

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, and JACK OLIVEIRA in their capacity as THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, and CHRISTOPHER STAINES

Plaintiffs

- and -

ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA NATIONAL ASSOCIATION, BANK OF MONTREAL, BANK OF MONTREAL FINANCIAL CORP., BANK OF MONTREAL HARRIS BANK N.A., BANK OF MONTREAL CAPITAL MARKETS LIMITED, THE BANK OF TOKYO MITSUBISHI UFJ LTD., BANK OF TOKYO-MITSUBISHI UFJ (CANADA), BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS CAPITAL CANADA INC., BNP PARIBAS GROUP, BNP PARIBAS NORTH AMERICA INC., BNP PARIBAS (CANADA), BNP PARIBAS, CITIGROUP, INC., CITIBANK, N.A., CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC., CREDIT SUISSE GROUP AG, CREDIT SUISSE SECURITIES (USA) LLC, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (CANADA), INC., DEUTSCHE BANK AG, THE GOLDMAN SACHS GROUP, INC., GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., HSBC HOLDINGS PLC, HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK USA, N.A., HSBC BANK CANADA, JPMORGAN CHASE & CO., J.P. MORGAN BANK CANADA, J.P. MORGAN CANADA, JPMORGAN CHASE BANK NATIONAL ASSOCIATION, MORGAN STANLEY, MORGAN STANLEY CANADA LIMITED, ROYAL BANK OF SCOTLAND GROUP PLC, RBS SECURITIES, INC., ROYAL BANK OF SCOTLAND N.V., ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE S.A., SOCIÉTÉ GÉNÉRALE (CANADA), SOCIÉTÉ GÉNÉRALE, STANDARD CHARTERED PLC, TORONTO DOMINION BANK, TD BANK, N.A., TD GROUP US HOLDINGS, LLC, TD BANK USA, N.A., TD SECURITIES LIMITED, UBS AG, UBS SECURITIES LLC, and UBS BANK (CANADA)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

REPLY TO THE STATEMENTS OF DEFENCE OF CREDIT SUISSE, DEUTSCHE BANK, RBC, BANK OF MONTREAL AND TD

1. The Plaintiffs repeat and rely on the allegations made in the Second Amended Statement of Claim as if pleaded below in their entirety and adopt the terms defined therein.
2. This Reply is to the Statements of Defence of Credit Suisse, Deutsche Bank, RBC, Bank of Montreal and TD, all other Defendants having settled this action.
3. The Plaintiffs admit the allegations contained at paragraphs 7, 8, 9 and 10 (except last sentence thereof) in the Statement of Defence of Credit Suisse.
4. The Plaintiffs admit the allegations contained at paragraph 4 in the Statement of Defence of Deutsche Bank.
5. The Plaintiffs admit the allegations contained at paragraphs 9 and 10 (first two sentences thereof) in the Statement of Defence of Bank of Montreal.
6. The Plaintiffs admit the allegations contained at paragraphs 9 (first sentence thereof), 10, 11, 12 and 13 in the Statement of Defence of TD.
7. The Plaintiffs deny all other allegations contained in the respective Statements of Defence of Credit Suisse, Deutsche Bank, RBC, Bank of Montreal and TD.

A. FX Market was in a constant state of manipulation

8. In each of their respective Statements of Defence, the Defendants deny a conspiracy to fix bid/ask spreads, alleging that any communications about fixing bid/ask spreads were episodic and that bid/ask spreads changed dynamically.

9. The communications were frequent, widespread and routine throughout the Class Period. Further, the influence of these discussions was not episodic; these discussions had an effect on prices in the FX market throughout the Class Period. As such, the FX Market was in a constant state of manipulation.

B. RBC and TD admit misconduct to the Ontario Securities Commission

10. On August 23, 2019, RBC and TD each entered into a Settlement Agreement with the Ontario Securities Commission (“OSC”) relating to their respective FX trading practices. In each Settlement Agreement, the OSC found that during 2011-2013, RBC and TD FX traders “regularly provided confidential information to, and received confidential information from, the traders of other financial institutions, including in respect of the existence of customer stop loss orders. This sharing of confidential information occurred in Multi-Dealer Chatrooms and in bi-lateral chats.”

