

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN FLEISHER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THE BANK OF NOVA SCOTIA,
SCOTIAMOCATTA, SCOTIA CAPITAL
(USA) INC., BARCLAYS BANK PLC,
BARCLAYS CAPITAL INC., DEUTSCHE
BANK AG, DEUTSCHE BANK
SECURITIES INC., HSBC HOLDINGS PLC,
HSBC BANK PLC, HSBC SECURITIES
(USA) INC., SOCIÉTÉ GÉNÉRALE N.A. and
SG AMERICAS SECURITIES, LLC,

Defendants.

No.

ECF Case

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
THE COMMODITY EXCHANGE ACT
AND FEDERAL ANTITRUST LAWS**

DEMAND FOR JURY TRIAL



Plaintiff Martin Fleisher (“Plaintiff”), individually and on behalf of a class of all others similarly situated, brings this action for damages and relief against The Bank of Nova Scotia (doing business as Scotiabank) (“BNS”), ScotiaMocatta and Scotia Capital (USA) Inc. (together with BNS and ScotiaMocatta, “Bank of Nova Scotia”); Barclays Bank PLC and Barclays Capital Inc. (together with Barclays Bank PLC, “Barclays”); Deutsche Bank AG and Deutsche Bank Securities Inc. (together with Deutsche Bank AG, “Deutsche Bank”); HSBC Holdings Plc, HSBC Bank Plc and HSBC Securities (USA) Inc. (together with HSBC Holdings Plc and HSBC Bank Plc, “HSBC”); and Société Générale N.A. and SG Americas Securities, LLC (together with Société Générale N.A., “SocGen”) (collectively, “Defendants”), for violations of the Commodity Exchange Act (“CEA”) and federal antitrust laws (the “Sherman Act” and “Clayton Act”) and for unjust enrichment. Based on counsel’s investigation, research and review of publicly available documents, on Plaintiff’s personal knowledge, and upon information and belief, Plaintiff alleges as follows:

INTRODUCTION

1. Every business day at 10:30 a.m. and 3:00 p.m. London Time, a handful of banks meet in private via teleconference to set or “fix” the price for a troy ounce¹ of physical gold (the “Gold Fix”). The ritual dates back to 1919, when a formal gathering took place once a day at the N M Rothschild & Sons (“Rothschild”) offices in London. In 2004, Rothschild sold its seat on The London Gold Market Fixing Ltd.² to Barclays, which resulted in the following five member banks for much of the Class Period: Barclays, Deutsche Bank, HSBC, Bank of Nova Scotia and SocGen. The resulting fixed gold price represents the primary benchmark used by physical and futures gold

¹ A “troy ounce” is equal to 31.1034768 grams, and is the standard form of measurement used in pricing metals such as gold, platinum and silver.

² The London Gold Market Fixing Ltd. is the entity consisting of and controlled exclusively by Defendants and which administers the Gold Fix.

traders worldwide. The “great flaw” of the gold fixing process, however, is that the member banks, *i.e.*, Defendants, trade on the information exchanged during the call to manipulate the price of gold and gold derivatives contracts before publication of the Gold Fix to the wider market.

2. Defendants have exploited the Gold Fix by conspiring to fix or restrain trade in, and intentionally manipulate, the prices of gold and gold derivatives, including COMEX gold futures and options contracts, from at least January 1, 2004 through the present (the “Class Period”). Defendants utilize their unique power and insight as administrators of the Gold Fix and/or as entities trading on undisclosed information to profit at the expense of uninformed market participants, including Plaintiff and the Class, by intentionally causing price movements in gold and gold derivatives, including COMEX gold futures and options.

3. The Gold Fix is by its very nature not transparent and therefore vulnerable to conspiratorial and manipulative behavior. One prominent economist with significant financial benchmark manipulation expertise stated, “[t]his is one of the most concerning fixings I have seen . . . [The Gold Fix is] controlled by a handful of firms with a direct financial interest in where it’s set, and there is virtually no oversight – and it’s based on information exchanged among them during undisclosed calls.”³ The lack of a prohibition against trading during the calls allows Defendants to gain an unfair trading advantage because pricing information exchanged during the calls provides them with insight into the immediate future direction of gold and gold derivative prices. Defendants are further motivated to conspire and manipulate the Gold Fix because hundreds of millions if not billions of dollars in profit are at stake as the spoils of their unlawful conduct.

³ Liam Vaughan, Nicholas Larkin and Suzi Ring, *London Gold Fix Calls Draw Scrutiny Amid Heavy Trading* (Nov. 26, 2013), *available at*: <http://www.bloomberg.com/news/print/2013-11-26/gold-fix-drawing-scrutiny-amid-knowledge-tied-to-eruption.html>.

4. The impact of Defendants' conduct, including their ability to reap massive profits by abusing the Gold Fix, has been analyzed in various published and unpublished studies. All of the studies find significant spikes in trading volume during, but not after, the fixing period when Defendants are free to share information with each other and their clients. The studies also show that trades in gold futures, such as those at issue here, following the start of the fixing period are found to be predictive of the fixing price direction. One such study found this to be the case 80%-95% of the time for fixings resulting in larger price movements. It also found statistically significant return advantages for the "informed trader" that far exceeded trading costs. As one of the authors of this study, Andrew Caminschi, explained, "[i]n a world where trading advantage is measured in milliseconds, that has some value."⁴ His study concluded that "the profits from informed trading could provide strong economic motivation for those inside the gold price fixing club to exploit market practice" by trading based on information obtained during the fixing.⁵ Another draft research paper analyzing the Gold Fix found that it was conducive to collusion and manipulation, the empirical data was consistent with price artificiality and that "[i]t is likely that co-operation between participants may be occurring."⁶

5. In March 2013, it was reported that the U.S. Commodity Futures Trading Commission ("CFTC") was "examining the setting of prices in London" and was "looking at issues

⁴ *Id.*

⁵ Andrew Caminschi and Richard Heaney, *Fixing a Leaky Fixing: Short-term Market Reactions to the London PM Gold Price Fixing*, J. Future Mkts. at 3 (2013) ("Caminschi").

⁶ Liam Vaughan, *Gold Fix Study Shows Signs of Decade of Bank Manipulation* (Feb. 28, 2014), available at: <http://www.bloomberg.com/news/2014-02-28/gold-fix-study-shows-signs-of-decade-of-bank-manipulation.html>.

including whether the setting of prices for gold . . . is transparent.”⁷ Similarly, reports surfaced in December 2013 that Germany’s financial regulator BaFin had requested documents from and interviewed employees of Deutsche Bank as part of a probe regarding the potential manipulation of gold prices. The U.K.’s Financial Conduct Authority (“FCA”) is also “scrutinizing how prices are set in the gold market.”⁸

6. These inquiries and investigations come on the heels of global regulatory review of other benchmarks – LIBOR and foreign currency – involving numerous of the Defendants here. In the LIBOR interest-rate rigging scandal, defendant Barclays settled LIBOR-related investigations with the CFTC, the Department of Justice (“DOJ”) and the U.K. Financial Services Authority (“FSA”) for \$200 million, \$160 million and £59.5 million, respectively – for a total of more than \$450 million – defendants Deutsche Bank and SocGen were fined €725 million and €446 million, respectively, by the European Union (“EU”), and defendant HSBC estimated that its agreed-to rate change would affect its 2008 and 2009 profits by hundreds of millions of dollars. Additionally, all of the Defendants except Bank of Nova Scotia have either settled with or been fined by regulators, or are still under investigation, relating to manipulative and/or collusive conduct with respect to EURIBOR (Euro Interbank Offered Rate) and/or TIBOR (Tokyo Interbank Offered Rate). Finally, defendants Barclays, Deutsche Bank and HSBC have been the subjects of investigations by regulators around the globe, including the DOJ, CFTC, FCA, Switzerland’s FINMA and various other regulators in Europe and Asia related to collusive and manipulative conduct with respect to foreign currency benchmarks.

