

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2010 MAY 19 P 4:09

IN RE MUTUAL FUNDS INVESTMENT
LITIGATION

MDL 1586

Case No. 04-md-15861-CCB

CLERK'S OFFICE
BALTIMORE

This Document Relates To:
Scudder Subtrack

BY _____ DEPUTY

PRELIMINARY APPROVAL ORDER

CATHERINE C. BLAKE, District Judge

WHEREAS:

A. (i) Lead Plaintiff Post-Retirement Health Insurance Plan and Trust, plaintiff Linda S. Cape, and plaintiff Tony D. David on their own behalf and on behalf of the Class ("Class Plaintiffs") and (ii) Kenneth Clark, Douglas A. Hinton, David Shaev, Craig J. McLaughlin, Deborah J. McLaughlin, David Weiser, Alan Schiller and Thelma Persall, derivatively and on behalf of the Deutsche/Scudder Settlement Funds ("Derivative Plaintiffs") (Class Plaintiffs and Derivative Plaintiffs collectively, "Plaintiffs"), on the one hand, and (iii) Deutsche Bank AG, Deutsche Asset Management, Inc., Deutsche Investment Management Americas, Inc., Deutsche Asset Management Investment Services Ltd., Scudder Distributors, Inc., and Investment Company Capital Corporation, ("Deutsche/Scudder Defendants"); (iv) UBS Financial Services Inc. (named as UBS PaineWebber and UBS Wealth Management USA in the Class Complaint); J.C. Bradford & Co.; Paul Cooper; Michael Yellen; William Savino; and Christopher Chung ("UBS Defendants"); (v) Aurum Securities Corp. and Aurum Capital Management Corp. ("Aurum Defendants") (Deutsche/Scudder Defendants, UBS Defendants, and Aurum Defendants, on the other hand), have entered into settlements of the claims asserted

against the Deutsche/Scudder Defendants, UBS Defendants, and Aurum Defendants in the above-captioned action (the "Action"), the terms of which are set forth in a Stipulation and Agreement of Settlement, dated February 12, 2010 (the "Deutsche/Scudder Fund Family Stipulation" or "Deutsche/Scudder Fund Family Settlement");

B. Plaintiffs, on the one hand, and Banc of America Securities, LLC ("BAS"), on the other hand, have entered into a settlement of the claims against BAS and Bank of America Corporation (the "BAS Defendants") in the Actions, the terms of which are set forth in a Scudder/BAS Severed Agreement and Stipulation of Settlement, dated January 28, 2010 (the "BAS Stipulation" or "BAS Settlement");

C. Plaintiffs, on the one hand, and Canary Capital Partners, LLC; Canary Capital Partners, Ltd.; Canary Investment Management, LLC; and Edward Stern ("Canary Defendants"), on the other hand, have entered into a settlement of the claims against the Canary Defendants in the Actions, the terms of which are set forth in a Severed Agreement and Stipulation of Settlement, dated January 27, 2010 (the "Canary Stipulation" or "Canary Settlement");

D. The Deutsche/Scudder Defendants, UBS Defendants, Aurum Defendants, BAS Defendants, and Canary Defendants are collectively referred to as the "Settling Defendants." Plaintiffs and the Settling Defendants are collectively referred to as the "Parties." The Deutsche/Scudder Fund Family Stipulation, the BAS Stipulation, and the Canary Stipulation are collectively referred to as the "Stipulations." The Deutsche/Scudder Fund Family Settlement, the BAS Settlement, and the Canary Settlement are collectively referred to as the "Settlements";

E. Class Plaintiffs have moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order preliminarily approving the Settlement, and providing notice of the proposed Settlement; and

F. The Court having read and considered the Stipulations, the proposed Notice of Proposed Settlement (the "Long Notice"), the proposed Publication Notice of Proposed Settlement (the "Publication Notice"), the proposed Post Card Notice of Proposed Settlement (the "Post Card Notice"), the proposed Plan of Allocation as set forth in the Long Notice, and the proposed form of Judgment and Order relating to the Settlements and Plan of Allocation, and finding that substantial and sufficient grounds exist for entering this Order;

IT IS HEREBY ORDERED:

JURISDICTION

1. This Court has jurisdiction over the subject matter of the Action and over all parties to this Action, including all members of the Class, as defined below.

NO DETERMINATION

2. This Court hereby decrees that neither the Stipulations, nor this Preliminary Approval Order, nor the fact of the Settlements, are an admission or concession by the Settling Defendants of any liability or wrongdoing whatsoever nor are they a concession by Plaintiffs of any infirmity of any claim asserted against the Settling Defendants.

CERTIFICATION OF SETTLEMENT CLASS

3. For settlement purposes, the Parties have proposed conditional certification of the following Class under Fed. R. Civ. P. 23(a) and (b)(3):

“Class” means all persons that purchased and/or held shares of the Deutsche/Scudder Settlement Funds (as defined below) during the period July 30, 1999, through January 12, 2004, inclusive (the “Class Period”). Excluded from the Class are the Settling Defendants, as well as members of their immediate families and their legal representatives, parents, affiliates, heirs, successors or assigns and any entity in which the Settling Defendants have or had a controlling interest (the “Excluded Persons”). Also excluded are any employees, principals, executives, officers, directors, or trustees of the Excluded Persons, and all trustees and managers of the mutual funds advised by Deutsche/Scudder. Also excluded from the Class are any Persons who timely and validly exclude themselves by filing a request for exclusion from the Class.

