

10 cv 8343
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAM WOLANYK, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

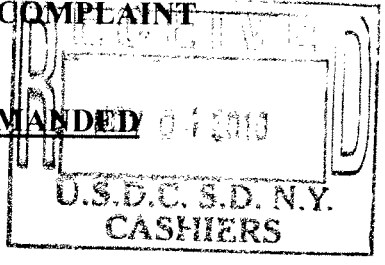
JP MORGAN CHASE & CO., J.P. MORGAN CLEARING CORP., J.P. MORGAN SECURITIES INC., J.P. MORGAN FUTURES INC., HSBC HOLDINGS PLC, HSBC SECURITIES (USA) INC., HSBC BANK USA, NATIONAL ASSOCIATION, and JOHN DOES 1-10,

Defendants.

CASE NO. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED 07/2010



Plaintiff Sam Wolanyk, on behalf of himself and all others similarly situated, brings this action against JPMorgan Chase & Co., J.P. Morgan Clearing Corp.; J.P. Morgan Securities Inc.; J.P. Morgan Futures Inc.; HSBC Holdings PLC; HSBC Securities (USA) Inc., and HSBC Bank USA, National Association and alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action arises from Defendants' combination, conspiracy, and agreement to unlawfully restrain trade in and suppress the prices of silver futures and options contracts traded on the Commodity Exchange, Inc. ("COMEX") from March 1, 2008 through and including the present (the "Class Period") in violation of Section 22(a)(1) of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 25(a)(1) and Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. During the Class Period, Defendants conspired to and did suppress and manipulate the prices of COMEX silver futures and options contracts by accruing extremely

large short positions in COMEX silver futures contracts in order to suppress the price of COMEX silver futures and options contracts. This behavior would also result in the suppression of the value of call options and an increase in the value of put options, frequently resulting in call options becoming worthless (“options pinning”). Defendants have engaged in additional conduct with the intent of manipulation the futures markets, including the placement of large, “spoof” orders, whose purpose was to influence prices and then to be withdrawn prior to actual speculation.

3. In September 2008, the Enforcement Division of the Commodity Futures Trading Commission (“CFTC”) commenced an investigation into manipulation in the silver market. The CFTC stated in a report that it had received “numerous letters, e-mails and phone calls” alleging that silver futures prices were being unlawfully manipulated downward.

4. In March 2010, a Whistleblower publicly announced his cooperation with the Federal Trade Commission (FTC) concerning Defendants’ possible manipulation of the silver markets. Upon information and belief, thereafter the Defendants began to unwind their short positions. The net short position of silver futures held by commercial banks, of which Defendants comprise the vast majority, have been reduced by more than 30% since March 2010.

5. On October 26, 2010, CFTC Commissioner Bart Chilton announced that there have been “violations of the Commodity Exchange Act in the silver market.” Specifically, Commissioner Chilton concluded, “[t]here have been fraudulent efforts to persuade and deviously control” prices in the silver market, which “should be prosecuted.” Commissioner Chilton further indicated that the CFTC investigation was continuing and added that he was “hopeful that the agency will speak publicly about the investigation in the very near future.”

6. Defendants' restraint of trade and anticompetitive conduct had severe adverse consequences on competition and price discovery. Plaintiff and other members of the Class who traded COMEX silver futures and options contracts during the Class Period were deprived of normal, competitive trading patterns and instead were subject to artificially determined prices as a result of Defendants' unlawful conduct. As a consequence thereof, Plaintiff and the Class suffered financial losses and were, therefore, injured in their business or property.

JURISDICTION AND VENUE

7. Silver is a "commodity" and is the "commodity underlying" silver futures and options contracts traded on the COMEX, as well as other exchanges such as the Chicago Board of Trade ("ECBOT") and the New York Stock Exchange ("NYSE") Liffe, as those terms are defined and used in Section 1 a(4) and 22 of the CEA, 7 U.S.C. §§ 1a(4) and 25(a)(1)(D), respectively.

8. This action arises under Section 1 of the Sherman Act, 15 U.S.C. § 1, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and Section 22 of the CEA, 7 U.S.C. § 25.

9. This Court has jurisdiction under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, Section 22 of the CEA, 7 U.S.C. 25, and 28 U.S.C. §§ 1331 and 1337.

10. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a), pursuant to Section 22 of the CEA, 7 U.S.C. § 25, and 28 U.S.C. § 1391(b), (c) and (d). The Defendants transacted business in the Southern District of New York, the claims arose in the Southern District of New York, and a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York. Defendants' unlawful acts manipulated the prices of COMEX silver (sometimes, "silver") contracts which were traded in this district in

which COMEX is located, at One North End Avenue, New York, New York. As used herein, COMEX silver contracts means COMEX silver futures contracts, and COMEX options on such contracts.

11. Defendants made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails in connection with the unlawful acts and practices and courses of business alleged in this Complaint.

PARTIES

12. Plaintiff SAM WOLANYK is a resident of San Diego, California. During the Class Period, Plaintiff SAM WOLANYK transacted in COMEX silver futures and options contracts and was injured in his property as a result of Defendants' unlawful conduct.

13. Defendant JPMorgan Chase & Co. is a Delaware financial holding company with its principal place of business in New York, New York. JPMorgan Chase & Co. is a leading global financial services firm and one of the largest banking institutions in the United States with \$2.1 trillion in assets, \$164.7 billion in stockholders' equity, and operations in more than 60 countries.

14. Defendant J.P. Morgan Clearing Corp. ("JPMC"), formerly known as Bear, Stearns Securities Corp. is a Delaware corporation with its corporate offices in Brooklyn, New York. JPMC is a subsidiary of J.P. Morgan Securities Inc. which is a wholly owned subsidiary of JPMorgan Chase & Co. JPMC is a registered Futures Commission Merchant with the CFTC.

15. Defendant J.P. Morgan Futures Inc. ("JPMFI") is a Delaware corporation with its principal place of business in New York, New York. JPMFI is a U.S. futures commission merchant and wholly owned subsidiary of JPMorgan Chase & Co. JPMFI provides research,

sales, execution and clearing services in futures and options across fixed income, equity, foreign exchange and commodity asset classes. JPMFI holds the U.S. accounts of JPMorgan Chase's global futures and options business customers.

16. Defendant HSBC Holdings plc ("HSBC Holdings") is a United Kingdom public limited company with its corporate headquarters in London, England. As of 2009, HSBC Holdings was the world's largest banking group and the world's sixth largest company according to Forbes Magazine.

17. Defendant HSBC Securities (USA) Inc. ("HSBC USA") is a Delaware corporation with a corporate office located in New York, New York. HSBC USA is a wholly owned subsidiary of HSBC Markets (USA) Inc. whose ultimate parent is HSBC Holdings plc. HSBC USA is a registered broker-dealer of securities under the Securities Exchange Act of 1934 and is a registered Futures Commission Merchant with the CFTC.

18. Defendant HSBC Bank USA, National Association ("HSBC NA") is a Texas company with an office in Wilmington, Delaware.

19. John Doe Defendants 1-10 are persons, whose identities are presently unknown to Plaintiff, who performed, participated in, furthered, and/or combined conspired or agreed with others to perform the unlawful act alleged herein, including the restraint of trade, fixing of prices, and manipulation of silver futures and silver options traded on the COMEX.

20. As used herein, JPMorgan Chase & Co., J.P. Morgan Clearing Corp., J.P. Morgan Securities Inc. and J.P. Morgan Futures Inc. are referred to herein as the "J.P. Morgan Group Defendants."

21. As used herein, HSBC Holdings plc, HSBC Securities (USA) Inc. and HSBC

Bank USA, National Association are referred to as the “HSBC Group Defendants.”

22. As used herein, the John Doe Defendants, the JP Morgan Group Defendants, and the HSBC Group Defendants are referred to as “Defendants.”

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action as a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and others similarly situated. The Class is defined as:

All persons or entities other than Defendants and their employees, affiliates, parents, subsidiaries or co-conspirators (whether or not named in this Complaint) who transacted in COMEX silver futures or options contracts between March 1, 2008 through such time as the effects of Defendants’ illegal conduct ceased.

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

25. Plaintiff’s claims are typical of the claims of the other members of the Class. Plaintiff and members of the Class sustained damages arising out of Defendants’ common course of conduct in violation of law as complained herein. The injuries and damages of each member of the Class were directly caused by Defendants’ wrongful conduct in violation of law as alleged herein.

26. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action litigation and antitrust class action litigation.

