

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

OLIVER BARKER, on behalf of himself
and all others similarly situated,

Plaintiffs,

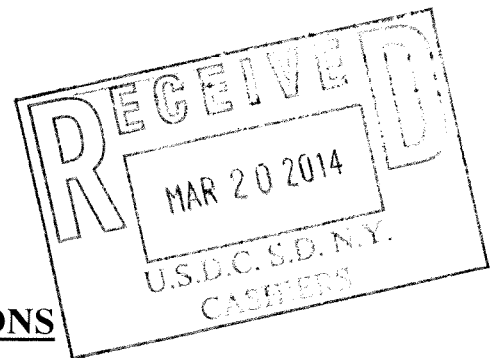
14 No. **CV** **1964**

against

BANK OF NOVA SCOTIA,
BARCLAYS BANK PLC, DEUTSCHE
BANK, AG, HSBC HOLDINGS PLC,
SOCIETE GENERALE,

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

Defendants.



SUMMARY OF ALLEGATIONS

Plaintiff alleges on information and belief (except as to his own actions),
the sources of which are analyses and reports on gold and gold derivatives pricing
concerning the London Gold Fix (defined herein), as follows:

SUMMARY OF ALLEGATIONS

1. At times between approximately January 1, 2004 and the present
("Class Period"), Defendants (as named in the caption and as defined below)
combined, conspired and agreed with one another and persons unknown to
Plaintiff, in order to manipulate prices of gold and gold derivatives
contracts.

2. Defendants have effected such manipulation in order to obtain profits that could only or best be achieved through collusion. Defendants did so through their respective memberships, ownerships, control and responsibilities in The London Gold Market Fixing Ltd. (the "London Gold Fix").

3. Defendants, in their capacities with the London Gold Fix, participate each trading day in a twice-daily price-setting and reporting process, at 10:30 AM Greenwich Mean Time (GMT) (this process is referred to herein as the "AM Fix") and 3:00 PM GMT (the "PM Fix"). The AM Fix and PM Fix are conducted via a dedicated telephone conference facility and each may last anywhere between a few minutes to an hour. The prices set by these Fixes are the "London Gold Fix Prices."

4. The reports of the London Gold Fix Prices are the most important pieces of regular daily information to the worldwide market's setting of gold prices, and thus gold derivative prices. The London Gold Fix Prices are announced in United States Dollars, Pound sterling (GBP), and the Euro (EUR) at the conclusion of the AM Fix and PM Fix sessions.

5. Defendants — the five members of the London Gold Fix who controlled the price-setting process — were in a position to manipulate the London Gold Fix Prices to guarantee themselves profits on proprietary

trades in gold and gold derivatives. Statistical analysis has recently uncovered anomalous movements in gold prices; the most likely explanation of the anomalous price movement is that Defendants used their positions to manipulate the London Gold Fix Prices. Investors and consumers who purchased or sold gold or gold derivatives at prices equal to, or set by, the spot price of gold were impacted by the manipulation. Due to Defendants' conduct, these investors and consumers engaged in transactions for gold and gold derivatives at artificial prices.

6. These anomalies are first observed in 2004, and coincide with a change in the composition of the London Gold Fix: at that time, the Rothschild firm withdrew from membership, and its place was taken by defendant Barclays.

7. According to reports in the media, recent statistical studies, papers or analyses indicate that gold prices have been manipulated by and during the processes of the AM Fix and PM Fix.

8. For example, one such analysis indicates that since 2004, there has been a statistically significant pattern in market activity during the particular timeframe in which the daily PM Fix is determined.

9. First, unusually large spikes in spot gold prices have consistently occurred during the PM Fix. This pattern is not explained by

news flow, fundamental analysis, or other factors affecting a properly operating market.

10. Second, the unusually large movements during the PM Fix in gold prices are overwhelmingly downward. This statistical pattern also is not explained by news flow, fundamental factors nor other normal market phenomena, and is most likely the result of collusive manipulation of prices in and around the times of the London Gold Fix pricing processes.

11. Significant moves in gold prices registered around the time of the PM Gold Fix have also occurred on days of expiration of options on the COMEX, a large US exchange operating in this District on which gold contracts and derivatives are traded.

12. Collusion is further indicated by Defendants' actions since the financial media began scrutinizing gold prices. As media reports have increasingly questioned whether manipulation of gold prices is occurring, Defendants have changed their conduct.

