

**ONTARIO
SUPERIOR COURT OF JUSTICE**

AMENDED THIS Nov 19, 2024
MODIFIÉ CE BETWEEN: PURSUANT TO
CONFORMÉMENT À

RULE/LA RÈGLE 28.02 (C) JULIUS DI FILIPPO and DAVID CARON

Plaintiffs

THE ORDER OF COA
L'ORDONNANCE DU
DATED / FAIT LE January 17, 2024

and

REGISTRAR
SUPERIOR COURT OF JUSTICE
PROFESSEUR
DES JURIS
DU BARRISTER

**THE BANK OF NOVA SCOTIA, SCOTIA CAPITAL (USA) INC.,
BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL
CANADA INC., BARCLAYS CAPITAL INC, BARCLAYS CAPITAL PLC,
DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES LIMITED,
DEUTSCHE BANK SECURITIES, INC., HSBC BANK CANADA, HSBC
BANK PLC, HSBC HOLDINGS PLC, HSBC SECURITIES (CANADA) INC.,
HSBC USA INC., HSBC SECURITIES (USA) INC., LONDON GOLD
MARKET FIXING LTD., SOCIÉTÉ GÉNÉRALE S.A., UBS AG, UBS BANK
(CANADA), UBS SECURITIES LLC, JPMORGAN CHASE & CO., J.P.
MORGAN BANK CANADA, J.P. MORGAN CANADA, JPMORGAN CHASE
BANK NATIONAL ASSOCIATION, MORGAN STANLEY CAPITAL
GROUP INC., BANK OF AMERICA CORPORATION, and MERRILL LYNCH
COMMODITIES INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED FRESH AS AMENDED STATEMENT OF CLAIM
Notice of Action Issued on December 18, 2015**

1. The plaintiffs claim on behalf of themselves and other members of the proposed Class (as defined in paragraph 4517 below):

- (a) A declaration that the defendants conspired, agreed and/or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the price of gold purchased in the gold market during the Class Period (as defined in paragraph 4517 below);

(b) A declaration that the defendants conspired, agreed and/or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the quoted bid-ask spreads used by participants in the gold market during the Class Period;

(c) A declaration that some or all of the defendants manipulated the price of gold during the Class Period;

(e)(d) Damages or compensation in an amount not exceeding \$1,000,000,000.00 for:

(i) loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("***Competition Act***");

(ii) civil conspiracy;

(iii) unjust enrichment; and

(iv) waiver of unlawful means tort; and

(iv)(v) breach of contract;

(d)(e) Punitive, exemplary and aggravated damages in the amount of \$250,000,000.00;

(f) Disgorgement of the revenues generated by the defendants;

(e)(g) An equitable rate of interest on all sums found due and owing or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43;

(f)(h) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and

(g)(i) Such further and other relief as this Honourable Court deems just.

THE NATURE OF THE ACTION

2. This action arises from a conspiracy among, and manipulative conduct engaged in by, the defendants to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably the price of gold and gold-related investment instruments, which include, without limitation: gold bullion and gold bullion coins, gold futures, shares of gold-focused ETFs, units of gold-focused mutual funds, gold certificates, gold leases, over-the-counter gold spot or forward transactions, and options on any of the foregoing (“**Gold Market Instruments**”) and to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably bid-ask spreads used by market participants in the gold market.

The Fixing

3. During the Class Period, the Bank of Nova Scotia, Barclays, Deutsche Bank, HSBC, and Société Générale (the “**Fixing Bank Defendants**”) met privately twice each London business day for what is known as the London Gold Market Fixing (hereafter the “**London Gold Fixing**” or “**Fixing**”). The Fixing produces a benchmark rate for gold, a price often agreed to be used in advance by buyers and sellers of gold (the “**Fix price**”). The Fix price affected the spot market for gold which, in turn, affected the broader market of Gold Market Instruments.

4. The Fixing was supposed to start and end with open competition. The process was to begin with the current, supposedly competitive, “spot” price for gold. From that starting point, a

competitive auction was to take place, the equilibrium of which would be published as the Fix price. The Fix price is the benchmark price for gold adopted at the Fixing. The Fix price is used directly in contracts for the purchase and sale of gold that had adopted as the price term the Fix price for a given day.

5. Beginning at least as early as 2004 and continuing through to ~~June 30, 2013~~December 31, 2016, the defendants conspired with each other to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably prices in the gold market. This was accomplished through daily conspiratorial communications under the guise of the arcane Fixing process, which provided a veneer of false legitimacy for collusion (the “**Fixing Communications**”).

Manipulation of Bid-Ask Spreads

6. In addition to the Fixing Communications, some or all of the defendants conspired with each other to fix, widen, control, maintain or enhance unreasonably bid-ask spreads in the gold market throughout the trading day. This was done to enhance the profits of the defendants at the expense of the Class Members, as defined below.

7. Market makers of Gold Market Instruments generate revenue by buying a particular instrument at a lower price than the price at which they sell it. The difference between the price at which a market maker is willing to buy and subsequently sell a Gold Market Instrument is known as the “bid-ask spread.” In order to fix, widen, control, maintain or enhance unreasonably bid-ask spreads, some or all of the defendants would share “flow information” about large current or incoming trades and the contents of their order books, including trigger prices of client stop-loss orders with the other conspirators. Combined with the Fixing Bank Defendants’ advance knowledge of the Fix price, by understanding order flow, it was possible

for the defendants to manipulate and fix their bid-ask spreads in the gold market to generate supra-competitive profits.

8. In furtherance of the conspiracy, agreement or arrangement, during the Class Period, senior executives, traders, and employees of the defendants, acting in their capacities as agents for the defendants: (i) fixed, maintained, increased, decreased, controlled, and unreasonably enhanced the price of physical gold and Gold Market Instruments as well as bid-ask spreads used by participants in the gold market; and (ii) communicated secretly using chat rooms, emails, text messages, telephone, and other means to share confidential customer information and to coordinate trading strategies to control or manipulate the price of gold and maintain supra-competitive bid-ask spreads.

9. Numerous criminal and regulatory investigations are underway concerning the collusion amongst the defendants, including in the United States, the United Kingdom, Switzerland, and Germany. Several individuals have pleaded guilty.

10. Following allegations of collusion affecting the London Gold Fixing, a third party administrator was put in place to operate and supervise the auctions that result in the determination of the Fix price for gold. As yet, no curative market mechanism has been introduced to address the conduct engaged in by some or all of the defendants to fix, widen, control, maintain or enhance unreasonably bid-ask spreads in the gold market.

Spoofing

11. In addition, some or all of the defendants engaged in “spoofing”, which involved placing bids and offers for gold and Gold Market Instruments with the intention of cancelling those orders before execution.

12. By placing these false bids or offers, a false impression of buying or selling interest was created and the price of gold and Gold Market Instruments was distorted, allowing the spoofing defendants to execute genuine bids or offers of gold and Gold Market Instruments at favourable prices that did not reflect prices set by legitimate forces of supply and demand.

13. The defendants’ longstanding conspiracy and pattern of manipulative conduct reflected a culture of increasing profits at the expense of the Class and the very integrity of the gold market. The defendants’ conspiracy to fix prices and manipulative conduct in the gold market impacted the pricing of Gold Market Instruments, resulting in loss and damage for the Class. The illegal acts alleged herein and particularized primarily in paragraphs 94-136 below, are collectively referred to as the “**Manipulative Conduct**”.

THE PLAINTIFFS AND THE CLASS

14. The plaintiff, Julius Di Filippo (“**Di Filippo**”), is an individual residing in Toronto, Ontario. During the Class Period, as defined below, Di Filippo transacted in several Gold Market Instruments whose price was based on ~~the Fix price~~ prices that were negatively impacted by the Manipulative Conduct by the defendants. These Gold Market Instruments included, but are not limited to, the Sprott Gold and Precious Minerals Fund (the “**SGPMF**”),

the Sprott Gold Bullion Fund (the “SGBF”), and the Sprott Physical Gold Trust (the “SPGT”) (collectively, the “Di Filippo Funds”).

~~13.~~15. The plaintiff, David Caron (“Caron”), is an individual residing in Kelowna, British Columbia. During the Class Period, as defined below, Caron transacted in several Gold Market Instruments whose price was based on ~~the Fix price and~~ prices that were negatively impacted by the manipulation of the Fix price ~~and~~ bid-ask spreads, and other manipulative conduct by the defendants. These Gold Market Instruments included, but are not limited to: the SPDR Gold Trust, the Horizons Beta Pro Comex Gold Bull Plus ETF, and the Sprott Physical Gold Trust (the “Caron Funds”).

~~14.~~16. The Di Filippo and Caron Funds’ values are derived from the Fix price. As such, the returns experienced by the Funds in respect of transactions related to Gold Market Instruments were lower than they would have been absent the ~~conspiracy.~~ Manipulative Conduct. These losses were passed on, in whole or in part, to the holders of the Funds, including Di Filippo and Caron. As a result of the conduct of the defendants as alleged herein, Di Filippo and Caron were deprived of transacting in a lawful, non-manipulated, competitive market for Gold Market Instruments and suffered damages as a result of the defendants’ unlawful conduct.