27. Common questions of law and fact exist as to all members of the Class which predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether Defendants conspired with others to artificially depress and manipulate the price of COMEX silver futures and options contracts in violation of the Sherman Act;

(b) Whether Defendants' conduct, which manipulated and suppressed the prices of COMEX silver futures and options contracts, violates the CEA;

(c) Whether Defendants' conduct had an anticompetitive and manipulative effect on the prices of COMEX silver futures and options contracts purchased or sold by Plaintiff and the Class during the Class Period; and

(d) The appropriate measure of damages, under the CEA and federal antitrust laws, sustained by Plaintiff and other members of the Class as a result of Defendants' unlawful activities.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action, on the other hand, would achieve substantial economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.

29. The interest of members of the Class in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and prosecution of the action through representatives would be unobjectionable. The amounts at stake for Class members, while substantial in the aggregate, are not great enough individually to enable them to maintain separate suits against Defendants. Plaintiff does not anticipate any difficulty in the management of this action as a class action.

RELEVANT MARKET

30. The relevant market is the market for COMEX silver futures and options contracts.

COMMODITIES MARKET BACKGROUND

31. In the commodity futures market: (a) more than 99% of the contracts do not result in delivery and may remain open for multi-month periods with no delivery of the commodity, and (b) at any given time, one-half of the participants in the futures market are “short” and one-half of the participants are the buyers of a contract or “long”.

A. COMEX Silver Futures and Options Contracts

32. COMEX, a division of the New York Mercantile Exchange (“NYMEX”), has been designated by the CFTC as a contract market pursuant to Section 5 of the CEA, 7 U.S.C. § 7. COMEX submits to the CFTC various rules and regulations for approval through which COMEX designs, creates the terms of, and conducts trading in various precious metals futures and options contracts, including futures and options contracts for silver. COMEX is an organized, centralized market that provides a forum for trading silver futures and options contracts.

33. COMEX provides standardized silver futures contracts with delivery dates

commencing with the next calendar month and potentially extending as far as 60 sequential months into the future depending upon the month in which the contract was executed. A silver futures contract is an agreement to buy or sell a fixed amount of silver at a date in the future. The COMEX specifies the terms of trading, including the trading units, price quotation, trading hours, trading months, minimum and maximum price fluctuations and margin requirements.

34. Trades of silver futures contracts on the COMEX have two “sides.” The “long” side represents the buyer of a contract who is obligated to pay for the silver and take delivery. The “short” side represents the seller of a contract who is obligated to receive payment for the silver and make delivery. If a market participant holds its position to the end of the settlement period for a silver futures contract, the market participant is obligated to “go to delivery.” That is to say, upon the settlement date, the “futures” contract for a particular month becomes a present contractual obligation for the purchase and sale of the physical silver. Longs must take delivery and shorts must make delivery of 5,000 troy ounces per contract over the course of the contract month. The price for the silver that goes to delivery is the “settlement price” of the COMEX silver futures contract.

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

B. Overview of Short Option Positions

36. There are a number of ways to “go short,” i.e., bet that the price of silver will decrease. As discussed above, one can sell a futures contract which confers upon the seller an obligation to deliver silver at a pre-specified date in the future at a pre-specified price. Alternatively, one can sell call options, which confers upon the buyer of the call option the right, but not the obligation, to purchase silver from the seller at a pre-specified “strike price” at some date in the future (i.e., expiry). At expiry, if the price of silver exceeds the strike price, the buyer will exercise the option, which means the seller will pay the difference between the prevailing price and the strike price. Conversely, if the price of silver falls short of the strike price, the option expires “out of the money.”

37. In the cases above (or any other method in which an entity creates a short position), the entity that is short benefits as prices fall. In the case of selling a futures contract, the seller at the time of contract expiration simply offsets his position by purchasing a futures contract and pockets the difference in prices. In the case of a call option, the seller benefits if the prevailing price is below the strike price because it collects the option premium and pays nothing to the purchaser.

38. Upon information and belief, during the Class Period, Defendants had net short positions in silver options contracts, including but not limited to, the sale of call options.

C. Physical and Futures Prices for the Underlying Physical Commodity are Directly Related to One Another

39. The futures price is the market’s consensus of the expected spot price for the underlying physical commodity at a specified future date. Because the futures price is nothing more than an expectation of the future spot price, both futures and physical prices must be and

are in fact, correlated. For example, if the futures price in a contract negotiated today for delivery next month starts to rise, this indicates that the market believes spot prices will rise next month. The rise in the future price for next month delivery will cause a reaction today among producers and consumers of the commodity.