4. In determining whether to certify a settlement class, the Court follows the requirements of Rule 23 in all respects except that, by definition, the Court need not evaluate the “manageability” of a proposed settlement class at trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). As the Fourth Circuit has directed, “the factors spelled out in Rule 23 must be addressed through findings, even if they overlap with issues on the merits.” *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 366 (4th Cir. 2004).

5. In the Scudder subtrack, the Parties have proposed settlements after the record has been fully developed. In particular, at the time of the Deutsche/Scudder Fund Family Settlement, Class Plaintiffs’ July 2, 2008 motion for class certification, Deutsche/Scudder Defendants’ July 2, 2008 motion for summary judgment, and Deutsche/Scudder Defendants’ July 2, 2008 motion to exclude Class Plaintiffs’ damages expert, Dr. Marc Vellrath, had been submitted along with an extensive record, and were awaiting decision after the hearing on those motions before the Court concluded on December 10, 2008. In addition, at the Court’s request, Class Plaintiffs submitted

supplemental, detailed information regarding alleged market timing damages for each Deutsche/Scudder Fund, and the Deutsche/Scudder Defendants responded, challenging the supplemental damages analysis. Accordingly, the Court is in a position to consider the appropriateness of the proposed Settlements against that fully-developed record, as well as the parties' representations regarding the Settlements themselves.

6. Class Plaintiffs' July 2, 2008 motion for class certification proposed a litigated class that consisted of the shareholders in the 135 Deutsche/Scudder Funds listed in Exhibit A to Plaintiffs' motion. In the Settlements that are now before the Court, the Plaintiffs propose to allocate payments to shareholders who held shares of certain Deutsche/Scudder Funds during the Class Period in proportion to the dilution identified in the analysis undertaken by Class Plaintiffs' expert Dr. Vellrath,¹ adjusted to take into account the amounts already paid by the Deutsche/Scudder Defendants in their December 2006 settlement with the New York Attorney General ("NYAG"), as well as amounts paid by third parties in settlements with the Securities and Exchange Commission to the extent that those settlements have allocated monies to specific Deutsche/Scudder Funds that are the subject of Class Plaintiffs' motion for class certification (the "completed third-party payments").

¹ In their motion for summary judgment and their motion to exclude Class Plaintiffs' damages expert, Deutsche/Scudder Defendants challenged Plaintiffs' damage calculations, but for purposes of analyzing the propriety of the settlement class only, the Court will accept Class Plaintiffs' damage calculations as evidence of Class Plaintiffs' "best case scenario" for the damages that investors in each fund that Class Plaintiffs sought to certify in their July 2, 2008 motion suffered as a result of Defendants' alleged wrongful conduct. The Court does not, however, either adopt or reject any of Dr. Vellrath's analysis.

7. Class Plaintiffs have submitted a Declaration of Dr. Vellrath that confirms his analysis that the \$34,314,360 that the Deutsche/Scudder Defendants paid pursuant to the December 2006 NYAG settlement provided the applicable Deutsche/Scudder Funds' shareholders with full and complete restitution for "arrangement" timing,² and, in fact, exceeds the amount of dilution that Dr. Vellrath computed for arrangement timing. Thus, no portion of the settlement monies need be allocated to compensate shareholders for damages allegedly caused by arrangement timing because those alleged damages have been fully recompensed.

8. The task remaining is to define a settlement class and allocate the monies from the pending Settlements to alleged dilution that Dr. Vellrath has attributed to alleged market timing that took place without an arrangement, which is referred to herein as "non-arrangement" timing. With respect to non-arrangement timing, Dr. Vellrath's Declaration attaches a schedule that lists, for each of the 135 Deutsche/Scudder Funds that were included in Class Plaintiffs' motion for class certification, the alleged dilution that Dr. Vellrath has computed for that Deutsche/Scudder Fund, net of the amounts distributed to shareholders of that Deutsche/Scudder Fund for alleged non-arrangement timing under the Deutsche/Scudder Defendants' settlement with the NYAG and the amounts distributed to those same shareholders by the completed third-party payments ("net maximum dilution"). The schedule attached to Dr. Vellrath's Declaration also

² On December 19, 2006, Deutsche/Scudder Defendants, without admitting or denying the allegations, entered into a consent decree with the Office of the Attorney General of New York that included findings that Deutsche/Scudder Defendants had entered into agreements granting specific permission for certain favored traders to engage in market timing in certain funds in contravention of prospectus requirements.

includes information supplied by the Deutsche/Scudder Defendants that benchmarks the approximate number of shareholder accounts in each such Deutsche/Scudder Fund.

9. Class Plaintiffs have sought certification of, and the Court intends to certify, a single class consisting of the shareholders of multiple Deutsche/Scudder Funds. Throughout the case, Plaintiffs have alleged that market timing can occur in any type of mutual fund, regardless of the securities held in the fund. Deutsche/Scudder Defendants, on the other hand, have consistently argued that mutual funds holding international, high-yield, or small capitalization securities are more susceptible to market timing, and that a mutual fund's natural susceptibility to timing has an important bearing on the measures that a mutual fund advisor might be expected to take to combat market timing and on the materiality of any statements that the Deutsche/Scudder Defendants may have made regarding timing.

