

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: BANK OF NOVA SCOTIA
SPOOFING LITIGATION

Civil Action No. 20-11059 (MAS) (LHG)

**CONSOLIDATED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs Casey Sterk, Kevin Maher, Jeffery Tomasulo, Christopher DePaoli, Don Tran, Mark Serri, ML Options Trading, LLC, Robert Charles Class A, L.P., and Port 22, LLC, (collectively, “Plaintiffs”) complain upon knowledge as to themselves and their own actions and upon information and belief as to all other matters against Defendants Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US), Inc., The Bank of Nova Scotia Trust Company of New York, Corey Flaum, and John Does 1-25 (collectively, “Defendants”), as follows:

SUMMARY OF ALLEGATIONS

1. This action arises from Defendants’ unlawful and intentional manipulation of COMEX Gold Futures, COMEX Silver Futures, NYMEX Platinum Futures, and NYMEX Palladium Futures, and options on those futures contracts (collectively, “precious metals futures contracts”) traded on the New York Mercantile Exchange (“NYMEX”) and the Commodity Exchange Inc. (“COMEX”) from approximately January 1, 2008 through July 31, 2016 (the “Class Period”) in violation of the Commodity Exchange Act, 7 U.S.C. §§1, *et seq.* (the “CEA”), and the common law.

2. Defendants are futures traders and the trading firm that employed them during the Class Period. Defendants manipulated the prices of precious metals futures contracts using a manipulative device called “spoofing,” whereby Defendants placed orders for precious metals futures contracts that they never intended to execute – and, in fact, canceled before execution – in order to send false and illegitimate supply and demand signals to the market. In this manner,

Defendants manipulated the prices of precious metals futures contracts throughout the Class Period to financially benefit Defendants' trading positions at the expense of other investors like Plaintiffs and members of the Class (defined below).

3. The unlawful conduct and manipulation described herein is the subject of both criminal and regulatory investigations. On August 19, 2020, BNS¹ entered into a deferred prosecution agreement ("DPA") with the U.S. Department of Justice ("DOJ")² and a settlement with the U.S. Commodity Futures Trading Commission ("CFTC"),³ agreeing to pay a combined \$60.4 million in criminal fines, restitution, and forfeiture of trading profits. In the Statement of Facts incorporated into the DPA, Defendant BNS admitted that its traders spoofed the markets for precious metals futures contracts *thousands* of times throughout the Class Period.⁴

4. As the CFTC Order states, BNS was ordered to pay a total of \$77.4 million for spoofing and making false statements. *At the time this was the largest civil monetary penalty ever ordered in a spoofing case.* In particular, BNS was ordered to pay the \$60.4 million for spoofing and attempted manipulation, and an additional \$17 million for making false and misleading statements to the CFTC regarding spoofing in 2018. In 2018, BNS had been ordered to pay a much smaller penalty. But because BNS made false statements in 2018, concealing the

¹ Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US) Inc., and The Bank of Nova Scotia Trust Company of New York are collectively referred to hereinafter as "BNS."

² *U.S.A. v. The Bank of Nova Scotia*, Case No. 20-707, Deferred Prosecution Agreement, (D.N.J. Aug. 19, 2020), <https://www.justice.gov/opa/press-release/file/1306141/download> (hereinafter, the "BNS DPA").

³ *In the Matter of: The Bank of Nova Scotia*, CFTC Docket No. 20-28, Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (CFTC Aug. 19, 2020), <https://www.cftc.gov/media/4411/enfbankofnovascotiaspoofingorder081920/download> (hereinafter, the "CFTC Order").

⁴ BNS DPA, Attachment A, ¶3.

breadth of the spoofing that had occurred at BNS, the CFTC stated that only now could it address “the true scope and nature of BNS’s wrongdoing.”⁵

5. As part of the DPA, BNS agreed that it “shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for the Company, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company” for the conduct described therein, including the allegation that “[b]etween approximately January 2008 and July 2016 . . . four precious metals traders employed by the Company engaged in fraudulent and manipulative trading practices in connection with the purchase and sale of gold, silver, platinum, and palladium futures contracts.”⁶

6. The CFTC also found that BNS’s compliance department failed to detect and/or deter the spoofing and that once it did become aware of such manipulative conduct, it failed to stop the misconduct. Indeed, on multiple occasions, senior members of BNS’s compliance team were privy to information regarding unlawful trading *but did not stop the behavior*, thereby indicating their acquiescence. CFTC Division of Swap Dealer and Intermediary Oversight Director Joshua B. Sterling stated that “BNS’s compliance and supervision violations highlight the need for all swap dealers to have the right tone at the top – plus appropriate programs and incentives in place – to instill a meaningful culture of compliance among their personnel.”⁷

⁵ *CFTC Orders The Bank of Nova Scotia to Pay Record \$77.4 Million for Spoofing and Making False Statements*, CFTC Press Release No. 8221-20 (Aug. 19, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8221-20>.

⁶ BNS DPA, ¶33, Attachment A, ¶2.

⁷ *CFTC Orders The Bank of Nova Scotia to Pay \$127.4 Million for Spoofing, False Statements, Compliance and Supervision Violations*, CFTC Press Release No. 8220-20 (Aug. 19, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8220-20>.

7. In addition, on June 25, 2019, Defendant Corey Flaum (“Flaum”) was charged and pled guilty to one count of attempted price manipulation in the U.S. District Court for the Eastern District of New York in relation to, *inter alia*, the same conduct described in this Complaint.⁸ Flaum is currently awaiting sentencing.⁹

8. The DOJ and CFTC identified, by way of example, some of the days on which Defendants manipulated precious metals futures contracts prices. Plaintiffs in this Action transacted in precious metals futures contracts on the majority of these days and throughout the Class Period. Defendants’ manipulative conduct caused Plaintiffs to suffer a loss on their transactions.

9. Given the concealed and secretive nature of Defendants’ manipulation, more evidence supporting the allegations in this Complaint will be uncovered after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §22 of the CEA, 7 U.S.C. §25. This Court also has jurisdiction over the state law claims under 28 U.S.C. §1367 because those claims are so related to the federal claim that they form part of the same case or controversy and under 28 U.S.C. §1332 because this is a class action in which the amount in controversy exceeds \$5,000,000 and there are members of the Class who are citizens of a different state than Defendants.

⁸ *U.S. v. Flaum*, No. 1:19-cr-00338, Information, ECF No. 2 (E.D.N.Y. July 25, 2019) (hereinafter, the “Information”).

⁹ *Flaum*, No. 1:19-cr-003338, Minute Order Granting Motion to Continue Sentencing (E.D.N.Y. July 16, 2020).

11. Venue is proper in the District of New Jersey, pursuant to 28 U.S.C. §§1391(b)-(d) and §22 of the CEA, 7 U.S.C. §25(c). Defendants have admitted that a portion of the conduct alleged occurred in this District. One or more of the Defendants resided, transacted business, were found, or had agents in the District of New Jersey. Since 2014, Plaintiff ML Options' principal place of business is in New Jersey. The Government's investigation into Defendants' activities was centered in New Jersey, and the DPA approved in and by the United States Attorney's Office for the District of New Jersey.

12. Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce, or the instrumentalities of transportation or communication in interstate commerce, or of the mails in connection with the unlawful acts and practices and course of business alleged herein.

PARTIES

A. Plaintiffs

13. Plaintiff Casey Sterk is an individual who resides in Encinitas, California. Mr. Sterk transacted in silver, gold, palladium, and platinum futures throughout the Class Period at artificial prices proximately caused by Defendants' unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived Mr. Sterk of the ability to transact in a competitive market that was free of manipulation and caused him to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Mr. Sterk to earn lower profits or suffer greater losses in his trading of precious metals futures contracts during the Class Period.

14. Plaintiff Kevin Maher is an individual who resides in Cambridge, New York. Mr. Maher transacted in silver and gold futures contracts throughout the Class Period at artificial prices proximately caused by Defendants' unlawful manipulation. Defendants spoofed the market for

these precious metals futures contracts thousands of times throughout the Class Period, which deprived Mr. Maher of the ability to transact in a competitive market that was free of manipulation and caused him to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Mr. Maher to earn lower profits or suffer greater losses in his trading of precious metals futures contracts during the Class Period.

15. Plaintiff Jeffery Tomasulo is an individual who resides in Norwalk, Connecticut. Mr. Tomasulo transacted in gold futures and options contracts throughout the Class Period at artificial prices proximately caused by Defendants' unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived Mr. Tomasulo of the ability to transact in a competitive market that was free of manipulation and caused him to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Mr. Tomasulo to earn lower profits or suffer greater losses in his trading of precious metals futures contracts during the Class Period.

16. Plaintiff Christopher DePaoli is an individual who resides in Sedona, Arizona. Mr. DePaoli transacted in silver futures and options contracts throughout the Class Period at artificial prices proximately caused by Defendants' unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived Mr. DePaoli of the ability to transact in a competitive market that was free of manipulation and caused him to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Mr. DePaoli to earn lower profits or suffer greater losses in his trading of precious metals futures contracts during the Class Period.

17. Plaintiff Don Tran is an individual who resides in El Monte, California. Mr. Tran transacted in silver and gold futures and options contracts throughout the Class Period at artificial

prices proximately caused by Defendants' unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived Mr. Tran of the ability to transact in a competitive market that was free of manipulation and caused him to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Mr. Tran to earn lower profits or suffer greater losses in his trading of precious metals futures contracts during the Class Period.

18. Plaintiff Mark Serri is a resident of Medford, New York. Mr. Serri transacted in gold futures and options contracts throughout the Class Period at artificial prices proximately caused by Defendants' unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived Mr. Serri of the ability to transact in a competitive market that was free of manipulation and caused him to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Mr. Serri to earn lower profits or suffer greater losses in his trading of precious metals futures contracts during the Class Period.

19. Plaintiff ML Options Trading, LLC ("ML Options") transacted in gold and silver futures and options contracts throughout the Class Period at artificial prices proximately caused by Defendants' unlawful manipulation. Since 2014, ML Options' principal place of business is in New Jersey; prior to that it was based in New York. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived ML Options of the ability to transact in a competitive market that was free of manipulation and caused it to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused ML Options to earn lower profits or suffer greater losses in its trading of precious metals futures contracts during the Class Period.

20. Plaintiff Robert Charles Class A, L.P. (“RCA”) is a California limited partnership, which, at all relevant times, maintained its principal place of business in San Diego, California. RCA transacted in gold and silver futures and options contracts throughout the Class Period at artificial prices proximately caused by Defendants’ unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived RCA of the ability to transact in a competitive market that was free of manipulation and caused RCA to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused RCA to earn lower profits or suffer greater losses in its trading of precious metals futures contracts during the Class Period.

21. Plaintiff Port 22, LLC (“Port 22”) was at all relevant times an Illinois limited liability company with its principal place of business in Chicago, Illinois. Port 22 transacted in gold and silver futures and options contracts throughout the Class Period at artificial prices proximately caused by Defendants’ unlawful manipulation. Defendants spoofed the market for these precious metals futures contracts thousands of times throughout the Class Period, which deprived Port 22 of the ability to transact in a competitive market that was free of manipulation and caused Port 22 to pay more to purchase, or receive less to sell, precious metals futures contracts. These artificial prices caused Port 22 to earn lower profits or suffer greater losses in its trading of precious metals futures contracts during the Class Period.

22. Plaintiffs’ collective trading records indicate that they traded precious metals futures contracts and options on those contracts throughout the entire Class Period from the beginning of January 2008 through end of July 2016.

B. Defendants

23. Defendant Bank of Nova Scotia is a Canadian corporation with its headquarters in Toronto, Ontario, Canada. Defendant Bank of Nova Scotia operates in various locations within

the United States, including New York and Houston. Defendant Bank of Nova Scotia employed Defendants Flaum and the Does during the Class Period. Defendant Flaum and certain Doe Defendants were acting within the scope of their employment with BNS when they executed the manipulative trades that are the subject of this Complaint.¹⁰

24. Defendant Scotia Capital (USA) Inc. is a New York corporation and a registered broker dealer in securities with the U.S. Securities and Exchange Commission, and a member of the Financial Industry Regulatory Authority and New York Stock Exchange, with its principal place of business located at One Liberty Plaza, New York, New York 10006. Scotia Capital (USA) Inc. is a wholly owned subsidiary of Scotia Capital Inc., which is a wholly owned subsidiary of BNS. Scotiabanc Inc. is a Delaware corporation with its principal place of business located at 711 Louisiana Street, Suite 1400, Houston, Texas 77002. Scotiabanc Inc. is a wholly owned subsidiary of Defendant Scotia Holdings (US) Inc.

25. Defendant Scotia Holdings (US) Inc. is a Delaware corporation with its principal place of business located at 600 Peachtree Street NE, Atlanta, Georgia 30308-2219. Scotia Holdings (US) Inc. is a wholly owned subsidiary of BNS Investments Inc. The sole common shareholder of BNS Investments Inc. is BNS and the sole preferred shareholder is Scotia Ventures Limited, which is a wholly owned subsidiary of BNS.

26. Defendant The Bank of Nova Scotia Trust Company of New York is a trust company regulated by the New York State Department of Financial Services and the Federal Reserve Bank of New York and a subsidiary of Scotia Holdings (USA) Inc., with its principal

¹⁰ BNS DPA, Attachment A, ¶13 (“In placing Manipulative Orders, the Subject Traders were acting within the scope of their employment as employees of [BNS] and with the intent, at least in part, to benefit the Company.”).

place of business located at One Liberty Plaza, 165 Broadway, 26th Floor, New York, New York 10006.

