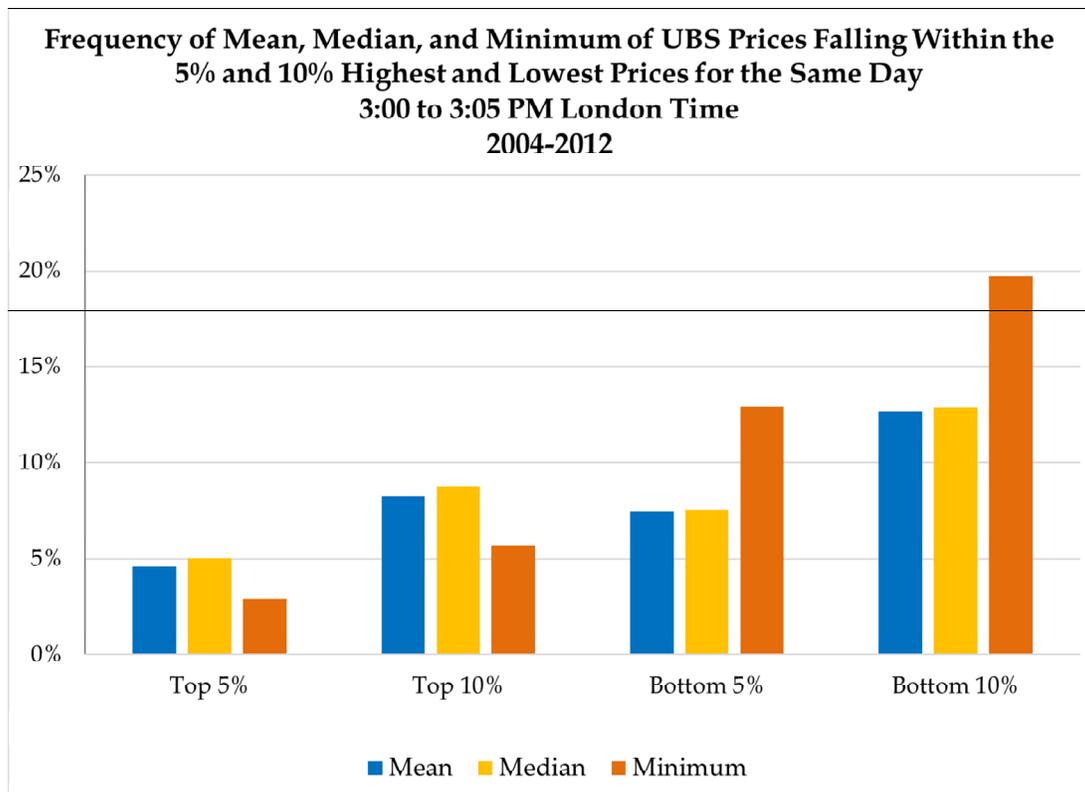


357. *Second*, Plaintiffs' consultants also revisited the analyses showing that the PM Fix price was among the extreme negative outliers of prices each trading day far more than would be expected by random chance. *See* ¶¶ 139-42. This time, the consultants focused on the prices for UBS specifically, from 2004 to 2012. As seen in the chart below, UBS's prices at the time of the PM Fixing fell in the bottom 5% and 10% for prices of the day far more often than they fell into the top 5% and 10%. This holds true regardless of whether considering UBS's mean, median, or minimum prices. This analysis further confirms that UBS's prices were not in line with normal market expectations, but rather reflected its active participation in the conspiracy to manipulate gold prices.



**B. Cooperation Materials From Fixing Bank Defendant Deutsche Bank Further Confirm That UBS Was An Active Participant In The Conspiracy**

358. The pre-discovery cooperation materials produced by Deutsche Bank show that the fact UBS consistently under-cut the market for gold, at the time the PM Fixing was being set, in the exact same ways the Fixing Bank Defendants were doing, is not merely a coincidence. Rather, these materials show that UBS's gold traders were in regular communication with gold traders from Deutsche Bank, which was a member of the Fixing panel.

359. As described below, these pre-discovery materials, from just one Fixing Bank Defendant, contain chat transcripts and emails in which UBS and Deutsche Bank exchanged confidential customer trading information and coordinated their trading activities for the express purpose of manipulating gold prices. This includes efforts to drive gold prices downward, and to reap profits from colluding around the PM Fixing. There is no legitimate pro-competitive justification for these communications, which, in conjunction with the economic analysis set

forth herein, leave no doubt that UBS participated in the conspiracy with the other Defendants to manipulate gold prices during the Class Period.

360. **Targeting the Fixing together.** The cooperation materials from Deutsche Bank show that UBS was actively involved in the scheme to manipulate and reap profits from the PM Fixing. Traders at UBS and Deutsche bank coordinated their trading activities around the time of the PM Fixing, in order to profit from the price drops at that time. For instance, on March 1, 2011, traders at UBS and Deutsche discussed how the PM Fixing specifically presented “decent” opportunities to “make good money.” The traders discussed prior attempts to profit off of the Fixing, including the tactics they used (“pushing” and using “ammo”), and the risks of miscalculating trading strategies around the Fixing.