13. Defendant Deutsche Bank, in mid-January 2014, said that it will withdraw from The London Gold Fix, but that it will continue in its role until a buyer is found for its seat. When asked to comment on the reason for the bank's decision to withdraw from The London Gold Fix or whether its withdrawal from the panel was related to the recent regulatory scrutiny on

the benchmark-setting process, Deutsche Bank declined to make a statement.

14. Second, Defendants, who collectively comprise the London Gold Fix panel, have admitted that they have begun investigating potential changes in the way the London Gold Fix operates, and have formed a steering committee to investigate potential reforms.

15. In addition, regulators from at least two countries have commenced investigations. Germany's financial regulator, BaFin has confirmed an investigation into gold and silver price manipulation and has reportedly sought documents from Deutsche Bank as part of the investigation. Britain's private regulatory organization, The Financial Conduct Authority, is also investigating gold market prices.

16. Defendants here overlap with the group of banks that have been sued and investigated in connection with manipulation of the LIBOR, TIBOR and Euribor and benchmarks: In fact, all five of the Defendants are implicated in the LIBOR rate-setting allegations, and all but Scotiabank are implicated in the TIBOR and Euribor benchmark manipulation allegations.

17. As a direct result of Defendants' unlawful conduct alleged herein, Plaintiff and the Class purchased and sold gold at artificial prices; Plaintiff and the Class are presumed to have been injured and damaged

thereby.

JURISDICTION AND VENUE

18. This action arises under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

19. This Court has jurisdiction under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 28 U.S.C. §§ 1331 and 1337.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (b)(3). Each Defendant maintains a major office in this District, and this District is home to the largest exchange for the trading of gold and gold derivatives in the United States (COMEX).

21. Defendants made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails in connection with the unlawful acts and practices and courses of business alleged in this Complaint.

PARTIES

Plaintiff

22. Plaintiff Oliver Barker is a resident of Indianapolis, Indiana. Plaintiff purchased physical gold during the Class Period. Plaintiff alleges he transacted at artificial prices or in an artificial market due to Defendants'

manipulation.

Defendants

23. Defendant Bank of Nova Scotia doing business as Scotiabank ("BNS" or "Scotiabank"), is a Canadian public company headquartered in Toronto, Canada. Defendant Scotiabank is licensed by the New York Department of Financial Services with a registered address at One Liberty Plaza, 22nd-26th Floors, New York, NY 10006.

24. Defendant Barclays Bank plc ("Barclays") is a British public limited company headquartered at 1 Churchill Place, London E14 5HP, England. Barclays is licensed by the New York Department of Financial Services with a registered address at 745 Seventh Avenue, New York, NY 10019, and a foreign representative office at One MetLife Plaza, 27-01 Queens Plaza North, Long Island City, New York 11101.

25. Defendant Deutsche Bank, AG ("Deutsche Bank") is a German financial services company headquartered in Frankfurt, Germany. Deutsche Bank is licensed by the New York Department of Financial Services with a registered address at 60 Wall Street, New York, NY 10005.

26. Defendant HSBC Holdings plc is a British public limited company headquartered in London at 8 Canada Square, London E14 5HQ, England. Defendant HSBC Bank USA, N.A., is the principal subsidiary of

HSBC USA Inc., an indirect, wholly-owned subsidiary of HSBC North America Holdings Inc. The principal executive offices of HSBC USA Inc. are located at 452 Fifth Avenue, New York, NY 10018. HSBC USA, Inc., HSBC North America Holdings and HSBC Bank U.S.A., Inc. are collectively referred to herein as "HSBC."

27. Defendant Societe Generale ("SocGen") is a public banking and financial services company headquartered in Paris, France. Defendant SocGen is licensed by the New York Department of Financial Services with a registered address at 1221 Avenue of the Americas, New York, NY 10020. Defendant, through their broker-dealer affiliate, held by virtue of a joint-venture, Newedge USA, LLC, which was formed by Societe Generale and Credit Agricole CIB, as a 50/50 joint venture.

28. During the Class Period, Defendants BNS, Barclays, Deutsche Bank, HSBC and SocGen owned and were fixing members (the "Members") of the London Gold Fix, while acting as gold dealers and brokers, making sales and purchases for their clients and for their own proprietary accounts. Defendants are responsible for the alleged acts of their employees and the conduct and planning of the London Gold Fix.

SUBSTANTIVE ALLEGATIONS

Spot Price of Physical Gold

29. Physical gold is available for purchase and sale in forms ranging from bullion bars and coins to jewelry; it is a commodity purchased and sold by dealers, brokerage houses, banks and consumers around the world. Markets for the commodity include jewelry and coin markets on one end of the spectrum, and commodity futures markets like COMEX on the other.