~~15.~~17. The plaintiffs seek to represent the following proposed class (the “Class” or the “Class members”):

All persons or entities in Canada who, between January 1, 2004 and ~~March 19,~~ December 31, 2016 (the “Class Period”) transacted in a Gold Market Instrument¹ either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that transacted in a Gold Market Instrument. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

¹*“Gold Market Instrument” includes but is not limited to: gold bullion or gold bullion coins, gold futures contracts traded on an exchange operated in Canada, shares in Gold ETFs, gold call options traded on an exchange operated in Canada, gold put options traded on an exchange operated in Canada, over-the-counter gold spot or forward transactions or gold call options, over-the-counter gold put options, leases for gold, gold certificates.*

THE DEFENDANTS

~~16.18.~~ The defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including unnamed co-conspirators.

~~17.19.~~ Where a particular entity within a corporate family of the defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into an agreement on behalf of, and reported these meetings and discussions to, their respective corporate families. The individual participants engaging in the Manipulative Conduct did so on behalf of their respective corporate families.

~~18.20.~~ Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this action, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged herein, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anti-competitive conduct.

~~19.21.~~ The terms “defendant” or “defendants” as used herein includes, in addition to those named specifically below, all of the named defendants’ predecessors, including those merged with or acquired by the named defendants and each named defendant’s wholly owned or

controlled subsidiaries or affiliates that played a material role in the unlawful acts alleged herein.

The Bank of Nova Scotia Defendants

~~20-22.~~ The defendant, **The Bank of Nova Scotia**, is a corporation organized and existing under the laws of Canada with its principal place of business in Toronto, Canada. The Bank of Nova Scotia is regulated under the *Bank Act*, SC 1991, c 46 (the “**Bank Act**”) as a Schedule I bank.

~~21-23.~~ The defendant, **Scotia Capital (USA) Inc.**, is a wholly-owned subsidiary of the Bank of Nova Scotia with its principal place of business in New York, New York. It is a registered broker dealer and executes client trades in a variety of Gold Market Instruments.

~~22-24.~~ The businesses of each of the defendants The Bank of Nova Scotia and Scotia Capital (USA) Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the ~~Conspiratorial Acts described below.~~ Manipulative Conduct. The defendants, The Bank of Nova Scotia and Scotia Capital (USA) Inc., are collectively referred to as “BNS.”

~~23-25.~~ BNS operates an online trading platform called Scotia iTRADE (“**iTRADE**”) for trading, among other things, commodities. BNS clients can trade gold derivatives and purchase gold certificates and gold bars on the iTRADE system. BNS also conducts proprietary trading in the gold market. During the Class Period, BNS was a member and owner of the London Gold Market Fixing Ltd., a market-making and clearing member of the London Bullion Market Association (“**LBMA**”), and entered directly into gold spot, forward, option and Gold ETF share transactions with members of the Class.

Barclays Defendants

24-26. The defendant, **Barclays PLC**, is a British public limited company headquartered in London, England. In Canada, Barclays Bank plc is regulated under the *Bank Act* as a Schedule III bank.

25-27. The defendant, **Barclays Bank PLC**, is a wholly owned subsidiary of Barclays PLC with its principal place of business in New York, New York.

26-28. The defendant, **Barclays Capital PLC**, is a wholly owned subsidiary of Barclays PLC with its principal place of business in London, England.

27-29. The defendant, **Barclays Capital Inc.**, is a wholly owned subsidiary of Barclays PLC with its principal place of business in New York, New York.

28-30. The defendant, **Barclays Capital Canada Inc.**, is a wholly owned subsidiary of Barclays Bank PLC headquartered in Toronto, Ontario and incorporated under the laws of Canada.

29-31. The businesses of each of the defendants Barclays PLC, Barclays Bank PLC, Barclays Capital Inc. and Barclays Capital Canada Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the ~~Conspiratorial Acts~~ described below. Manipulative Conduct. The defendants, Barclays PLC, Barclays Bank PLC, Barclays Capital Inc. and Barclays Capital Canada Inc., are collectively referred to as “Barclays.”

30-32. Barclays executes client trades in the physical gold market, on exchanges, in gold derivatives, and in shares of Gold ETFs, and also operates a system called BARX for

commodities trading. Clients of Barclays can make orders at the London Gold Fixing price or trade gold derivatives on the BARX system. Up until 2012, Barclays also conducted proprietary trading in the gold market. During the Class Period, Barclays was a member and owner of the London Gold Market Fixing Ltd., a market-making and clearing member of the LBMA, and entered directly into gold spot, forward, option and Gold ETF share transactions with members of the Class.

Deutsche Bank Defendants

~~31~~33. The defendant, **Deutsche Bank AG**, is a corporation organized and existing under the laws of Germany with its principal place of business in Frankfurt, Germany and branches and offices in Toronto, Ontario. Deutsche Bank AG is regulated in Canada under the *Bank Act* as a Schedule III bank

~~32~~34. The defendant, **Deutsche Bank Securities Limited**, is a wholly owned subsidiary of Deutsche Bank AG with its principal place of business in Toronto, Ontario.

~~33~~35. The defendant, **Deutsche Bank Securities Inc.**, is a wholly owned subsidiary of Deutsche Bank AG with its principal place of business in New York, New York.

~~34~~36. The businesses of each of the defendants Deutsche Bank AG, Deutsche Bank Securities Limited and Deutsche Bank Securities Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the ~~Conspiratorial Acts described below~~ Manipulative Conduct. The defendants, Deutsche Bank AG, Deutsche Bank Securities Limited and Deutsche Bank Securities Inc., are collectively referred to as “Deutsche Bank.”

~~35.37.~~ Deutsche Bank executes client trades in the physical gold market, on exchanges, in gold derivatives, and in shares of Gold ETFs. Deutsche Bank also conducts proprietary trading in the gold market, and provides an electronic platform named “Autobahn” for trading gold products. During the Class Period, Deutsche Bank was a member and owner of the London Gold Market Fixing Ltd., a market-making and clearing member of the LBMA, and entered directly into gold spot, forward, option and Gold ETF share transactions with members of the Class.

HSBC Defendants

~~36.38.~~ The defendant, **HSBC Bank plc**, is a company organized and existing under the laws of the United Kingdom with its principal place of business in London, England and subsidiaries in Canada.

~~37.39.~~ The defendant, **HSBC Holdings plc**, is a wholly owned subsidiary of HSBC Bank plc with its principal place of business in London, England.

~~38.40.~~ The defendant, **HSBC Bank Canada**, is regulated in Canada under the *Bank Act* as a Schedule II bank and has its head office in Vancouver, British Columbia.

~~39.41.~~ The defendant, **HSBC Securities (Canada) Inc.**, is a wholly owned subsidiary of HSBC Bank Canada headquartered in Toronto, Ontario.

~~40.42.~~ The defendant, **HSBC USA Inc.**, is a wholly owned subsidiary of HSBC Bank plc with its principal place of business in New York, New York.

~~41.43.~~ The defendant, **HSBC Securities (USA) Inc.**, is a wholly owned subsidiary of HSBC Bank plc with its principal place of business in New York, New York.

42.44. The businesses of each of the defendants HSBC Bank plc, HSBC Holdings plc, HSBC Bank Canada, HSBC Securities (Canada) Inc., HSBC USA Inc. and HSBC Securities (USA) Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the ~~Conspiratorial Acts described below~~ Manipulative Conduct. The defendants, HSBC Bank plc, HSBC Holdings plc, HSBC Bank Canada, HSBC Securities (Canada) Inc., HSBC USA Inc. and HSBC Securities (USA) Inc., are collectively referred to as “HSBC.”

43.45. HSBC executes client trades in the physical gold market, on exchanges, in gold derivatives, and in shares of Gold ETFs. While HSBC does not have a formal proprietary gold trading business, it does take positions on the gold derivatives market. During the Class Period, HSBC was a member and owner of the London Gold Market Fixing Ltd., a market-making and clearing member of the LBMA, and entered directly into gold spot, forward, option and Gold ETF share transactions with members of the Class.

Société Générale

44.46. The defendant, **Société Générale S.A. (“SoGen”)**, is a financial services company headquartered in Paris, France.

45.47. SoGen executes client trades in the physical gold market, on exchanges, in gold derivatives, and in shares of Gold ETFs. SoGen operates the Alpha Precious Metals electronic platform for trading gold products. SoGen also conducts proprietary trading in the gold market. During the Class Period, SoGen was a member and owner of the London Gold Market Fixing Ltd. During the Class Period, SoGen also was a market-making member of the LBMA, and entered directly into gold spot, forward, option, and Gold ETF share transactions with members of the Class.