27. Defendant Flaum is a resident of Florida. Defendant Flaum was an employee of Defendant BNS in its New York offices from at least May 2010 until approximately August 2016. He used the following “Tag50” identifications to place manipulative orders: BSNCFLAUM, CFLAUM, and CCCFLAUM. The DOJ charged Defendant Flaum with, and Defendant Flaum pled guilty to, one count of attempted price manipulation related to the conduct at issue in this Complaint.¹¹

28. Defendants John Doe Nos. 1-25 are other individuals or entities that participated in the manipulation and unlawful conduct described herein. These defendants may include other financial firms or employees, agents, or affiliates of Defendant BNS, including, but not limited to, the precious metals traders employed by Defendant BNS or one of its affiliates. For example, the DPA names Subject Trader 2 (“ST-2”), Subject Trader 3 (“ST-3”), and Subject Trader 4 (“ST-4”).¹² Upon information and belief, discovery will reveal the identities of these, and other, individual Doe Defendants.

SUBSTANTIVE ALLEGATIONS

A. Background

29. **Commodity Futures Contract.** A commodity futures contract is a standardized bilateral executory agreement for the purchase and sale of a particular commodity at a specified price at a specified time in the future. A commodity is the underlying asset upon which a futures contract is based. The commodity underlying a futures contract can be a physical commodity, *e.g.*,

¹¹ See Information.

¹² BNS DPA, Attachment A, ¶2.

corn or silver, or a financial instrument, *e.g.*, Treasury bills, foreign currencies, or the value of a stock index.

30. **“Long” and “Short” Futures.** Futures contracts represent a commitment to make (in the case of a short contract) or take (in the case of a long contract) “delivery” of the underlying commodity at a defined point in the future. During the Class Period, precious metals futures contracts were predominantly settled through physical delivery, though some instruments settle to cash.

31. **Offset by Trading.** Futures market participants trading in futures settling through delivery almost always “offset” their contracts before the expiration month when delivery or settlement occurs. For example, a purchaser of one futures contract may liquidate, or cancel or offset, a future obligation to take delivery of the commodity underlying that contract by selling one equivalent futures contract. This sale of one contract offsets or liquidates the earlier purchase of another contract. The difference between the initial purchase price and the sale price represents the realized profit or loss for the trader.

32. **Options Contract.** An options contract is an agreement that gives the buyer, or “option holder,” the right, but not the obligation, to either buy or sell something at a specified price during a specified time period. The buyer of an option pays an “option premium” to the seller for the right to buy (call) or sell (put) the underlying commodity (in this case, precious metals futures contracts).

33. **Call options** confer upon the buyer the right, but not the obligation, to buy the commodity at the specified price (the “strike” price). Call options confer upon the seller, or “option writer,” the obligation to sell the commodity at the strike price. The buyer (the “long” or “option holder”) of one call option wants the value of the underlying commodity to increase so that the

buyer can exercise the option at a price less than the underlying commodity is worth and make a profit. The seller (who is “short”) of a call option wants to avoid having to sell the underlying commodity at a price below market value. Therefore, the trader that is short a call option would prefer the value of the underlying asset to decrease.

34. **Put options** confer upon the buyer the right, but not the obligation, to sell the underlying commodity at the strike price, and they confer upon the seller the obligation to buy the underlying commodity at the strike price if the option is exercised. The buyer of one put contract, assuming no offsetting hedges, wants the value of the underlying commodity to decrease so that the buyer can sell the commodity at above a market price. Conversely, the seller of the put option wants the price of the underlying asset to stay above the strike price so that the seller of the option would not be forced to buy the underlying futures at an above-market price.

B. CME, Globex, and Precious Metals Futures Contracts

35. Futures contracts are traded on markets designated and regulated by the CFTC. The CME Group Inc. (“CME Group”) owns and operates, among other such Designated Contract Markets (“DCMs”), COMEX and NYMEX. At all relevant times, COMEX and NYMEX were registered DCMs with the CFTC, with self-regulatory responsibilities, and were subject to regulation by the CFTC. Thus, COMEX and NYMEX are each a “registered entity” pursuant to §1a(40) of the CEA, 7 U.S.C. §1a(40).

36. As DCMs pursuant to §5 of the CEA, 7 U.S.C. §7, COMEX and NYMEX specify the terms for each of the futures contracts they list, including the underlying commodity, trading

units, tick size,¹³ price quotation, trading hours, trading months, minimum and maximum price fluctuation, and margin requirements.

37. COMEX and NYMEX allow traders to place orders to buy (“bids”) or sell (“offers”) precious metals futures contracts, electronically through Globex, an electronic trading platform or through the Exchanges’ trading floors. Trading on Globex is conducted electronically using a visible “order book” that displays quantities of anonymous orders (*i.e.*, offers to sell futures contracts and bids to buy futures contracts) at various price points, or “levels.” Trading through the Exchanges’ trading floor was conducted via open-outcry.

38. COMEX Gold Futures Contracts and COMEX Silver Futures Contracts are listed on the COMEX, subject to the rules and regulations of COMEX, including Chapters 112 and 113 of the COMEX Rulebook, and during the relevant period were traded either through the Exchange trading floors or electronically on the CME’s Globex platform. Trading through the Exchanges’ trading floor was conducted via open-outcry.

39. NYMEX Platinum Futures Contracts and NYMEX Palladium Futures Contracts are listed on the NYMEX, subject to the rules and regulations of NYMEX, including Chapters 105 and 106 of the NYMEX Rulebook, and during the relevant period were traded either through the Exchange trading floors or electronically on the CME’s Globex platform. Trading through the Exchanges’ trading floor was conducted via open-outcry.

40. When an order is matched, *i.e.*, when there exists both a willing buyer and seller for a specified contract at a given price, a transaction occurs and is referred to as a “fill” (or “execution”). At any time before the order is filled, the trader can “cancel” the order. However,

¹³ The minimum price increment at which a futures contract could trade on COMEX and NYMEX is called a “tick.” COMEX and NYMEX set the value of a tick for each contract that they list.

if an order is partially filled, only the unfilled portion of the order will be cancelled, and that portion of the order is pulled from the order book.