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

361. On April 1, 2011, UBS and Deutsche Bank traders exchanged similar stories about “trading on the fix” in order to “push” prices. The Deutsche Bank trader remarked that trading on the Fix was “quite fun,” and the UBS trader relayed the potential dangers of “pushing too early” when attempting to manipulate prices at the Fix.

Trader	Message
Deutsche Bank	i was prop trading on the fix
Deutsche Bank	was quite fun
Deutsche Bank	it's a free option the fix
UBS	oh ok
UBS	did i tell u i saw a 300k loss on a fixing before too
Deutsche Bank	wtf
Deutsche Bank	miscomm?
UBS	starting pushing too early lol
Deutsche Bank	yeah
Deutsche Bank	oh well bro
Deutsche Bank	we tried man . . .
Deutsche Bank	we are brothers forever

362. On June 29, 2011, in another example of coordinated trading around the Fixing based on a foreknowledge that prices would drop at that time, traders at UBS and Deutsche Bank agreed to wait to buy gold until after prices had dropped at the 4 p.m. Fixing.

Trader	Message
UBS	i got stops at 1700, 05, 12 etc. etc.
UBS	crude is up nicely so wanna be long some
Deutsche Bank	gold should be higher then?
UBS	asia i would just wait for the dip and buy
Deutsche Bank	i would just wait for 4 pm
Deutsche Bank	and go home
Deutsche Bank	that's my new plan
UBS	agreed

363. Similarly, on May 11, 2011, a Deutsche Bank trader remarked to a UBS trader “u just said u sold on fix.” The UBS trader replied “yeah,” “we smashed it good.”

364. **Coordinating downward movements.** The cooperation materials from Deutsche Bank also contain several communications showing that UBS was actively involved in the conspiracy to drive gold prices downward. For instance, on March 21, 2011, traders at UBS and Deutsche Bank coordinated their efforts to take advantage of a period of relatively low liquidity to “wack” the price of gold once it reached a certain level. Significantly, it was the UBS trader who gave the order to coordinate their sales of gold to generate liquidity and drive the price

downward.

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

365. Similarly, on December 14, 2010, a trader at Deutsche Bank told his counterpart at UBS “im feeling helpful to ubs today.” The UBS trader then said “need to push this back lower,” to which the Deutsche Bank trader replied “ok,” and “lets do it.”

366. On certain occasions, traders at UBS and Deutsche Bank believed that other market participants were attempting to increase the price of gold. The traders responded by taking coordinated action to push the price of gold back down. For instance, on July 26, 2011, traders from UBS and Deutsche coordinated their short positions and sales of gold, in response to market forces perceived as pushing the price of gold upward.

Trader	Message
Deutsche Bank	someone still trying to push our gold up
UBS	so u should pay the mkt right away
Deutsche Bank	nope
UBS	cause chances are someone else got hit and u f*ck them up
Deutsche Bank	no touchy
Deutsche Bank	im short 15k
Deutsche Bank	xau
Deutsche Bank	too much fire
UBS	im gonna sell more silver and gold
Deutsche Bank	k
Deutsche Bank	i really think we are on the right side today, being short

367. Similarly, on April 11, 2011, a UBS trader expressed concern that gold prices

were being “pushed higher.” A Deutsche Bank trader responded by offering to trying to give the UBS trader “some peace.”

368. *Cross-sharing of information and strategies.* The cooperation materials produced by Deutsche Bank include chat transcripts and emails in which traders at UBS and Deutsche Bank conspired to manipulate gold prices by sharing customer order information and executing coordinated trades in order to “whack,” “push,” and “move” gold prices. For example, on November 16, 2010, traders at UBS and Deutsche Bank shared information about a customer who had bid on gold, and agreed to act together to “whack” the price of gold.

Trader	Message
UBS	boc sniffing around in gold
Deutsche Bank	likewise
Deutsche Bank	passed my bid
Deutsche Bank	dude
Deutsche Bank	so their round
Deutsche Bank	is from u
Deutsche Bank	to me
Deutsche Bank	haha
UBS	not always
UBS	anyway good to give each other heads up
UBS	if we find out side, whack it
Deutsche Bank	yeah

369. Similarly, on June 14, 2011, traders from UBS and Deutsche exchanged information on customer offers, and coordinated their trading activities in order to “push” the price of gold. The same type of coordinated price manipulation took place on April 8, 2011. Traders at UBS and Deutsche Bank repeatedly shared customer offer information, and aligned their trading positions in order to “push” the price of gold.