10. Regardless of the merits of these respective contentions, the Court notes that the market timing dilution alleged to have occurred in each Deutsche/Scudder Fund, based upon Class Plaintiffs' allegations and evidence, including the expert reports and Declarations of Dr. Vellrath, differs significantly from one fund to another, and is concentrated primarily in funds invested in international, high yield, and small capitalization securities. Even without factoring the challenges the Deutsche/Scudder Defendants have made to Class Plaintiffs' damages calculations and analysis, many of the 135 funds listed in Class Plaintiffs' motion for class certification have little alleged net dilution damage. In addition, Deutsche/Scudder Defendants have posed significant challenges to Class Plaintiffs' damages calculations and analysis. Finally, as Judge Motz noted in his Opinion of December 30, 2009, dismissing the Putnam case in its entirety

and significant portions of the Janus case, any case based purely on non-arrangement market timing poses significant challenges to Plaintiffs in proving that dilution allegedly suffered by investors in a particular Deutsche/Scudder Fund was the result of market timing that Deutsche/Scudder Defendants knowingly or recklessly permitted.

11. Thus, the Court's analysis turns to the appropriateness of including shareholders of particular Deutsche/Scudder Funds in the settlement class, balancing as to each Deutsche/Scudder Fund the parties' contentions, the characteristics of the Deutsche/Scudder Fund at issue, the total alleged net dilution damage suffered by each Fund, and the likely costs of providing notice in a reasonable manner to all class members who would be bound by a settlement as required by Rule 23(e).

12. The Court also is conscious of the number of shareholders in each Fund, given that the costs of notice and administration for many of the Deutsche/Scudder Funds would swallow up even the alleged net maximum dilution computed for that Deutsche/Scudder Fund by Dr. Vellrath. In evaluating notice costs, the Court finds that on average, each Deutsche/Scudder Fund had thousands of shareholders during the Class Period that Class Plaintiffs have alleged in this case, and that the cost of providing first-class mail notice to a shareholder and attendant administration costs will be at least \$1.00 per shareholder.

13. The Court will certify a class of shareholders of Deutsche/Scudder Funds where, except as provided in paragraph 15 below, the anticipated average recovery per account (before attorneys' fees and costs) is more than the \$1.00 per account of anticipated notice and administration expenses.

14. Applying these standards³, the following 39 Deutsche/Scudder

Funds will be included in the settlement class:

	Net Maximum Dilution	Accounts ⁴
Scudder SVL International Fund	\$33,323,069.52	97
Scudder SVS Int'l Research Portfolio	\$491,064.55	11
Deutsche Int'l Small Cap Equity Fund	\$496,932.33	22
Scudder Emerging Markets Equity Fund	\$1,556,927.18	154
Scudder SVL Global Discovery Fund	\$791,954.25	48
Scudder/Deutsche EAFE Equity Index Fund	\$1,141,829.63	356
Scudder SVS Value	\$52,051.03	9
SVS Small Cap Growth Fund	\$137,835.68	24
Top 50 Asia Strategy	\$692,201.09	350
The Japan Fund	\$63,042,645.90	39,232
European Equity Fund	\$2,277,910.78	945
International Equity Fund	\$76,492,187.93	44,046
Scudder International Select Equity Fund ⁵	\$4,243,327.96	3,076
Scudder Greater Europe Growth Fund	\$39,867,675.00	82,920
Deutsche European Mid Cap Fund	\$705,034.39	1,086
Scudder SVS Strat Income	\$6,631.99	8
Scudder SVS High Yield	\$11,430.63	17
Scudder SVS Growth Opp	\$6,885.70	11
Scudder International Fund ⁶	\$57,703,965.00	367,841
Deutsche Small Cap Fund	\$3,032,364.41	5,315
Scudder SVL Cap Growth	\$19,615.49	69
Kemper Asian Growth	\$985,051.74	7,557

³ The alleged net maximum dilution figures that appear in this Order, including those that follow in this paragraph and in paragraph 17, are derived from Dr. Vellrath's calculations, as described in paragraph 8, above.

⁴ The account figures shown in some instances may understate the number of accounts that were in the fund over the entire class period.

⁵ Formerly Deutsche International Select Equity Fund.

⁶ Includes alleged net maximum dilution and accountholders for the Kemper International Fund, which merged into the Scudder International Fund.