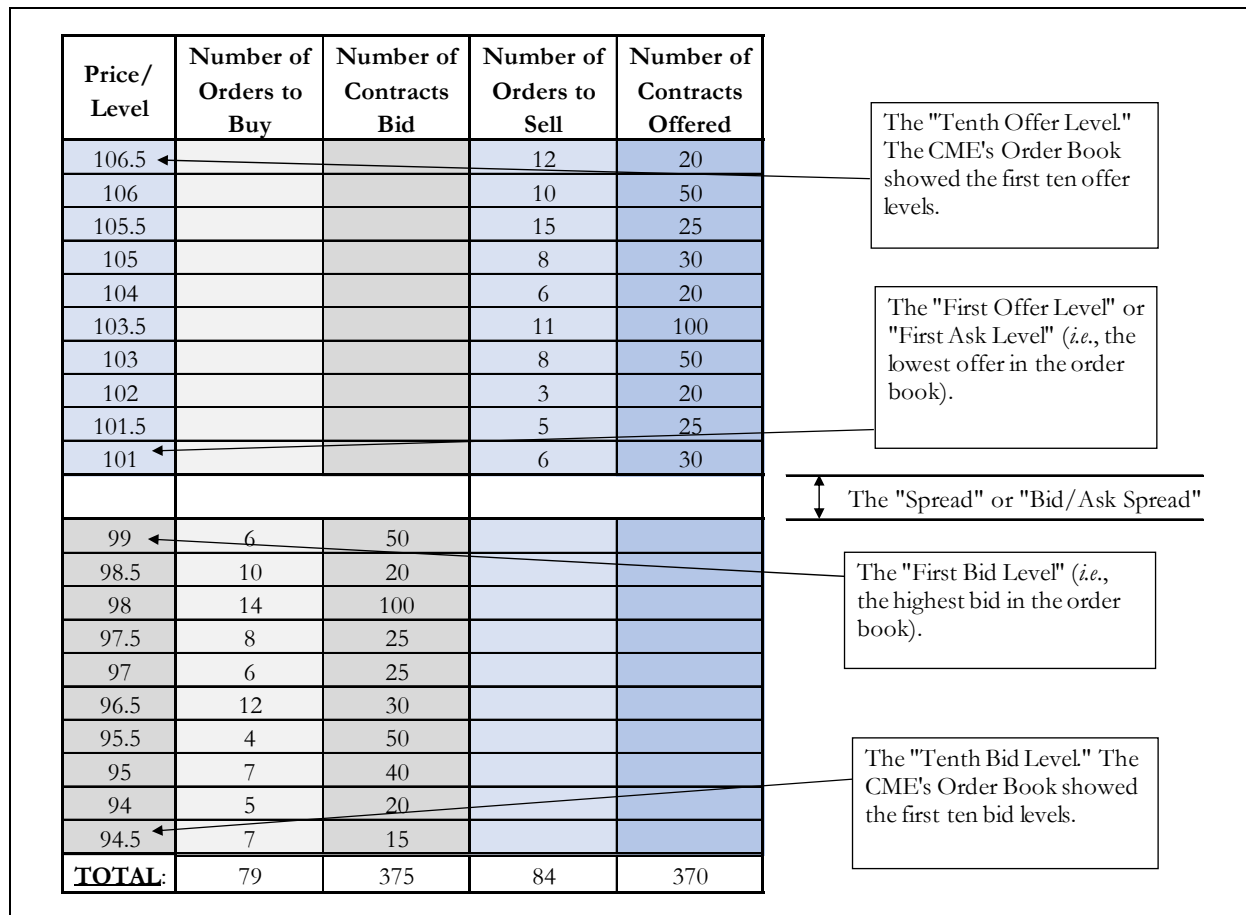
41. There are different types of orders. For example, a “limit order” allows the buyer, or seller, to define the maximum purchase price for buying, or minimum sale price for selling, a specified contract. Any portion of a limit order that can be matched is immediately executed. A limit order remains on the book until the order is either executed, cancelled, or expires. Limit orders that remain in the order book, and have not expired or been filled or cancelled, are sometimes referred to as “resting orders.”

42. Another example is an “iceberg” or “iceberg order”: a type of order that traders can use when trading futures contracts on COMEX and NYMEX. In an iceberg order, the total amount of the order is divided into a certain pre-set quantity and only that quantity is visible to other market participants, with the remainder of the order not visible to other market participants. Whenever the visible portion of the order is filled, the same pre-set quantity of the remaining portion automatically becomes visible; this process repeats until the remainder of the order is either executed or canceled.

43. The order book, sometimes referred to as the “ladder,” allows traders to view the number of orders and the aggregate number of contracts that all traders are actively bidding or offering at a given price level. Only the total numbers of orders and contracts at various price levels are visible. The number of traders and the identities of the traders who placed the orders are not visible, which means that other market participants cannot detect if a trader is placing orders simultaneously on opposite sides of the market, as Defendants did here. The highest price at which someone is willing to buy is referred to as the best-bid level, or first-bid level. The best-ask level, or first-ask level, is the lowest price at which someone is willing to sell. The bid-ask

spread is the difference between these two prices. An illustrative example of a visible order book is contained in FIGURE 1.

FIGURE 1.



44. Globex bids and offers are matched according to an algorithm known as "FIFO," which stands for first-in, first-out. Under the FIFO order matching method, orders on the same side of the market (*i.e.*, the buy side or the sell side) and at the same price are filled based on time priority. Thus, as a general rule, the order that was placed first trades first, irrespective of the order's size. Iceberg orders are an exception; for iceberg orders, once the visible quantity is completely filled, the replenishment quantity goes to the back of the time priority queue.

C. Spoofing

Spoofing in General

45. Spoofing is the act of bidding or offering with the intent, at the time the bid or offer is placed, to cancel the bid or offer before execution. These orders, the “spoof orders,” create a false impression of supply or demand that moves futures contract prices in a desired direction *vis-à-vis* an order the spoofer intends to execute (the “genuine order”). For example, if a trader wants to buy futures contracts at a price below the lowest ask price then available in the market, *i.e.*, a price lower than that at which any market participant would be willing to sell, he/she will place a genuine order, often in the form of an iceberg order, which is a legitimate way to avoid upward pricing pressure that would occur if the full size of the participant’s order was displayed all at once. To do this, the trader will place one or more large spoof orders – orders the trader never intends to execute – to sell a substantial amount of the same contract on the opposite side of the market. The spoof orders are generally made at a price that is at or above the first-ask level (the lowest-ask price available in the market), meaning that many times they are passive orders that will not be immediately filled. These large orders falsely signal that investors are selling their futures contracts, causing prices to decrease (in response to the apparent increase in supply), toward the price at which the trader entered the genuine order. The manipulator then cancels the large spoof orders before they get filled, so the trader never enters a transaction at that price level.

46. The DOJ itself noted in its charging information against BNS that spoofing served to “inject false and misleading information into the precious metals futures market in order to deceive other market participants into believing something untrue, namely that the visible order book accurately reflected market-based forces of supply and demand. This false and misleading information was intended to, and at times did, trick other market participants into reacting to the apparent change and imbalance in supply and demand by buying and selling precious metals

futures contracts at quantities, prices, and times that they otherwise likely would not have traded.”¹⁴

47. FIGURES 2a and 2b below show the order book imbalance and artificial appearance of supply and demand forces that spoofing causes. FIGURE 2a is a hypothetical order book. The best bid is two ticks away from the best offer and, therefore, no executable trades are present. For the purposes of this example, the order book begins fairly balanced, with roughly even numbers of contracts being offered and bid. FIGURE 2b shows how that same order book would appear after a hypothetical genuine order and series of spoof orders are entered. Specifically, the order book in FIGURE 2b shows that an iceberg buy order is placed to buy 50 contracts, but only showing five contracts to the market at a time. Then, spoof orders are placed on the opposite side of the market: one spoof order for 200 contracts is placed at the first-offer level; then four more spoof orders for a total of 100 contracts are also placed at the first-offer level; and six additional spoof orders for a total of 250 contracts are placed at the second-offer level. Following these spoof orders, the order book shows a significant imbalance, with 300 spoof contracts now resting at the first-offer level and 250 spoof contracts resting at the second-offer level. This spoofing gives the appearance of far more sellers in the market than buyers, which signals artificial supply to market participants and leads to artificial, downward price pressure.