11. The OSC found that “the disclosure of such information in some instances was a breach of confidentiality and created the potential risk that this information could be used for the trader's benefit and to the customer's detriment”, which potential risk did occur as a result of TD's, RBC's and the other Defendants' conduct.

12. In their respective Settlement Agreement with the OSC, TD and RBC admitted that from 2011-2013, each engaged in conduct contrary to the public interest by:

(a) sharing confidential customer information with FX traders at other firms in electronic chatrooms; and

(b) failing to establish and maintain an adequate compliance system that addressed inappropriate information sharing and thus provided reasonable assurance that TD or RBC:

- i. complied with securities legislation, and in particular the market manipulation and fraud prohibitions in the *Securities Act*; and
- ii. did not undermine confidence in the integrity of the FX markets.

13. The TD Settlement Agreement was approved by Order of the OSC dated August 30, 2019. As part of the Order, TD made a “voluntary payment” of \$9,300,900 to the OSC, plus costs in the amount of \$800,000.

14. The RBC Settlement Agreement was approved by Order of the OSC dated August 30, 2019. As part of the Order, RBC made a “voluntary payment” of \$13,552,000 to the OSC, plus costs in the amount of \$800,000.

C. Specific Reply

(i) *Credit Suisse*

15. Contrary to the allegation contained at paragraphs 28-33 of the Statement of Defence of Credit Suisse, Credit Suisse did participate in the Conspiratorial Acts as set out in the Second Amended Statement of Claim.

16. On November 13, 2017, Credit Suisse entered into a consent order with the New York Department of Financial Services (“NYDFS”) relating to its involvement in the manipulation of the foreign exchange market. In the consent order, Credit Suisse agreed to pay a fine of USD\$135 million for its misconduct. The NYDFS investigation determined that:

(a) from at least 2008 to 2015, Credit Suisse consistently engaged in improper, unsafe, and unsound conduct, in violation of New York laws and regulations, by failing to implement effective controls over its FX business;

(b) Credit Suisse engaged in the inappropriate sharing of information with other global banks which may have led to coordinated trading, manipulation of exchange rates, and increased bid/ask spreads offered to customers in Credit Suisse’s foreign exchange business. These efforts were directed at maximizing profits or minimizing losses in Credit Suisse’s trading book, to the detriment of customers and a competitive marketplace; and

(c) from approximately April 2010 to June 2013, Credit Suisse sought to engage in front-running customers’ limit and stop-loss orders through application of an algorithm

that appears to have been designed to trade ahead of customer's orders and increase profits.

(ii) *Deutsche Bank*

17. Contrary to the allegation contained at paragraph 20 of the Statement of Defence of Deutsche Bank, Deutsche Bank has been charged, sanctioned or fined by a governmental or regulatory agency in relation to the allegations made in this action.

18. On or about April 20, 2017, the U.S. Federal Reserve issued an Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, against Deutsche Bank in relation to unsafe and unsound practices in the FX Market.

19. The Order found that, from October 2008 through October 2013, Deutsche Bank engaged in the following misconduct:

(a) Deutsche Bank lacked adequate governance, risk management, compliance, and audit policies and procedures to ensure that Deutsche Bank's FX activities complied with safe and sound banking practices and applicable internal policies;

(b) FX traders in the spot market at Deutsche Bank routinely communicated with FX traders at other financial institutions through chatrooms on electronic messaging platforms accessible by traders at multiple institutions;

(c) Deutsche Bank's deficient policies and procedures prevented it from detecting and addressing unsafe and unsound conduct by certain of its FX traders, including in communications by traders in multibank chatrooms, consisting of:

- i. disclosures of trading positions and, on some occasions, discussions of coordinated trading strategies with traders of other institutions
- ii. discussions about possible FX benchmark fix-related trading with traders of other institutions;
- iii. attempts to influence contributions to submission-based foreign currency benchmarks in certain emerging market currencies in order to possibly benefit Deutsche Bank, both within Deutsche Bank and with traders of other institutions;
- iv. discussions by a Deutsche Bank trader regarding bid/offer spreads offered to FX customers for FX non-deliverable forward contracts with traders of other institutions in an emerging market currency; and
- v. discussions on trading in a manner to trigger or defend certain FX barrier options within Deutsche Bank, in order to benefit Deutsche Bank.