Scudder RREEF	\$11,029.28	45
Scudder Pacific Opportunities Fund	\$3,036,436.61	29,461
Deutsche High Yield Bond	\$26,141.85	122
Scudder SVS Inv Grade Bond	\$2,696.40	13
Development Fund	\$10,445,289.00	45,442
Deutsche Top 50 Europe	\$55,240.92	426
Scudder New Europe Fund	\$3,985,098.00	55,262
Scudder U.S. Bond Index Fund	\$10,139.62	309
Scudder Global Discovery Fund	\$6,268,052.03	109,929
Global Fund	\$7,848,371.00	149,169
DWS RREEF Real Estate Securities	\$43,548.87	1,298
Scudder Lifecycle Mid Range Fund	\$12,044.67	208
Scudder Global Biotech	\$11,247.33	212
Scudder Research Fund-C	\$4,813.02	162
Scudder SVL Growth & Income Fund	\$1,540.89	57
Micro Cap	\$69,649.00	2300
Scudder Municipal Bond Fund	\$32,657.02	673

15. In addition, the Scudder Technology Fund and the Scudder Mid Cap Fund will be included in the settlement class despite the fact that the anticipated average recovery per account (before attorneys' fees and costs) for these funds is less than the \$1.00 per account of anticipated notice and administration expenses. In reaching this conclusion, the Court recognizes that Plaintiffs entered into memoranda of understanding with the BAS Defendants in 2006 and with the Canary Defendants in 2004 to settle the claims in the Action asserted against these defendants that included the Scudder Technology Fund and the Scudder Mid Cap Fund. The Court acknowledges that the inclusion of shareholders of these funds in the Class is necessary to finalize the settlements between Plaintiffs, the BAS Defendants, and the Canary Defendants.

16. The funds named in paragraphs 14 and 15 (the "Deutsche/Scudder Settlement Funds") account for \$328,176,375.67, or approximately 97%, of the alleged net maximum potential dilution for non-arrangement timing computed by Dr. Vellrath.

17. The remaining 60⁷ Deutsche/Scudder funds for which Class Plaintiffs sought class certification on July 8, 2008, fail to reach the threshold described in paragraph 14, and therefore will not be included in the settlement class. They are as follows:

	Net Maximum Dilution	Accounts
Scudder NY Tax-Free Income	\$111,423.77	5,786
Kemper Global Blue Chip Fund	\$43,126.08	1,858
Scudder Short Term Fixed Income Fund	\$397.98	331
Scudder CA Tax-Free Income Fund	\$154,146.00	28,949
Scudder International Research Fund	\$66,509.00	2,765
Scudder Latin America Fund	\$1,029,478.32	62,797
Scudder Emerging Markets Growth Fund	\$98,652.39	8,486
Scudder/Deutsche Equity 500 Index Fund	\$81,143.47	12,577
Scudder Fixed Income Fund	\$65,044.98	5,879
Deutsche Equity Partners Fund/Scudder Flag Investors Equity Partners Fund	\$120,747.50	9,235
Scudder Massachusetts Tax Free Fund	\$6,238.56	489
Scudder Managed Municipal Bond Fund	\$518,045.00	181,877
Scudder-Dreman Financial Services Fund	\$391,463.65	47,209
Deutsche Communications Fund	\$1,909,651.24	157,899
Scudder AARP GNMA and U.S. Treasury Fund	\$1,480.29	4,992
Scudder High Yield Tax-Free Bond Fund	\$58,267.31	14,985
Scudder Florida Tax-Free Income Fund	\$2,984.68	1,575
Scudder Large Company Growth Fund	\$429,716.58	80,747
Scudder Medium Term Tax Free Fund	\$6,283.69	967
Scudder High Income Opportunity Fund	\$12,299.42	2,347
Scudder Medium-Term Tax-Free Fund	\$25,973.05	9,749
Scudder High Yield Tax Free Fund	\$25,192.92	4,198
Kemper Intermediate Municipal Fund	\$5,737.73	683
Scudder High Yield Fund	\$1,186,786.43	204,060

⁷ The 41 Deutsche/Scudder Funds listed in paragraphs 14 and 15 and the 60 Deutsche/Scudder Funds listed in this paragraph do not add up to the 135 Deutsche/Scudder Funds in Class Plaintiffs' class certification motion because, among other reasons, certain funds merged during the Class Period.

New York Tax-Free Income Fund	\$10,620.82	4,258
Scudder Select 500 Fund	\$9,405.06	5,255
Emerging Markets Income Fund	\$49,333.00	21,414
Kemper Horizon 20 Fund	\$13,354.79	3,651
Scudder Massachusetts Tax Free Fund	\$25,333.18	7,556
Kemper High-Yield Fund II	\$2,866.66	882
Kemper Small Cap Equity Fund/ Scudder Dynamic Growth Fund ⁸	\$1,163,997.00	222,748
Scudder Capital Growth Fund	\$803,490.55	302,293
Scudder Short Term Bond Fund	\$12,657.00	24,143
Scudder Pathway Growth Portfolio	\$103,198.88	46,374
Scudder California Tax-Free, Class S	\$10,834.33	5600
High Income Opportunity Fund	\$7,430.66	8,211
Scudder Balanced Fund	\$9,658.16	18,506
DWS Core Plus Income Fund	\$14,169.91	35,242
Scudder Focus Value Plus Growth Fund	\$35,785.00	39,746
Kemper Total Return Fund	\$70,716.02	448,339
Scudder Real Estate Securities Fund	\$0.00	1,729
Kemper Income and Capital Preservation Fund	-\$1,231.64	51,917
Scudder Blue Chip Fund	\$223,722.00	239,440
Scudder-Dreman High Return Equity Fund	-\$279,098.91	833,353
Scudder 21st Century Growth Fund	-\$7,053.79	41,535
Scudder Contrarian Fund	-\$38,271.62	68,492
Scudder Growth Fund	\$1,990,887.00	377,992
Kemper Classic Growth Fund	-\$11,678.16	55,713
Scudder Aggressive Growth Fund	\$131,222.55	86,968
Kemper Municipal Bond Fund	-\$98,062.00	83,012
Kemper Small Cap Value Fund/Scudder-Dreman Small Cap Value Fund ⁹	\$951,361.00	161,081
Scudder Gold & Precious Metals Fund	-\$139,551.86	26,654
Emerging Markets Debt Fund	\$4,084.31	96
Scudder Lifecycle Short-Range Fund	\$13.22	316
Deutsche Managed Municipal Fund	\$628.02	676
Scudder Emerging Markets Income Fund	\$1,228.53	
Scudder Short Duration Fund	\$2,775.21	0
Deutsche Top 50 U.S. Strategy	\$1,357.38	530