UBS Defendants

46.48. The defendant, **UBS AG**, is a Swiss company based in Basel and Zurich, Switzerland. UBS AG is regulated in Canada under the *Bank Act* as a Schedule III bank.

47.49. The defendant **UBS Securities LLC**, a wholly owned subsidiary of UBS AG, is a Delaware company with its principal place of business in Stamford, Connecticut.

48.50. The defendant, **UBS Bank (Canada)**, is regulated in Canada under the *Bank Act* as a Schedule II bank and has its head office in Toronto, Ontario.

49.51. The businesses of each of the defendants UBS AG, UBS Securities LLC and UBS Bank (Canada) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the ~~Conspiratorial Acts described below~~ Manipulative Conduct. The defendants, UBS AG, UBS Securities LLC and UBS Bank (Canada), are collectively referred to as “UBS.”

50.52. UBS executes client trades in the physical gold market, on exchanges, in gold derivatives, and in shares of Gold ETFs. UBS operates electronic platforms for trading gold products. UBS also conducts proprietary trading in the gold market and operates, sponsors, manages, and trades shares of Gold ETFs. During the Class Period, UBS was a market-making and clearing member of the LBMA, and entered directly into gold spot, forward, option, and Gold ETF share transactions with members of the Class.

JPMorgan Defendants

53. The defendant, **JPMorgan Chase & Co.**, is a Delaware corporation headquartered in New York, New York.

54. The defendant, **J.P. Morgan Bank Canada**, is regulated in Canada under the *Bank Act* as a Schedule II bank and has its head office in Toronto, Ontario.

55. The defendant, **J.P. Morgan Canada**, is regulated in Canada under the *Bank Act* as a Schedule II bank and has its head office in Toronto, Ontario. J.P Morgan Canada is currently in liquidation.

56. The defendant, **JPMorgan Chase Bank National Association**, is regulated in Canada under the *Bank Act* as a Schedule III bank.

57. The businesses of each of the defendants JPMorgan Chase & Co, J.P. Morgan Bank Canada, J.P. Morgan Canada, and JPMorgan Chase Bank National Association are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the Manipulative Conduct. The defendants, JPMorgan Chase & Co, J.P. Morgan Bank Canada, J.P. Morgan Canada, and JPMorgan Chase Bank National Association, are collectively referred to as "JPMorgan".

Morgan Stanley

58. The defendant, **Morgan Stanley Capital Group Inc. ("Morgan Stanley")**, is a Delaware corporation headquartered in New York, New York.

Bank of America and Merrill Lynch

59. The defendant, **Bank of America Corporation ("BAC")**, is a multinational investment bank and financial services company headquartered in Charlotte, North Carolina. It has a central hub in Toronto.

60. The defendant, **Merrill Lynch Commodities Inc. (“Merrill Lynch”)**, operated global commodities trading business that included the trading of precious metals futures contracts and related products. In 2008, it became an indirectly held, wholly owned subsidiary of BAC.

61. The businesses of each of the defendants BAC and Merrill Lynch are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the Manipulative Conduct.

London Gold Market Fixing Limited

~~51-62.~~ The defendant, **The London Gold Market Fixing Limited (“LGMF”)**, is a private company organized and existing under the laws of the United Kingdom with its principal place of business in London, England. LGMF is owned and controlled by Barclays, Deutsche Bank, HSBC, BNS, and SoGen and these five banks are the only members of LGMF.

~~52-63.~~ LGMF was founded in 1994 by the five banks that then conducted the Fixing. From 2004 to 2013, LGMF was owned and controlled by the Fixing Bank Defendants. The day to day business of LGMF was conducted by a group of directors who were selected by the Fixing Bank Defendants. Nearly all of LGMF’s revenue was derived from the Fixing Bank Defendants’ membership fees such that LGMF was financially dependent on the Fixing Bank Defendants.

~~53-64.~~ At all material times, LGMF was part and parcel of the defendants’ conspiracy as the LGMF is a shell for the operation of the Fixing and functioned as a vehicle for the defendants’ conspiracy and as an agent for the Fixing Bank Defendants.

FACTUAL BACKGROUND

The London Gold Fixing

~~54~~65. The Fixing was originally established to determine a daily benchmark price for one troy ounce of gold at predetermined times during the London trading day. In the physical gold market there is no central price at any given time. Instead, all of the gold market-making banks, including the Fixing Bank Defendants, and dealers provide competing bid and ask quotes directly to their clients and customers. The Fix price was supposed to provide buyers and sellers an objective benchmark that isolated both parties from the noise of the trading day, or the bias of any one market maker. The Fix price is of utmost importance to the market for Gold Market Instruments because movements in the Fix price are immediately and consistently reflected in movements in the values of Gold Market Instruments.

~~55~~66. The Fixing Bank Defendants are one type of “market makers” in the gold market, meaning that each stands ready to buy and sell gold on a regular and continuous basis. The Fixing Bank Defendants at any given time have gold orders on their own behalf (*i.e.*, proprietary trading), their clients’ behalf (*i.e.*, brokerage trading), or frequently some of each.

~~56~~67. Client orders will generally be “limit orders,” meaning an order to buy gold at no more than a specific price or to sell gold at no less than a specific price. A buy limit order is executed unless the price is above a pre-set value. A sell limit order is executed unless the price is below a pre-set value.

~~57~~68. The contemporary London Gold Fixing occurs twice each London business day at 10:30 AM and 3:00 PM London time, known as the “AM Fix” and the “PM Fix” respectively. During

the Class Period, the Fixing was administered by LGMF, the members of which are the Fixing Bank Defendants, with the exception of Deutsche Bank, which was a member until resigning its seat in May 2014 after initially trying but failing to sell its seat as a Fixing member. Later, Deutsche Bank announced its intention to sell its precious metals trading business.

~~58~~.69. The contemporary London Gold Fixing has occurred by telephone conference call since 2004. Prior to 2004, the London Gold Fixing occurred in person at the London offices of N.M. Rothschild & Sons. Leading up to the Fixing, the Fixing Bank Defendants' trading rooms are in constant communication with select clients who are interested in dealing in gold if the price is right.

~~59~~.70. During the Class Period, the lead Fixing Bank Defendant (known as the "**Chair**") began the fixing process by proposing a price near the current gold spot price. The participants then simulated the result of trading at that price as follows. First, each of the Fixing Bank Defendants looked at its limit orders and determined how many were eligible to trade at that price. They considered how much gold their proprietary trading desk would trade at the same price. The Fixing Bank Defendants then stated a single value, the net amount (in ounces) of gold they wished to buy or sell.

~~60~~.71. After each Fixing Bank Defendant provided this value, they determined if the overall net amount was within 50 bars. If so, all transactions succeeded and the Fix was complete. Otherwise, the Chair changed the proposed price.

~~61~~.72. If the amount of gold the Fixing Bank Defendants proposed to buy was higher than the amount they proposed to sell, the Chair raised the price. That decreased the number of proposed purchases, both because more buy limit orders would fail and because of proprietary traders. At

the same time, it increased the number of proposed sales, both because more sell limit orders would succeed and because of proprietary trading.

~~62.73.~~ Conversely, if the amount proposed for sale was higher, the Chair lowered the price. This would have the exact opposite effects from above, increasing the number of proposed purchases and decreasing the number of proposed sales.

~~63.74.~~ This process repeated until a Fix was found.

~~64.75.~~ At any time, a Fixing Bank Defendant, or their underlying customers, could increase, decrease or withdraw a previously-declared selling or buying order or place a completely new order. In such a circumstance, if the Fixing Bank Defendant required a short pause in order to enable it to recalculate their overall level of interest, then the Fixing Bank Defendant could call “flag,” which brought the Fixing to a temporary halt. The Chair could not fix the price while a flag prevailed.

~~65.76.~~ Once a Fix was found, the call then concluded and the price was transmitted to the LBMA for publication.

~~66.77.~~ The Fixing Bank Defendants were in direct, private communication with each other and other bullion banks concerning the price of gold at least twice each day as the Fixing occurred. As such, the Fixing Bank Defendants were afforded a unique opportunity for daily communications and collusions. In any other setting, a daily meeting between a small group of horizontal competitors would have immediately raised suspicion. But here, due to the anachronism of the longstanding tradition of the Fixing, the Fixing Bank Defendants were able to form the core of a conspiracy, as they could coordinate daily without it seeming out of place.

The tradition of the Fixing provided a veneer of legitimacy to what was an unlawful price fixing conspiracy.

~~67.78.~~ The Fixing Bank Defendants administered the Fixing themselves until recently through LGMF, with no oversight by any independent organization. Indeed, the Fixing was carried out, quite deliberately, in such a way as to ensure that the “cover” the Fixing provided to the Fixing Bank Defendants’ conspiratorial meetings remained hidden.

~~68.79.~~ No communications, meeting minutes, or other records of what occurred during the “auction” – such as how the “bids” played out during the course of the purported auction – were kept as a matter of course.

