

ONTARIO

SUPERIOR COURT OF JUSTICE



The Honourable Mr. )

) Thursday, the 25th day

Justice Belobaba )

) of October, 2018

BETWEEN

JULIUS DI FILIPPO and DAVID CARON

Plaintiffs

and

THE BANK OF NOVA SCOTIA, SCOTIA CAPITAL (USA) INC., BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL CANADA INC., BARCLAYS CAPITAL INC., BARCLAYS CAPITAL PLC, DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES LIMITED, DEUTSCHE BANK SECURITIES, INC., HSBC BANK PLC., HSBC HOLDINGS PLC, HSBC BANK CANADA, HSBC SECURITIES (CANADA) INC., HSBC USA INC., HSBC SECURITIES (USA) INC., LONDON GOLD MARKET FIXING LTD., SOCIÉTÉ GÉNÉRALE, SOCIÉTÉ GÉNÉRALE (CANADA), SOCIÉTÉ GÉNÉRALE SA, SG AMERICAS SECURITIES, LLC, UBS AG, UBS BANK (CANADA) and UBS SECURITIES LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**Certification and Notice Approval**

**THIS MOTION** made by the plaintiffs for an Order approving the publication, the short-form and long-form notices of settlement approval hearing, and the plan of dissemination of said notices was heard by teleconference this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**ON READING** the materials filed and on hearing the submissions of counsel for the plaintiffs and counsel for the Settling Defendants; and

**ON BEING ADVISED** that the plaintiffs and the Settling Defendants consent to this Order and the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that the definitions set out in the Settlement Agreement, attached to this Order as Schedule “A”, apply to and are incorporated into this Order, except to the extent that they are modified in this Order;
2. **THIS COURT ORDERS** that the short-form and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” and “C”;
3. **THIS COURT ORDERS** that the plan of dissemination for the short-form and long-form notices of settlement approval hearing (the “**Plan of Dissemination**”) is hereby approved substantially in the form attached hereto as Schedule “D” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination;
4. **THIS COURT ORDERS** that this action be certified as a class proceeding, pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended, against Deutsche Bank AG, Deutsche Bank Securities Limited, and Deutsche Bank Securities, Inc. (collectively, “**Deutsche Bank**” or the “**Settling Defendants**”) for settlement purposes only.
5. **THIS COURT ORDERS** that the “**Ontario Settlement Class**” be defined as:

All persons or entities who, between January 1, 2004 and March 19, 2014 (the “**Class Period**”), transacted in a Gold Market Instrument<sup>[1]</sup>, in whole or in part in Canada, either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that transacted in a Gold Market Instrument. Excluded from the class are Quebec settlement class members and the defendants, their parent companies, subsidiaries, and affiliates.

[1] “**Gold Market Instrument**” includes but is not limited to: gold bullion or gold bullion coins, gold futures contracts traded on an exchange operated in Canada, shares in gold ETFs, gold call options traded on an

exchange operated in Canada, gold put options traded on an exchange operated in Canada, over-the-counter gold spot or forward transactions or gold call options, over-the-counter gold put options, leases for gold, and gold certificates.

6. **THIS COURT ORDERS** that Julius Di Filippo and David Caron be appointed as the representative plaintiffs for the Ontario Settlement Class;
7. **THIS COURT ORDERS** that the “**Common Issue**” for the Ontario Settlement Class be defined as:


Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of Gold Market Instruments purchased in the Gold Market?

8. **THIS COURT ORDERS** that this Order, any reason given by the Court in connection with it and the certification of the Ontario Action as against the Settling Defendants for settlement purposes pursuant to this Order, including, without limitation, the definition of the Ontario Settlement Class and the Common Issue, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action, as against the Non-Settling Defendants
9. **THIS COURT ORDERS** that:
  - (a) the putative members of the Ontario Settlement Class can opt out of the Ontario Action by sending a written request to opt out to Ontario Counsel, postmarked on or before the date that is sixty (60) days from the date of the first publication of the publication notice of settlement approval hearings. The written election to opt out must include the information specified in the long-form notice of settlement approval hearing, which is attached hereto as Schedule “C”;

- (b) where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Ontario Counsel; and
- (c) any putative member of the Ontario Settlement Class who validly opts out of the Ontario Action shall not be able to participate in the Ontario Action and no further right to opt out of the Ontario Action will be provided; and

10. **THIS COURT ORDERS** that this Order is contingent upon a parallel order being made by the Quebec Court, and the terms of this Order shall not be effective unless and until such order is made by the Quebec Court.

Date: *October 25, 2018*



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The Honourable Mr. Justice Belobaba

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 25 2018

PER / PAR:



JULIUS DI FILIPPO ET AL  
Plaintiffs

-and-

THE BANK OF NOVA SCOTIA et al.  
Defendants

Court File No. CV-15-543005-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
Certification and Notice Approval**

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