

CV-16-55 1067-DOCF

Court File No. ✓

**ONTARIO  
SUPERIOR COURT OF JUSTICE**



BETWEEN:

JULIUS DI FILIPPO and DAVID CARON

Plaintiffs

and

THE BANK OF NOVA SCOTIA, SCOTIAMOCATTA, SCOTIA CAPITAL (USA) INC.,  
DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES LIMITED, DEUTSCHE BANK  
SECURITIES, INC., HSBC HOLDINGS PLC, HSBC BANK PLC., HSBC BANK CANADA,  
HSBC SECURITIES (CANADA) INC., HSBC USA INC., HSBC SECURITIES (USA) INC.,  
UBS AG, UBS SECURITIES LLC, UBS BANK (CANADA), and THE LONDON SILVER  
MARKET FIXING LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the Statement of Claim served with this Notice of Action.


IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Notice of Action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 15, 2016 Issued by   
Local Registrar *(Im Brenton)*  
Address of court office: 393 University Avenue, 10th Floor  
Toronto ON M5G 1E6

**TO: THE BANK OF NOVA SCOTIA**  
44 King Street West  
Toronto, ON M5H 1H1

**AND TO: SCOTIAMOCATTA**  
40 King Street West  
Toronto, ON M5W 2X6

**AND TO: SCOTIA CAPITAL (USA) INC.**  
One Liberty Plaza  
New York, New York 10006, USA

**AND TO: DEUTSCHE BANK AG**  
Taunusanlage 12  
60325 Frankfurt AM Main 60262, Germany

**AND TO: DEUTSCHE BANK SECURITIES LIMITED**  
199 Bay Street, Suite 4700  
Commerce Court West  
Toronto, ON M5L 1E9

**AND TO: DEUTSCHE BANK SECURITIES, INC.**  
60 Wall Street  
New York, New York 10005, USA

**AND TO: HSBC HOLDINGS PLC**  
8 Canada Square  
London E14 5HQ, United Kingdom

**AND TO: HSBC BANK PLC**  
8 Canada Square  
London E14 5HQ, United Kingdom

**AND TO: HSBC BANK CANADA**  
300-885 West Georgia Street  
Vancouver, BC V6C 3E9

**AND TO: HSBC SECURITIES (CANADA) INC.**  
70 York Street, Suite 500  
Toronto, ON M5J 2S9

**AND TO: HSBC USA, INC.**  
452 Fifth Avenue  
New York, New York 10018, USA

**AND TO: HSBC SECURITIES (USA) INC.**  
453 Fifth Avenue  
New York, New York 10018, USA

**AND TO: UBS AG**  
Aeschenvorstadt 1  
4051 Basel, Switzerland

and

Bahnhofstrasse 45  
8001 Zurich, Switzerland

**AND TO: UBS SECURITIES LLC**  
677 Washington Blvd.  
Stamford, Connecticut 06901, USA

**AND TO: UBS BANK (CANADA)**  
800-154 University Avenue  
Toronto, ON M5H 3Z4

**AND TO: THE LONDON SILVER MARKET FIXING LIMITED**  
1 Silk Street  
London EC2Y 8HQ, United Kingdom

## CLAIM

1. The plaintiffs' claim is for:
  - (a) A declaration that the Fixing Bank Defendants, as defined below, conspired, agreed and/or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the price of silver during the Class Period (as defined in paragraph 10 below);
  - (b) A declaration that some or all of 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 silver market during the Class Period;
  - (c) Damages or compensation in an amount not exceeding \$1,000,000,000 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;
    - (iv) Waiver of tort; and
    - (v) Breach of contract;
  - (d) Punitive, exemplary and aggravated damages in the amount of \$250,000,000;

- (e) An equitable rate of interest on all sums found due and owing to the plaintiffs and other class members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*Courts of Justice Act*");
- (f) Investigative costs pursuant to section 36 of the *Competition Act* and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act* and the *Courts of Justice Act*; and
- (g) Such further and other relief as this Honourable Court deems just.

### ***The Nature of the Action***

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

### ***The Fixing***

3. Until August 14, 2014, The Bank of Nova Scotia, Deutsche Bank, and HSBC (the "**Fixing Bank Defendants**") met privately on a secure conference call at 12:00 P.M. London time for what is known as the London Silver Fixing (hereafter the "**London Silver Fixing**" or "**Fixing**"). The Fixing produced a benchmark rate for silver, a price often agreed to be used in advance by buyers

and sellers of silver (the “**Fix price**”). The Fix price affected the spot market for silver which, in turn, affected the broader market of Silver Investments.

4. The acts alleged in the following paragraphs are collectively referred to as the “**Conspiratorial Acts.**”

5. The Fixing was supposed to start and end with open competition. The process was supposed to begin with the current, supposedly competitive, “spot” price for silver. 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 silver adopted at the Fixing. The Fix price is used directly in contracts for the purchase and sale of silver that adopt the Fix price as the price term for any given day.

6. Beginning at least as early as 1999 and continuing through to August 14, 2014, under the guise of the arcane fixing process, which provided a veneer of legitimacy for collusion and conspiratorial communications, the defendants conspired with each other to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably prices in the silver market. This was done to enhance the profits of some or all of the defendants at the expense of the Class Members, as defined below.