~~69.80.~~ In addition to the illicit activity engaged in by the Fixing Bank Defendants during the Fixing, some or all of the defendants conspired with each other to maintain supra-competitive bid-ask spreads in the gold market throughout the trading day and around the Fix by sharing order flow information with each other in the manner described herein.

The London Bullion Market

~~70.81.~~ By the late 1800s, London developed as the centre of the world gold trade. The gold trade that takes place in London is known as the London Bullion Market. Historically, the participants in this London gold market compiled lists of accredited smelters and assayers whose gold bars they would accept without question, in settlement against transactions conducted between each other and with other acceptable counterparties. Such bars became known as London Good Delivery, which is the standard for gold used to settle transactions in the London Bullion Market. Today, London Good Delivery gold is traded in troy ounces.

~~71-82.~~ The London Bullion Market does not have a central clearing house but instead operates on an over-the-counter basis. This trading activity is the London Bullion Market, which comprises five functions: (1) gold clearing by the LBMA clearing members including Barclays, BNS, Deutsche Bank, HSBC, and UBS; (2) gold vaulting including by some of the defendants; (3) the London Good Delivery system and rules; (4) pricing by LBMA market-makers including all of the defendants; and (5) gold accounts held by all of the defendants and others.

~~72-83.~~ The Fixing, operated by the Fixing Bank Defendants via LGMF, is an integral part of the London Bullion Market and global gold markets. The LBMA holds out the Fix price as a benchmark that is “globally accepted” as the basis for pricing a variety of gold transactions and used by “[c]lients around the world [who] wish[] to buy or sell precious metals[]” and Gold Market Instruments.

The Various Gold Market Instruments

~~73-84.~~ ***Spot contracts.*** Some of the international demand for gold is met through spot contracts on the over-the-counter segment of the market for Gold Market Instruments. A spot contract is a contract where a buyer and seller agree to settlement (payment and delivery) on a spot date, which is normally two business days after the trade date. The settlement price is called the spot price. Sales at “spot” are often tied or keyed to the London PM Fix on the day of the sale.

~~74-85.~~ ***Gold derivatives.*** There is also a large market consisting of gold derivatives, financial instruments whose value depends on the underlying price of physical gold on the spot market, and which are often pegged to the London Fixing (*i.e.*, settled by reference to the Fix price).

~~75:86.~~ Gold derivatives include gold futures, forwards, and options contracts. A gold forward contract is a bilateral agreement for the purchase or sale of an agreed amount of gold at a specified date in the future. A gold futures contract is similar to a futures contract, but with standardized terms and daily mark-to-market cash flow requirements. These types of contract can be traded over-the-counter (a forward) or on an exchange (a future).

~~76:87.~~ **Exchange-traded funds (“ETFs”)** issue securities that track an industry index (e.g., the S&P 500), a commodity (e.g., gold or silver), or a basket of assets in the same way as an index fund, but which are shares that trade on an exchange. Securities issued by ETFs experience price changes throughout the day reflecting supply and demand as they are purchased and sold, where that supply and demand is heavily influenced by supply and demand within the industry, or for the commodity or assets that the ETF tracks. There are ETFs that invest only in gold bullion and whose shares are linked directly to gold bullion prices (“**Gold ETFs**”).

~~77:88.~~ **Mutual Funds.** There are many mutual funds that transact in various Gold Market Instruments based on the investment strategy set by fund managers. Typically, the net asset value of the mutual funds is based on the spot price of gold.

~~78:89.~~ **Gold Certificates.** These are certificates that are issued to holders of gold and that provide a vehicle to invest in gold without having the physical metal. The value of gold certificates is based on the spot price of gold.

~~79:90.~~ **Gold Leases.** These are transactions that typically occur between bullion banks and central banks whereby the central bank will loan gold to the bullion bank at a certain rate of interest. The bullion banks will then sell the gold on the open market and buy treasuries in return. Since at some point the bullion banks must return the leased gold to the central bank,

they are exposed to the risk that if prices in the gold market rise, they will have to buy back the gold they leased at a higher price than that at which they sold it. As such, in order to hedge the risk of this occurring, bullion banks will buy gold futures.

The Fixing Impacts the Prices of Gold Market Instruments

~~80-91.~~ Manipulating the Fixing directly impacts the price the defendants would pay for gold, and directly impacts the cash flows for Fix price-linked derivatives. Because of the prominence of the Fix price as a measure of gold prices generally, such manipulation presented the opportunity to profit on other Gold Market Instruments as well. Foreknowledge as to an upcoming movement in the price of gold would create numerous opportunities to profit in many different outlets for Gold Market Instruments. This is because Gold Market Instruments often move together with the Fix price.

~~81-92.~~ The Fix price also impacts the price of gold futures and options on these futures contracts, and vice versa. This is because the price of derivatives and the spot gold prices closely correlate to each other. Changes in the price in one will be almost immediately reflected in the other.

~~82-93.~~ Because the futures price is essentially an expectation of what the spot price will be for the underlying futures contract at maturity, gold futures and physical prices are very closely correlated.

Maintaining Supra-Competitive Bid-Ask Spreads and Other Manipulative Conduct Affects the Price of Gold Market Instruments

~~83-94.~~ The defendants conspired to fix bid-ask spreads in the gold market. Maintaining supra competitive bid-ask spreads impacts the price of Gold Market Instruments whose price is based

on the spot price of Gold. Combined with the Fixing Bank Defendants' advance knowledge of the Fix price, by understanding order flow, the defendants manipulated and fixed their bid-ask spreads in the gold market to generate supra-competitive profits.

~~84.95.~~ The defendants' traders "front run" on customer information when they receive customer orders that could move the gold market and then trade their own firm's proprietary positions prior to executing their customers' market-moving trades. Such orders give traders information about the direction in which the gold market will move. The traders use this information to take positions that benefit the defendants to the detriment of the Class.

~~85.96.~~ Absent collusion, a defendant "front running" the gold market would still face the risk that another defendant with a larger position could trade in the opposite direction at the same time. If this were to happen, the defendant's strategy would backfire, and the defendant would, in industry jargon, get "run over".

~~86.97.~~ To avoid the risk of getting run over, the defendants agreed to "front run" together by sharing aggregate customer orders and agreeing to coordinate the sequencing of their own trades to their advantage and to the detriment of the Class.

98. In addition, and as described further below, the defendants engaged in spoofing which distorted the price of gold and Gold Market Instruments.

THE CONSPIRACY MANIPULATIVE CONDUCT

Defendants ~~Conspired~~ Engaged in Manipulative Conduct to Control and Fix Prices and Supply of Gold and Gold Market Instruments

~~87.~~ The acts alleged in the following paragraphs are collectively referred to as the "**Conspiratorial Acts.**"

~~88.99.~~ Beginning at least as early as January 1, 2004 and continuing until at least ~~June 30,~~ December 31, 2016, the defendants manipulated the Fixing so that the Fix price was at artificial levels compared to what competitive market forces would have dictated. This not only caused artificial prices in the spot market, but also artificial prices for both futures and options, for Gold ETFs, and for other Gold Market Instruments.

~~89.100.~~ The defendants' manipulation of the gold benchmark was intended to and did directly affect the price of physical gold, gold futures, Gold ETF shares and other Gold Market Instruments, causing the Class losses and damage. The defendants had control over the gold markets and the Gold Market Instruments that were tied to the Fix price.

~~90.101.~~ The defendants' manipulation of the Fix price affected the prices at which Class members purchased or otherwise transacted in Gold Market Instruments with the defendants. The defendants' manipulation of the Fix price also directly affected the prices of Gold Market Instruments that members of the Class purchased from or otherwise transacted with non-defendants in the following fashion. The manipulated Fix price was incorporated in countless Gold Market Instruments and gold derivatives whose value was settled by reference to the Fix price.

~~91.102.~~ The defendants' manipulation of the Fix price allowed non-defendants to trade at the same manipulated Fix price. Those non-defendants did in fact sell or otherwise trade Gold Market Instruments at the same manipulated Fix price.

~~92.103.~~ The defendants' manipulation of the Fix price caused the Class loss. But for the defendants' manipulation of the Fix price, the non-defendants would not have sold or otherwise traded Gold Market Instruments at the manipulated Fix price.

~~93.~~104.The defendants were also large participants in the market for physical gold. Advance knowledge of downward movements at the Fixing allowed the defendants to buy gold cheaper than they would have been able to absent collusion, thereby profiting at the expense of members of the Class when the price of gold rose.

~~94.~~105.The defendants were also large participants in the market for Fix price-denominated derivatives. These contracts, like those for physical sales of gold, directly incorporate the Fix price in order to determine the cash flows between the parties. Suppressing the Fix price during the Fixing would thus make one participant profit at the expense of the other. The defendants can and did profit from their collusion in this way at the expense of members of the Class.