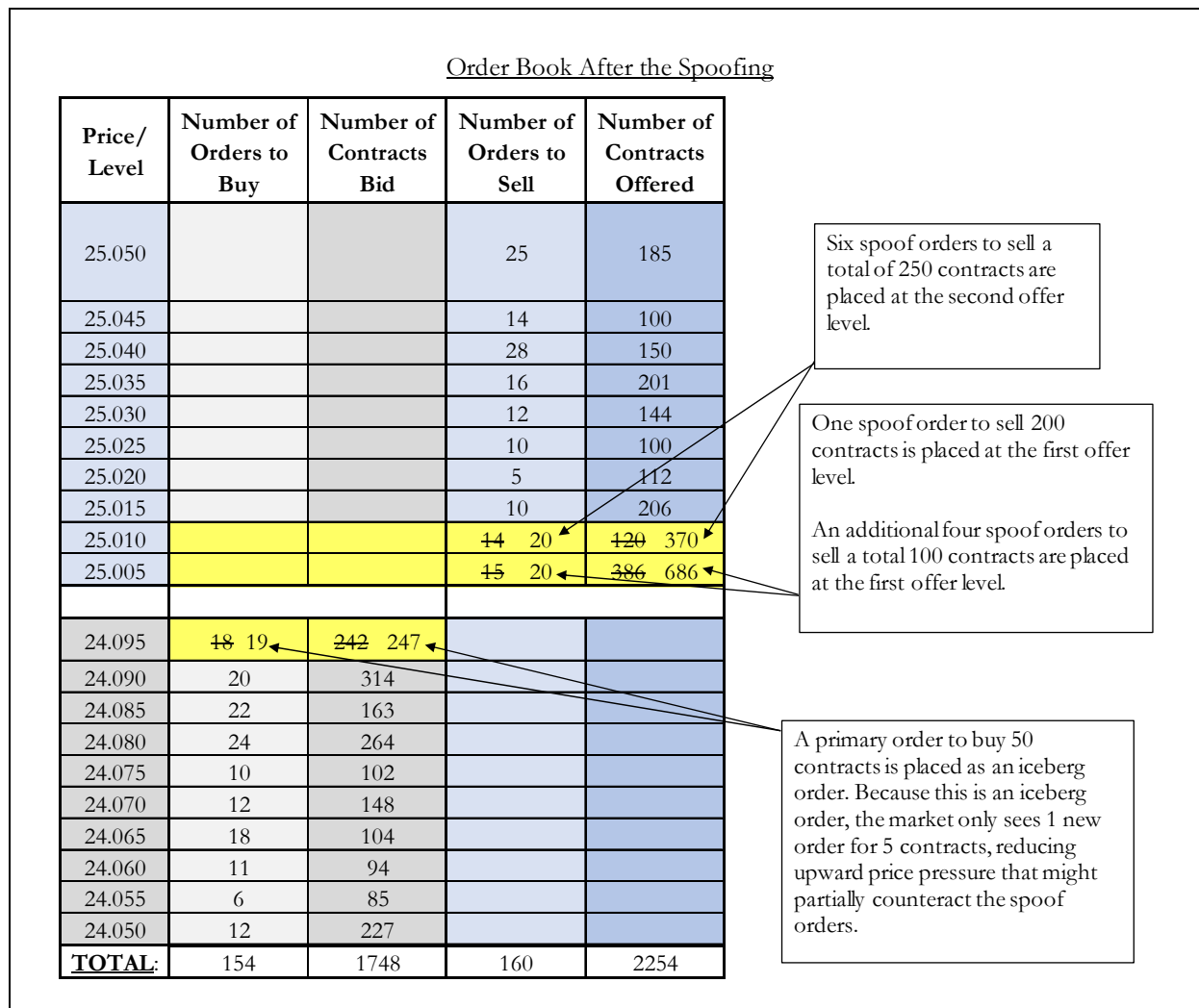
¹⁴ *U.S. v. Bank of Nova Scotia*, No. 3:20-cr-00707, Information, ¶4, ECF No. 1 (D.N.J. Aug. 19, 2020).

FIGURE 2a.

Order Book Before the Spoofing Begins

Price/ Level	Number of Orders to Buy	Number of Contracts Bid	Number of Orders to Sell	Number of Contracts Offered
25.050			25	185
25.045			14	100
25.040			28	150
25.035			16	201
25.030			12	144
25.025			10	100
25.020			5	112
25.015			10	206
25.010			14	120
25.005			15	386
24.095	18	242		
24.090	20	314		
24.085	22	163		
24.080	24	264		
24.075	10	102		
24.070	12	148		
24.065	18	104		
24.060	11	94		
24.055	6	85		
24.050	12	227		
TOTAL:	153	1743	149	1704

FIGURE 2b.



48. The same technique can also be used in reverse to manipulate prices artificially higher. For example, a trader can place an order to sell futures contracts above the current market prices and then, by entering and canceling large orders to buy that same futures contract, send an artificial signal of increased demand to the market that drives futures prices higher towards the level of their initial sell order.

49. In each instance, the trader profits because spoofing allows the trader to buy futures contracts at below the current market price, or to sell futures contracts at above the current market price.

D. Defendants Manipulated the Prices of Precious Metals Futures Contracts and Options Contracts to Artificial Levels Throughout the Class Period

50. In the BNS DPA, Defendant BNS admitted that during the period from at least 2008 through 2016, precious metals traders employed by BNS, including Defendant Flaum, engaged in a scheme to deceive by placing thousands of spoof orders that they never intended to execute, with the intent to create the false and misleading impression of increased supply and demand in the market in order to: (a) induce other market participants to trade at times, prices, and quantities that they would not have absent Defendants' manipulation of the market; and (b) financially benefit Defendants at the expense of Plaintiffs and the Class. They canceled the large spoof orders before they got filled, such that the traders never actually entered transactions at the spoofed price level.

51. Defendants placed the spoof orders electronically onto the NYMEX and COMEX. The illegitimate supply and demand signals conveyed by the spoof orders were thereby disseminated to the market and artificially moved prevailing market prices in the direction of Defendants' genuine orders, injuring Plaintiffs and Class members. During his plea hearing, Defendant Flaum detailed the mechanics of the scheme and admitted that the spoof orders were designed to – and did – artificially move the prices of precious metals futures contracts.¹⁵

52. Defendants' spoofing not only manipulated the price of futures contracts, but options on those futures contracts as well. When a market is spoofed upwards, it leads a trader or investor to believe there is more size on the bid or less size on the offer. If market participants need to buy, this activity would lead one to believe the chance of getting filled on the bid is less likely and often leads traders to lift the existing offer. Anyone who is entering an order to get long

¹⁵ See *Flaum*, No. 1:19-cr-00334, Transcript at 5-6, 22-23, ECF No. 7 (Dec. 26, 2019).

on the market would have been impacted. This would include a buyer of a futures contract, a buyer of a call option, or a seller of a put option. All three of these types of trades are directionally long positions.