40. For the producers of the commodity, the increase in the price of that commodity for delivery next month makes it more profitable to shift sales from the current month to the next month. Conversely, for buyers of physical silver, the increase in price for delivery next month creates an incentive for them to purchase today rather than waiting until next month when the price increase is expected. Thus, the increase today in futures price (for delivery next month) has caused producers to decrease the available supply of the commodity and prompted buyers of physical silver to increase their demand. The decrease in supply coupled with the increase in demand, causes today's spot prices for the commodity to increase. The same causal economic story (albeit in reverse) prevails if futures prices decline.

41. Therefore, changes in futures prices for delivery months into the future have tangible effects on physical spot prices today. Put statistically, futures prices and physical spot prices are linked and correlated.

D. The COMEX Silver Futures and Options Contracts Market Is Susceptible to Collusion

42. The silver futures market is a thin market. The number of futures contracts traded in the silver market is small, i.e., thin, in comparison to markets involving other commodities. For instance, in August 2008, there were only 129,240 open interest silver futures contracts, i.e., silver futures contracts that had not yet settled, as opposed to 1.25 million open interest NYMEX Light Sweet Crude Oil futures contracts and 408,430 open interest COMEX gold futures

contracts during the same period.

43. The relatively sparse number of silver futures contracts regularly traded on COMEX, enabled large banks, such as Defendants, to manipulate the price of silver futures contracts during the Class Period by flooding the market with a disproportionate number of contracts.

44. In addition, the market for COMEX silver futures and options contracts is highly concentrated with only a handful of very large banks controlling a dominant number of futures and options contracts.

SUBSTANTIVE ALLEGATIONS

A. The COMEX Silver Futures and Options Contracts Market is Susceptible to Collusion

45. In August 2008, subsequent to JPMorgan's acquisition of Bear Stearns, Defendants JPMorgan and HSBC controlled over 85% of the commercial net short position in COMEX silver futures contracts and 25% of all open interest short positions.

46. In the first quarter 2009, HSBC NA held 40% of all precious metals derivatives (excluding gold) held by commercial banks.

47. As of the first quarter 2009, Defendants owned more than 96 percent of all precious metal derivatives held by U.S. banks (excluding gold) with a combined notional value of \$7.9 billion.

48. Prices in the silver futures and options market respond much more to large orders, large trades, and large positions than do prices in other commodity markets.

49. A review of the Office of Comptroller of the Currency's Quarterly Report on Bank Derivatives Activities for the first quarter of 2009, which provides information on the

value of derivative contracts for the top five commercial banks and trust companies, indicates that, together, JPMorgan and HSBC controlled 96% of all precious metals derivative contracts besides gold (which include silver).

50. In March 2008, JPMorgan purchased Bear Stearns. Bear Stearns had amassed a significant short position in silver contracts.

51. By August 5, 2008, Defendants were short a massive 33,805 contracts, or more than 169 million troy ounces of silver. This short position was equal to an approximately 25% of annual world mine production of silver.

B. Defendants Used Their Market Power to Manipulate the COMEX Market for Silver Futures and Options Contracts

52. Defendants consistently maintained their massive short positions until March 2010 when the public complaints about manipulation began.

53. According to publicly available information, JP Morgan traders bragged during the Class Period about their large trades which successfully moved silver prices.

54. Also during the Class Period, the trading of silver futures and options indicates that large “spoofing” orders were entered and that options pinning occurred.

55. According to publicly available information, JPMorgan Group Defendants sent “signals” to HSBC Group Defendants and other Defendants coordinating Defendants’ collusive restraint of trade, fixing, and manipulation of the prices of COMEX silver futures and options contracts.

56. According to publicly available information, such “signals” were sent, among other times, on a monthly basis on or around the dates of certain key events, including: (a) following the United States Department of Labor’s issuance of Non-Farm Payroll Reports, which

are released during the first week of each month; (b) at the time of Options Expiry on the last four business days of each month; and (c) during COMEX silver futures contract roll-over.

57. Further according to publicly available information, manipulative trades and orders have repeatedly been entered prior to the opening of trading COMEX silver futures.

58. According to publicly available information, the JP Morgan Group Defendants and the HSBC Group Defendants were among the Defendants who engaged in the forgoing manipulative practices.

59. According to an October 27, 2010 article published in the Wall Street Journal, the CFTC's enforcement staff has circulated a packet of information to CFTC lawyers and commissioners, outlining some of its findings in the silver probe, including documents that could suggest there have been attempts to manipulate prices. According to the same article, CFTC lawyers have interviewed employees of JPMorgan in its metals-trading business as well as industry traders, commodity executives, experts and employees of other metals-trading firms.