⁷ Katy Burne, Matt Day and Tatyana Shumsky, *U.S. Probes Gold Pricing* (Mar. 14, 2013), available at: <http://online.wsj.com/news/articles/SB10001424127887324077704578358381575462340>.

⁸ Suzi Ring, Liam Vaughan and Nicholas Larkin, *Century-Old London Gold Benchmark Fix Said to Face Overhaul* (Jan. 21, 2014), available at: <http://www.bloomberg.com/news/2014-01-21/century-old-london-gold-fix-said-to-face-overhaul-amid-scrutiny.html>.

7. As reports of potential gold price manipulation continue to surface, government investigations mount, and economic analyses continue to point toward manipulation and concerted action as the most likely explanation for anomalous trading activity occurring during the Gold Fix, Defendants have all but conceded that the process is flawed.

8. On January 17, 2014, Deutsche Bank publicly announced that it will withdraw from the Gold Fix. The following week, it was reported that Defendants “have formed a steering committee that’s seeking external firms to advise how the process could be improved.”⁹ On March 5, 2014, Bank of Nova Scotia’s CEO Brian Porter stated in a Bloomberg Television interview, “The Fix is dated, it has been around for a long period of time It should be reviewed and any degree of transparency we could bring to that would be healthy.”¹⁰

9. Those familiar with the Gold Fix process, however, have already articulated simple mechanisms that would ensure a more transparent and fair process. For example, an EU advisor stated that one option “would be to scrap the conference call and base the benchmark on an average of trades in the spot market over a short period.”¹¹ Similarly, some economists have suggested replacing the Gold Fix with a benchmark calculated by taking a snapshot of trading in the gold market – where \$19.6 trillion of gold was circulated in 2012.

10. As a direct result of Defendants’ unlawful conduct alleged herein, Plaintiff and the Class transacted in an artificial market and were injured and damaged.

⁹ *Id.*

¹⁰ Sarah Jacob, *Scotiabank CEO Porter Says ‘Dated’ Gold Fix Needs Review* (Mar. 5, 2014), available at: <http://www.bloomberg.com/news/2014-03-05/scotiabank-ceo-porter-says-dated-gold-fix-should-be-reviewed.html>.

¹¹ Suzi Ring, Liam Vaughan and Nicholas Larkin, *Century-Old London Gold Benchmark Fix Said to Face Overhaul* (Jan. 21, 2014), available at: <http://www.bloomberg.com/news/2014-01-21/century-old-london-gold-fix-said-to-face-overhaul-amid-scrutiny.html>.

JURISDICTION AND VENUE

11. This action arises under §1 of the Sherman Act, 15 U.S.C. §§1 and 2, §§4 and 16 of the Clayton Act, and §22 of the Commodity Exchange Act (“CEA”), 7 U.S.C. §25.

12. Gold is a “commodity” and is the “commodity underlying” gold futures and options contracts traded on the COMEX, as those terms are defined and used in §§1a(4) and 22 of the CEA, 7 U.S.C. §§1a(9) and 25(a)(1)(D), respectively.

13. This Court has jurisdiction over this action pursuant to §25 of the CEA, 7 U.S.C. §25(c), §1 of the Sherman Act, 15 U.S.C. §1, §§4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26(a), and 28 U.S.C. §§1331 and 1337, respectively.

14. Venue is proper in the Southern District of New York, pursuant to §25 of the CEA, 7 U.S.C. §25(c), §§4, 12 and 16 of the Clayton Act, 15 U.S.C. §§15, 22 and 26, and 28 U.S.C. §1391(b), (c) and (d). One or more of the Defendants resided, transacted business, was found, or had agents in the District, and a part of the events or omissions giving rise to the claims occurred in the Southern District of New York. Defendants’ unlawful acts allegedly manipulated prices of gold futures and options contracts traded on COMEX, a designated contract market located in this district at One North End Avenue, New York, New York 10282.

PARTIES

Plaintiff

15. Plaintiff Martin Fleisher is a resident of New York. Plaintiff purchased and sold securities dependent on the price of gold during the Class Period. Plaintiff transacted at artificial prices or in an artificial market due to Defendants’ collusive and manipulative practices.

Defendants

16. Defendant BNS, doing business as Scotiabank, is a Canadian public company headquartered in Toronto, Canada. Defendant ScotiaMocatta is the bullion division of BNS, is a part

of Scotiabank's Global Banking and Markets and provides hedging, financing and physical products and services. Defendant ScotiaMocatta is headquartered in Toronto, Canada. Defendant Scotia Capital (USA) Inc. ("Scotia Capital") is a New York corporation with its principal place of business located at One Liberty Plaza, 165 Broadway, New York, NY 10006. Scotia Capital is a domestic subsidiary of BNS and has offices in London. BNS, ScotiaMocatta and Scotia Capital are collectively referred to herein as "Bank of Nova Scotia." Bank of Nova Scotia actively traded COMEX gold futures contracts during the Class Period. Bank of Nova Scotia was a member and owner of The London Gold Market Fixing Ltd. during the Class Period.

17. Defendant Barclays Bank plc ("Barclays Bank") is a British public limited company headquartered at 1 Churchill Place, London E14 5HP, England. Defendant Barclays Capital Inc. ("Barclays Capital") is a corporation with its principal place of business located at 745 Seventh Avenue, New York, NY 10019 and is a wholly owned subsidiary of Barclays Bank. Barclays Capital also has offices in London. Barclays Bank and Barclays Capital are collectively referred to herein as "Barclays." Barclays actively traded COMEX gold futures contracts during the Class Period. Barclays was a member and owner of The London Gold Market Fixing Ltd. during the Class Period.

18. Defendant Deutsche Bank AG ("DB") is a German financial services company headquartered in Frankfurt, Germany. Defendant Deutsche Bank Securities Inc. ("DB Securities") is a direct subsidiary of Deutsche Bank U.S. Financial Markets Holding Corporation, and ultimately is a wholly owned subsidiary of DB, with its principal place of business located at 60 Wall Street, New York, NY 10005. DB and DB Securities are collectively referred to herein as "Deutsche Bank." Deutsche Bank actively traded COMEX gold futures contracts during the Class Period. Deutsche Bank was a member and owner of The London Gold Market Fixing Ltd. during the Class Period.

