



**GRANTED**

EFiled: Mar 17 2015 08:06AM EDT  
Transaction ID 56928578  
Case No. 8145-VCN



**EXHIBIT**

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: FREEPORT-MCMORAN )  
COPPER & GOLD INC. DERIVATIVE ) C.A. No. 8145-VCN  
LITIGATION )

**SUPPLEMENTAL SCHEDULING ORDER**

WHEREAS, a consolidated stockholder derivative action is pending in this Court entitled *In re: Freeport-McMoRan Copper & Gold Inc. Derivative Litigation*, C.A. No. 8145-VCN (the “Action”);

WHEREAS, (a) plaintiffs Dauphin County Employee Retirement Fund; State-Boston Retirement System; Amalgamated Bank as Trustee for the LongView LargeCap 500 Index Fund, LongView LargeCap 500 Index VEBA Fund, LongView Quantitative LargeCap Fund and LongView Quantitative LargeCap VEBA Fund; and City of Roseville Employees’ Retirement System (collectively, “Plaintiffs”); and (b) individual defendants James R. Moffett, Richard C. Adkerson, Gerald J. Ford, Robert Addison Day, the estate of B.M. Rankin, Jr., H. Devon Graham, Jr., Robert J. Allison, Jr., Charles C. Krulak, Bobby Lee Lackey, Jon C. Madonna, Dustan E. McCoy, Stephen H. Siegele, Kathleen L. Quirk and James C. Flores (collectively, the “Settling Defendants,”) have determined to settle all claims asserted against the Settling Defendants in the Action with prejudice on

the terms and conditions set forth in the Stipulation and Agreement of Settlement, Compromise and Release entered into by the Parties dated January 12, 2015 (the “Stipulation”);

WHEREAS, Plaintiffs indicated a desire to pursue the Credit Suisse Claims derivatively on behalf of Freeport against Credit Suisse Securities (USA) LLC (“Credit Suisse”);

WHEREAS, on January 22, 2015, the Court entered a scheduling order in accordance with the Stipulation, approving the form and content of the notice of the Settlement to Freeport Stockholders and scheduling the date and time for the settlement fairness hearing (the “Settlement Hearing”) for April 7, 2015 at 2:00 p.m. at the Court of Chancery of the State of Delaware, Dover, Delaware;

WHEREAS, on March 10, 2015, Plaintiffs, the Settling Defendants, and Credit Suisse (each a “Party” and, collectively, the “Parties”) entered into an Addendum to the Stipulation (the “Addendum”), which amended certain provisions in the Stipulation to reflect the settlement reached between Plaintiffs, Credit Suisse, and Freeport;

WHEREAS, the Parties have made an application, pursuant to Court of Chancery Rule 23.1, for entry of a supplemental scheduling order in accordance with the Stipulation and Addendum approving the form and content of the notice of the terms of the Addendum to Freeport Stockholders; and

WHEREAS, the Court having read and considered the Addendum, and the exhibits attached thereto; the Addendum being sufficient to warrant supplemental notice to Freeport Stockholders; and all Parties having consented to the entry of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2015, as follows:

1. **Definitions:** Unless otherwise defined herein, the capitalized terms used herein shall have the same meanings as they have in the Stipulation, as amended by the Addendum.

2. **Settlement Hearing:** The Court will hold the Settlement Hearing on April 7, 2015 at 2:00 p.m., at the Court of Chancery of the State of Delaware, Dover, Delaware, for the following purposes: (a) to determine whether Plaintiffs and Plaintiffs' Counsel have adequately represented the interests of Freeport and its stockholders; (b) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation, as amended by the Addendum, is fair, reasonable and adequate to Plaintiffs, Freeport and Freeport's stockholders, and should be approved by the Court; (c) to determine whether a Final Order and Judgment substantially in the form attached as Exhibit B to the Addendum should be entered dismissing the Action with prejudice; (d) to determine whether the application by Plaintiffs' Counsel for an award of attorneys' fees and

reimbursement of litigation expenses should be approved; (e) to hear and consider any objections to the Settlement and/or Plaintiffs' Counsel's application for an award of attorneys' fees and expenses; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the terms of the Addendum and the Settlement Hearing shall be given to Freeport Stockholders as set forth in paragraph 4 of this Order.

3. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Parties may agree to without further notice to Freeport Stockholders.

4. **Manner of Giving Notice:** Notice of the terms of the Addendum shall be given by Freeport as follows:

(a) not later than the date of entry of this Order (the "Supplemental Notice Date"), Freeport shall file a copy of the Supplemental Notice, substantially in the form attached to the Addendum as Exhibit A, as an exhibit to a Form 8-K with the Securities and Exchange Commission;

(b) not later than two (2) business days after the Supplemental Notice Date, Plaintiffs' Counsel shall post a copy of the Supplemental Notice on their respective firm websites, and such copy shall remain posted on such websites through the Effective Date of the Settlement; and

(c) not later than fifteen (15) calendar days prior to the Settlement Hearing, (i) Freeport shall serve on Plaintiffs' Counsel and file with the Court proof, by affidavit or declaration, of compliance with paragraph 4(a) above; and (ii) Plaintiffs' Counsel shall serve on counsel for the Settling Defendants and Credit Suisse, and file with the Court proof, by affidavit or declaration, of compliance with paragraph 4(b) above.

5. **Approval of Form and Content of Notice:** The Court (a) approves, as to form and content, the Supplemental Notice, attached to the Addendum as Exhibit A, and (b) finds that the publication of the Supplemental Notice in the manner and form set forth in paragraph 4 of this Order, in addition to the mailing and publication of the original Notice in the manner and form set forth in paragraph 4 of the Court's January 22, 2015 Scheduling Order: (i) constitutes notice that is reasonably calculated, under the circumstances, to apprise Freeport Stockholders of the pendency of the Action, of the effect of the proposed Settlement (as amended by the Addendum) (including the Releases to be provided thereunder), of Plaintiffs' Counsel's application for an award an attorneys' fees and reimbursement of litigation expenses (including Plaintiffs' Counsel's supplemental fee and expense application related to the settlement of the Credit Suisse Claims), of their right to object to the Settlement and/or Plaintiffs' Counsel's application for attorneys' fees and litigation expenses, and of their right

to appear at the Settlement Hearing; (ii) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iii) satisfies the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules. The date and time of the Settlement Hearing shall be included in the Supplemental Notice before it is published.

6. **Appearance and Objections at Settlement Hearing:** Any person or entity who or which held shares of Freeport common stock as of the close of business on January 15, 2015 (the “Record Date”) and continues to hold such shares as of the date of the Settlement Hearing may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Register in Chancery and delivering a notice of appearance to representative counsel for Plaintiffs, Credit Suisse and the Settling Defendants, at the addresses set forth in paragraph 7 below, such that it is received no later than March 30, 2015, or as the Court may otherwise direct.

7. Any person or entity who or which held shares of Freeport common stock as of the close of business on the Record Date and continues to hold such shares as of the date of the Settlement Hearing may file a written objection to the proposed Settlement (as amended by the Addendum) and/or Plaintiffs’ Counsel’s application for an award of attorneys’ fees and litigation expenses (including

Plaintiffs' Counsel's supplemental fee and expense application related to the settlement of the Credit Suisse Claims) and appear and show cause, if he, she or it has any cause, why the proposed Settlement and/or the application for attorneys' fees and litigation expenses should not be approved; *provided, however*, that, unless otherwise directed by the Court for good cause shown, no such person or entity shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement (as amended by the Addendum) and/or the application for attorneys' fees and litigation expenses (including the supplemental fee and expense application) unless that person or entity has filed a written objection with the Register in Chancery and served copies of such objection on representative counsel for Plaintiffs, Credit Suisse and the Settling Defendants at the addresses set forth below such that they are received no later than March 30, 2015.