C. The CFTC's Investigation into Defendants' Conspiracy

60. In September 2008, the Commodity Futures Trading Commission ("CFTC") commenced an investigation into manipulation in the silver market after receiving "numerous letters, e-mails and phone calls" alleging that silver futures prices were being manipulated downward.

61. In November 2009, the Whistleblower contacted the CFTC Enforcement Division and reported Defendants' illegal conspiracy to manipulate and suppress the prices of COMEX silver futures and options contracts.

62. In his communications with the CFTC, the Whistleblower described how

JPMorgan silver traders signaled market participants in advance of their manipulation, so that they, along with other traders, could reap enormous profits by artificially and unlawfully suppressing and manipulating the price of COMEX silver futures and options contracts.

63. In subsequent communications, the Whistleblower informed the CFTC that he had observed JPMorgan signal the market that it intended, with others, to reduce and suppress the price of COMEX silver futures contracts, including at or around the date of Options Expiry.

64. According to the Whistleblower, JPMorgan sent “signals” to HSBC and other co-conspirators prompting them to join JPMorgan's artificial suppression and manipulation of the price of COMEX silver futures and options contracts by flooding the market with short positions.

65. These “signals” were sent on a monthly basis on or around the dates of certain key events, including: (a) following the United States Department of Labor's issuance of Non-Farm Payroll Reports, which are released during the first week of each month; (b) at the time of Options Expiry on the last four business days of each month; and (c) during COMEX silver futures contract roll-over.

66. Additionally, the Whistleblower described signals that Defendants employed on a daily basis which the Whistleblower characterized as the “daily fix.” During certain times of the day (typically when trading volume on the COMEX is light), Defendants rapidly dumped large numbers of COMEX silver futures contracts at or around the same suppressed price. It was understood among Defendants and their co-conspirators that the price of these contracts would set the direction of silver futures contracts prices for that day. As the

Whistleblower explained in an email to Eliud Ramirez, Senior Investigator for the CFTC's Enforcement Division, dated January 26, 2010:

As an example, if you look at the trades just before the pit open today you will see around 1,500 contracts sell at once where the bids were tiny by comparison in the fives and tens. This has the immediate effect of gaining \$2,500 per contract on the short positions against the long holders, who lose that in moments and likely were stopped out.

67. The Whistleblower's statements concerning the "daily fix" are corroborated by Jeffrey Christian, Managing Director and founder of CPM Group, a commodities research and consulting company in New York. Christian recently testified before the CFTC that "there are times when companies enter the market with large trades during the New York pre-market, *apparently with the intention of moving prices in their favor by placing a large order or orders before the liquidity is there to accommodate such trades.*" (emphasis added)

68. In a subsequent email to Ramirez, dated February 3, 2010, the Whistleblower informed the CFTC that he had received a signal from Defendants indicating their intent to depress the prices of COMEX silver futures and options contracts two days later, at or around the time of the announcement of the Non-Farm Payroll Report. The Whistleblower then predicted how the manipulation would play out in an email:

Scenario 1. The news is bad (employment is worse). This will have a bullish effect on gold and silver as the U.S. dollar weakens and the precious metals draw bids, spiking them higher. This will be sold into within a very short time (1-5 mins) with thousands of new short contracts being added, overcoming any new bids and spiking the precious metals down hard, targeting key support levels.

Scenario 2. The news is good (employment is better than expected). This will result in a massive short position being instigated almost immediately with no move up. This will not initially be liquidation of long positions but will result in stops being triggered, again targeting key support levels.

Both scenarios will spell an attempt by the two main short holders [JPMorgan

and HSBC] to illegally drive the market down and reap very large profits. Locals such as myself will be “invited” on board which will further add downward pressure.

69. On February 5, 2010, the Whistleblower emailed Ramirez “to confirm that the silver manipulation was a great success and played out EXACTLY to plan as predicted ... Indeed, the price of silver fell dramatically on February 3, 2010 following Defendants' manipulation just as the Whistleblower had predicted.

70. The Whistleblower added, “[h]ow would this be possible if the silver market was not in the full control of [JPMorgan and HSBC] . . . I hope you took note of how and who added the short sales (I certainly have a copy) and I am certain you will find it is the same concentrated shorts [JPMorgan and HSBC] who have been in full control since [JPMorgan] took over the Bear Stearns position.”