Trader	Message
Deutsche Bank	fund asking for gold
UBS	tk
Deutsche Bank	u ready for ur gold?
UBS	prop guy gave me 5k

Deutsche Bank	tx
Deutsche Bank	a lot of offers here man
Deutsche Bank	bought 500k
Deutsche Bank	wtf
UBS	i'll push gold
UBS	don't worry about the 75k
UBS	how much in offers u got from 68-69 in gold?
Deutsche Bank	10k 69
Deutsche Bank	5k 68
UBS	just match me up 5k at 68 pls
Deutsche Bank	done
Deutsche Bank	will get ready to release
UBS	so get out half below 40, half above 40
Deutsche Bank	yeah
Deutsche Bank	here we go
UBS	patience
Deutsche Bank	that's not me
Deutsche Bank	but i feel it
UBS	before i was really trying to look out for u, i thought u were long 5 lacs and couldn't get the stop done so i pushed up gold too
Deutsche Bank	haha
Deutsche Bank	fun times
Deutsche Bank	mate
Deutsche Bank	i will have done the same

370. Similarly, on August 17, 2011, a trader at Deutsche Bank told a trader at UBS that it was “time for gold to move.” The UBS trader responded by sharing his customer order information, and saying that “the dots will connect.”

Trader	Message
Deutsche Bank	bro
Deutsche Bank	i think time for gold to move
Deutsche Bank	anyway, yeah i think so
Deutsche Bank	what u said
Deutsche Bank	very true
UBS	got small stops thru 1789
Deutsche Bank	ok
UBS	3k
Deutsche Bank	i only have ones at 88.50
UBS	the dots will connect

371. The cooperation materials from Deutsche Bank contain many more chat transcripts and emails in which UBS and Deutsche Bank exchanged confidential customer information, and coordinated their trading activities. As seen above, these were the key tactics used to manipulate prices in the gold market. By way of just a few additional examples, on July 21, 2011, a UBS trader informed a Deutsche Bank trader that “gold i got offers 1610, bids 1580,” and “we also saw fund selling around 1585.” Similarly, on August 16, 2011, Deutsche Bank and UBS traders exchanged customer offer and bid information:

Trader	Message
Deutsche Bank	i think there are more offers than stop
Deutsche Bank	stops topside
UBS	we were long at 1763, this 66/68 area was my tgt
UBS	i got 3k of stops around 1770
UBS	and offer for 5k
Deutsche Bank	same

372. And on February 9, 2012, UBS and Deutsche Bank coordinated their trading activities, with UBS noting that they should “try to stay together today.”

Trader	Message
UBS	im buying gold
Deutsche Bank	seems like we buy
Deutsche Bank	as in
Deutsche Bank	immediate reaction softer
Deutsche Bank	ok lets buy gold
UBS	im guessing mkt has stops at 1723
UBS	tried to go for it
Deutsche Bank	got paid

373. In addition, the cooperation materials from Deutsche Bank confirm that UBS’s participation in this manipulative trading activity was well-known to the Fixing Bank Defendants, who were often its direct beneficiaries. For instance, on January 25, 2008, a gold trader at Deutsche Bank remarked that UBS would “spooft the sell.” The UBS trader responded that its trading activities were “just to make u happy!”

**IX. DEFENDANTS' CONDUCT RESTRAINED TRADE, DECREASED COMPETITION, AND ARTIFICIALLY LOWERED PRICES, THEREBY INJURING PLAINTIFFS**

**A. Prices for Gold Investments – Including The Spot Market as Governed by the Fixing – are Inextricably Linked**

374. The prices of Gold Investments – including as set by the PM Fixing – are highly correlated. For example, as described above, the PM Fixing and the price of COMEX gold futures have effectively moved in lockstep since 1975. *See* ¶ 115. Likewise, the prices for gold spot and futures prices, when average normalized prices are used, have effectively mirrored each other between January 2001 and December 2013. *See* ¶ 116. Equally, the prices of the SPDR Gold Shares (and Gold ETFs) and the PM Fixing price have moved in near perfect unison when tracked from 2004 to 2013, *see* ¶ 117, with gold futures (COMEX GC) returns and returns on SPDR Gold Shares also having correlated to an extremely high degree during the period from 2007 – 2012. *See* ¶¶ 118-20.

375. The interdependence of prices for Gold Investments is not surprising given that each investment is linked to the same underlying physical commodity. In the case of gold COMEX futures, for example, the price of gold futures is linked to the price of physical, or spot, gold simply because futures prices are an estimate of the future value delivery of physical, or spot gold. In the case of Gold ETFs, for example, the correlation exists because ETFs are structured to reflect spot prices. Academic work has extensively documented the immediate and direct impact of the PM Fixing on prices of market-leading gold derivative instruments, as well as the strong commonality among the impacts on these instruments.

376. The interdependence of prices for Gold Investments as set by the PM Fixing is also not surprising given that the PM Fix was understood to set – and treated worldwide by participants in the Gold Investments market as setting – a *benchmark price* for gold, regardless

of the form on instrument through which the gold-related investment was trading.