***Manipulation of Bid-Ask Spreads and Silver Market Instruments***

7. In addition to manipulating the Fixing, some or all of the defendants conspired with each other to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably bid-ask spreads of Silver Market Instruments in the silver market throughout the trading day. This was also done to

enhance the profits of some or all of the defendants at the expense of the Class Members, as defined below.

***The Plaintiffs and the Class***

8. 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 Silver Market Instruments, as defined below, whose price was based on the Fix price and were negatively impacted by the manipulation of the Fix price and bid-ask spreads by the defendants. These Silver Market Instruments included, but are not limited to: silver bullion, silver bullion coins, the Sprott Silver Bullion Fund and the Sprott Physical Silver Trust.

9. The plaintiff, David Caron (“**Caron**”), is an individual residing in Kelowna, British Columbia. During the Class Period, as defined below, Caron transacted in several Silver Market Instruments whose price was based on the Fix price and were negatively impacted by the manipulation of the Fix price and bid-ask spreads by the defendants. These Silver Market Instruments included, but are not limited to: silver bullion, silver bullion coins, and the Horizons Beta Pro Comex Silver Bull Plus ETF.

10. 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, 1999 and August 14, 2014 (the “**Class Period**”) transacted in a Silver Market Instrument<sup>1</sup> 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 Silver Market Instrument. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.*

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

***Breach of the Competition Act***

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

12. The defendants and their unnamed co-conspirators’ conduct took place in, among other places, the United States, the United Kingdom, various countries in Asia and various countries in Europe where it was illegal and contrary to the competition laws of those jurisdictions.

***Civil Conspiracy***

13. 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 the Conspiratorial Acts in contravention of section 45(1) 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*;



- (c) entering into bid-rigging agreements in contravention of section 47 of the *Competition Act*; and
- (d) 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.

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

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

16. 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***

17. 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 silver or Silver Market Instruments and the prices which would have been paid in the absence of the Conspiratorial Acts.

18. 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*

19. 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 from their unlawful conspiracy.

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

*Breach of Contract*

21. 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 Silver Market Instruments. These contracts included, without limitation, spot, futures and options contracts related to Silver.

22. 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 Silver Market Instruments or other aspects of the silver 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 silver market, the defendants breached their contracts with the Class Members and the Class Members have suffered damages as a result.

23. The defendant, The Bank of Nova Scotia, together with its subsidiaries and/or affiliates, operates an online trading platform called Scotia iTRADE ("iTRADE"). Caron used iTRADE to transact in Silver Market Instruments during the Class Period. It was the reasonable expectation of Caron that when using a trading service operated by The Bank of Nova Scotia, such as iTRADE,

that The Bank of Nova Scotia would not engage in illicit activity in the silver market which would negatively affect the transactions Caron engaged in. During the Class Period, The Bank of Nova Scotia engaged in illicit activity in the silver market and breached its contract with Caron and other Class members who contracted with The Bank of Nova Scotia or one of its affiliated entities.

**Punitive, Aggravated and Exemplary Damages**

24. The defendants used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from their positions of influence in the silver market. 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 members' rights.

25. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages.

April 15, 2016

**SOTOS LLP**  
180 Dundas Street West, Suite 1200  
Toronto, ON M5G 1Z8

**David Sterns** LSUC#: 36274J  
Tel: 416.977.5229  
Fax: 416.977.0717

**Louis Sokolov** LSUC#: 34483L  
Tel: 416.572.7316  
Fax: 416.977.0717

**Rory McGovern** LSUC#: 65633H  
Tel: 416.572.7320  
Fax: 416.977.0717

**Sabrina Callaway** LSUC#: 65387O  
Tel: 416.572.7311  
Fax: 416.977.0717

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert** LSUC#: 309420

Tel: 416.595.2117

Fax: 103.204.2889

**Robert L. Gain** LSUC#: 52836E

Tel: 416-595-2072

Fax: 416-204-2907

**CAMP FIORANTE**

**MATTHEWS MOGERMAN**

#400- 856 Homer Street

Vancouver, BC V6B 2W5

**Reidar Mogerman** LSBC#: 502278

Tel: 604.331.9530

Fax: 604.689.7554

**David G.A. Jones** LSBC#: 500759

Tel: 604.331.9528

Fax: 604.689.7554

**Michelle Segal** LSBC#: 509779

Tel: 604.697.2480

Fax: 604.689.7554

Lawyers for the Plaintiffs

**JULIUS DI FILIPPO et al.**  
Plaintiffs

-and-

**THE BANK OF NOVA SCOTIA et al.**  
Defendants

Court File No. **CV-16-SS1067**

**-DCCP**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

**SOTOS LLP**

180 Dundas Street West, Suite 1200  
Toronto, ON M5G 1Z8

David Sterns (LSUC#: 36274J)

Louis Sokolov (LSUC#: 34483L)

Rory McGovern (LSUC#: 65633H)

Sabrina Callaway (LSUC#: 65387O)

Tel: 416.977.0007

Fax: 416.977.0717

**KOSKIE MINSKY**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Kirk Baert (LSUC#: 30942O)

Rob Gain (LSUC#: 52836E)

Tel: 416.595.2117

Fax: 103.204.2889

**CAMP FIORANTE MATTHEWS MOGERMA**

#400- 856 Homer Street  
Vancouver, BC, V6B 2W5

Reidar Mogerman (LSBC#: 502278)

David G.A. Jones (LSBC#: 500759)

Michelle Segal (LSBC#: 509779)

Tel: 604.331.9530

Fax: 604.689.7554

Lawyers for the Plaintiffs