⁸ Formerly Kemper Small Cap Equity Fund.

⁹ Formerly Kemper Small Cap Value Fund.

Deutsche Top 50 World Strategy Fund	\$1,211.92	443
Deutsche Value Builder Fund	\$31,050.00	31,803

18. The Court hereby preliminarily FINDS and CONCLUDES that the Class set forth above satisfies all of the requirements for certification under Rule 23(a) and Rule 23(b)(3). The requirements of Rule 23(a) – numerosity, commonality, typicality, and adequacy – are satisfied, the Class satisfies the requirements for certification under Rule 23(b)(3) as questions of law or fact common to the Class predominate over individualized issues, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, the Court preliminarily CERTIFIES the Class for purposes of these Settlements, under Rules 23(a) and 23(b)(3).

19. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of these Settlements only, Lead Plaintiff Post-Retirement Health Insurance Plan and Trust, plaintiff Linda S. Cape, and plaintiff Tony D. David are preliminarily certified as Class Representatives and the law firm Berger & Montague, P.C. is certified as Class Counsel.

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

20. The proposed Stipulations and the Settlements they embody are hereby PRELIMINARILY APPROVED. Final approval of the Settlements is subject to the hearing of any objections of members of the Class to the proposed Settlements embodied in the Stipulations.

21. Pending the determination of the fairness of the Settlements, all further litigation of this Action against the Settling Defendants is hereby STAYED.

OTHER CASES ENJOINED

22. Pending final approval of the Settlements, the Court hereby preliminarily enjoins each Class Member, including any member who makes an irrevocable election to exclude himself or herself from the Class, and Derivative Plaintiffs from commencing, prosecuting or maintaining in any court other than this Court any claim, action or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision or ruling of this Court in connection with the Settlements. The Court further enjoins any member of the Class who has not, by the deadline for opting out, made a timely, irrevocable election to exclude himself or herself from the Class from commencing, prosecuting or maintaining, either directly, representatively or in any other capacity, any of the Released Claims, as defined in the Stipulations.

APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING NOTICE

The Parties have submitted for this Court's approval a proposed Long Notice, Post Card Notice, and Publication Notice (together, the "Notice"), which the Court has reviewed. The Court finds and concludes as follows:

23. The proposed Notice is the best notice practical under the circumstances and allows Class Members a full and fair opportunity to consider the proposed Settlements. The proposed plan for distributing the Notice, which is set forth below, likewise is a reasonable method calculated to reach all Class Members who would be bound by the Settlements. Under this plan, Plaintiffs shall cause notice of the proposed Settlements, the hearing on the proposed Settlements, the request for approval of the Plan of Allocation and Plaintiffs' Counsel's application for an award of attorneys' fees and payment of expenses to be provided as follows:

(a) No later than June 30, 2010 a copy of the Post Card Notice, substantially in the form annexed hereto as Exhibit ___, shall be mailed to all Class Members at the postal address of each such person as set forth in the records of Deutsche/Scudder or its transfer agents or as identified through the implementation of the IDC's Plan of Distribution, *provided, however*, that in cases where a financial institution serving as an intermediary is the shareholder of record and holds securities in an omnibus account on behalf of a Class Member as the actual beneficial owner, notice to the financial institution shall suffice;

(b) A Publication Notice substantially in the form annexed hereto as Exhibit ___ shall be published, no later than July 14, 2010, once each in *People Magazine, The Wall Street Journal, and The New York Times*. Banner advertisements that allow potential Class Members to click through to a cross-track settlement website that will provide a link to the website described in paragraph 23(c) will be placed on CNN.com, AOL.com (Run of Network and E-mail), 24/7 Network, Hotmail.com, Facebook.com, Yahoo.com, The Wall Street Journal online, over 400 local newspaper, broadcast and entertainment websites throughout the United States (through a national online advertisement purchase), and various investing e-newsletters (such as MarketWatch, WSJ and Barron's). The Publication Notice will also be distributed through twenty-six Really Simple Syndication ("RSS") feeds targeted to the Business/Finance channel, and through a national distribution of a press release issued through PR Newswire to both its US1 and Financial Markets newslines.