**B. Defendants' Artificial Lowering of the Price of Gold, Including the PM Fix Price, Directly Impacted the Market for Gold Investments**

377. Defendants' conduct constitutes a *per se* violation of the antitrust laws because of its clear and obvious risk of inflicting anticompetitive impact and economic injury. Defendants operated as a secretive cartel and engaged in a price-fixing scheme that inherently reduced the free and unfettered competition the Sherman Act was designed to preserve and promote. Defendants' scheme to fix the benchmark price at artificially suppressed levels directly and immediately impacted the market for Gold Investments (a market in which Defendants participate). To the extent some types of Gold Investments may be considered distinct submarkets, Defendants' scheme immediately impacted those submarkets as well.

378. The Bank Defendants hold themselves out as horizontal competitors (as buyers, sellers, and brokers) in the market for Gold Investments. As such, they should compete *with and against* each other when trading either their own proprietary books or the assets and investments of their clients. The fact that members of the conspiracy participated in the London Gold Fixing did not give them permission to suspend this competition. Indeed, the Fixing was intended to yield market outcomes that depended on the Fixing Bank Defendants operating as competitors. Instead of acting as competitors, however, Defendants agreed to restrain trade in order to pursue collective goals and to manipulate the market by collusion and coordination, as described above. Defendants' collusive price fixing was inimical to competition and restrained trade in the affected market (and any applicable submarkets).

379. As explained above, the PM Fixing was supposed to be – and was understood by market participants as being – a reliable benchmark price for gold, including the market for Gold Investments, because it reflected actual market supply and demand. This was the case for at least

two reasons.

380. First, the chair for the PM Fixing was supposed to commence the Walrasian auction process used in the Fixing by announcing (and then soliciting supply or demand levels from Defendants in response to) a figure that was the then-prevailing US Dollar spot price for gold. That is, *the starting point* for each day's PM Fixing was held out to be the spot price of gold at 3:00 p.m. in London (10:00 a.m. in New York). The spot price for gold is the price for delivered physical gold, and thus – ultimately – the price upon which all gold-based or gold-derived investments are based.

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

382. Trade was accordingly restrained and competition decreased in the market for Gold Investments by any manipulation of either: (1) the price at which the chair commenced the PM Fixing on a given day, or (2) the levels of market supply and demand that moved the PM Fixing price to the level at which it was ultimately fixed. As shown above, however, the Fixing Bank Defendants repeatedly colluded to ensure there was coordinated manipulation and fixing of the opening price and the quoted buy/sell levels.

383. Defendants colluded to manipulate the price at which the chair opened the Fixing

on a given day by, among other things, placing “spoof orders,” engaging in “wash sales,” as well as collusively sharing and acting on non-public information regarding client orders (including stop-loss orders), including shortly before the PM Fixing. They did this in order to manipulate the prices throughout the market for Gold Investments, including specifically the price of the commodity underlying COMEX gold futures contracts.

384. Defendants also colluded to manipulate the actual levels of market supply and demand quoted by the Fixing members – and thus the direction and extent of any movement of the Fixing’s opening price – by the means described in the preceding paragraph as well as by falsely representing the net supply or demand on their order books, or by “netting off” or “building” certain orders before the Fixing commenced.

385. These acts were undertaken for the purpose of manipulating the benchmark price that would be reached by that day’s Fixing and artificially to lower the price of Gold Investments (including, to the extent applicable, their underlying commodity). The resulting price movements had a significant impact on the spot price for gold and for any Gold Investment connected to or affected by the spot price for gold, and thus by the PM Fixing.

386. Defendants’ ability to influence the PM Fixing benchmark price, including by way of manipulation of the price at which the PM Fixing would commence, is amply demonstrated by the structure of the Fixing, the Bank Defendants’ complete control over the LGMF, and the empirical evidence discussed above. Defendants thus have considerable power over the market for Gold Investments, including those which expressly reference or in practice rely on the Fixing price.

387. Accordingly, to the extent that Defendants and their co-conspirators’ collusive manipulation artificially lowered prices in the spot market for gold or as reached by the PM

Fixing, it also artificially lowered prices in the broader market for Gold Investments, including because prices for each of the Gold Investments implicitly and expressly followed the PM Fixing price. The effects of Defendants' collusive manipulation of the above-described market were purposeful, intended to maximize their profits, and occurred at least on the days set out in Appendix A.

**C. Plaintiffs, as Sellers in the Market for Gold Investments, Were Injured by Transacting at Lowered Prices Created by Defendants' Collusive Conduct**

388. Plaintiffs were sellers in the market for Gold Investments, and were affected by movements in prices in the gold spot market, and by the price set by the PM Fixing.

389. Defendants and their co-conspirators' collusive manipulation artificially lowered prices in (and the value of the commodities underlying) the market for Gold Investments. As sellers in that market, Plaintiffs thus received lower sales prices than they would have received in a competitive market free of Defendants' collusive and manipulative conduct.