~~95.~~106.The defendants were also large participants in the market for such contracts as “digital options,” and have contracts that have similar market-based triggers such as “stop-loss” orders¹ and “margin” calls.² These contracts in various forms require the defendants to act, or not act, based on whether the price of gold crosses a specific threshold. By accepting these orders, the banks agreed to transact with the client at a specified price if the gold benchmark reached that price. By manipulating the Fixing, the defendants frequently were able to trigger (or avoid triggering) such orders, avoiding much of the risk in such obligations. The defendants were also able to make margin calls that otherwise would not have been made. The defendants can and did profit from their collusion in this way, at the expense of members of the Class.

¹ A “**stop-loss order**” is a specified level at which a financial product (or commodity) should be sold to limit potential losses. Clients place stop-loss orders with entities such as the defendants to help manage the risk arising from movements in gold prices.

² A “**margin call**” is a demand from a broker to an investor to deposit additional funds or securities so that the investor’s margin account is raised to a certain level. Margin calls are made when the funds or securities in an investor’s margin account need to be raised because they have fallen below a certain level calculated by the broker as being necessary to cover potential losses.

96-107.The defendants all acted as market makers in the gold market during the Class Period. As such, the defendants had unique access to “order flow” information related to client orders and other sensitive non-public market information. This information was shared among some or all of the defendants throughout the trading day, including around the Fix, in order to create and maintain supra-competitive bid-ask spreads in the gold market. The purpose of this was to enhance their profits at the expense of the Class.

108. The defendants also engaged in spoofing, including conspiratorial spoofing. In doing so, the defendants presented false information to distort the price of gold and Gold Market Instruments, which then allowed them to execute trades at these distorted prices, at the expense of the Class.

The Conspiratorial Communications

97-109.The Fixing Bank Defendants met (later, by conference call) twice a day via the LGMF. The discussions by their nature involved the sharing of information, but the standing meeting also presented the further opportunity for daily collusion under the cover of this anachronistic process. The call was unregulated, unrecorded and no records of the communications during the calls were kept.

98-110.Various electronic communication platforms were employed by the defendants’ senior level traders to give effect to the conspiracy and to provide a means by which confidential information concerning customer orders could be improperly shared among the defendants. These electronic communication platforms include chat rooms, instant messages, proprietary trading venues and platforms, and emails. The use of electronic communication platforms allowed the defendants to simultaneously communicate with numerous other defendants on a

global basis. The defendants used code words to avoid detection from authorities. The defendants formed these chat rooms with the specific intent to collude with each other to control or manipulate the price of gold and Gold Market Instruments and to maintain supra-competitive bid-ask spreads throughout the trading day. The defendants also used their proprietary trading platforms to signal desired price levels for gold by placing sequential identical quotes that constitute outliers when considered against prevailing market prices at the time. These outliers acted as signalling mechanisms whereby defendants and co-conspirators indicated the price to which they intended to manipulate the Fixing.

99.111. The following examples are some, but not all, instances of conspiratorial chat room communications between traders from some of the defendants during the Class Period:

- (a) In 2007, on a difficult trading day, a trader from Deutsche Bank relayed to his counterpart from the Bank of Nova Scotia that “at least the fix will be fun . . . make it all back there!!!!!! :l.”
- (b) Again in 2007, a Deutsche Bank trader remarked to a trader at The Bank of Nova Scotia “hahahahaha, we were all short going into that fix.”
- (c) In 2008, an HSBC trader told a Deutsche Bank trader: “i kick some out and take it back after the fix,” pointing to a strategy to sell gold at a high price and buy it back later at a lower price “after the fix.” In response, the Deutsche Bank trader joked that “yeah no one else is thinking that : - l.”

(d) In 2011, a Deutsche Bank trader remarked to an HSBC trader that “everyone shrt into the fix i swear it’s the only time ppl trade,” to which the counterpart at HSBC replied “hahahhahahahahahahahha shocking absolutely shocking.”

(e) In 2012, a Deutsche Bank trader said to his counterpart at Barclays, “im glad u are now interbank.” The Barclays trader asked why, and the Deutsche Bank trader replied “it’s a good alliance.” The same day, that same Deutsche Bank trader remarked to a different trader at Barclays, “im a tiny buyer at the mom.” The Barclays trader answered “think im buyer too,” to which the Deutsche Bank trader replied “means we fix lower.”

The Defendants Shared Confidential Customer Order Information to Control the Fixes

~~100~~.112._____ Through electronic means, the defendants shared their confidential customer orders for gold with one another. Each defendant aggregated its customers’ orders to determine what its individual net position was going to be during the Fixings. The Fixing Bank Defendants then shared this information with one another to determine their aggregate net position. By sharing and aggregating their confidential customer order flows, the Fixing Bank Defendants had access to substantial information that was not otherwise available to the investing public. As a result, the Fixing Bank Defendants could predict the movement of the price of gold more accurately than would have been possible absent collusion.

Spoofing and Methods of Controlling the Fixes

~~101~~.113._____ To execute their conspiracy, the defendants employed a number of tactics to control or manipulate the Fixings. These controlling or manipulative tactics included what is known as “netting off,” “building,” “giving the ammo,” and “taking the ammo.” The defendants

undertook these trading strategies together in order to minimize their risk and maximize the impact of their scheme. For example, on March 1, 2011, traders at UBS and Deutsche Bank discussed prior attempts to profit from the Fixing and some tactics in doing so:

Trader	Message
Deutsche Bank	speaking of fix i gotta do that when im there lol
UBS	its not rocket science
UBS	do ur guys see much fixing stuff there
Deutsche Bank	on the pm fix its decent actually
Deutsche Bank	am fix i just muck ar[ou]nd
UBS	i've seen fixings go real wrong before
UBS	like -300k pnl
Deutsche Bank	wtf
Deutsche Bank	wrong side?
UBS	not always fun and g[a]mes
UBS	nope basically bad timing
UBS	push too early
UBS	run out of ammo at the end
Deutsche Bank	i see

~~402-114.~~ Each of these controlling or manipulative strategies was accomplished through the sharing of confidential customer information and trading positions. By sharing their confidential individual trading positions, the defendants gained an understanding of the overall order flows across the gold market.

115. The defendants also engaged in “spoofing,” including conspiratorial spoofing, to control and manipulate prices and the Fixings.

Netting Off

~~403-116.~~ Gold traders in the chat rooms with net orders in the *opposite* direction to the desired movement at the time of the Fixings would seek before the Fixing to transact or “net

off” their orders with third parties outside the chat room rather than with gold traders in the chat room. This maintained the volume of orders in the desired direction held by the traders for the Fixing Bank Defendants and avoided orders being transacted in the opposite direction during the Fixings. This process has also been referred to as “*taking out the filth*” or “*clearing the decks*.”

Building

104.117.____ Gold traders in the chat room with net orders in the same direction as the desired movement at the time of the Fixings would seek to transact with other conspirators. That way, one of the defendants could more easily control the process of ensuring the trades had the maximum effect at just the right time. This process was referred to as “building” or “*giving you the ammo*.” This practice increased the influence of the traders at the Fixings by allowing them to control a larger proportion of the overall volume than they would otherwise have or to adopt particular trading strategies.

Painting the Screen

105.118.____ If the defendants did not have enough “ammo” to move the market, they would invent it. The process, called “*painting the screen*,” involves placing orders to give the illusion of activity that would impact the Fixing with the intention that these orders would be cancelled after the Fixing had been closed.

Rigging the Auction

106.119.____ Additionally, the defendants had a direct means of affecting the Fixing by controlling the “auction” itself. The defendants coordinated trading activities prior to the Fixing

window so as to cause the price to move in the desired direction, thereby making it easier to achieve the desired result during the “auction.”

407.120. The Fixing Bank Defendants had an additional mechanism at their disposal. Acting on behalf of all members of the conspiracy, a Fixing Bank Defendant placed “auction” bids and quotes at prices during the Fixings regardless of what their true aggregate demands were that had been funneled to them or were on their order books. Rather than participating in good faith, the Fixing Bank Defendants could simply submit aggregate “auction” “bids” that understated or overstated demand, particularly when doing so benefitted each defendant’s own proprietary positions even as it harmed the bank’s clients.

Spoofing

121. The defendants engaged in “spoofing,” including conspiratorial spoofing, which involved placing false bids and offers for gold and Gold Market Instruments at artificial prices either above or below where the market was trading, and then quickly canceling those orders before they could be filled.

122. Spoofing distorted the price of gold and Gold Market Instruments in the direction of the fake order by creating the false appearance of supply and demand at the “spoof” price level. This allowed the defendants to buy or sell gold at a more favorable price than they otherwise could have.

The Defendants’ ~~Conspiracy~~ Manipulative Conduct Resulted in Artificial Prices for Gold Market Instruments

408.123. The prices of Gold Market Instruments are highly correlated with the Fix price.

~~109~~.124. The Fixings were supposed to be, and were understood by market participants as being, a reliable benchmark price for gold, including the market for Gold Market Instruments, because they reflected actual market supply and demand. This was not the case for at least two reasons.