71. In March 2010, the Whistleblower went public with his allegations and revealed his emails to the CFTC predicting certain market movements.

72. Upon information and belief, Defendants began to unwind their massive short positions shortly thereafter. As reflected in the CFTC Bank Participation reports, the net short position of silver futures held by commercial banks, of which Defendants comprise the vast majority, have been reduced by more than 30% since March 2010.

73. As Defendants' short position in Comex Silver Futures contracts have decreased, the price of silver has risen dramatically. Silver has gained 40 percent this year, touching \$24.95 an ounce on October 14, its highest level in 30 years.

74. An October 27, 2010 Wall Street Journal Article cites a CFTC weekly report for October 19, the most recent period, showing that less than four market players hold 24.3% of

all net bearish bets in the silver market. Importantly, relying on silver traders and a person close to the investigation, the article confirms that Defendants JPMorgan and HSBC are among those market participants.

75. On October 26, 2010, CFTC Commissioner Bart Chilton announced that there have been “violations of the Commodity Exchange Act in the silver market.” Specifically, Commissioner Chilton concluded, “[t]here have been fraudulent efforts to persuade and deviously control” prices in the silver market, which “should be prosecuted.” Commissioner Chilton indicated that the CFTC investigation was continuing and added that he was “hopeful that the agency will speak publicly about the investigation in the very near future.”

OTHER FACTORS INDICATING A CONSPIRACY

A. Standardized Product with High Degree of Interchangeability

76. When products offered are viewed as interchangeable by market participants, it is easier to unlawfully agree on the price for the product in question, and it is easier to effectively monitor agreed-upon prices. This makes it easier to form and sustain an unlawful anticompetitive agreement or conspiracy.

77. Here, COMEX silver futures and options contracts are interchangeable. Indeed, the COMEX specifies the terms of each contract, including the trading units, price quotation, trading hours, trading months, minimum and maximum price fluctuations and margin requirements.

B. Defendants Had the Opportunity to Conspire Through Their Participation in Trade Associations

78. Participation in trade associations can foster and facilitate an unlawful anticompetitive conspiracy. Throughout the Class Period, Defendants participated in numerous

trade association activities and events together, which provided many opportunities to conspire and share confidential information and trading strategy.

79. For example, Defendants are members of the Futures Industry Association (FIA”), the Futures and Options Association (“FOA”) and the London Bullion Market Association (“LBMA”).

80. HSBC USA and JPMFI are regular members of the FIA, a United States-based industry advocacy and education organization whose regular members are all futures commission merchants. In addition, the FIA’s board of directors includes the managing director and global co-head of JPMFI’s futures and options and OTC clearing, and Robert T. Cox, the managing director and head of futures of HSBC USA. Richard Berliand, the chairman of JP Morgan Futures and Options and head of JP Morgan-Bear Stearns’ prime brokerage business, serves as a special advisor to the board. As part of FIA, Defendants participate in the annual Futures & Options Expo, the FIA/OIC Investor Education Day, the International Derivatives Expo, and other events and meetings.

81. HSBC Bank PLC and JPMS are members of the FOA, an industry association for firms and institutions carrying on business in futures, options and other derivatives or which use such products in their business. FOA’s principal role is to represent the interests of its members in the public and regulatory domain and deliver a wide range of support services to the membership. Defendants participate in annual events and conferences such as International Derivatives Week. In addition, Richard Berliand of JPMFI serves as a special advisor to FOA’s Board.

82. Both JP Morgan Chase and HSBC NA are also members of the LBMA, the

London-based trade association that represents the wholesale gold and silver bullion market in London.

83. Each of the Defendants would have been more likely to take short positions if it knew beforehand and was confident that the other Defendant were supporting it and taking similar steps in order to control the public market prices. Absent their collusion, signaling and prior knowledge, it would be much less likely to be in each of the Defendant's independent economic self-interest to engage in the activities alleged here.

C. Absent an Unlawful Conspiracy to Suppress and Manipulate the Price of COMEX Silver Futures and Options Contracts, Defendants' Actions Were Contrary to Their Economic Self-Interest

84. Each of the Defendants would have been more likely to have taken or maintained their enormous short positions if it knew beforehand and was confident that the other Defendant would support it and take similar short positions in the market for COMEX silver futures and options contracts. Absent their collusion, signaling and prior knowledge, it would be less in each of the Defendant's independent economic self-interest to take such enormous short positions.