390. As a direct result of Defendants and co-conspirators' conduct, Plaintiffs were injured in their business or property and suffered harm in respect of the sales they conducted where the relevant sales price was artificially lowered by collusive manipulation. Such sales and harm occurred at least on (but not limited to) the days set out in Appendix B.

391. In the ways and for the reasons set out above, the artificially low prices caused by Defendants and co-conspirators' manipulative conduct in the market for Gold Investments persisted, and also caused harm to plaintiffs beyond the days set out in Appendix B.

**D. Defendants' Manipulative Conduct Caused Sustained Price Suppression of Gold Prices**

392. As the economic evidence shows, Defendants' manipulative conduct to suppress gold prices around the PM Fixing caused prices to be artificially lower throughout the Class Period than if set by free and open competition. This evidence includes the facts that:

- a. Prices dropped during the PM Fixing many more times than they increased during every year in the Class Period;
- b. The PM Fixing prices were among the lowest spot prices of the day much more often than they were among the highest spot prices of the day during every year in the Class Period;
- c. Defendants' quoted prices were significantly lower than those of other market participants around the PM Fixing call for every year in the Class Period;
- d. Defendants' ask prices were the first to drop as the PM Fixing call started for every year in the Class Period;
- e. There was a significantly large drop of average prices around the PM Fixing, which is not only due to episodic manipulation but also reflects the sustained price suppression outlined above;
- f. For every year in the Class Period, average price changes during the PM Fixing were sustainably negative at the same time that average price changes throughout the day were sustainably positive; and
- g. Defendants had the motive to sustainably suppress prices throughout the Class Period in order to benefit their systematic short positions.

393. As a consequence, the harm suffered by plaintiffs is not restricted to those specific days on which the most striking downward price drops occurred during the PM Fixing, but instead extends throughout the Class Period. Repeated interventions on hundreds of occasions throughout the Class Period caused the price of spot gold and related investments to be lower than would have prevailed with free and open competition throughout the Class Period.

**X. EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS DUE TO DEFENDANTS' CONCEALMENT OF THE CONSPIRACY**

394. Defendants and their co-conspirators concealed their wrongdoing in manipulating the London Gold Fixing. Thus, the statute of limitations relating to the claims for relief alleged herein was tolled, due both to Defendants' and their co-conspirators affirmative acts of concealment and the inherently self-concealing nature of their private, unregulated conduct.

395. Defendants' and their co-conspirators' success in concealing their collusion was facilitated by their tremendous control over global financial markets and the gold market in particular.

396. Neither Plaintiffs nor the Class knew of Defendants' and their co-conspirators' unlawful and self-concealing manipulative acts and could not have discovered them by the exercise of reasonable due diligence, if at all, at least prior to public reports of government investigations concerning possible manipulation of the London Gold Fixing in 2013. Plaintiffs and the Class also lacked any basis for identifying the wrongdoers or calculating damages before that date. Indeed, Defendants' and their co-conspirators' conduct concerning the London Gold Fixing was so well hidden that Defendants and their co-conspirators kept global regulators unaware of such conduct for years until in or around 2013.

397. Following the reports of government investigations becoming public, Plaintiffs undertook investigation into possible manipulation of the London Gold Fixing, retained counsel, and retained economic consultants to undertake sophisticated economic investigation of the London Gold Fixing and whether it was subject to manipulation by Defendants and their co-conspirators.

398. Reasonable due diligence could not have uncovered Defendants' and their co-conspirators' manipulative conspiracy because: (i) the London Gold Fixing was held out as

being set by an impartial auction based on market factors; (ii) the London Gold Fixing is conducted in private; (iii) Defendants' and their co-conspirators' trading positions and trading strategies are not public information; (iv) the bilateral, non-exchange traded nature of the transactions at issue; (v) the highly specialized and esoteric nature of the different aspects of the gold market make it extraordinarily difficult for an ordinary person to assess improprieties; and (vi) neither Defendants nor their co-conspirators told Plaintiffs or other Class Members that they were conspiring to fix, stabilize, maintain, and/or otherwise manipulate the London Gold Fixing.

399. Defendants and their co-conspirators also took active steps to conceal evidence of their misconduct from Plaintiffs, the Class, regulators, and the public including, *inter alia*: (i) holding out the London Gold Fixing as an impartial, arms-length process that reflected market factors; (ii) stating that gold prices reflected normal market forces;<sup>102</sup> (iii) maintaining the secrecy of the London Gold Fixing process; (iv) avoiding any discussion in public fora of the London Gold Fixing and/or manipulation of the London Gold Fixing; (v) refusing to comment on, or affirmatively denying allegations of, manipulation reported by the press in or after March 2013; (vi) initiating sham gold trades they never intended to execute in order to influence artificially the price of gold; (vii) secretly trading their own proprietary gold positions; and (viii) using non-public proprietary trading platforms directly to coordinate intended price movements.