~~110~~.125. First, the Chair of the Fixings was supposed to commence the auction process used in the Fixing by announcing (and then soliciting supply or demand levels from defendants in response) a figure that was the then-prevailing US Dollar spot price for gold. In other words, the *starting point* for each day's Fixing was held out to be the spot price of gold. The spot price for gold is the price for delivered physical gold, and thus the price upon which all gold-based or gold-derived investments are based.

~~111~~.126. Second, the auction that followed the Chair's announcement of the prevailing spot price was supposed to be a *genuine and competitive* auction, based on *actual market supply and demand* for gold. The Fixing Bank Defendants were supposed to announce whether they were buyers or sellers at the Chair's price based on net supply/demand for spot gold from their order books. This supply and demand was supposed to consist of orders from customers – market participants free to place orders with any Fixing Bank Defendant if one defendant's prices were not sufficiently competitive – and orders from defendants themselves, where defendants were engaging in proprietary trading, acting as direct market participants.

~~112~~.127. The Fixing Bank Defendants' manipulative conduct caused either: (1) the price at which the Chair commenced the Fixing to be artificial, or (2) the levels of market supply and demand that moved the Fixing price to the level at which it was ultimately fixed to be artificial.

113.128. By setting the price of the Fixing at a level different from what would have resulted absent collusion, the Manipulative Conduct, the Fixing Bank Defendants manipulated the spot market and futures markets for gold and thereby affected the broader market for Gold Market Instruments as the price for each of the Gold Market Instruments implicitly and expressly followed the Fixing prices. Furthermore, the defendants' spoofing also manipulated the spot and futures markets for gold and Gold Market Instruments.

114.129. As a result, Class Members who engaged in transactions for Gold Market Instruments suffered damages and loss. Where the Class Member engaged in transactions on behalf of another Class Member (including as part of managing the risks in an equity fund, mutual fund, pension plan or other investment vehicle), at least part of the artificial prices were passed-on to the holder of the investment vehicle either as a result of deflated value of the investment vehicle or through increased management fees imposed as a percentage of assets under management. As a result, the Class suffered losses in respect of both upward and downward price movements.

Concealment of the Conspiracy and Manipulative Conduct

115.130. During the Class Period, the defendants and their employees and agents, took active steps to, and did, conceal the unlawful conspiracy Manipulative Conduct from Class Members.

116.131. The defendants fraudulently concealed their anti-competitive activities by, among other things, engaging in secret communications in furtherance of their conspiracy, agreement or arrangement. These communications occurred within non-public chat rooms, instant

messages, and through email, none of which was transparent to the plaintiffs or other Class Members.

~~117~~.132._____The defendants actively and jointly concealed their collusive conduct. The defendants agreed among themselves not to publicly discuss or otherwise reveal the nature and substance of the acts and communications in furtherance of the agreements and arrangements alleged herein. The defendants also used code words and deliberately misspelled words to evade detection.

~~118~~.133._____The Fixings occur in a secret and archaic process from which no records are kept. The defendants' trades and trading strategies are not public information. The defendants do not publish information concerning the Fixings.

Summary

~~119~~.134._____During the Class Period, the defendants and unnamed co-conspirators conspired, combined, agreed, and/or arranged with each other to fix, maintain, increase, decrease, control and unreasonably enhance the spot price of gold determined at the Fix, Gold Market Instruments as well as the bid-ask spreads in the gold market.

~~120~~.135._____In furtherance of such conspiracy, arrangement or agreement, during the Class Period, senior executives, traders, and employees of the defendants, acting in their capacities as agents for the defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the communications and meetings, the defendants and unnamed co-conspirators unlawfully conspired, agreed and/or arranged to:

- (a) fix, maintain, increase, decrease and control unreasonably the Fix price of gold and Gold Market Instruments; and
- (b) monitor and enforce adherence to agreed-upon trading strategies to effect the conspiracy.

136. The defendants also engaged in other manipulative conduct, including spoofing, which distorted the price of gold and Gold Market Instruments.

GOVERNMENT INVESTIGATIONS

~~121,137.~~ Numerous criminal and regulatory investigations are underway concerning the ~~collusion amongst the defendants~~ Manipulative Conduct, including in the United States, United Kingdom, Switzerland, and Germany.

~~122,138.~~ The law enforcement and regulatory authorities include:

- (a) United States:
 - (i) the Department of Justice (“**DOJ**”)
 - (ii) the Commodity Futures Trading Commission (“**CFTC**”)
- (b) United Kingdom: the United Kingdom Financial Conduct Authority (“**UK-FCA**”)
- (c) Switzerland:
 - (i) the Swiss Competition Commission (“**WEKO**”)
 - (ii) the Swiss financial regulator (“**FINMA**”)

(d) Germany:

(i) the Federal Financial Supervisory Authority (“**BaFin**”)

~~123,139.~~ As a result of DOJ and CFTC investigations, a former trader working at Deutsche Bank’s precious metals desk named David Liew (“**Liew**”) pleaded guilty on June 1, 2017, to charges including conspiracy to manipulate the gold and other precious metals markets. Liew admitted that he knowingly and intentionally conspired with metals traders at other financial institution(s) to place orders and execute trades for the purpose of triggering customers’ stop-loss orders. Liew also admitted that the intent of triggering the customer stop-loss orders was to allow the traders to buy precious metals futures contracts at artificially low prices or sell precious metals futures contracts at artificially high prices.

~~124,140.~~ On June 2, 2017, the CFTC issued an order finding that Liew conspired on multiple occasions with other precious metals traders to manipulate the prices of gold futures contracts, including by stop-loss manipulation. For example, on March 29, 2011, a UBS trader asked Liew for assistance in the gold futures market, to “push it up” because the UBS trader “need[ed] a print.” Liew bought gold futures contracts with the intent to push prices up as requested. Immediately after the UBS trader told Liew that he “got [the print]”, Liew sold back the gold futures contracts, eliminating his exposure to risk from further price movements in the gold futures market and generating a profit.

141. On January 29, 2018, the CFTC issued orders against Deutsche Bank, HSBC and UBS:

(a) As against Deutsche Bank, the CFTC found that from at least February 2008 and continuing through at least September 2014, Deutsche Bank “engaged in a

scheme to manipulate the price of precious metals futures contracts by utilizing a variety of manual spoofing techniques”. The Deutsche Bank traders, “both individually and in coordination with one or more of the others, placed orders to buy or sell gold, silver . . . futures contracts with the intent to cancel the orders before execution”. Further, between December 2009 through February 2012, a Deutsche Bank trader “coordinated his trading with another precious metals trader at another large financial institution” and “[o]n certain occasions . . . was successful at manipulating the price and triggering the customer-stop loss orders.”

(b) As against HSBC, the CFTC found that from at least July 16, 2011 through August 2014, HSBC “engaged in the disruptive trading practice of “spoofing””. The HSBC trader “placed orders for futures contracts in Precious Metals, primarily gold, with the intent to cancel before their execution.”

(c) As against UBS, the CFTC found that from January 2008 and continuing through at least December 2013, UBS “attempted to manipulate the price of precious metals futures contracts by utilizing a variety of manual spoofing techniques.” A UBS trader also “coordinated his trading with another precious metals trader at another large financial institution”, “intentionally triggering stop-loss orders . . . to buy precious metals futures contracts at artificially low prices or sell precious metals futures contracts at artificially high prices”.

142. On October 1, 2018, the CFTC found that during the period from at least June 2013 through June 2016, BNS engaged in the disruptive trading practice of “spoofing” in gold and silver futures products BNS was ordered to pay \$800,000. However, on August 19, 2020, the

CFTC found that multiple statements made by BNS during its investigation were false in that BNS “made multiple false and misleading statements of material fact to CFTC staff, and omitted material facts regarding the universe of BNS’s precious metal futures accounts, traders, and the Tag50s its traders used.” BNS was ordered to pay \$77.5 million in penalties and equitable relief.

143. On October 9, 2018, John Edmonds, a JPMorgan trader, pleaded guilty to a conspiracy offense related to “wire fraud, commodities fraud, commodities price manipulation, and spoofing” from no later than 2009 until no earlier than 2015.

144. On February 5, 2019, Andre Flotron, a UBS trader, entered into a consent order requiring him to pay a civil monetary penalty “for spoofing and engaging in a deceptive or manipulative scheme through his spoofing” from at least August 2008 through at least November 2013.

145. On June 25, 2019, the CFTC settled charges against Merrill Lynch for spoofing, manipulation, and attempted manipulation of precious metals futures contracts during the period from at least 2008 through 2014. Monetary sanctions totaling approximately \$25 million were imposed.

146. On July 25, 2019, it was announced that Corey Flaum, a trader for Scotia Capital and Bear Stearns, pleaded guilty to attempted commodities price manipulation. According to admissions, between approximately June 2007 and July 2016, Mr. Flaum “placed thousands of orders to manipulate the prices of gold, silver ... futures contracts” and he “intended to deceive other market participants about the existence of supply and demand, and to artificially move the price of precious metals futures contracts”.