(c) The Long Notice, substantially in the form annexed hereto as Exhibit ___, shall be placed on the web site maintained by the Claims Administrator, as

approved by the Court below, at [www.\[insert\].com](http://www.[insert].com), and shall be available to those who request it by calling (800) XXX-XXXX or mailing a written request to the Claims Administrator. The website address for obtaining the Long Notice shall be prominently displayed on both the Post Card Notice and the Publication Notice. The phone number and mailing address for obtaining the Long Notice shall be prominently displayed on the Post Card Notice.

24. The form of the Notice fairly, plainly, accurately, and reasonably informs Class Members of: (1) appropriate information about the nature of this Action, the Class, the identity of Plaintiffs' Counsel, and the essential terms of the Settlements, including the Plan of Allocation; (2) appropriate information about Plaintiffs' Counsel's forthcoming application for attorneys' fees and other payments that will be deducted from the Settlement Amounts, as defined in the Stipulations; (3) appropriate information about how to participate in the Settlements; (4) appropriate information about this Court's procedures for final approval of the Stipulations and Settlements, and about Class Members' right to appear through counsel if they desire; (5) appropriate information about how to challenge or opt out of the Settlements, if Class Members wish to do so; and (6) appropriate instructions about how to obtain additional information regarding this Action or the Settlements.

25. The Court FINDS and CONCLUDES that the proposed plan for distribution of the Notice will provide the best notice practicable, and will satisfy Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78u-4(a)(7), including by the Private Securities

Litigation Reform Act of 1995, due process, and any and all other applicable laws, and shall constitute due and sufficient notice to all Persons entitled thereto.

26. The Court also FINDS and CONCLUDES that the proposed plan of notice provides reasonable and adequate notice to current shareholders of the Deutsche/Scudder Funds of the Settlement of the Derivative Action and satisfies the notice requirements of Rule 23.1(c).

27. Accordingly, the Court hereby ORDERS as follows:

(a) The forms of the Post Card Notice, Long Notice and Publication Notice are APPROVED.

(b) The manner of distributing the Notice is APPROVED.

(c) Promptly following the entry of this Order, the Claims Administrator shall prepare final versions of the Post Card Notice, Long Notice, and Publication Notice, substantially in the form approved by this Court, incorporating the relevant dates and deadlines set forth in this Order.

(d) The Claims Administrator shall take all other actions in furtherance of the Plan of Allocation as specified in the Stipulations.

28. To effectuate the provision of notice provided for in paragraph 23 hereof, and the calculation of Settlement Amount distributions to Class Members and to the Derivative Plaintiffs, for the benefit of the Deutsche/Scudder Settlement Funds, and other actions required by this Order, the Court hereby approves the selection of Rust Consulting, Inc. to serve as the Administrator for the Settlements (the "Claims Administrator"). Plaintiffs may retain the Claims Administrator.

29. To further effectuate the provision of notice provided for in paragraph 23 hereof, the Claims Administrator shall establish a toll free telephone number and lease and maintain a post office box of adequate size for the return of Requests for Exclusion. The Post Card Notice shall identify such post office box and the Long Notice shall designate said post office box as the return address for the purposes designated in the Notices. The Claims Administrator shall be responsible for the receipt of all responses to the Notice and, until further order of the Court, shall preserve all entries of appearance, Requests for Exclusion, and all other written communications from Class Members, nominees or any other person in response to the Notices.

30. All reasonable Notice and Administrative Costs shall be paid by Plaintiffs from the Settlement Amounts, subject to the limitations set forth in the Stipulations; provided, however, that Plaintiffs shall only be obligated to pay their *pro rata* share of the costs of notice and settlement administration to the extent that notice and administration of the Settlements can be reasonably combined with notice of other settlements in MDL 1586.

31. Seven (7) days before the date fixed by this Court for the Fairness Hearing, that is, by October 14, 2010, Plaintiffs shall cause to be filed with the Clerk of this Court affidavits or declarations of the person or persons under whose general direction the mailing of the Post Card Notice, the publication of the Publication Notice, and the posting of the Long Notice and mailing of that document to Class Members and fund shareholders who so request shall have been made, showing that such mailing, posting, and publication have been made in accordance with this Order. In no event shall the Settling Defendants be required to pay for Notice and Administrative Costs.

32. All nominees receiving notice who hold or held Deutsche/Scudder Settlement Funds for beneficial owners are directed to, within seven (7) days of their receipt of the Notice, either (a) supply the names and addresses of such beneficial owners to the Claims Administrator, and the Claims Administrator is ordered to send the Post Card Notice promptly to such identified beneficial owners; or (b) request additional copies of the Post Card Notice from the Claims Administrator and within seven (7) days of receipt of the copies of the Post Card Notice from the Claims Administrator mail the Notice to the beneficial owners. Nominee purchasers who elect to send the Post Card Notice to their beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Post Card Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed, upon receipt by the Claims Administrator of proper documentation, for the documented and reasonable expense of sending the Post Card Notice to beneficial owners.

PAYMENT OF SETTLEMENT FUND

33. Class Counsel is authorized and directed to prepare any tax returns required to be filed on behalf of the Settlement Amounts and to cause any taxes due and owing to be paid from the Settlement Amounts, as set forth in the Stipulations.

34. There shall be no distribution of any of the Settlement Amounts to any Class Member or the Deutsche/Scudder Settlement Funds (in connection with the Derivative Settlement) until after the Effective Date, as defined in the Stipulations.

PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

35. **Fairness Hearing:** The Court hereby schedules a hearing (the “Fairness Hearing,” referred to in the Stipulations as the “Final Settlement Hearing”) at October 21-22, 2010, at 10:00 a.m. for the following purposes:

(a) to finally determine whether this Action satisfies the applicable prerequisites for class action treatment under Rules 23(a) and (b) of the Federal Rules of Civil Procedure;

(b) to determine whether the proposed Settlements are fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine whether the Judgment as provided under the Stipulations should be entered, dismissing the Actions, as defined in the Stipulations, filed herein, on the merits and with prejudice, as against the Deutsche/Scudder, UBS, and Aurum Released Parties, as defined in the Deutsche/Scudder Fund Family Stipulation; the Bank of America Released Parties, as defined in the BAS Stipulation; the Canary Released Parties, as defined in the Canary Stipulation; and the Settling Defendants only, and to determine whether the releases of the Released Claims and Released Parties’ Claims, as set forth in the Stipulations, should be provided to the Released Parties and to the Released Plaintiffs Parties, as defined in the Stipulations;

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlements is fair and reasonable, and should be approved by the Court;

(e) to consider Plaintiffs’ Counsel’s application for an award of attorneys’ fees and expenses; and

(f) to rule upon such other matters as the Court may deem appropriate.

The Fairness Hearing shall be held at the United States District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, Maryland 21201. The Court expressly reserves the right to adjourn or continue the Fairness Hearing without any further notice to the Class other than by an announcement of the adjournment at the scheduled time of the Fairness Hearing or at the scheduled time of any adjournment of the Fairness Hearing. The Court may consider modifications of the Settlements (with the consent of Plaintiffs and the Settling Defendants) without further notice to the Class.

36. Right to Request Exclusion from the Settlements: Class

Members may exclude themselves from, or opt out, of the Settlements. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, including all the releases contemplated thereby, unless such persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. Any request for exclusion must be in the form of a written, signed statement (the "Request for Exclusion") mailed by first class mail postmarked to the Claims Administrator at the address designated in the Long Notice on or before September 21, 2010 (the "Exclusion Deadline"). Such Request for Exclusion shall clearly indicate the name, address and telephone number of the person seeking exclusion, that the sender requests to be excluded from the Class for the Scudder Subtrack Settlement in MDL 1586 – the Mutual Funds Securities Litigation, and must be signed by such person. Such persons requesting exclusion are also directed to provide information sufficient to determine their holdings

of the Deutsche/Scudder Settlement Funds as of the beginning of the Class Period, the end of the Class Period, and as of March 31, June 30, September 30, and December 31 for each year during the Class Period. Such information may be provided by submitting quarterly and/or year-end mutual fund statements from the Class Period. The Request for Exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. The Claims Administrator shall, consistent with the terms of the Opt-Out Side Letters and/or Supplemental Agreements (as defined in the Stipulations), provide to all counsel all Requests for Exclusion that are received. The Class will not include those individuals who file and serve a timely Request for Exclusion, and individuals who opt-out are not entitled to any monetary award under the Settlements.

37. Within five (5) business days after the Exclusion Deadline, the Claims Administrator shall provide the Settling Defendants and Class Counsel with a report which, at a minimum, will identify all persons purporting to opt out of the Class and will attach the Requests for Exclusion submitted by each. At or before the Fairness Hearing, the Claims Administrator shall file all Requests for Exclusion with the Court.

38. **Settling Defendants' Right to Rescind Agreement.** If the conditions set forth in the Opt-Out Side Letters and/or Supplemental Agreements, as defined in the Stipulations, executed by the Settling Defendants and Class Plaintiffs concurrently with the Stipulations, are met, then each of the Settling Defendants, at their sole option, shall have the right to void their respective Settlement, with respect to themselves, provided that such Settling Defendant exercises its right to void their respective Settlement on or before 5:00 p.m. Eastern Time of the 10th business day (5th

business day for the Canary Defendants) before the Fairness Hearing. In the event of a termination of a Settlement pursuant to an Opt-Out Side Letter or Supplemental Agreement, all such Settling Defendant's obligations under their respective Stipulation shall cease to be of any force and effect, and the Stipulation and any orders entered in connection therewith, with respect to such Settling Defendant, shall be vacated, rescinded, cancelled, and annulled, and Plaintiffs and such Settling Defendant shall return to the status quo in the Action as if the Plaintiffs and such Settling Defendant had not entered into the Settlement Agreement. In addition, in such event, the Stipulation and all negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of any and all parties thereto, and evidence relating to the Stipulation and all negotiations shall not be admissible or discoverable in the Action or otherwise.

Notwithstanding the foregoing, the Stipulation shall not become null and void as a result of the election by a Settling Defendant to exercise its option to withdraw from the Stipulation pursuant to an Opt-Out Side Letter or Supplemental Agreement until the conditions set forth in the Opt-Out Side Letter or Supplemental Agreement have been satisfied.

EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION OF AGREEMENT

39. If the Court does not enter the Judgment substantially in the form provided for in the Stipulations, or if the Court enters the Judgment and appellate review is sought and on such review, the entry of Judgment is vacated, modified or reversed, then the Parties shall each have the right to terminate the Settlements and the Stipulations by providing written notice of their election to do so to all other Parties within thirty (30) days of the entry of the Court's ruling. Such notice may be provided on behalf of Class

Plaintiffs and the Class Members by Class Counsel and on behalf of Derivative Plaintiffs by Derivative Counsel. No party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein, except to the extent provided for in provisions of the Stipulations relating to the Plan of Allocation and the Fee and Expense Award. If any party hereto engages in a material breach of the terms hereof, any other party, provided that it is in substantial compliance with the terms of its respective Stipulation, may terminate its Stipulation on notice to the breaching party or sue for enforcement.

40. In the event that a Stipulation is terminated or canceled or fails to become effective for any reason, then within ten (10) business days after written notice is sent by Class Counsel, Derivative Counsel, or counsel for any of the Settling Defendants, the balance, less any costs incurred (consistent with the Stipulations) for notice and administration of the Settlement, of any cash deposited by the Settling Defendants, or any of them, or their respective insurers, into the Escrow Account shall be refunded to the Settling Defendants or, where applicable, their insurers who made such payment, in proportion to payments actually made, including interest accrued, less any Taxes and Tax Expenses due and payable with respect to such income. In such event, the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of the Stipulation and they shall proceed in all respects as if the Stipulation, this Order, and related orders had not been executed and without prejudice in any way from the negotiation, fact or terms of the Settlement.

41. **Deadline for Filing Objections to the Settlements.** Any Class Member, current shareholder of the Deutsche/Scudder Funds, or non-Settling Defendant may appear at the Fairness Hearing to show cause why the proposed Settlements should or should not be approved as fair, reasonable and adequate; why a judgment should or should not be entered thereon; why the Plan of Allocation should or should not be approved as fair, reasonable and adequate; or why Plaintiffs' Counsel should or should not be awarded attorneys' fees and payment of expenses in the amounts sought by Plaintiffs' Counsel; *provided, however*, that no Class Member, current shareholder of the Deutsche/Scudder Funds, or non-Settling Defendant shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlements, the Judgment to be entered approving the same, the proposed Plan of Allocation or Plaintiffs' Counsel's application for an award of attorneys' fees and payment of expenses, unless on or before September 21, 2010 (the "Objection Deadline"), such Class Member, current shareholder of the Deutsche/Scudder Funds, or non-Settling Defendant has properly and timely served via the Court's electronic filing system or by hand or by first-class mail on Class Counsel, as set forth below, written objections and copies of any supporting papers and briefs (which must contain information or documents concerning such objectors' holdings of shares in the Deutsche/Scudder Settlement Funds during the Class Period or a statement attesting to the fact that such objector held, purchased or acquired shares in one or more of the Deutsche Scudder Settlement Funds during the Class Period, or, if a current shareholder, proof of current ownership):

Sherrie R. Savett
Lawrence Deutsch
Glen L. Abramson
Jeffrey L. Osterwise
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103

and has filed by the Objection Deadline said objections, papers and briefs, showing due proof of such service upon Class Counsel, with the Clerk of the United States District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, Maryland 21201. Except where any written objection is filed (and therefore served) through the Court's electronic filing system, within three business days of receipt, Class Counsel shall serve upon counsel for all Parties the written objections and copies of any supporting papers and briefs that Class Counsel receives. Class Members may retain an attorney at their own expense to appear at the Settlement Hearing, but there is no need for Class Members to retain an attorney and Class Members can appear at the hearing without hiring an attorney.

42. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlements, the Plan of Allocation, and/or the request for attorneys' fees and expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlements, the Plan of Allocation, and/or Plaintiffs' Counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Fairness

Hearing. Class Members or shareholders do not need to appear at the hearing or take any other action to indicate their approval.

43. Any Class Member, current shareholder, or non-Settling Defendant who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlements as well as the Judgment and Orders to be entered approving the Settlements, the Plan of Allocation, or Plaintiffs' Counsels' application for an award of attorney's fees and payment of expenses or from otherwise being heard concerning these subjects in this or any other proceeding, except for good cause shown. Objections raised at the Fairness Hearing will be limited to those previously submitted in writing. In this context, granting the non-Settling Defendants a right to object and appear at the Fairness Hearing is without waiver of the Parties' rights to argue the non-Settling Defendants' lack of standing to object and appear at the Fairness Hearing.

44. **Deadline for Submitting Motion Seeking Final Approval.** No later than September 14, 2010: (a) Plaintiffs shall file a Motion for Final Approval of the Settlements, Settlement Agreements and Plan of Allocation. Any opposition must be filed no later than September 21, 2010, with the Parties' reply (if any) to be filed no later than October 6, 2010.

45. **Deadline for Petition for Attorneys' Fees.** Plaintiffs' Counsel shall file with this Court their petition for an award of attorneys' fees and reimbursement of expenses no later than September 14, 2010. Any opposition must be filed no later than

September 21, 2010, with Plaintiffs' Counsels' reply (if any) to be filed no later than October 6, 2010.

46. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlements.

SO ORDERED:

Dated: Baltimore, Maryland

May 19, 2010



CATHERINE C. BLAKE
United States District Judge