400. In addition, Defendants and their co-conspirators also failed to have the proper internal controls in place to detect internal misconduct concerning the London Gold Fixing. Such internal failures made it all the more difficult for Plaintiffs, the Class, government regulators, and the public to become aware of Defendants' and their co-conspirators'

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<sup>102</sup> See, e.g., The London Bullion Market Association, Forecast 2013 (Jan. 2, 2013), at 6 (Société Générale), 7 (Deutsche Bank), 8 (Barclays), 16 (HSBC), [www.lbma.org.uk/assets/forecast2013.pdf](http://www.lbma.org.uk/assets/forecast2013.pdf).

misconduct. Indeed, even following government investigations concerning other financial benchmark manipulation that came to light in 2012 and 2013, the Defendants did not examine their internal controls surrounding the London Gold Fix and chose instead to continue to conceal their misconduct.

401. For example, as noted by the U.K. Financial Conduct Authority, Defendant Barclays failed to have proper internal controls in place to adequately monitor traders' conduct at the Fixing. The U.K. Financial Conduct Authority specifically found that "Barclays' systems and reports [] did not formally record orders place by traders in the Gold Fixing until 5 February 2013" and that "Barclays' lack of systems and controls to record internal orders and flag trades that related specifically to the Gold Fixing left the firm unable to supervise traders' activities in the Gold Fixing adequately."

402. Such failures also made it easier for Barclays employees to conceal their misconduct. For example, the U.K. Financial Conduct Authority found that a Director on the Precious Metals Desk at Barclays attempted to conceal his manipulative trading activity at the Fixing and provided an untruthful account of events to government regulators.<sup>103</sup> The U.K. Financial Conduct Authority noted that this conduct was all the more egregious because it occurred *the day after* Barclays was fined for rigging LIBOR interest rates.<sup>104</sup>

403. Such failures were also not limited to Defendant Barclays and are prevalent among the Defendants and their co-conspirators.

404. For example, the CFTC found that Defendant HSBC failed to have adequate internal controls in place on its foreign currency desk to detect the manipulation of foreign

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<sup>103</sup> See U.K. Financial Conduct Authority, *Final Notice to Daniel James Plunkett* (May 23, 2014), at 2.7.

<sup>104</sup> See U.K. Financial Conduct Authority, *Final Notice to Barclays Bank plc* (May 23, 2014), at 2.11.

currency benchmark prices. BaFin noted similar internal control failures at Defendant Deutsche Bank concerning LIBOR.<sup>105</sup> The French financial regulator Autorité de Contrôle Prudentiel has also found “serious shortcomings” in internal controls at Defendant Société Générale in the past.<sup>106</sup> The Swiss financial regulator FINMA also found similar failures at UBS surrounding precious metals benchmarks. FINMA noted that although many in UBS were aware of manipulation and the fact that internal controls were deficient, UBS employees voluntarily chose not to take any action and instead helped to conceal the activity.

405. As a result of Defendants’ and their co-conspirators’ affirmative steps to conceal their improper conduct, their willful decision not to put in place proper controls to detect improper conduct, the self-concealing nature of the price-fixing conspiracy, and the resulting lack of public information about material aspects of the conspiracy, collusion, and trading based on nonpublic information, the statute of limitations was tolled for Plaintiffs’ claims.

## **XI. CLASS ACTION ALLEGATIONS**

406. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, seeking relief on behalf of the following class (the “Class”):

All persons or entities who during the period from January 1, 2004 through June 30, 2013 (the “Class Period”): (i) sold gold bullion or gold bullion coins; (ii) sold gold futures contracts traded on COMEX or other exchanges operated in the United States; (iii) sold shares in Gold ETFs; (iv) sold gold call options traded on COMEX or other exchanges operated in the United States; (v) bought gold put options traded on COMEX or other exchanges

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<sup>105</sup> Daniel Schäfer, *German regulator to tell Deutsche Bank to improve controls*, Financial Times (Aug. 12, 2013), [www.ft.com/intl/cms/s/0/4a036a28-0342-11e3-b871-00144feab7de.html#axzz3LiFYXfrP](http://www.ft.com/intl/cms/s/0/4a036a28-0342-11e3-b871-00144feab7de.html#axzz3LiFYXfrP).

<sup>106</sup> Fabio Benedetti-Valentini, *SocGen Blames Single Trader After \$608 Million Penalty*, Bloomberg (Dec. 4, 2013), [www.bloomberg.com/news/2013-12-04/solcgen-blames-single-trader-after-607-million-penalty.html](http://www.bloomberg.com/news/2013-12-04/solcgen-blames-single-trader-after-607-million-penalty.html).

operated in the United States; (vi) sold over-the-counter gold spot or forward transactions or gold call options; or (vii) bought over-the-counter gold put options.

Excluded from the Class are Defendants and their employees, affiliates, parents, subsidiaries, and co-conspirators, whether or not named in this Complaint, and the United States Government, and other governments.

407. Plaintiffs believe that there are many thousands of Class Members as described above, making the Class so numerous and geographically dispersed that joinder of all Class Members is impracticable.