30. In physical gold markets relevant to Plaintiff's claims, physical gold is typically purchased at a price set by the markets—the spot price—plus a fee charged by the seller, which may be a set-value or a value equal to a percentage of the spot price.

31. The spot price of gold is its purchase/sale price, as determined by the markets, for immediate settlement. For example, gold bullion and gold coins may be acquired from dealers, brokerage houses or banks. These purchases are typically achieved through execution of a “spot price plus” contract where the total purchase price reflects the spot price of physical gold at the time of settlement (or another time if designated by the parties), plus dealer fees charged “on top” of the spot price.

32. A number of factors influence the market's valuation of physical gold, but none more so than the valuation assigned to the commodity twice

a day by the London Gold Fix. The London Gold Fix's twice-daily valuations are supposed to be accomplished by negotiation and price discovery among its Members – five of the largest purchasers and sellers of the commodity and its derivative products.

33. The price point at which the Members of the London Gold Fix privately determine to purchase and sell gold and gold-derivative products amongst themselves (the AM Fix and PM Fix) is set and announced twice each. The AM Fix and PM Fix calibrate and drive the spot prices for gold and gold-derivative products on each and every market that trades in the commodity, impacting each purchaser and seller trading on a spot price plus contract or trading on a price based on or derived from gold's spot-price.

The London Gold Fix

34. The origin of the London Gold Fix's price-setting activity dates to 1919 when the five leading gold dealers of the time met each morning to settle at a wholesale price for physical gold trades. Since then, the fixing process has changed slightly. There are still five market-makers—all banks trading on their own accounts and as brokers—but today they operate through and as the London Gold Fix. The London Gold Fix is a distinct entity owned and controlled by its Members: Defendants Barclays, Deutsche Bank, HSBC, BNS, and SocGen.

35. The London Gold Fix Members are supposed to engage in a process to fix a price for settling contracts between and amongst themselves as participants in the London bullion market. But the London Gold Fix also provides a recognized price that is used as a benchmark for pricing the majority of gold products and derivatives throughout the world's markets.

36. The process that the London Gold Fix members are and were supposed to follow in setting gold prices (the “Fixing” process) during the Class Period is as follows:

37. First, the current Chairman of the London Gold Fix (a position which rotates among the members each year) determines the then prevailing US Dollar spot price for loco (delivery) London gold in the market. That spot price is used to open the Fixing process.

38. The five Members declare how many bars of gold they wish to buy/sell at the current market/spot price. Since each Member may act as a principal and a broker throughout the Fixing process, their declared interests are supposed to be based on current and contemporaneous client orders (those entered during the call) as well as the proprietary needs of each Member.

39. Third, the price is increased or decreased until the buy/sell bids/asks are within 50 bars of each other (the objective is for buy orders to

equal sell orders, but a 50-bar margin is considered sufficiently close due to constantly changing supply/demand). Throughout this exercise in calibration, Members may modify or even withdraw their orders to buy or sell, again acting for their own accounts or as brokers.

40. Finally, once the buy/sell orders are within 50 bars, that price point becomes the London Gold Fix Price.¹

41. This process, which supposedly balances supply and demand, may last a few minutes or may last as long as an hour. The Members and their company, the London Gold Fix, conduct the Fixing process absent any regulatory oversight or supervision.

Alleged Wrongdoing

42. Plaintiff has good grounds to believe and does allege that during the Class Period, Defendants combined, conspired and agreed with one another in order to manipulate prices of gold.

43. Reports of the London Gold Fix are the most important of the daily reports that influence the prices of gold. The twice-daily London Gold Fix process and announcement heavily affect the valuation of gold in

¹ The London Gold Fix's US Dollar Fixing Price is the price for one troy ounce of gold loco in London in the form of LBMA Good Delivery bars of approximately 400 troy ounces each.

gold and gold-derivative market around the world.

44. Members of the London Gold Fix conspire to set a price for gold that is artificial. Rather than bargaining at arm's length, Members of the London Gold Fix collude to set an artificial price for gold that benefits themselves. The Members' artificial valuation of gold impacts the spot price of gold in markets all over the world and trading of the commodity's futures.

45. Due to the outsized influence of the London Gold Fix Price on the valuation of gold in markets around the world, every person in every market who settles a gold transaction based on spot price for physical gold is impacted by the collusive and manipulative actions of the London Gold Fix Members.