53. Conversely, when a market is spoofed downwards, it leads a trader or investor to believe there is less size on the bid or more size on the offer. If market participants need to sell, this activity would lead one to believe the chance of getting filled on the offered side is less likely and often leads traders to hit the existing bid. Anyone who is entering an order to get short on the market would have been impacted. This would include a seller of a futures contract, a buyer of a put option, or a seller of a call option. All three of these types of trades are directionally short positions.

54. Defendants' spoofing manipulation also impacted the prices of financial products directly linked to precious metals futures contracts, including exchange traded funds ("ETFs"). Many ETFs track the price of precious metals futures contracts. To earn the advertised return for their investors, the ETFs must purchase and hold the respective futures contracts and roll them over month to month as the contracts expire. The price of a precious metals futures ETF therefore must move up or down in unison with the price of underlying precious metals futures contracts because the ETF price is based entirely on the futures contract prices. ETFs have no choice regarding whether or not to accept the going rate for a futures contract; they must purchase the next month's contract at the prevailing market price. As sophisticated market participants, Defendants knew that ETFs must purchase precious metals futures contracts, the prices of which Defendants were manipulating.

55. Defendants' manipulation of the markets for precious metals futures contracts caused prices to be artificial throughout the Class Period. The BNS DPA provided just a handful

of examples of the thousands of spoof orders that Defendants placed during the Class Period, which are outlined below:

1. January 19, 2010

56. On or about January 19, 2010, ST-2, in the course of his employment with Defendant BNS, placed a spoof order to buy a total of approximately 110 COMEX Gold Futures contracts at a price of \$1,133.80, sending false demand signals to the market in order to fill his genuine order on the sell side of the market at an artificial price. After ST-2 placed his spoof buy order, the market price moved, and his pre-existing genuine sell order at the price of \$1,134.00 was filled. ST-2 then cancelled the spoof orders without any of them being filled.¹⁶

2. August 22, 2011

57. On August 22, 2011, Defendant Flaum, in the course of his employment with Defendant BNS, placed a genuine order to sell 25 COMEX Gold Futures contracts at a price of \$1,891.00. Later, Flaum placed a spoof order to buy 245 COMEX Gold Futures contracts at a price of \$1,890.20, sending false demand signals to the market in order to fill Flaum's genuine order on the sell side of the market at an artificial price. After the spoof order was placed, Flaum's genuine order was filled. Flaum then canceled the spoof orders without any of them being filled.¹⁷

58. On August 22, 2011, Plaintiff Maher bought COMEX Gold Futures. By buying COMEX Gold Futures in a market where Defendants had manipulated the market prices higher using spoofing, Mr. Maher paid more than he would have but for Defendants' conduct. These artificial prices caused Mr. Maher and other Class members to earn less profits or suffer greater losses during the Class Period.

¹⁶ BNS DPA, Attachment A, ¶6.

¹⁷ BNS DPA, Attachment A, ¶10.

3. June 28, 2012

59. On June 28, 2012, in the course of his employment with Defendant BNS, ST-3 placed a genuine order to sell three COMEX Gold Futures contracts at a price of \$1,569.60. ST-3 then placed a spoof order to buy 150 COMEX Gold Futures contracts at a price of \$1,569.00, sending false demand signals to the market in order to fill ST-3's genuine order on the sell side of the market at an artificial price. After the spoof order was placed, ST-3's genuine order was fully executed. After his genuine order was filled, ST-3 then canceled the spoof orders without any of them being filled.¹⁸

60. On June 28, 2012, Plaintiffs ML Trading, Maher, Serri, and Port 22 bought COMEX Gold Futures. Some Plaintiffs also sold put options on COMEX Gold Futures. By buying COMEX Gold Futures or selling put options in a market where Defendants had manipulated the market prices higher using spoofing, Plaintiffs paid more than they would have but for Defendants' conduct. These artificial prices caused Plaintiffs and other Class members to earn less profits or suffer greater losses during the Class Period.

4. August 1, 2013

61. On August 1, 2013, ST-4, in the course of his employment with Defendant BNS, placed two genuine iceberg orders to buy a total of 10 COMEX Gold Futures contracts at a price of \$1,320.00. Later, ST-4 began placing a series of contract spoof orders to sell a total of 57 COMEX Gold Futures contracts at a price of \$1,320.00, sending false supply signals to the market in order to fill ST-4's genuine order on the buy side of the market at an artificial price. After the

¹⁸ BNS DPA, Attachment A, ¶7.

spoof order was placed, ST-4's genuine orders were fully executed. ST-4 then canceled the spoof orders without any of them being filled.¹⁹

62. On August 1, 2013, Plaintiffs ML Trading and Serri sold COMEX Gold Futures. By selling COMEX Gold Futures in a market where Defendants had manipulated the market prices lower using spoofing, Plaintiffs were paid less than they would have been but for Defendants' conduct. These artificial prices caused Plaintiffs and other Class members to earn less profits or suffer greater losses during the Class Period.

5. December 31, 2015

63. On December 31, 2015, Defendant Flaum, in the course of his employment with Defendant BNS, placed a genuine order to sell five COMEX Gold Futures contracts at a price of \$1,060.40. Later, Flaum placed a spoof order to buy 245 COMEX Gold Futures contracts at a price of \$1,059.90, sending false demand signals to the market in order to fill Flaum's genuine order on the sell side of the market at an artificial price. After the spoof order was placed, Flaum's genuine order was filled. Flaum then canceled the spoof orders without any of them being filled.²⁰

64. On December 31, 2015, Plaintiff ML Trading bought COMEX Gold Futures. By buying COMEX Gold Futures in a market where Defendants had manipulated the market prices higher using spoofing, ML Trading paid more than it would have but for Defendants' conduct. These artificial prices caused ML Trading and other Class members to earn less profits or suffer greater losses during the Class Period.

¹⁹ BNS DPA, Attachment A, ¶11.

²⁰ BNS DPA, Attachment A, ¶5.