147. On July 25, 2019, the CFTC found that during the period in or around 2007 until in or around 2016, Corey Flaum “engaged in a pattern of spoofing in the precious metals futures market”. According to the Justice Department, he “placed thousands of orders to manipulate the prices of gold, silver, platinum and palladium futures contracts”.

148. On September 30, 2019, the CFTC entered an order against Morgan Stanley for spoofing with respect to futures products in precious metals during the period of in or about November 2013 to at least November 2014.

149. On August 19, 2020, BNS resolved criminal charges with the US Department of Justice in relation to price manipulation involving thousands of episodes of unlawful trading activity in the precious metals futures contracts markets between approximately January 2008 and July 2016, as well as in relation to false statements made by BNS to the CFTC in relation to its investigation. Additionally, the CFTC issued three orders against BNS in relation to spoofing, false statements, and compliance and supervision violations / failures.

150. On September 29, 2020, the CFTC settled charges against JPMorgan for manipulative and deceptive conduct and spoofing during the period spanning from at least 2008 through 2016, and involving hundreds of thousands of spoof orders. JPMorgan was required to pay \$920.2 million.

125.151. The UK-FCA’s investigation into Barclays’ precious metals desk found that:

Barclays failed to: (i) create or implement adequate policies or procedures to properly manage the way in which Barclays’ traders participated in the Gold Fixing; (ii) provide adequate specific training to Precious Metals Desk staff in relation to their participation in the Gold Fixing; and (iii) create systems and reports that allowed for adequate monitoring of traders’ activity in connection with the Gold Fixing.

~~126.152.~~ As a result of the failures, UK-FCA found that: “Barclays was unable to adequately monitor what trades its traders were executing in the Gold Fixing or whether those traders may have been placing orders to affect inappropriately the price of gold in the Gold Fixing.”

~~127.153.~~ These failures were deemed “particularly serious given the importance of the Gold Fixing as a price-setting mechanism which . . . provides market users with an opportunity to buy and sell gold at a single quoted price; therefore, any inappropriate conduct in the Gold Fixing could affect both UK and international financial markets.”

~~128.154.~~ Barclays was also found to have failed “to adequately manage certain conflicts of interest between itself and its customers.” In particular, Barclays failed to adequately manage the inherent conflict of interest that existed from (i) Barclays participating in the London Gold Fixing and contributing to the price fixed during the London Gold Fixing, while at the same time also (ii) selling to customers options products that referenced, and were dependent on, the price of gold fixed in the Fixing. UK-FCA fined Barclays 26 million pounds (USD\$43.8 million) in 2014 over a Director on the Precious Metals Desk at Barclays, Daniel Plunkett, who manipulated the London Gold Fixing. UK-FCA found regarding Plunkett: “(1) He placed orders during the Gold Fixing which were intended to increase the likelihood that the price of gold would fix below a certain level during the Gold Fixing, and in doing so preferred his interests over those of a customer; and (2) His actions had the potential to have an adverse effect on the Gold Fixing and the UK and international financial markets.”

~~129.155.~~ Switzerland’s financial regulator FINMA found similar problems at UBS. It found “serious misconduct” by UBS in precious metal trading. FINMA’s chief executive officer

stated that the regulator has “seen clear attempts to manipulate fixes in the precious metals markets.”

~~130.~~156. Specifically, FINMA found that UBS’s precious metals traders had engaged in: (i) sharing information on order books with third parties (*e.g.*, stop-loss orders); (ii) sharing so-called “flow information” with third parties on large current or imminent orders; (iii) sharing client names with third parties; (iv) front running; and (v) triggering stop-loss orders. FINMA concluded that UBS’s “compliance function in foreign exchange and precious metals trading was insufficient.”

~~131.~~157. FINMA also noted problems with proprietary or “back book” trading at UBS. FINMA noted that such proprietary trading leads to conflicts of interest with UBS’s clients especially because traders’ compensation was set in part based on the success of the proprietary trading. FINMA noted that, “[a] substantial element of the conspicuous conduct in [precious metals] trading was the repeated front running (especially in the back book) of silver fix orders of one client.” FINMA noted that with those particular episodes, “Owing to the frequency and obviousness of front running in the back book, the desk supervisors saw themselves forced – after some time of passive inactivity – to prohibit front running in the back book, but did not sanction the traders who engaged in it.”

~~132.~~158. FINMA found that this conduct was tolerated or even engaged in by managers with responsibility for overseeing precious metals traders.

~~133.~~159. As a result of its investigations, in December 2015, FINMA issued industry bans of between one and five years against six managers and traders formally employed in the UBS foreign exchange and precious metals business. Four of them were precious metals traders.

FINMA found that the individuals in question were directly responsible for serious breaches of regulations at UBS and “bore significant responsibility for the serious organisational shortcomings and improper conduct at UBS.”

134.160. FINMA found that traders shared confidential client information, sometimes revealing the identity of clients to third parties, deliberately triggered stop-loss orders and engaged in front running.

135.161. UBS understood, participated in and benefited from the collusive activities. Chat room transcripts and emails show traders at UBS and Deutsche Bank sharing customer order information and executing coordinated trades in order to “push,” “smack” and “whack” gold prices. These included many efforts to artificially suppress gold prices, and to manipulate gold prices at the time of the Fixing. The defendants regularly discussed coordinating their gold transactions, including with UBS. For example, on March 21, 2011, traders from UBS and Deutsche Bank had the following conversation:

Trader	Message
Deutsche Bank	bro japan holiday today
Deutsche Bank	think it'll be quiet
Deutsche Bank	well, illiquid, not quiet haha
Deutsche Bank	illiquid means wild wild west
UBS	okay when gold pops 1430
UBS	we whack it
UBS	u sell your 50k
UBS	i sell my 20k
UBS	then we double that up and produce our on liquidity too
UBS	that should be enough to cap it on a holiday
Deutsche Bank	haha yeah
Deutsche Bank	lol

INDEPENDENT ADMINISTRATOR NOW RESPONSIBLE FOR THE FIXING

~~136.162.~~ In November 2014, following the LBMA review of the Fixing, ICE Benchmark Administration (“**IBA**”) was selected as a third-party administrator for the Fixing. IBA provides the price platform, methodology as well as the overall administration and governance for the Fixing.

~~137.163.~~ On March 20, 2015, IBA became the administrator for the LBMA Gold Price, which replaced the Fixing as the principal global benchmark for daily gold prices. IBA now operates and supervises the auctions that make up the Fixings.

~~138.164.~~ As part of the reforms to the Fixing, IBA made the following improvements:

- (a) developed benchmark surveillance technology and techniques to enhance transparency and confidence in the Fixing process;
- (b) established an Oversight Committee; and
- (c) introduced a new electronic auction process.

~~139.165.~~ IBA publishes details of the auction live on its trading platform, showing the starting price of each round as well as the final aggregate bid and offer volumes entered in that round.

~~140.166.~~ At the end of the auction, IBA publishes the final benchmark price and a “Transparency Report” with aggregate details of each auction round.

RIGHTS OF ACTION

Breach of the Competition Act

167. ~~The Conspiratorial Acts constitute~~ Manipulative Conduct constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1), and 47(1) of the *Competition Act*.

168. The Manipulative Conduct also constitutes an offence under s. 52 of Part VI of the *Competition Act* in that the Manipulative Conduct distorted the price of gold and Gold Market Instruments, including the Fix Price, by falsely altering supply and demand.

~~141.~~169. The plaintiffs claim on behalf of themselves and other Class Members loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

Breach of Foreign Law

~~142.~~170. The defendants and their unnamed co-conspirators' conduct, particularized in this statement of claim, took place in, among other places, the United States, the United Kingdom, various countries in Asia and various countries in Europe where such conduct was illegal and contrary to the competition laws of those jurisdictions.

Civil Conspiracy

~~143.~~171. The defendants and their co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage to Class Members. The unlawful means included the following:

- (a) ~~entering into~~ engaging in the Conspiratorial Acts Manipulative Conduct in contravention of ~~section~~ sections 45(1) and 47(1) and 52 of the *Competition Act*;
- (b) the Canadian-based defendants giving effect to a foreign directive in contravention of section 46(1) of the *Competition Act*; and
- (c) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

~~144.172.~~ In furtherance of the conspiracy, the defendants, their employees, agents and co-conspirators, carried out the ~~Conspiratorial Acts~~ Manipulative Conduct described above.

~~145.173.~~ The defendants and their co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the Class.

~~146.174.~~ The defendants and their co-conspirators intended to cause economic loss to the Class. In the alternative, the defendants and their co-conspirators knew in the circumstances that their unlawful acts would likely cause injury to the Class.

Unjust Enrichment

~~147.175.~~ The defendants have been unjustly enriched as a result of the conduct alleged above. The Class Members have suffered a corresponding deprivation in the amount of the difference between the prices actually paid by or on behalf of Class Members for physical gold or Gold Market Instruments and the prices which would have been paid in the absence of the ~~Conspiratorial Acts~~ Manipulative Conduct.