19. Defendant HSBC Bank plc is a British company headquartered in London at 8 Canada Square, London E14 5HQ, England, and is a wholly owned subsidiary of defendant HSBC Holdings plc. Defendant HSBC Securities (USA) Inc. is a direct subsidiary of HSBC Markets (USA) Inc., and ultimately is a wholly owned subsidiary of defendant HSBC Holdings plc, with its principal place of business located at 452 5th Ave., New York, NY 10018. Defendants HSBC Bank plc, HSBC Holdings plc and HSBC Securities (USA) Inc. are collectively referred to as “HSBC.” HSBC actively traded COMEX gold futures contracts during the Class Period. HSBC was a member and owner of The London Gold Market Fixing Ltd. during the Class Period.

20. Defendant Société Générale S.A. is a multinational banking and financial services company headquartered in Paris, France, at 29, Boulevard Haussmann, 75009 Paris, France. Defendant SG Americas Securities, LLC is the registered U.S.-based broker-dealer and wholly owned subsidiary of defendant Société Générale S.A. SG Americas Securities, LLC maintains its principal place of business at 1221 Avenue of the Americas, New York, New York, 10020. Defendants Société Générale S.A. and SG Americas Securities, LLC are collectively referred to herein as “SocGen.” SocGen actively traded COMEX gold futures contracts during the Class Period. SocGen was a member and owner of The London Gold Market Fixing Ltd. during the Class Period.

CO-CONSPIRATORS

21. During the Class Period, various other entities and individuals, including, but not limited to, agents or other persons or entities acting for Defendants or for any other co-conspirators, have willfully aided, abetted, counseled, or participated as co-conspirators in the unlawful conduct alleged in this complaint, including the restraint of trade and manipulation of the Gold Fix as alleged herein, and performed acts and made statements in furtherance thereof. All allegations against the

named Defendants are also against these unnamed co-conspirators as though set forth at length below.

EFFECTS ON INTERSTATE COMMERCE

22. Defendants' unlawful acts alleged in this complaint were within the flow of, were intended to, and did have a substantial effect on interstate commerce in the United States. Defendants made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or the mails in connection with the unlawful acts as described herein. Defendants have engaged in substantial business activities in the United States that affect many billions of dollars of commerce in gold and gold derivatives.

FACTUAL ALLEGATIONS

The London Gold Fix

23. Of all the precious metals, gold is the most popular as an investment. Investors generally buy gold as a way of diversifying risk. Gold is a commodity as defined by the CEA, 7 U.S.C. §1a(9), and is the commodity underlying gold derivatives, including gold futures and options contracts traded on COMEX. The gold market is estimated to be worth \$20 trillion, while anywhere from \$2 trillion to half of the total gold market value is estimated to be investible.

24. For almost a century, the most common benchmark for the price of gold has been the London Gold Fix. The origin of the Gold Fix dates to 1919 when the five leading gold dealers of the time would meet each morning at the office of Rothschild in London to settle at a wholesale price for physical gold trades. In 2004, Rothschild withdrew from the Gold Fix and defendant Barclays claimed its seat and the process moved to teleconference. Currently, defendants Barclays, Deutsche Bank, HSBC, Bank of Nova Scotia and SocGen comprise The London Gold Market Fixing Ltd., which is responsible for administering the Gold Fix. SocGen currently holds the rotating

chairmanship (through SocGen precious metals trader Vincent Domien), and the Gold Fix now takes place twice daily at 10:30 a.m. London time and 3:00 p.m. London time.

The Fixing Process

25. The fixing process begins with the chairman announcing an opening price, which is usually at or near the current spot price. Each of the members then declares whether they are buyers or sellers or have no interest. The chairman then adjusts the price until there are both buyers and sellers declared. Subsequently, buyers and sellers declare the quantity of gold (in increments of 5 bars) they seek to transact at this price. The chairman then adjusts the price up or down to bring the quantities into balance. When the quantities are balanced to within 50 bars or less, the chairman deems the price to be “fixed” and announces the result to the London Bullion Market Association (“LBMA”) for broad publication. The U.S. dollar fixing price is the price for one troy ounce of gold delivered in London in the form of LBMA “Good Delivery” bars (the de facto standard for the quality of gold bars) of approximately 400 troy ounces each. The LBMA provides the daily Gold Fix prices on its website in U.S. dollars, British pounds and euros.

26. Although Defendants’ clients do not participate directly in the conference calls, Defendants represent their market participant clients on the calls. Such participants include, *e.g.*, gold producers (miners, refiners), gold consumers (jewelers, industrials), investors, speculators, private individuals and sovereign states. Defendants have admitted that one of the advantages of the Gold Fix is “being connected to the most sophisticated trading rooms in the world” during the meetings.¹² They have also touted “[a]nonymity” as one of the central benefits of the Gold Fix.¹³

¹² Internet Archive Wayback Machine, April 4, 2006 search results for “<http://goldfixing.com/intro>”, <http://web.archive.org/web/20060404205008/http://www.goldfixing.com/intro/> (last visited Apr. 3, 2014).

¹³ Internet Archive Wayback Machine, April 4, 2006 search results for “<http://goldfixing.com/intro>”, <http://web.archive.org/web/20060404205008/http://www.goldfixing.com/intro/benefits.asp> (last visited Apr. 3, 2014).

27. According to Defendants, at any time during the call, a fixing member may call “flag” to bring the fixing to a temporary halt in order to recalculate their overall level of interest and withdraw a previously declared order or place a new order. During this time, the chairman cannot fix the price. The fixing process takes between a few minutes to an hour or more, but generally does not last much longer than 10 or 15 minutes. Importantly, *the fixing members are not restricted from sharing information with others or trading in gold-related instruments, including physical gold and gold derivatives, during the fixing period.*

28. The Gold Fix is not regulated by any governmental entity, but instead is left up to the fixing members to determine how the price of gold is set. The twice-daily Gold Fix becomes the primary basis for pricing gold spot and futures prices throughout the world. Defendants admit that “[t]he Gold Fixing . . . provides a published benchmark price that is widely used as a pricing medium by producers, consumers, investors and central banks.” Gold derivatives, including the price of COMEX gold futures and options contracts traded on the COMEX, are directly influenced by the Gold Fix.

29. Defendants admittedly revamped the official Gold Fix website in October 2013 (<https://www.goldfixing.com>), which features an explanation of how the gold price is fixed, just after Andrew Caminschi and Richard Heaney’s paper, *Fixing a Leaky Fixing: Short-Term Market Reactions to the London PM Gold Price Fixing* (the “Caminschi Study”), was released. The Caminschi Study, discussed in further detail below, was the first of its kind and concludes that the Gold Fix has a material impact on exchange-traded gold instruments (including COMEX gold futures), that information from the fixing is leaking to the markets prior to the fixing publication and that economic returns exist for those trading on the leaked information. In order to enter and obtain any information from the new Gold Fix website, users must first agree to a set of onerous terms and

conditions thus preventing many from accessing any information at all about the Gold Fix directly from the London Gold Market Fixing Ltd. Further, Defendants no longer tout on the Gold Fix website their contemporaneous connection to the most sophisticated trading rooms in the world and anonymity as central benefits of the Gold Fix.

COMEX Gold Futures and Options

30. Derivatives are contracts between two or more parties derived from one or more underlying assets. Gold derivatives include gold futures and options contracts, which are used extensively as a hedge against inflation and as a safe haven in times of financial uncertainty. A futures contract is an agreement to buy or sell a commodity and deliver that item at a certain date in the future. A gold futures contract is an agreement to buy or sell a fixed amount of gold, typically (but not always) 100 troy ounces, at a date in the future. The contracts are standardized by a futures exchange as to quantity, quality, time and place of delivery – only the price is variable.