6. May 25, 2016

65. On or about May 25, 2016, Defendant Flaum, in the course of his employment with Defendant BNS, placed a genuine order to buy three COMEX Gold Futures contracts at a price of \$1,222.50. Later, Flaum placed a spoof order to sell 145 COMEX Gold Futures contracts at a price of \$1,223.20, sending false supply signals to the market in order to fill Flaum's genuine order on the buy side of the market at an artificial price. After the spoof order was placed, Flaum's genuine order was filled. Flaum then canceled the spoof orders without any of them being filled.²¹

66. On the same day, Defendant Flaum, in the course of his employment with Defendant BNS, placed a genuine order to buy 10 COMEX Gold Futures contracts at a price of \$1,221.70. Later, Flaum placed a spoof order to sell 145 COMEX Gold Futures contracts at a price of \$1,222.20, sending false supply signals to the market in order to fill Flaum's genuine order on the buy side of the market at an artificial price. After the spoof order was placed, Flaum's genuine order was filled. As the price continued to fall, Flaum placed another genuine order to buy 10 COMEX Gold Futures contracts at a price of \$1,221.40. After his second genuine order was executed, Flaum canceled the spoof orders without any of them being filled.²²

67. On May 25, 2016, Plaintiff Port 22 sold COMEX Gold Futures. By selling COMEX Gold Futures in a market where Defendants had manipulated the market prices lower using spoofing, Port 22 was paid less than it would have been but for Defendants' conduct. These artificial prices caused Port 22 and other Class members to earn less profits or suffer greater losses during the Class Period.

²¹ BNS DPA, Attachment A, ¶8.

²² BNS DPA, Attachment A, ¶9.

68. The above are but a few illustrative examples of spoofing conduct provided to the Government by Defendants. Defendants have admitted to spoofing the precious metals futures market thousands of times throughout the entire Class Period.²³ During this time period, Plaintiffs bought and sold precious metals futures and options on a near-daily basis. There can be no doubt that many of Plaintiffs' other transactions fall within similar proximity to the thousands of other spoofing instances.

69. Through their manipulative conduct, Defendants unlawfully increased their profits at the expense of Plaintiffs and the Class. As a result of Defendants' sophisticated manipulative strategy, innocent market participants – such as Plaintiffs – who traded NYMEX and COMEX precious metals futures and options contracts, traded at artificial prices throughout the Class Period caused by Defendants' manipulation.

E. Defendants' Inadequate Compliance Practices Allowed the Spoofing Scheme to Flourish

70. Defendants' compliance department "failed to detect and or deter the Subject Traders' unlawful trading practices." According to CFTC Division of Swap Dealer and Intermediary Oversight Director, Joshua B. Sterling, "BNS's compliance and supervision violations highlight the need for all swap dealers to have the right tone at the top – plus appropriate programs and incentives in place – to instill a meaningful culture of compliance among their personnel."²⁴ As detailed in the Statement of Facts attached to the DPA, Defendants' compliance

²³ BNS DPA, Attachment A, ¶3.

²⁴ *CFTC Orders The Bank of Nova Scotia to Pay \$127.4 Million for Spoofing, False Statements, Compliance and Supervision Violations*, CFTC Press Release No. 8220-20 (Aug. 19, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8220-20>.

function failed “to detect or deter” the unlawful trading practices.²⁵ In fact, even after receiving information showing manipulative trades, the compliance department took no action, including providing no training or guidance, contributing to, and allowing the unlawful scheme to flourish.²⁶ The failures by the compliance department “contributed to the offense conduct and undermined the control functions necessary to an effective compliance program.”²⁷ Adding to this failure, BNS “falsely represented to the National Futures Association (‘NFA’), [a] self-regulatory organization for the U.S. derivatives industry, that [it] used sophisticated algorithmic trade surveillance tools to identify spoofing and other manipulative trading practices,” but this was false.²⁸ BNS did not use such tools as part of its trade surveillance program.²⁹

CLASS ACTION ALLEGATIONS

71. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and as representatives of the following Class:

All persons and entities that purchased or sold any NYMEX Platinum Futures contract, NYMEX Palladium Futures contract, COMEX Silver Futures contract, COMEX Gold Futures contract, or any option on those futures contracts, during the period of at least January 1, 2008 through at least July 31, 2016.³⁰

72. Excluded from the Class are Defendants, their officers and directors, management, employees, subsidiaries, or affiliates. Also excluded from the Class is the Judge presiding over

²⁵ BNS DPA, Attachment A, ¶14.

²⁶ *Id.*, ¶¶16-18.

²⁷ *Id.*, ¶21.

²⁸ *Id.*, ¶22.

²⁹ *Id.*

³⁰ Plaintiffs define the Class based on currently available information and hereby reserve the right to amend the definition of the Class, including, without limitation, the Class Period.

this action, his or her law clerks, spouse, any other person within the third degree of relationship living in the Judge's household, the spouse of such person, and the U.S. government.

73. The Class is so numerous that joinder of the individual members of the proposed Class is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that at least hundreds, if not thousands, of geographically dispersed Class members transacted in NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, or options on those futures contracts throughout the Class Period.

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

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

76. Common questions of law or fact exist, as to Plaintiffs and all Class members, and these common questions predominate over any questions affecting only individual members of the Class. These predominant questions of law and/or fact common to the Class include, without limitation:

- (a) whether Defendants manipulated the prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts,

COMEX Gold Futures contracts, or the prices of options on those futures contracts in violation of the CEA;

(b) whether Defendants manipulated the price of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, or the price of options on those futures contracts to be artificial;

(c) whether such manipulation caused a cognizable injury under the CEA;

(d) whether Defendants' unlawful conduct caused actual damages to Plaintiffs and the Class;

(e) whether Defendants were unjustly enriched at the expense of Plaintiffs and members of the Class;

(f) the operative time period and extent of Defendants' unlawful conduct; and

(g) the appropriate nature and measure of Class-wide relief.

77. A class action is superior to other methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. 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 the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many Class members who could not afford to individually litigate claims such as those asserted in this Complaint. The cost to the court system of adjudication of such individualized litigation would be substantial. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the Defendants.

78. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

79. The applicable statutes of limitations relating to the claims for relief alleged herein were tolled because of Defendants' fraudulent concealment involving both active acts of concealment by Defendants and inherently self-concealing conduct.

80. By its very nature, the unlawful activity alleged herein was clandestine. Defendants engaged in secret and surreptitious activities to submit and cancel trade orders in order to manipulate the prices of NYMEX and COMEX precious metals futures contracts to artificial levels.

81. Defendants concealed their manipulative acts by, *inter alia*, placing orders electronically to buy or sell NYMEX and COMEX precious metals futures contracts at a certain price, even though they secretly had no intent of transacting at that level. At no point did Defendants disclose that they placed these orders to manipulate the prices of NYMEX and COMEX precious metals futures contracts. Because of such fraudulent concealment, and the fact that Defendants' manipulation is inherently self-concealing, Plaintiffs and the members of the Class could not have discovered the existence of Defendants' manipulation any earlier than the date of the public disclosures thereof.

82. Additionally, Defendant BNS has made repeated public statements that it maintains established procedures that ensure compliance with all applicable laws and regulations.