408. There are questions of law and fact common to the Class that relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

- a. Whether Defendants and their co-conspirators engaged in a combination or conspiracy to fix, raise, maintain, stabilize and/or otherwise manipulate the gold benchmark price in violation of the Sherman Act and/or Commodity Exchange Act;
- b. The identity of the participants in the conspiracy;
- c. The duration of the conspiracy;
- d. The nature and character of the acts performed by Defendants and their co-conspirators in furtherance of the conspiracy;
- e. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the Class Members;
- f. Whether Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from Plaintiffs and the Class Members;
- g. The appropriate injunctive and equitable relief for the Class; and
- h. The appropriate measure of damages sustained by Plaintiffs and the Class Members.

409. Plaintiffs' claims are typical of the claims of the other Class Members. Plaintiffs

and the Class Members sustained damages arising out of Defendants' common course of conduct in violation of law as complained of herein. The injuries and damages of each Class Member were directly caused by Defendants' wrongful conduct in violation of the laws as alleged herein.

410. Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs are adequate representatives of the Class and have no interests adverse to the interests of absent Class Members. Plaintiffs have retained counsel competent and experienced in class action litigation, including commodity futures manipulation and antitrust class action litigation.

411. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications.

412. The questions of law and fact common to the Class Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

413. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous, separate individual actions, or repetitive litigation, would entail. The Class is readily definable and is one for which records should exist in the files of Defendants and their co-conspirators, Class Members, or the public record. Class treatment will also permit the adjudication of relatively small claims by many Class Members who otherwise could not afford to litigate the claims alleged herein, including those for antitrust. This class action presents no difficulties of management that would preclude its maintenance as a class action.

**CAUSES OF ACTION**

**CLAIM ONE**

**VIOLATION OF 15 U.S.C. § 1  
AGREEMENT RESTRAINING TRADE**

414. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

415. 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.*

416. During the Class Period, Defendants entered into an agreement or series of agreements to reduce competition amongst themselves by fixing and/or manipulating gold prices before and during the Fixing, the PM Fix, and, as a result, the price of Gold Investments, including COMEX futures.

417. This conspiracy to manipulate gold market prices and the benchmark price caused injury to both Plaintiffs and the Class by depriving them of the benefit of accurate gold benchmark prices reflecting true market conditions, as well as accurate spot gold prices 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.

418. 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.

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

throughout the Class Period.

420. Plaintiffs and the Class are entitled to treble damages for the violations of the Sherman Act alleged herein. Plaintiffs and the Class are also entitled to an injunction against Defendants preventing and restraining the violations alleged herein.

## **CLAIM TWO**

### **VIOLATION OF 7 U.S.C. §§ 1 *et seq.* MANIPULATION IN VIOLATION OF THE COMMODITY EXCHANGE ACT, INCLUDING CFTC RULE 180.2**

421. Plaintiffs incorporate by reference and reallege the preceding allegations as though fully set forth herein.

422. By their intentional misconduct, Defendants and their co-conspirators each violated Sections 6(c)(3) and 9(a)(2) of the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 9(3), 13(a)(2), and CFTC Rule 180.2 adopted under the CEA (“Rule 180.2”) and caused prices of exchange-traded gold futures and options, and prices of the commodity underlying these instruments, to be artificial during the Class Period.

423. Defendants’ and their co-conspirators’ trading and other activities alleged herein constitute market manipulation of prices of exchange-traded gold futures and options, and prices of the commodity underlying these instruments, in violation of Sections 6(c)(3), 9(a), and 22(a) of the CEA, 7 U.S.C. §§ 9(3), 13(a) and 25(a), and Rule 180.2.

424. Defendants’ and their co-conspirators’ manipulation deprived Plaintiffs and the Class of a lawfully operating market during the Class Period.

425. Plaintiffs and others who transacted in exchange-traded gold futures and options during the Class Period transacted at artificial and unlawful prices resulting from Defendants’ and co-conspirators’ manipulations in violation of the CEA, 7 U.S.C. § 1, *et seq.*, and Rule

180.2, and as a direct result thereof were injured and suffered damages. Plaintiffs each sustained and are entitled to actual damages for the violations of the CEA alleged herein.

**CLAIM THREE**

**VIOLATION OF 7 U.S.C. §§ 1 *et seq.*  
EMPLOYMENT OF MANIPULATIVE OR DECEPTIVE DEVICE OR  
CONTRIVANCE IN VIOLATION OF THE COMMODITY EXCHANGE ACT,  
INCLUDING CFTC RULE 180.1**

426. Plaintiffs incorporate by reference and reallege the preceding allegations as though fully set forth herein.

427. By their intentional misconduct, from August 15, 2011 through June 30, 2013, Defendants and their co-conspirators each violated Sections 6(c)(1) and 9(a)(2) of the CEA, 7 U.S.C. §§ 9(1), 13(a)(2), and CFTC Rule 180.1 adopted under the CEA (“Rule 180.1”) and caused prices of exchange-traded gold futures and options, and prices of the commodity underlying these instruments, to be artificial during the Class Period.