31. Gold futures contracts are traded on COMEX, a division of the New York Mercantile Exchange (“NYMEX”), which is owned and operated by CME Group. COMEX is designated by the CFTC as a contract market pursuant to §5 of the CEA, 7 U.S.C. §7. COMEX submits to the CFTC various rules and regulations for approval through which COMEX designs, creates the terms of, and conducts trading in various precious metals futures and options contracts, including futures and options contracts for gold. COMEX is an organized, centralized market that provides a forum for trading gold futures and options contracts. The average daily volume for COMEX Gold futures is over 200,000 contracts which equates to approximately 20 million ounces changing hands on a daily basis with an additional 48 million ounces (or 1,366 metric tons) held in open positions. Over 90% of these futures contracts are traded electronically.

32. COMEX provides standardized gold futures contracts with delivery dates commencing with the next calendar month and potentially extending as far as 72 sequential months into the future, depending upon the month in which the contract was executed. The number of COMEX gold futures contracts trading at any given time varies from time to time. Trading is conducted for delivery during the current calendar month; the next two calendar months; each February, April, August, and October falling within a 23-month period; and any June and December falling within a 72-month period beginning with the current month. The most immediate expirations are referred to as the “front” months, and are the most actively traded gold futures.

33. COMEX gold futures trades have two sides. The “long” side represents the buyer of a contract who is obligated to pay for the gold and take delivery. The “short” side represents the seller of a contract who is obligated to receive payment for the gold and make delivery. Short positions are typically obtained by buyers expecting the price of gold to decline, while long positions are typically obtained by sellers expecting the price of gold to increase. If a market participant holds its position to the end of the settlement period for a gold futures contract, the market participant is obligated to “go to delivery.” Once the settlement date is reached, the futures contract for a particular month becomes a present contractual obligation for the purchase and sale of the physical gold.

34. Only a small percentage of all futures contracts traded each year on COMEX and other exchanges result in actual delivery of the underlying commodities. Instead, traders generally offset their futures positions before their contracts mature. For example, a purchaser of a gold futures contract can cancel or offset his future obligation to the contract market/exchange clearing house to take delivery of gold by selling an offsetting futures contract. The difference between the initial purchase or sale price and the price of the offsetting transaction represents the realized profit

or loss. To illustrate this concept, if gold is trading at \$600 per troy ounce, a typical 100 ounce contract has a value of \$60,000 (600×100 ounces). A trader that is long at 600 and sells at 610 will make \$1,000 ($610 - 600 = \$10$ profit, 10×100 ounces = \$1,000). Conversely, a trader who is long at 600 and sells at 590 will lose \$1,000.

35. Futures contracts follow a practice known as mark-to-market. The term refers to accounting for the fair value of an asset such as gold based on the current market price or based on another objectively assessed fair value. For example, at the end of each trading day, a trading exchange such as COMEX sets a settlement price based on the day's closing price range for each contract. Each trading account is credited or debited based on that day's profits or losses and checked to ensure that the trading account maintains the appropriate margin for all open positions.

36. Gold options contracts are also traded on COMEX. There are two types of options – calls and puts. A call gives the holder of the gold option the right, but not the obligation, to buy the underlying gold futures contract at a certain price, known as the strike price, up until some point in the future – options expiry. If the price of the futures contract exceeds the strike price it will typically be exercised as “in the money.” Conversely, the put gives the holder the right, but not the obligation, to sell the underlying gold futures contract at the strike price up until the date the option expires. Puts are usually bought when the holder expects the price of the underlying contract to fall (like a short position on a futures contract), while calls are usually bought when the holder expects the underlying contract to rise. The price at which an option is bought or sold is the premium.

The Price of Gold and Gold Derivatives Is Directly Linked to the Gold Fix

37. The market for gold derivatives is inextricably linked to, and associated with, the spot (or physical) market for gold, and consequently to the Gold Fix, which essentially captures a snapshot of the spot price for gold every day at 10:30 a.m. and 3:00 p.m. London Time.

38. The spot market is the first point in a commercial transaction, and gold futures prices derive their valuation from the spot price. Gold spot and futures prices move in the same direction, which is why people use futures markets to hedge price exposure. An increase in the price of gold as announced after each Gold Fix signals either stronger demand or weakened supply, and futures traders take account of both price movements and changes in the supply/demand balance when conducting their futures trading. In other words, the futures price is the market's consensus of the expected spot price for the underlying physical commodity at a specified future date.

39. Futures prices are nothing more than an expectation of the future spot prices, so both futures and physical prices must be and are directly correlated. For example, if the futures price in a contract negotiated today for delivery next month starts to rise, this indicates that the market believes spot prices will rise next month. The rise in the futures price for next month delivery will cause a reaction today among producers and consumers of the commodity. Likewise, current spot prices and changes or trends in current spot prices will affect futures prices. The Caminschi Study documented this strong correlation between the Gold Fix and futures prices when it concluded, "it is evident that both the GC [the trading symbol for COMEX gold futures] and GLD [the trading symbol for a popular exchange-traded fund ("ETF")] markets are significantly impacted by the London PM gold price fixing process."¹⁴

40. The following illustration demonstrates the correlation between the Gold Fix and gold futures prices from 2004 to 2013. XAU is the trading symbol for spot gold prices while GC1 is the trading symbol for one of the heaviest trading COMEX gold futures contracts. As explained above, gold spot prices are based on the Gold Fix, with the main difference being that spot prices fluctuate throughout a trading cycle, providing up-to-the-minute prices. These spot prices realign each day

¹⁴ Caminschi Study at 35.

with the announcements of the Gold Fix, virtually guaranteeing direct correlation with the Gold Fix. The chart actually provides two lines, one for spot prices (XAU) and one for the futures contract prices (GC1), but the correlation between the spot and futures prices is so high (almost 100%) that the lines converge and appear as one.



Defendants Profit from Conspiring to Manipulate, and Manipulating, the Price of Gold and Gold Derivatives

41. Defendants have combined, conspired and/or agreed with one another to manipulate prices of gold and gold derivatives contracts. Defendants' conduct was designed to profit from the Gold Fix by abusing their ownership of, and unique positions as fixing members of, The London Gold Market Fixing Ltd., at the expense of Plaintiff and Class members. Central to Defendants' unlawful conduct is that Defendants are not prohibited from trading and sharing information with each other and with others during the fixing process, and Defendants did in fact trade and place

directional trades with a high degree of certainty that they would profit from them based on the information discussed on and likely even prior to the Gold Fix teleconferences.