83. Further, as discussed herein, while Defendant BNS was subjected to a regulatory fine in 2018 for potential spoofing behavior, the CFTC has now revealed that BNS made "false

statements and omissions” to regulators during the prior investigation, and it was not until 2020 that the true nature and extent of the misconduct came to light.³¹

84. As a result, Plaintiffs and the Class had no knowledge of, and could not have had knowledge of, Defendants’ unlawful and self-concealing manipulative acts and could not have discovered the same by the exercise of reasonable diligence before August 19, 2020, when the CFTC Order and BNS DPA were released.

85. Upon the public release of such information on August 19, 2020, Plaintiffs quickly engaged legal counsel and investigated the misconduct reported to determine whether they were affected during the relevant period and whether they had legal claims for which to seek redress.

86. As a result of the concealment of Defendants’ unlawful conduct through misrepresentations and/or active omissions regarding their conduct, and the self-concealing nature of Defendants’ manipulative acts, Plaintiffs assert the tolling of the applicable statutes of limitations affecting the rights of the causes of action asserted by Plaintiffs.

87. Defendants are equitably estopped from asserting that any otherwise applicable limitations period has run.

FIRST COUNT
For Manipulation in Violation of the Commodity Exchange Act
7 U.S.C. §§1, *et seq.*
(Against All Defendants)

88. Plaintiffs reallege and incorporate the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

³¹ CFTC Order at 2; *see also* BNS DPA, ¶4.b (“As a result of the Company’s incomplete disclosure, and inaccurate representations on which the CFTC relied, the CFTC and the Company entered into a resolution that did not reflect the full extent of Flaum’s spoofing . . .”).

89. Defendants through their acts alleged herein, from at least January 1, 2008 through at least July 31, 2016, specifically intended to, and did, cause unlawful and artificial prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts in violation of the CEA, 7 U.S.C. §§1, *et seq.*, through their use of fictitious buy and sell orders, and other manipulative conduct.

90. Defendants manipulated the price of a commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, in violation of the CEA.

91. During the Class Period, the prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts did not result from legitimate market information and the forces of supply and demand. Instead, the prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts were artificially inflated, or deflated, by Defendants' spoofing and other manipulative trading activities.

92. Throughout the Class Period, Defendants entered orders to buy or sell without the intention of having those orders filled and specifically intending to cancel those orders prior to execution. Defendants did this with the intent to inject illegitimate information about supply and demand into the marketplace and to artificially move prices up or down to suit Defendants' own trades and positions. As a result of these artificial prices, Plaintiffs and the Class suffered losses on their trades in NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts.

93. Through their use of spoofing and other manipulative techniques, Defendants manipulated the prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts throughout the Class Period and thereby caused damages to Plaintiffs and Class members who purchased or sold such instruments at the artificially inflated or deflated prices.

94. At all times and in all circumstances previously alleged herein, Defendants had the ability to cause, and did cause, artificial prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts. Defendants, directly and through their employees and affiliates, were active in the markets for NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts and were aware of the effects of spoofing and other manipulative conduct on those markets.

95. By their intentional misconduct, Defendants each violated §§6(c), 6(d), 9(a), and 22(a) of the CEA, 7 U.S.C. §§9, 13b, 13(a), and 25(a), throughout the Class Period.

96. As a result of Defendants' unlawful conduct, Plaintiffs and members of the Class have suffered damages and injury-in-fact due to the artificial prices for NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts to which Plaintiffs and the Class would not have been subject, but for the unlawful conduct of the Defendants, as alleged herein.

97. Plaintiffs and members of the Class are each entitled to actual damages sustained in NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver

Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts for the violations of the CEA alleged herein.

98. In addition, Defendants acted willfully and intentionally to manipulate precious metals futures. Accordingly, Plaintiffs seek double punitive damages under 7 U.S.C. §25(a)(3).

SECOND COUNT
For Employing a Manipulative Device in Violation
of the Commodity Exchange Act
7 U.S.C. §§1, *et seq.* and Regulation 180.1(a)
(Against All Defendants)

99. Plaintiffs reallege and incorporate the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

100. Defendants' unlawful conduct, as described herein, including systematically submitting and cancelling spoof orders and engaging in other manipulative conduct in order to artificially move prices for NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts constitutes the employment of a manipulative and deceptive device.

101. As alleged herein, Defendants acted intentionally – and, even if they are found to not have acted intentionally, they at least acted recklessly – in employing the manipulative and deceptive device to procure ill-gotten trading profits at the expense of Plaintiffs and the Class.

102. By their intentional misconduct, Defendants each violated §§6(c) and 22(a) of the CEA, 7 U.S.C. §§9 and 25(a), throughout the Class Period.

103. As a result of Defendants' unlawful conduct, Plaintiffs and members of the Class have suffered damages and injury-in-fact due to artificial prices for NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts to which Plaintiffs and the Class would not have been subject, but for the unlawful conduct of the Defendants, as alleged herein.

104. Plaintiffs and members of the Class are each entitled to damages for the violations of the CEA alleged herein.

THIRD COUNT
For Principal-Agent Liability for Violation of the Commodity Exchange Act
7 U.S.C. §§1, *et seq.*
(Against All Defendants)

105. Plaintiffs reallege and incorporate the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

106. Defendant BNS is liable under §2(a)(1) of the CEA, 7 U.S.C. §2(a)(1), for the manipulative acts of its agents, representatives, and/or other persons acting for it in the scope of their employment.

107. Plaintiffs and members of the Class are each entitled to damages for the violation alleged herein.

FOURTH COUNT
Unjust Enrichment
(Against All Defendants)

108. Plaintiffs reallege and incorporate the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

109. Defendants financially benefited from their unlawful acts. As alleged herein, Defendants submitted spoof orders electronically and employed other manipulative techniques to manipulate the prices of NYMEX Platinum Futures contracts, NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts in an artificial direction. Defendants intended to, and did, artificially alter prices in a direction that benefitted their trades and positions at the expense of Plaintiffs and the Class.

110. These unlawful acts caused Plaintiffs and other members of the Class to suffer injury, lose money, and transact at artificial prices for NYMEX Platinum Futures contracts,

NYMEX Palladium Futures contracts, COMEX Silver Futures contracts, COMEX Gold Futures contracts, and options on those futures contracts.

111. As a result of the foregoing, it is unjust and inequitable for Defendants to have enriched themselves in this manner at the expense of Plaintiffs and members of the Class, and the circumstances are such that equity and good conscience require Defendants to make restitution.

112. Each Defendant should pay restitution for its own unjust enrichment to Plaintiffs and members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the requested relief as follows:

A. For an Order certifying this lawsuit as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3), designating Plaintiffs as the Class Representatives and appointing their counsel as Class Counsel;

B. For a judgment awarding Plaintiffs and the Class damages against Defendants for their violations of the CEA, together with prejudgment interest, at the maximum rate allowable by law;

C. For a judgment awarding Plaintiffs and the Class restitution of any and all sums of Defendants' unjust enrichment;

D. For an award to Plaintiffs and the Class of their costs of suit, including reasonable attorneys' and experts' fees and expenses; and

E. For such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury for all issues so triable.

Dated: May 4, 2021

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