20. As a result of the above, Deutsche Bank was found by the U.S. Federal Reserve to have engaged in unsafe and unsound banking practices and was ordered to pay a USD\$136.9 million fine.

21. With respect to the allegation in the Statement of Defence of Deutsche Bank that traders at Deutsche Bank did not participate in chat rooms where Conspiratorial Acts occurred, traders at Deutsche Bank that participated in such chat rooms include: Michael Keogh; Lee Merchant; John Carrion; Stuart Dunn; Matthew Willis; Chris Fahy; Robert Wallden; James Ludlam; and Gayle Chang.

22. These traders participated in chat rooms where Conspiratorial Acts occurred, including: “Horras”; “FO Lion’s Bagels”; “0x1000002694096”; “0x0000000000027a1f”; “LEH/Citi/DB/RBC”; “0x3000000FC7951”; “Cit/NOM/DEU/BBI/BOM/MS”; “The Real Room”; “0x30000011859C6”; “G.O.A.T. -2”; “0x2000001D0DDD3”; and “0x1000001F92968”.

(iii) *RBC*

23. With respect to the allegation in the Statement of Defence of RBC that traders at RBC did not participate in chat rooms where Conspiratorial Acts occurred, traders at RBC that participated in such chat rooms include: Graeme King; Paul Adamson; Michael Weston; Eric Olson; and Mark Fornasiero.

24. These traders participated in chat rooms where Conspiratorial Acts occurred, including: “HORRAS”; “FO LION’S BAGELS”; “COGNOSCENTI”; “NORTHERN EXPOSURE”; “CIT/NOM/DEU/BBI/BOM/MS”; and “LEH/CITI/DB/RBC”

(iv) *TD*

25. With respect to the allegation in the Statement of Defence of TD that traders at TD did not participate in chat rooms where Conspiratorial Acts occurred, traders at TD that participated

in such chat rooms include: Ryan Pacifico; Nick Poulson; Arpit Patel; Philip Figuracion; Jamie Lawes; Mark Elflain; Stephen Molloy; and Martin Ryan.

26. These traders participated in chat rooms where Conspiratorial Acts occurred, including: “CAD Spot Monkeys”; “The Real Room”; “GBP Keeyyyyyyyyyssss”; “Upminster Ladies”; “FO Lion’s Bagels”; “The Young Gurus”; “0x4000001AB8EA2”; “0x4000001ABCEBC”; “0x4000001AB573F”; “0x00000000000027A1F”; “0x10000026B07AA”; “0x3000001DE3526”; and “0x2000000B92557”.

(v) *Bank of Montreal*

27. With respect to the allegation in the Statement of Defence of Bank of Montreal that traders at Bank of Montreal did not participate in chat rooms where Conspiratorial Acts occurred, traders at Bank of Montreal that participated in such chat rooms include: Kevin Eldridge; Jonathan Gencher; Derek Shewring; Ken Duerr; Matthew Larocque; and Rob Johnston.

28. These traders participated in chat rooms where Conspiratorial Acts occurred, including: “LEH/Citi/DB/RBC”; “0x4000001ACB573”; “Cit/NOM/DEU/BBI/BOM/MS”; “0x4000000A0426F”; “0x200000074E67A”; “0x1000000CA4F90”; and “0x20000011B3FFE”.

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Proceeding commenced at Toronto

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CREDIT SUISSE, DEUTSCHE BANK, RBC, BANK OF
MONTREAL AND TD**

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