffs' proposed Amended Plan of Allocation attached as Exhibit A hereto.

2. A plan of allocation need not be perfect and need only be reasonable and fair. *See e.g., In re Giant Interactive Group, Inc. Sec. Litig.*, 2011 WL 5244707, at *8 (S.D.N.Y. Nov. 02, 2011) (collecting cases).

3. The Court finds that the proposed Amended Plan of Allocation (hereinafter "the Plan") is recommended by experienced Class Counsel and has a rational and reasonable basis. *See In re Marsh Erisa Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010).

4. The proposed Plan is, at the very least, reasonable and fair, and is approved in all respects. The Court directs that the Plan be published on the Settlement website as soon as practicable.

5. If any problems arise with the Plan, and such problems necessitate any amendment to the Plan, then Class Counsel shall confer with the counsel for the Floor Broker and Allocation Objectors before proposing such amendment to the Court. The Floor Broker and Allocation Objectors and other Class members shall be advised of such amendment by posting on the Settlement website, and shall have the opportunity to object and be heard.

6. Paragraph 18 of the Final Order and Judgment dated April 11, 2012 [Docket No. 404] is hereby amended in order to provide counsel for the Floor Broker and Allocation Objectors with access to data or other information provided by Class members to support their proofs of claims. Upon request to Class Counsel or Settlement Administrator, Class Counsel or Settlement Administrator, subject to execution of appropriate confidentiality agreement(s) by requestor, will provide Class members or their counsel access to data supplied to Class Counsel or Settlement Administrator, the classification of Class members, and the methodology(ies)

applied by Settlement Administrator to said data in classifying Class members and/or calculating awards to Class members.

7. The Settlement Administrator shall provide the following information to each Class member (or his/her counsel) who files a proof of claim and makes a request for: (a) the Class member's individual trading data as represented in the New York Mercantile Exchange ("NYMEX") street book (after the Class member has requested the NYMEX to unmask their account information in the street book) in Class Contracts made during the Class Period as is necessary to determine eligibility; (b) a list of all the Class member's qualifying transactions; (c) the relevant artificiality calculations for the Class member's qualifying transactions; (d) the Allowed Claim Amount of the Class member's qualifying transactions; and (e) a list of the Class member's non-qualifying transactions. A Class member's request to the NYMEX in respect of his or her account information in the street book shall satisfy the requirement for the Class member to submit adequate documentation as set forth in the Settlement and the Plan.

8. Class members who file timely proofs of claims shall have a reasonable opportunity to supplement their trading information after the deadline for filing proofs of claim.

9. Class members who file proofs of claims, Co-Lead Counsel and the Settlement Administrator shall work together in good faith in order to resolve any concerns relating to the application of the Plan, classification of Class Members, the calculation of the recovery to any Class Member, if any, and/or the data to which the Plan is applied. In the event that the parties are unable to resolve any such concerns relating to the Plan or the application thereof, they may seek relief from the Court.

10. The Floor Broker and Allocation Objectors have waived their right to appeal from Orders of the Court in connection with the Settlement in any way, including, but not limited to, the extent that this Order overrules objections to the Plan of Allocation, provided however the

Floor Broker and Allocation Objectors retain all their rights, including their right to appeal, relating solely to the application of the formulae contained in the Plan, the application of the hedger and swap dealer discounts to any Class Member, and the data to which they are applied.

Signed this ___ day of ____, 2012, at the Courthouse for the United States District Court for the Southern District of New York.

Hon. Shira A. Scheindlin
United States District Court Judge

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: AMARANTH NATURAL GAS)
COMMODITIES LITIGATION)

) MASTER FILE NO.
) 07 CIV. 6377 (SAS)

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[PROPOSED] AMENDED PLAN OF ALLOCATION

1. Except for the terms defined herein, the Amended Plan of Allocation adopts and incorporates the definitions in the Stipulation and Agreement of Settlement, dated December 13, 2011.

2. A Class Member’s Allowed Claim Amount shall equal that Class Member’s “Net Adverse Impact” (as defined in Section 5 of this Amended Plan of Allocation) as calculated below in Sections 3 through 6. Section 7 sets forth how the Net Settlement Fund shall be distributed among Class Members.

3. A Class Member’s “Adverse Impact” shall be equal to the sum of their “Artificiality Paid” on each purchase of a Class Contract minus the sum of their “Artificiality Received” on each sale of a Class Contract. For the avoidance of doubt, “sale” means either closing a long position or opening a short position and “purchase” means either closing a short position or opening a long position.

4. The amounts of “Artificiality Paid” and “Artificiality Received” for each Class Member shall be determined on a position-by-position basis for each Class Contract. For each purchase or sale of all or a portion of a position in a Class Contract by a Class Member, the Class

Member's "Artificiality Paid" or "Artificiality Received" shall be calculated based on either (a) the Daily Artificiality Estimates or (b) the Slam The Close Artificiality Estimates, whichever produces a higher Allowed Claim Amount for the Class Member. See www.amaranthcommoditieslitigation.com (listing the artificiality estimates).

5. "Net Adverse Impact" shall mean the Adverse Impact minus the Hedging Deduction.

6. The Hedging Deduction, for Class Members who are determined, in good faith, to be hedgers, shall equal 57.75% of the Adverse Impact provided further that the Settlement Administrator shall inquire, into those Class Members who the Settlement Administrator has reason to believe to be swaps-dealers, whether such Class Members are swaps-dealers. Swaps-dealer transactions shall be subject to a Swaps-Dealer Hedging Deduction of 91%.

7. For the distribution among Class Members *inter se*, (i) if the sum of each and every claiming Class Member's Allowed Claim Amount is less than or equal to the Net Settlement Fund, each Class Member who executes the required release and covenant not to sue and submits adequate documentation, all as determined by the Settlement Administrator (or the Mediator in the event of an unresolved dispute), shall be entitled to receive an amount equal to that Class Member's Allowed Claim Amount; and (ii) if the sum of each and every claiming Class Member's Allowed Claim Amount is greater than the Net Settlement Fund, each Class Member who executes the required release and covenant not to sue and submits adequate documentation, all as determined by the Settlement Administrator (or the Mediator in the event of an unresolved dispute), shall be entitled to receive an amount computed by multiplying the Net Settlement Fund by a fraction, (1) the numerator of which is the Class Member's Allowed Claim Amount and (2) the denominator of which is the sum of each and every claiming Class

Member's Allowed Claim Amount. For the avoidance of doubt, no Class Member shall receive any distribution from the Net Settlement Fund in excess of that Class Member's Allowed Claim Amount.

8. All determinations under this Plan of Allocation shall be made by the Settlement Administrator subject to review by Class Counsel, counsel for the Floor Broker and Allocation Objectors, and the Court. Any determinations that are objected to, must be approved by the Court.

9. After notice to counsel for the Floor Broker and Allocation Objectors and after appropriate "meet and confer" on any reservations expressed by them, Class Counsel shall file with the Court, any administrative conventions that have an effect on the amounts of Class member claims ("Administrative Conventions").¹ Contemporaneously with such filing, Class Counsel shall post such Administrative Conventions on the Settlement website. After the Floor Broker and Allocation Objectors and other Class members have had a reasonable opportunity to object to each Administrative Convention and after the Court rules on any objections made to any such convention, then such Administrative Convention shall become effective.

¹ As used herein Administrative Convention includes any convention for reconciling the treatment of different data sets from different sources as between submissions by the same Class member or among different Proofs of Claim submissions by different Class Members.