42. A precious metals broker and former Barclays economist explained that “[t]raders involved in this price-determining process have knowledge which, even for a short time, is superior to other people’s knowledge That is the great flaw of the London gold-fixing.”¹⁵ This “flaw” allows Defendants to make substantial profits from trading on their superior knowledge during the call, prior to the publication of the Gold Fix to the larger public. As the head of research at GoldMoney, a dealer in physical gold, explained, “[w]hen the banks fix the price, the advantage they have is that they know what orders they have in the pocket. There is a possibility that they are gaming the system.”¹⁶

43. That there is in fact an increase in trading volume during the call is well documented. For example, the Caminschi Study reported:

This study finds that both the GC [COMEX gold futures contract] and GLD [SPDR’s gold ETF] markets are sensitive to the fixing, with large, statistically significant spikes in trade volume and price volatility following the start of the price fixing period. Trade volumes increase over 50% and price volatility increases over 40% following the fixing start. Further, the elevation in market activity is marginally higher and persists longer for the GC as compared with the GLD. We find no significant change in either price volatility or trade volume aligned with the end of the fixing.¹⁷

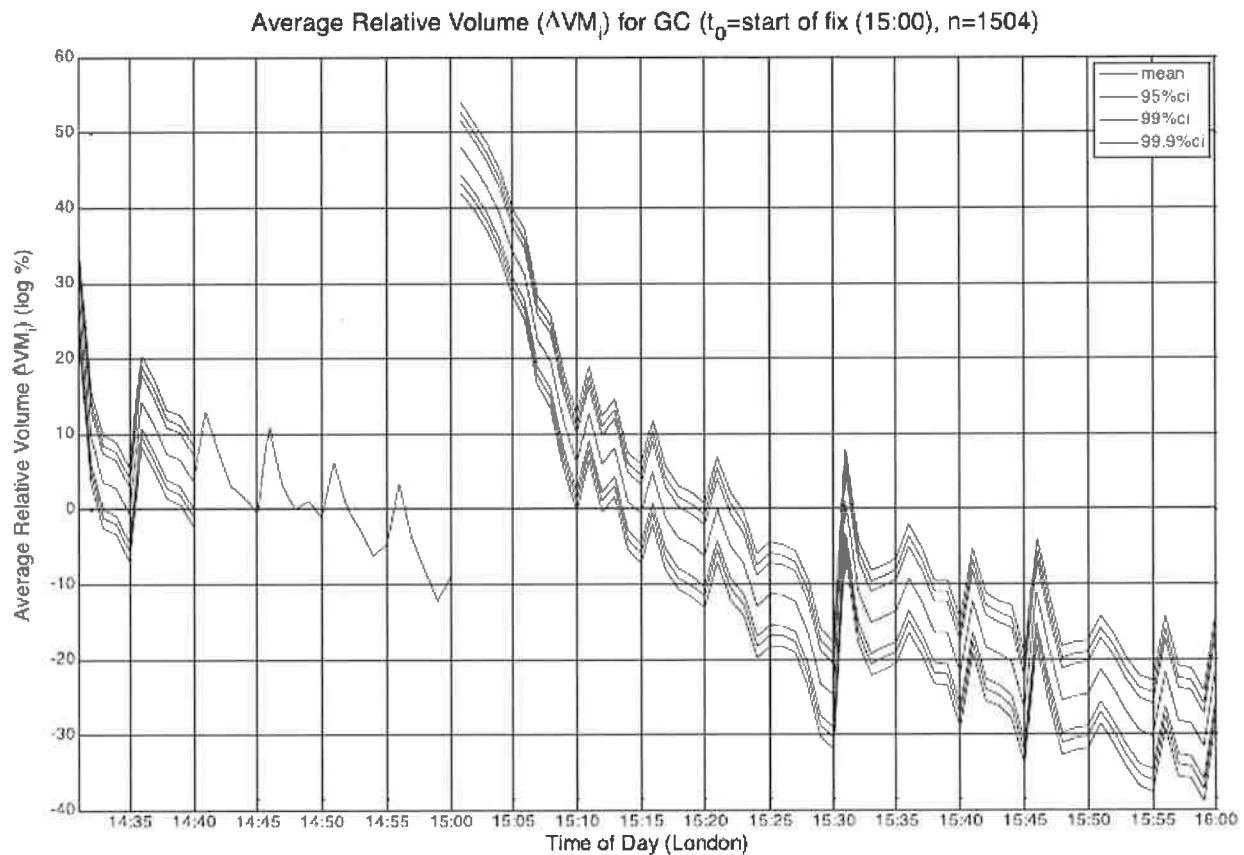
44. In the chart shown below, the Caminschi Study graphically displays the higher volume of trading following the beginning of the PM Gold Fix. The study explains that “the higher

¹⁵ Liam Vaughan, Nicholas Larkin and Suzi Ring, *London Gold Fix Calls Draw Scrutiny Amid Heavy Trading* (Nov. 26, 2013), available at: <http://www.bloomberg.com/news/print/2013-11-26/gold-fix-drawing-scrutiny-amid-knowledge-tied-to-eruption.html>.

¹⁶ Madison Marriage, *Gold price rigging fears put investors on alert* (Feb. 23, 2014), available at: <http://goldsilverworlds.com/physical-market/ft-removes-article-gold-price-rigging-fears-put-investors-on-alert/>.

¹⁷ Caminschi Study at 2.

volume and volatility immediately following the fix start is not just uninformed speculation. If it were, the exchange-traded contract prices would move in the opposite direction to that implied by the upcoming fix as often as they move in the same direction. . . . Instead, we see a very coherent increase aligned to the fixing start.”¹⁸ Given that Defendants collaborated to create the privileged information exchanged during the fixing calls, controlled the distribution of that information and placed trades based on that information, Defendants caused this increased trading volume to occur.



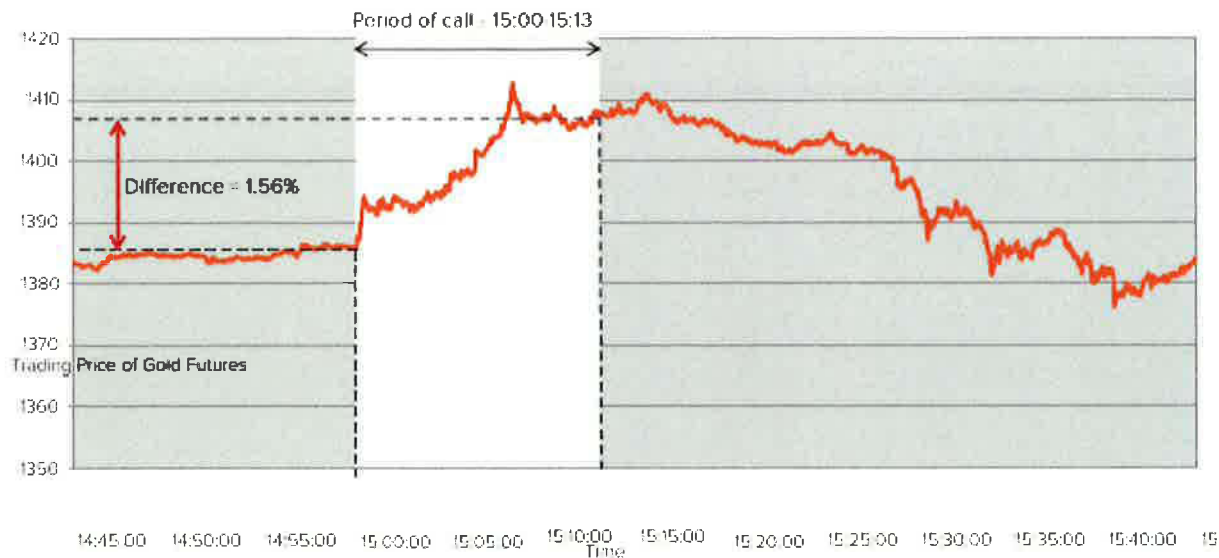
45. The Caminschi Study also found that trades in the opening minutes of the fixing are significantly predictive of the price direction of the fixings, in some cases exceeding 90%. Based on these findings, Caminschi/Heaney concluded that: (a) the afternoon Gold Fix process has a material impact on exchange traded gold instruments, including COMEX gold futures; (b) information from