46. Defendants have effected the foregoing manipulation in order to profit themselves individually and collectively. This includes by abusing Defendants' ownership of, and positions as, Fixing Members of, the London Gold Fix.

47. Recent statistical studies indicate that gold prices have been manipulated by the London Gold Fix Members.

48. For example, one such analysis reveals that, since 2004, statistically significant patterns in the spot price for gold have emerged:

unusually large spikes in spot gold prices are observed during the time frame of the PM Fixes.

49. This statistical pattern was not observed prior to 2004, when Rothschild withdrew from the London Gold Fix and Barclays took its place. Furthermore, the pattern is not explained by news flow or other factors consistent with efficient market behavior.

50. In addition, these unusually large spikes in spot gold prices exhibit an overwhelmingly downward trend. During 2010, for example, these aberrantly large movements were decreases in the price of gold 92% of the time such spikes were observed.

51. This statistical pattern is not explained by news flow or attributable to other factors consistent with efficient market fluctuations either. On the contrary, the persistent spikes and their statistical pattern are explained best by a collusive manipulation of prices in and around the times of the PM Fixes. The pricing phenomena observed by statisticians are more likely than not the result of collusion.

52. As reports of potential gold price manipulation have surfaced in the preceding weeks, Defendants have altered their conduct.

53. For example, Defendant Deutsche Bank has publicly announced that it will withdraw from the London Gold Fix, however Deutsche Bank

has agreed to maintain its membership until a buyer is found for its seat. When asked to comment on whether its withdrawal from the London Gold Fix was related to the recent regulatory scrutiny on the benchmark-setting process, Deutsche Bank declined to do so.

54. In addition, Defendants began investigating potential changes to the way the London Gold Fix operates, forming a steering committee to solicit advice for improving its processes.

55. Deutsche Bank has reportedly complied with the demands of German Financial Regulator, BaFin, to produce documents, in connection with the regulator's reported investigation into potential manipulation of gold and silver prices. The Financial Conduct Authority, a private financial service regulator in the U.K., is also scrutinizing the Fixing process.

56. Defendants are already embroiled in allegations of financial benchmark manipulation; Defendants have been accused of manipulating LIBOR, and, with the exception of Scotiabank, of manipulating Euribor and TIBOR as well.

57. While the setting of those benchmarks are at least subject to some level of government supervision and regulation, the Fixing process engaged in by the London Gold Fix is not.

EQUITABLE TOLLING

58. Plaintiff has no obligation to plead facts regarding the statute of limitations. The conduct alleged herein is and was self-concealing. Defendants did not disclose wrongdoing in the gold and gold derivatives markets, nor indicate that the Fixing process was anything other than the arms-length transactions in which the London Gold Fix purports to engage. The first signal to the market of potential wrongdoing came no earlier than Defendant Deutsche Bank's announcement of its intention to withdraw from the London Gold Fix, in January of 2014.

59. Application of the doctrine of fraudulent concealment tolled the statute of limitations as to the claims asserted by Plaintiff and members of the Class. Plaintiff and members of the Class had no knowledge of the unlawful conduct alleged in this Complaint, or of any facts that could or would have led to the discovery thereof, until at least 2014. Plaintiff could not in the exercise of reasonable diligence have discovered facts sufficient to state a claim before January, 2014.

CLASS ALLEGATIONS

60. Plaintiff brings this action as a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and others similarly situated. The "Class" is defined as:

All persons or entities, other than Defendants and their employees, affiliates, parents, subsidiaries or co-

conspirators, who, between January 1, 2004 and the present, transacted in physical gold at “spot price plus” or transacted in gold derivatives on an exchange, for delivery in the U.S.

61. The Class is so numerous that joinder of all members is impracticable. While the exact number of the Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that at least hundreds of geographically dispersed Class members have sold or purchased physical gold during the Class Period.

62. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and members of the Class sustained damages arising out of Defendants' common course of conduct in violation of law as complained herein. The injuries and damages of each member of the Class were directly caused by Defendants' wrongful conduct in violation of law as alleged herein.

63. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action litigation, including market manipulation and antitrust class action litigation.

64. Common questions of law and fact exist as to all members of the Class which predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the

Class are:

- a. whether Defendants conspired among themselves to manipulate prices;
- b. whether Defendants did in fact manipulate prices;
- c. whether Defendants' conduct had an anticompetitive and manipulative effect on the prices class members paid for physical gold;
- d. whether Defendants' conduct caused antitrust injury; and
- e. the appropriate measure of damages sustained by Plaintiff and other members of the Class as a result of Defendants' unlawful activities.

65. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action, on the other hand, would achieve substantial economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other

undesirable results.

66. The interest of members of the Class in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and prosecution of the action through representatives.

67. The amounts at stake for Class members, while substantial in the aggregate, are not great enough individually to enable them to maintain separate suits against Defendants. Plaintiff does not anticipate any difficulty in the management of this action as a class action.

CLAIMS FOR RELIEF

AS AND FOR A FIRST CLAIM AGAINST ALL DEFENDANTS ON BEHALF OF ALL CLASS MEMBERS

Violation of Section 1 of the Sherman Act, 15 U.S.C. §1, *et seq.*

68. Plaintiff re-alleges and incorporates by reference the allegations of this Complaint as if fully restated herein.

69. Each Defendant is an independent entity and independent center of decision-making. All Defendants own or operate and are responsible for the London Gold Fix.

70. Defendants made among themselves or constituted with each other a combination, conspiracy or contract in unreasonable restraint of trade to manipulate gold prices for their profit in violation of Section 1 of

the Sherman Act.

71. As a direct result of the foregoing, Plaintiff and members of the Class transacted at artificial and unlawful prices, and transacted in an artificial and manipulated market, during the Class Period. Defendants' conduct is presumed to have caused injury to the Plaintiff and the Class.

**AS AND FOR A SECOND CLAIM AGAINST ALL DEFENDANTS
ON BEHALF OF ALL CLASS MEMBERS
Unjust Enrichment and Restitution**

72. Plaintiff re-alleges and incorporates by reference the allegations of this Complaint as if fully restated herein.

73. Defendants have benefited from their unlawful acts through, inter alia, creating increased revenues for themselves.

74. It would be inequitable for Defendants to retain these benefits.

75. Plaintiff and members of the Class are entitled to receive from Defendants an amount equal to Defendants' unjust enrichment.

**AS AND FOR A THIRD CLAIM AGAINST ALL DEFENDANTS
ON BEHALF OF ALL CLASS MEMBERS
Injunctive Relief, Section 16 of the Clayton Act, 15 U.S.C. § 26**

76. Plaintiff re-alleges and incorporates by reference the allegations of this Complaint as if fully set-forth herein.

77. Defendants, through their actions, have intentionally caused manipulation of the market for physical gold.

78. Defendants' actions have drawn increased scrutiny in recent weeks. Nevertheless, Defendants have made no structural changes to their practices in fixing the price of gold, and continue to permit trading for their own accounts during the crucial timeframe preceding agreement on, and announcement of, the PM Fix price-point. The voluntary alterations in Defendants' conduct, such as the formation of a steering committee, offer no protection to the trading public; Defendants have already demonstrated their capacity and willingness to manipulate the gold markets.

79. Plaintiff requests the Court to enjoin Defendants from setting artificial prices on the London Gold Fix for the sale and purchase of gold and gold-derivatives.

DEMAND FOR JURY TRIAL

80. Pursuant to Federal Rule of Civil Procedure 38(b) and otherwise, Plaintiff respectfully demand a trial by jury.

PRAYER FOR RELIEF

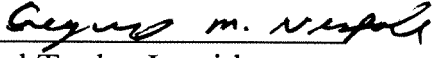
WHEREFORE, Plaintiff prays for relief as follows:

- A. That the Court determine this action may be maintained as a class action;
- B. That the Court determine Defendants' actions herein are in violation of Section 1 of the Sherman Act and that judgment be

entered against Defendants for treble damages as allowed by law;

- C. That the Court determine, find and declare that Defendants have been unjustly enriched, impose a trust upon such unjust enrichment for the benefit of Class members, and order Defendants to make restitution to Plaintiff and the Class;
- D. That Plaintiff and the Class recover their costs, including attorneys' fees;
- E. That the Plaintiffs are entitled to the injunction sought, and Defendants are so enjoined;
- E. That prejudgment interest be awarded according to law; and
- F. For such other and further relief as this Court may deem just and proper.

Dated: March 20, 2014
New York, New York

By: 
Fred Taylor Isquith
Gregory M. Nespole (GN 6820)
Thomas H. Burt
Beth A. Landes
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Avenue
New York, NY 10016
Telephone: 212/545-4600
Facsimile: 212/545-4653

Marc S. Henzel
LAW OFFICES OF MARC S.
HENZEL

431 Montgomery Ave, Suite B
Telephone: (610) 660-8000
Facsimile: (610) 660-8080

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