428. Defendants’ and their co-conspirators’ trading and other activities alleged herein constitute market manipulation of prices of exchange-traded gold futures and options, and prices of the commodity underlying these instruments, in violation of Sections 6(c)(1), 9(a), and 22(a) of the CEA, 7 U.S.C. §§ 9(1), 13(a) and 25(a), and Rule 180.1.

429. Defendants’ and their co-conspirators’ manipulation deprived Plaintiffs and the Class of a lawfully operating market during the Class Period.

430. Plaintiffs and others who transacted in exchange-traded gold futures and options during the Class Period transacted at artificial and unlawful prices resulting from Defendants’ and co-conspirators’ manipulations in violation of the CEA, 7 U.S.C. § 1, *et seq.*, and Rule 180.1, and as a direct result thereof were injured and suffered damages. Plaintiffs each sustained and are entitled to actual damages for the violations of the CEA alleged herein.

**CLAIM FOUR**

**VIOLATION OF 7 U.S.C. §§ 1 *et seq.*  
EMPLOYMENT OF MANIPULATIVE OR DECEPTIVE DEVICE OR  
CONTRIVANCE IN VIOLATION OF THE COMMODITY EXCHANGE ACT,  
INCLUDING CFTC RULE 180.1**

431. Plaintiffs incorporate by reference and reallege the preceding allegations as though fully set forth herein.

432. By their intentional misconduct, Defendants and their co-conspirators each violated Sections 6(c)(1) and 9(a)(2) of the CEA, 7 U.S.C. §§ 9(1), 13(a)(2), and CFTC Rule 180.1 adopted under the CEA (“Rule 180.1”) and caused prices of exchange-traded gold futures and options, and the price of the commodity underlying these instruments, to be artificial during the Class Period.

433. In violation of CEA Sections 6(c)(1) and 9(a)(2), and CFTC Rule 180.1, Defendants and co-conspirators 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 both prices of gold and prices of gold futures and options in interstate commerce. Defendants and co-conspirators did so either knowingly, intentionally, or with reckless disregard of the fact that such reports were false, misleading, or inaccurate.

434. Plaintiffs and others who transacted in exchange-traded gold futures and options during the Class Period transacted at artificial and unlawful prices resulting from Defendants’ and co-conspirators’ manipulations in violation of the CEA, 7 U.S.C. § 1, *et seq.*, and Rule 180.1, and as a direct result thereof were injured and suffered damages. Plaintiffs each sustained and are entitled to actual damages for the violations of the CEA alleged herein.

**CLAIM FIVE**

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

435. Plaintiffs incorporate by reference and reallege the preceding allegations as though fully set forth herein.

436. 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.

437. Plaintiffs each sustained and are entitled to actual damages for the violations of the CEA alleged herein.

**CLAIM SIX**

**VIOLATION OF 7 U.S.C. §§ 1 *et seq.*  
AIDING AND ABETTING LIABILITY IN VIOLATION OF THE COMMODITY  
EXCHANGE ACT**

438. Plaintiffs incorporate by reference and reallege the preceding allegations as though fully set forth herein.

439. Defendants and their co-conspirators knowingly aided, abetted, counseled, induced and/or procured the violations of the CEA alleged herein. Defendants did so knowing of each other's, and their co-conspirators', 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 Sections 13 and 22(a)(1) of the CEA, 7 U.S.C. §§ 13c(a), 25(a)(1).

440. Plaintiffs each sustained and are entitled to actual damages for the violations of the CEA alleged herein.

**CLAIM SEVEN**

**UNJUST ENRICHMENT  
(Against All Defendants in Direct or Quasi-Contractual Relationships  
with Class Members)**

441. Plaintiffs incorporate by reference and reallege the preceding allegations as though fully set forth herein.

442. This Claim concerns transactions in which a Defendant or its affiliate was in a direct or quasi-contractual relationship with a Class Member.

443. Because of the acts of Defendants and their co-conspirators as alleged herein, Defendants have been unjustly enriched at the expense of Plaintiffs and the Class.

444. Plaintiffs and the Class seek restoration of the monies of which they were unfairly and improperly deprived, as described herein, by way of transactions for the sale or purchase of Gold Investments entered into with Defendants or their co-conspirators.

**PRAYER FOR RELIEF**

Plaintiffs 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 Plaintiffs be designated as class representatives, and that Plaintiffs' counsel be appointed as Class counsel for the Class;

B. That the unlawful conduct alleged herein 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 Plaintiffs 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 monetary losses suffered by Class Members that were in contractual or quasi-contractual relationships with a Defendant or an affiliate thereof, due to that Defendants' unjust enrichment at the Class Members' expense;

G. That the Court award Plaintiffs and the Classes their costs of suit, including reasonable attorneys' fees and expenses, as provided by law; and

H. That the Court direct such further relief it may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

DATED: New York, New York  
November 17, 2016

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