¹⁸ *Id.* at 31.

the fixing is leaking into markets prior the fixing results being published; and (c) real economic returns exist for trading on these information leaks. The Caminschi Study also found that the price variation during the 15 minutes following the start of the call averages \$4 per ounce. With just one typical COMEX futures contract covering 100 ounces of gold, the potential profit from this 15-minute period is \$400 per contract (100 ounces x \$4). If this were earned at only half of the afternoon fixings held each trading day, with approximately 250 fixing days per year, this single contract exposure could generate \$50,000 per year. During those same 15 minutes, on average, some 4,500 of COMEX's popular GC futures contracts are traded each day. Based on these potential profits, the study concluded that "the profits from informed trading could provide strong economic motivation for those inside the gold price fixing club to exploit market practice in this manner."¹⁹

46. The anomalous trading activity associated with Defendants' conduct is illustrated in the graph below with respect to the trading price of gold futures on May 22, 2013. Following a relatively level trading period prior to the start of the Gold Fix call, there is a noticeable jump in price – over \$20 – which is indicative of trading activity related to the call. The market continues to move in the direction indicated by the initial move and closes significantly higher at the end of the fixing period, before declining substantially to levels even below the level immediately preceding the call. Given that Defendants collaborated to create the privileged information exchanged during the fixing calls, controlled the distribution of that information and placed trades based on that information, Defendants caused gold futures prices to move in whichever direction they desired before publication of the Gold Fix to the greater public.

¹⁹ Caminschi Study at 3.



Gold Futures price movements during the Gold fixing call on 22-May-2013

47. On February 23, 2014, the *Financial Times* published an article discussing the results of an analysis by Fideres, a consultancy, which found that gold prices may have been manipulated in 50% of the cases during the four-year period between January 2010 and December 2013. Shortly thereafter, the article was removed from the website, but not before its imprint was left and subsequently retrieved from Google's archives. The article reported:

Fideres' research found the gold price frequently climbs (or falls) once a twice-daily conference call between the five banks begins, peaks (or troughs) almost exactly as the call ends and then experiences a sharp reversal, a pattern it alleged may be evidence of "collusive behaviour."

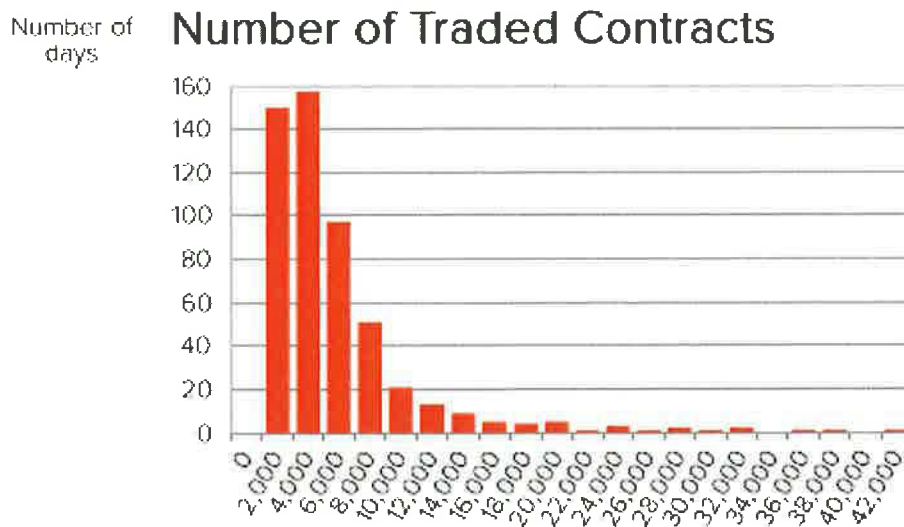
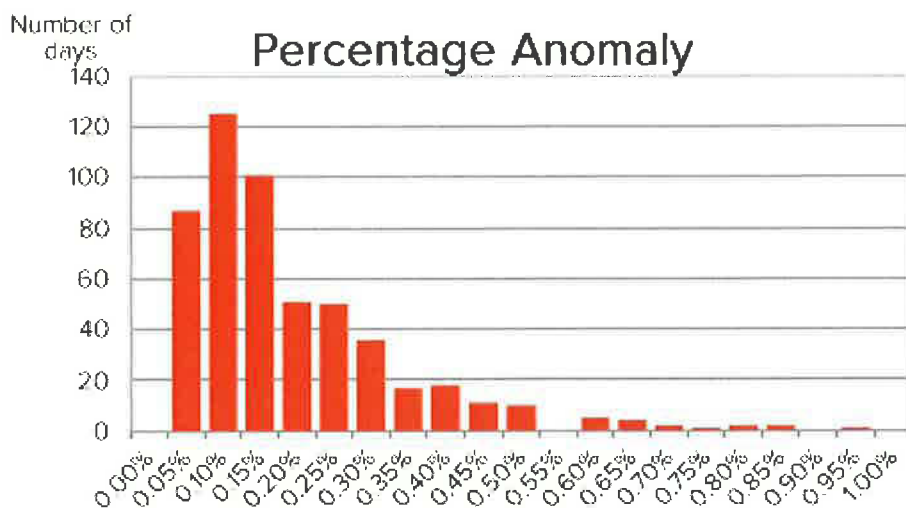
"[This] is indicative of panel banks pushing the gold price upwards on the basis of a strategy that was likely predetermined before the start of the call in order to benefit their existing positions or pending orders"

"The behaviour of the gold price is very suspicious in 50 per cent of cases. This is not something you would expect to see if you take into account normal market factors"²⁰

48. Over approximately 1,000 tradable days in the period covered by the Fideres analysis, approximately 500 days exhibited anomalous behavior. The average quantum of anomaly was \$2

²⁰ Madison Marriage, *Gold price rigging fears put investors on alert* (Feb. 23, 2014), available at: <http://goldsilverworlds.com/physical-market/ft-removes-article-gold-price-rigging-fears-put-investors-on-alert/>.

and the approximate average number of futures traded during the fixing window was 5,000. For comparative purposes, at 2010 prices, a \$10 move in the price of Gold would yield a 20% return on a \$5,000 investment in COMEX gold futures (a \$1,000 profit). The following charts demonstrate the quantum of the gold market price anomalies and the volume of trading in gold futures across days where anomalous behavior was identified. Based on its analysis, Fideres' study positively concluded that there is sufficient statistical evidence of privileged information leaking into the market during the first few minutes of the time window for the fixing.



49. By leveraging their control of the Gold Fix to create directional price movements that benefit Defendants at the expense of Plaintiff and the Class, Defendants intended to manipulate and did in fact manipulate the prices of physical gold and gold futures and options contracts. Moreover, through their concerted conduct surrounding the Gold Fix, Defendants caused the prices of physical gold and gold futures and options contracts to trade at artificial levels in restraint of trade.