~~148.176.~~ Since the difference in price received by the defendants from the Class Members resulted from the defendants' wrongful and unlawful acts, there is and can be no juridical reason justifying the defendants retaining any part of it.

Waiver of Tort

~~149.~~ In the alternative to damages, the plaintiffs plead an entitlement to "waive the tort" of civil conspiracy and claim an accounting, or other such restitutionary remedy, for disgorgement of the revenues generated by the defendants and their co-conspirators from their unlawful conspiracy.

~~150.~~ It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the Conspiratorial Acts.

Breach of Contract

~~151.177.~~ When certain of the defendants acted as market makers throughout the trading day, certain Class Members contracted with them directly when entering into contracts for the purchase or sale of Gold Market Instruments. These contracts included, without limitation, spot, futures and options contracts related to Gold.

~~152.178.~~ It was the reasonable expectation of the Class Members that when the defendants were acting as market makers, they would not manipulate the bid-ask spreads of Gold Market Instruments or other aspects of the gold market for their own benefit and at the Class Members' expense. To the extent that they manipulated the bid-ask spreads when acting as market makers and other aspects of the gold market, the defendants breached their contracts with the Class Members and the Class Members have suffered damages as a result.

~~153~~.179. The defendant, The Bank of Nova Scotia, operates iTRADE. Caron used iTRADE to transact in Gold Market Instruments during the Class Period. It was the reasonable expectation of Caron that when using a trading service operated by BNS, such as iTRADE, that BNS would not engage in illicit activity in the gold market which would negatively affect the transactions Caron engaged in. During the Class Period, BNS engaged in illicit activity in the gold market, including spoofing, and breached its contract with Caron and other Class members who contracted with BNS or one of its affiliated entities.

~~154~~.180. The defendant, Barclays operates a system called BARX for commodities trading. Using BARX, clients of Barclays can make orders at the London Gold Fixing price or trade gold derivatives on the BARX system. It was the reasonable expectation of the Class that when using a trading service operated by Barclays, such as BARX, that Barclays would not engage in illicit activity in the gold market which would negatively affect the transactions members of the Class engaged in. During the Class Period Barclays engaged in illicit activity in the gold market, including spoofing, and breached its contract with Class members who contracted with Barclays or one of its affiliated entities.

~~155~~.181. The defendant, SoGen operates the Alpha Precious Metals (“**APM**”) electronic platform for trading gold products. Using APM, clients of SoGen can make orders at the London Gold Fixing price or trade gold derivatives on the APM system. It was the reasonable expectation of the Class that when using a trading service operated by SoGen, such as APM, that SoGen would not engage in illicit activity in the gold market which would negatively affect the transactions members of the Class engaged in. During the Class Period SoGen engaged in illicit activity in the gold market, including spoofing, and breached its contract with Class members who contracted with.

Unlawful Means Tort

182. The defendants' spoofing was unlawful and prohibited conduct against parties, including members of the Class, intended to cause economic harm to the Class.

183. The defendants intended that their Manipulative Conduct cause harm to all Class Members. The defendants' conduct supports third party civil actions for damages or compensation under Canadian law, under the law of the jurisdiction in which the acts took place, and under the law of the applicable contract. The Class Members have a civil claim against the defendants arising from the facts described herein for:

- (a) Breach of contract;
- (b) Breach of the duty of good faith in contractual relations;
- (c) Breach of foreign law;
- (d) Civil conspiracy;
- (e) Unjust enrichment;
- (f) Damages arising under s. 36 of the *Competition Act* for conduct contrary to sections 45, 46, 47, and 52 of the *Competition Act*; and
- (g) Damages arising from breaches of competition laws in other jurisdictions.

184. The defendants intended their conduct would cause harm to the Class by causing them to transact in Gold Market Instruments at distorted prices. Alternatively, the defendants intended to harm the Class as a necessary means of enriching themselves. The defendants intended and

knew that the harm suffered by the Class would follow as a natural consequence of their conduct particularized herein.

185. The Class suffered harm as a result of the defendants' conduct in the form of distorted prices for Gold Market Instruments.

Discovery of Losses

~~156.~~186. The plaintiffs did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the claims which are the basis of this action until recently.

~~157.~~187. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy, and other manipulative conduct, from the public, including the Class Members. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy and other manipulative conduct, were fraudulently concealed and carried out in a manner that precluded detection.

~~158.~~188. The defendants' and their co-conspirators' anti-competitive conspiracy and other manipulative conduct was self-concealing. The defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy and other manipulative conduct.

~~159.~~189. Because the defendants' agreements, understandings ~~and~~, conspiracies, and other manipulative conduct were kept secret, the Class Members were unaware of the defendants' unlawful conduct during the Class Period, and did not know that the gold prices they were paying (or were being paid on their behalf) had been unlawfully fixed, maintained, increased, decreased, controlled, and unreasonably enhanced.

REMEDIES

Damages

~~160.~~190. ____ As a result of the ~~Conspiratorial Acts~~ Manipulative Conduct:

- (a) the prices of physical gold and Gold Market Instruments have been, directly or indirectly, fixed, maintained, increased, decreased, controlled, and unreasonably enhanced at artificial and non-competitive levels; and
- (b) competition in the gold market has been unduly restrained.

~~161.~~191. ____ The defendants' ~~Conspiratorial Acts~~ Manipulative Conduct caused prices to be set at artificial levels, rather than if set by free and open competition, throughout the Class Period. The collusion and conduct necessarily injures participants in the gold market and the Class suffered loss and damage as a result of the defendants' ~~Conspiratorial Acts~~ Manipulative Conduct.

~~162.~~192. ____ During the Class Period, the plaintiffs and other Class Members transacted in the gold market. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiffs and other Class Members were deprived of a competitive marketplace and exposed to artificial volatility.

~~163.~~193. ____ Absent collusion and other manipulative conduct, the defendants would have had incentives to avoid the abusive trading practices described above. Through collusion and other manipulative conduct, Class Members were deprived of the benefits of a competitive marketplace such as narrower bid-ask spreads.

~~164.~~194. The defendants' anticompetitive conduct had severe adverse consequences on competition in that the defendants artificially ensured advantageous market movements in price of gold and Gold Market Instruments including by exchanging confidential customer information and agreeing to collusive trading strategies. Under the facts alleged herein, the Class Members could not escape such conduct because of the dominant positions occupied by the defendants in the gold market.

~~165.~~195. No one Fixing Bank Defendant could accomplish systemic and continuing control or manipulation of the Fixings without coordinating with its rivals. Absent the Fixing Bank Defendants' knowledge of one another's confidential customer information, the conduct alleged herein would be a risky strategy. The Fixing Bank Defendants benefited from coordinating their market activities.

~~166.~~196. The direct, foreseeable and proximate result of the defendants' ~~Conspiratorial Acts~~Manipulative Conduct was to cause the plaintiffs and Class damages and loss.

~~167.~~197. The damage is capable of being quantified on an aggregate basis as the difference between the prices actually paid by (or on behalf of) Class Members for physical gold or Gold Market Instruments and the prices which would have been paid in the absence of the ~~unlawful conspiracy~~Manipulative Conduct.

~~168.~~198. All amounts payable to the class on account of damages ~~and disgorgement~~ should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, or otherwise.

~~169.~~199. In addition, the defendants are jointly and severally liable to pay costs of investigation and prosecution of this action pursuant to section 36 of the *Competition Act*.

Disgorgement

200. In the alternative, the plaintiffs seek disgorgement of the revenues generated by the defendants and their co-conspirators from their unlawful Manipulative Conduct.

201. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the Manipulative Conduct and/or unlawful means misconduct.

202. All amounts payable to the class on account of disgorgement should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, or otherwise.

Punitive, Aggravated and Exemplary Damages

~~170.~~203. The defendants used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from transactions in the gold market and related Gold Market Instruments. They were, at all times, aware that their actions would have a significant adverse impact on Class Members. The conduct of the defendants and their co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the Class member's rights.

~~171.~~204. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages.

SERVICE OUTSIDE OF ONTARIO

~~172-205.~~_____ The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because the claim:

- (a) is in respect of a tort committed in Ontario (Rule 17.02(g)); and
- (b) is against a person carrying on business in Ontario (Rule 17.02(p)).

RELEVANT LEGISLATION

~~173-206.~~_____ The plaintiffs plead and rely on the *Bank Act*, SC 1991, c 46, as amended; *Courts of Justice Act*, RSO 1990, c C.43, as amended; the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended; the *Competition Act*, RSC, 1985, c C-34, as amended; and the *Criminal Code*, RSC 1985, c C-46.

January 15, 2016 (Amended February 25, 2016) (Amended Amended November 7, 2017) (Fresh as Amended, February 5, 2019) (Amended Fresh as Amended, _____, 2020)

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Plaintiffs

-and-

THE BANK OF NOVA SCOTIA et al.
Defendants

Court File No. CV-15-543005

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO
Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

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