**Representative Counsel  
for Plaintiffs:**

Michael J. Barry  
Grant & Eisenhofer P.A.  
123 Justison Street  
Wilmington, DE 19801

**Representative Counsel  
for the Settling Defendants:**

William M. Lafferty  
Morris Nichols Arsht & Tunnell LLP  
1201 N. Market Street, 18<sup>th</sup> Floor  
Wilmington, DE 19801

M. Duncan Grant  
Pepper Hamilton LLP  
1313 N. Market Street, Suite 5100  
Wilmington, DE 19899

**Representative Counsel  
for Credit Suisse:**

T. Brad Davey  
Potter, Anderson & Corroon LLP  
Hercules Plaza  
1313 North Market Street, 6<sup>th</sup> Floor  
P.O. Box 951  
Wilmington, Delaware 19801

8. Any objections, filings and other submissions: (a) must state the name, address and telephone number of the objector and must be signed by the objector; (b) must contain a statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the objector wishes to bring to the Court's attention, and if the objector has indicated that he, she or it intends to appear at the Settlement Hearing, the identity of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the hearing; and (c) must include documentation sufficient to prove that the objector held shares of Freeport common stock as of the close of business on the Record Date and continues to hold such shares.

9. Unless the Court orders otherwise, any person or entity who or which does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement (as amended by the Addendum) and Plaintiffs' Counsel's application for an award of attorneys' fees and litigation expenses (including the supplemental

fee and expense application) and shall be forever barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement or the requested attorneys' fees and litigation expenses, or from otherwise being heard concerning the Settlement or the requested attorneys' fees and litigation expenses in this or any other proceeding.

10. **Stay and Temporary Injunction:** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation and Addendum. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs and all other Freeport Stockholders from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendant Parties.

11. **Supplemental Notice and Administration Costs:** Except for the costs and expenses of posting the Supplemental Notice on the websites of Plaintiffs' Counsel, any and all costs and expenses related to providing Supplemental Notice shall be paid by Freeport regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall the Settling Defendants, Credit Suisse, Plaintiffs, Plaintiffs' Counsel, or the Escrow Amount be responsible for such notice costs.

12. **Termination of Settlement:** If the Settlement is terminated pursuant to paragraph 14 of the Stipulation, as amended by the Addendum, (a) Plaintiff and the Settling Defendants shall be restored to their respective positions in the Action immediately prior to the execution of the Term Sheet, and shall promptly agree on a new scheduling order to govern further proceedings in this Action, and (b) Plaintiff, Freeport and Credit Suisse shall be restored to their respective positions with respect to the Credit Suisse Clams as immediately prior to the execution of the Addendum. For the avoidance of doubt, the Addendum constitutes a material part of the Settlement for purposes of paragraph 14 to the Stipulation, and all Parties shall have the right to terminate the Settlement in its entirety pursuant to paragraph 14 of the Stipulation as amended by the Addendum upon any decision by the Court not to approve the terms of the Addendum, upon any decision by the Court not to enter the Final Order and Judgment in any material respect as to the Addendum, or upon any order vacating, modifying, revising or reversing the Final Order and Judgment with respect to the terms of the Stipulation and/or Addendum becoming Final.

13. **Use of this Order:** Neither the Stipulation, Addendum, nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by: (a) any of the Settling Defendants, Credit Suisse, or any of the other Released Defendant Parties as to the validity of

any claims, defenses, other issues raised, or which might be or have been raised, in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies such wrongdoing or liability; or (b) Plaintiffs as to the infirmity of any claim or the validity of any defense, or that damages in the Action would not have exceeded the Escrow Amount. The existence of the Stipulation, Addendum, their contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever. Notwithstanding the foregoing, any of the Released Parties may file the Stipulation, Addendum, or any judgment or order of the Court related thereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**14. Supporting Papers:** Plaintiffs' Counsel have filed and served the opening papers in support of the proposed Settlement and Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of litigation

expenses. Plaintiffs' Counsel shall file and serve supplemental papers, if any, in support of the amended settlement terms as set forth in the Addendum, no later than March 18, 2015; opposition papers, if any, shall be filed and served no later than March 30, 2015; and reply papers, if any, shall be filed and served no later than five (5) calendar days prior to the Settlement Hearing.

15. **Retention of Jurisdiction:** The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

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Vice Chancellor John W. Noble

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** John Noble

**File & Serve**

**Transaction ID:** 56925018

**Current Date:** Mar 17, 2015

**Case Number:** 8145-VCN

**Case Name:** CONF ORD CONS W/CA#: 8110, 8126, 8139, 8140, 8142, 8156, 8206, 8207, 8208 & 8384-VCN IN RE: FREEPORT-MCMORAN COPPER & GOLD INC. DERIVATIVE LITIGATION

**Court Authorizer:** Noble, John

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/s/ Judge Noble, John