The Gold Fix, By Its Nature, Is Susceptible to Collusion and Manipulation

50. The Gold Fix, an exclusive and private meeting held via teleconference between five global mega-banks that trade directly in, are affiliated with companies that trade directly in, or have financial interests in companies that trade directly in, gold and/or gold derivatives and have a substantial history associated with manipulation of financial benchmarks, is by its very nature extremely susceptible to collusive and manipulative behavior. When Barclays joined the Gold Fix in 2004 and the meetings moved from in-person to a dedicated conference facility, Defendants likely had an even greater incentive and ability to manipulate gold prices, as those directly participating on the calls were either no longer removed or less removed from their physical operations that execute trades.

51. The structure of the benchmark is conducive to collusion and manipulation, and Defendants have the means, motive and opportunity to manipulate the fixing rather than compete. Defendants have the means to collude and manipulate the Gold Fix by virtue of their unfettered access to the Gold Fix process as fixing members of The London Gold Market Fixing Ltd. Defendants' motive is exhibited by their ability to profit from their unique knowledge obtained through the Gold Fix as demonstrated in the various economic analyses discussed above. Defendants have the opportunity to manipulate the Gold Fix every day when they meet to administer the fix, including through their extensive relationships and communications with each other as direct

participants of the Gold Fix and as market-making members of the LBMA, an international trade association representing the market for gold and silver bullion.

52. Moreover, built in to the very process of the Gold Fix itself is a mechanism that allows participants to individually and collectively gain a competitive edge over their competitors at the expense of Plaintiff and Class members – namely access to, and the ability to trade on, shared pricing information exchanged during the call. Finally, the fact that there has been no regulatory oversight or body responsible for ensuring that the Gold Fix is administered in a transparent fashion and is not susceptible to manipulation is in and of itself evidence that the Gold Fix is susceptible to collusion and manipulation.

**Defendants’ Collusive and Manipulative Conduct
Has Led to Government Investigations**

53. In March 2013, it was reported that the CFTC was “examining the setting of prices in London,” and was “looking at issues including whether the setting of prices for gold . . . is transparent.”²¹ Similarly, reports surfaced in December 2013 that Germany’s financial regulator BaFin had requested documents from and interviewed employees of Deutsche Bank as part of a probe regarding the potential manipulation of gold prices. The U.K.’s FCA is also “scrutinizing how prices are set in the gold market.”²²

54. These inquiries and investigations come on the heels of global regulatory review of the LIBOR interest-rate rigging scandal, where defendant Barclays settled LIBOR-related investigations with the CFTC, the DOJ and the FSA for \$200 million, \$160 million and £59.5

²¹ Katy Burne, Matt Day and Tatyana Shumsky, *U.S. Probes Gold Pricing* (Mar. 14, 2013), available at: <http://online.wsj.com/news/articles/SB10001424127887324077704578358381575462340>.

²² Suzi Ring, Liam Vaughan and Nicholas Larkin, *Century-Old London Gold Benchmark Fix Said to Face Overhaul* (Jan. 21, 2014), available at: <http://www.bloomberg.com/news/2014-01-21/century-old-london-gold-fix-said-to-face-overhaul-amid-scrutiny.html>.

million, respectively – for a total of more than \$450 million – defendants Deutsche Bank and SocGen were fined €725 million and €446 million, respectively, by the EU, and defendant HSBC estimated that its agreed-to rate change would affect its 2008 and 2009 profits by hundreds of millions of dollars.

55. Additionally, defendants Barclays, Deutsche Bank and SocGen recently settled proceedings with the EU relating to rigging the EURIBOR, including allegations that traders at different banks discussed their bank’s submissions for the calculation of the EURIBOR along with other trading and pricing strategies. The EU’s investigation as to defendant HSBC is still under way. Similarly, Deutsche Bank has settled proceedings with the EU regarding collusive practices related to the setting of the Japanese TIBOR. SocGen was fined \$605 million for manipulating EURIBOR while Deutsche Bank was fined a total of \$983 million for its manipulation of both EURIBOR and TIBOR. Defendants Barclays, Deutsche Bank and HSBC have also been the subjects of investigations by regulators around the globe, including the DOJ, CFTC, FCA, Switzerland’s FINMA and various other regulators in Europe and Asia, related to collusive and manipulative conduct with respect to foreign-exchange benchmarks.

56. In the wake of regulatory scrutiny concerning the Gold Fix, in mid-January 2014, defendant Deutsche Bank announced that it will withdraw from the gold panel, but that it would continue in its role until a buyer is found for the seat. Also in response to this scrutiny, Bank of Nova Scotia’s CEO Brian Porter stated in a Bloomberg Television interview, “The Fix is dated, it has been around for a long period of time. . . . It should be reviewed and any degree of transparency we could bring to that would be healthy.”²³ Additionally, it was reported that Defendants have

²³ Sarah Jacob, *Scotiabank CEO Porter Says ‘Dated’ Gold Fix Needs Review* (Mar. 5, 2014), available at: <http://www.bloomberg.com/news/2014-03-05/scotiabank-ceo-porter-says-dated-gold-fix-should-be-reviewed.html>.

begun considering ways to improve the Gold Fix process, and have even formed a steering committee that is seeking external firms to advise how the process could be improved. Those familiar with the Gold Fix process, however, have already indicated how the process could be improved and made more transparent. For example, an EU advisor stated that one option “would be to scrap the conference call and base the benchmark on an average of trades in the spot market over a short period.”²⁴ Similarly, some economists have suggested replacing the Gold Fix with a benchmark calculated by taking a snapshot of trading in the gold market – where \$19.6 trillion of gold was circulated in 2012.

ANTITRUST INJURY

57. As a direct and foreseeable result of Defendants’ unlawful anticompetitive and manipulative conduct, competition in the market for physical gold and gold derivatives has been reduced and prices for physical gold and gold derivatives have traded at artificial levels.

58. As a direct result of Defendants’ violations, Plaintiff and Class members have been damaged in their property or business by virtue of having suffered substantial financial losses.

EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

59. By its very nature, the unlawful activity as alleged herein that Defendants engaged in was self-concealing. Plaintiff and Class members had no knowledge of the unlawful conduct alleged in this complaint until at least the time when it was reported that defendant Deutsche Bank would withdraw from the Gold Fix process in January 2014. Plaintiff and Class members were deprived of the benefits of normal market operation, including market-determined pricing without influence from Defendants’ anticompetitive conduct.

²⁴ Suzi Ring, Liam Vaughan and Nicholas Larkin, *Century-Old London Gold Benchmark Fix Said to Face Overhaul* (Jan. 21, 2014), *available at*: <http://www.bloomberg.com/news/2014-01-21/century-old-london-gold-fix-said-to-face-overhaul-amid-scrutiny.html>.

60. As a direct result of Defendants' violations, Plaintiff and Class members have been damaged in their property or business by virtue of having suffered substantial financial losses.

CLASS ALLEGATIONS

61. 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 itself and others similarly situated. The "Class" is defined as:

All persons or entities who, between January 1, 2004 and the present, held or transacted in physical gold, or gold derivatives that settled or were marked-to-market based on the Gold Fix, or held or transacted in COMEX gold futures or options contracts, or purchased or sold securities dependent on the price of gold. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, agent or employee of any defendant, any co-conspirator and any governmental entity.

62. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that at least hundreds of geographically dispersed Class members traded COMEX gold futures and options contracts during the Class Period.

63. 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' unlawful conduct as alleged herein.

64. Plaintiff will fairly and adequately protect the interests of the members of the Class, has no interests which are adverse to the interests of absent Class members and has retained counsel competent and experienced in class action litigation, including commodity manipulation and antitrust class action litigation.

65. Common questions of law and fact exist as to all members of the Class that 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 and/or with others to manipulate prices for gold and gold derivatives contracts;
- (b) whether Defendants manipulated the prices of gold derivatives contracts in violation of the CEA;
- (c) whether Defendants violated §1 of the Sherman Act;
- (d) whether Defendants' conduct had an anticompetitive and/or manipulative effect on prices, and caused injury to the business or property of Plaintiff and the Class;
- (e) whether Defendants were unjustly enriched at the expense of Plaintiff and members of the Class; and
- (f) the appropriate measure of damages sustained by Plaintiff and other members of the Class as a result of Defendants' unlawful activities.

66. 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.

67. 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 would be unobjectionable. 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.

CAUSES OF ACTION

CLAIM ONE

VIOLATION OF 7 U.S.C. §§ 1 *et seq.* MANIPULATION IN VIOLATION OF THE COMMODITY EXCHANGE ACT INCLUDING CFTC RULE 180.1(a)

68. Plaintiff incorporates by reference and realleges the preceding allegations.

69. By their intentional misconduct, the Defendants each violated section 9(a)(2) of the Commodity Exchange Act, 7 U.S.C. § 13(a)(2), and caused prices of gold futures and options to be artificial during the Class Period.

70. Defendants' alleged trading and other activities constitute market power manipulation of the prices of gold futures and options in violation of sections 9(a) and 22(a) of the CEA, 7 U.S.C. §§ 13(a) and 25(a).

71. In addition, in violation of CFTC Rule 180.1(a), Defendants caused to be delivered for transmission false, misleading or inaccurate reports of the London Gold Fixing, *i.e.*, false reports concerning market information or conditions that affected or tended to affect the price of gold, a commodity in interstate commerce. Defendants did so either knowingly, intentionally or acting in reckless disregard of the fact that such reports were false, misleading, or inaccurate.

72. Defendants' extensive manipulation deprived Plaintiff and the Class of a lawfully operating market during the Class Period.

73. Plaintiff and others who transacted in gold futures and options or purchased and sold securities dependent on the price of gold during the Class Period transacted at artificial and unlawful prices resulting from Defendants' manipulations in violation of the CEA, 7 U.S.C. § 1, *et seq.*, and as a direct result were injured and suffered damages.

74. Plaintiff and Class Members are each entitled to actual damages sustained for the violations of the CEA alleged above.

CLAIM TWO

VIOLATION OF 7 U.S.C. §§ 1 *et seq.* PRINCIPAL-AGENT LIABILITY IN VIOLATION OF THE CEA

75. Plaintiff incorporates by reference and realleges the preceding allegations.

76. Each Defendant is liable under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B), for the manipulative acts of their agents, representatives, and/or other persons acting for them in the scope of their employment.

77. Plaintiff and Class Members are each entitled to actual damages sustained for the violations of the CEA alleged above.

CLAIM THREE

VIOLATION OF 7 U.S.C. §§ 1 *et seq.* AIDING & ABETTING LIABILITY IN VIOLATION OF THE CEA

78. Plaintiff incorporates by reference and realleges the preceding allegations.

79. Defendants knowingly aided, abetted, counseled, induced and/or procured the violations of the CEA alleged above. Defendants did so knowing of each other's manipulation of the London Gold Fixing, and willfully intended to assist these manipulations, which resulted in gold

futures and options pricing becoming artificial during the Class Period in violation of Section 25(a)(1) of the CEA, 7 U.S.C. § 25(a)(1).

80. Plaintiff and Class Members are each entitled to actual damages sustained for the violations of the CEA alleged above.

CLAIM FOUR

VIOLATION OF 15 U.S.C. § 1 SHERMAN ACT VIOLATIONS

81. Plaintiff incorporates by reference and realleges the preceding allegations.

82. Defendants and their unnamed co-conspirators entered into and engaged in a combination and conspiracy that was an unreasonable and unlawful restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, *et seq.*

83. During the Class Period, Defendants entered into a series of agreements to reduce competition amongst themselves by fixing and/or manipulating the gold benchmark rate and, as a result, the price of gold and gold futures, including COMEX futures and securities dependent on the price of gold.

84. This conspiracy to manipulate the gold benchmark rate caused injury to both Plaintiff and the Class by depriving them of the benefit of accurate gold benchmark rates reflecting actual market conditions, as well as accurate spot gold rates for some period during and following Defendants' unlawful conduct, and thus received, upon execution of their trades, less in value than they would have received absent Defendants' wrongful conduct.

85. The conspiracy is a *per se* violation of Section 1 of the Sherman Act. Alternatively, the conspiracy resulted in substantial anticompetitive effects in the gold market. There is no legitimate business justification for, or pro-competitive benefits from, Defendants' conduct.

86. As a direct and proximate result of Defendants' violation of Section 1 of the Sherman Act, Plaintiff and the Class have suffered injury to their business and property throughout the Class Period.

87. Plaintiff and the Class are entitled to treble damages for the violations of the Sherman Act alleged above. Plaintiff and the Class are also entitled to an injunction against Defendants preventing and restraining the violations alleged above.

CLAIM FIVE

UNJUST ENRICHMENT

88. Plaintiff incorporates by reference and realleges the preceding allegations.

89. Because of the acts of Defendants and their co-conspirators as alleged above, Defendants have been unjustly enriched at the expense of Plaintiff and Class Members.

90. Plaintiff and Class Members seek restoration of the monies of which they were unfairly and improperly deprived, as described herein.

PRAYER FOR RELIEF

Plaintiff demands relief as follows:

A. That the Court certify this lawsuit as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be designated as a class representative, and that Plaintiff's counsel be appointed as Class counsel for the Class;

B. That the unlawful conduct alleged above be adjudged and decreed to violate Section 1 of the Sherman Act;

C. That Defendants be permanently enjoined and restrained from continuing and maintaining the conspiracy alleged in the Complaint;

D. That the Court award Plaintiff and the Class damages against Defendants for their violations of federal antitrust laws, in an amount to be trebled in accordance with such laws, plus interest;

E. That the Court find that Defendants violated the CEA and award appropriate damages;

F. That the Court award Plaintiff and the Class their costs of suit, including reasonable attorneys' fees and expenses, as provided by law; and

G. That the Court direct such further relief as it deems just and proper.

DEMAND FOR JURY TRIAL

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

DATED: April 24, 2014

SUSMAN GODFREY L.L.P.



Stephen D. Susman (SS-8591)
Shawn J. Rabin (SR-6546)
Megan O'Hara Easley (ME-7715)
560 Lexington Avenue, 15th Floor
New York, New York 10022
Telephone: (212) 336-8330
Facsimile: (212) 336-8340

Marc M. Seltzer (*pro hac vice* application
forthcoming)
Steven G. Sklaver (*pro hac vice* application
forthcoming)
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Attorneys for Plaintiff