D. The Performance of the Defendants and the Conduct of the Defendants has Changed Substantially Since the Government Investigation

85. Prior to public complaints and the government investigation of manipulation of COMEX silver futures prices that began in March 2010, silver prices greatly underperformed gold prices. Since the government investigation began, silver prices have greatly outperformed gold prices.

86. This "price signature" is consistent with what would be expected of very reputable firms (like the JP Morgan Group Defendants and the HSBC Group Defendants) when their unlawful activities are threatened by government investigations and possible exposure, and

compliance intercedes.

87. After public complaints and government reviews of those complaints about manipulation in the silver markets began in March 2010, Defendants somewhat changed their behavior. Among other things, Defendants (a) reduced the amount of their manipulative activities, (b) reduced the concentration of their holdings compared to the overall open interest in the silver futures market, and (c) the JP Morgan Group Defendants announced that they were ending its metals trading operation.

88. As Defendants cut back on their unlawful activities, prices of silver futures traded on the COMEX dramatically increased. Such prices have increased by approximately 50% since March 2010 even though no fundamental changes in supply or demand for silver, including industrial demand, have occurred during this time period. Gold prices increased by only 20% during this time period.

89. Likewise, between March 2008 and March 2010, the price of gold had similarly increased by approximately 20%. Rather than increasing by 50% as silver did while Defendants lessened their unlawful activity between March 2010 and the present, the price of silver COMEX futures decreased by approximately 25% between March 2008 and March 2010.

90. The foregoing “price signature” of manipulation is not explainable by any changes in supply and demand. These price changes directly result, at least in one substantial part, from Defendants’ reduction in their concentration and other reductions of their other unlawful activities in the silver markets since the government investigation of the public complaints about manipulation began in March 2010.

91. As a direct result of Defendants’ unlawful conduct alleged herein, Plaintiff and

members of the Class have been injured in their property and damaged by transacting in the artificial market that has existed for COMEX silver futures and options contracts.

**ALLEGATIONS OF ANTITRUST
INJURY TO PLAINTIFF AND THE CLASS**

92. Defendants' anticompetitive conduct had severe adverse consequences on competition in that Plaintiff and other members of the Class who traded COMEX silver futures and options contracts during the Class Period were trading at artificially determined prices that were suppressed as a result of Defendants' unlawful conduct. As a consequence thereof, Plaintiff and the Class suffered financial losses and were, therefore, injured in their business or property.

FRAUDULENT CONCEALMENT

93. By its very nature, the unlawful activity, as alleged herein, that Defendants engaged in was self concealing. Defendants, inter alia, conspired and engaged in secret and surreptitious activities in order to manipulate and make artificial prices for COMEX silver futures and options contracts.

94. Defendants fraudulently concealed their participation in their conspiracy to manipulate and make artificial the market for COMEX silver futures and options contracts by, among other things, engaging in secret "signals" or communications in furtherance of the conspiracies. Because of such fraudulent concealment, and the fact that a conspiracy in restraint of trade is inherently self-concealing, Plaintiff and the members of the Class could not have discovered the existence of Defendants' conspiracy and manipulation any earlier than public disclosures thereof.

95. None of the facts or information available to Plaintiff and members of the Class prior to October 2010, if investigated with reasonable diligence, could or would have led to the

discovery of the conspiracies alleged in this Complaint.

96. Because Defendants employed acts and techniques that were calculated to wrongfully conceal the existence of such illegal conduct, Plaintiff and the Class could not have discovered the existence of this unlawful conduct any earlier than its public disclosure in or about October 2010.

97. As a result, Plaintiff and members of the Class were prevented from learning of the facts needed to commence suit against Defendants for the manipulative and anticompetitive conduct alleged in this Complaint until October 2010.

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

COUNT ONE

VIOLATION OF COMMODITY EXCHANGE ACT, 7 U.S.C. § 1

99. Plaintiff incorporates by reference the preceding allegations.

100. Plaintiff and members of the Class sold COMEX silver futures contracts and/or purchased or sold options contracts during the Class Period at prices which were made artificial by Defendants' unlawful activities, and were injured as a result of Defendants' manipulation and suppression of the prices of those contracts.

101. Defendants' activities constitute manipulation of the prices of COMEX silver futures and options contracts during the Class Period in violation of Sections 9(a) and 22(a) of the CEA, 7 U.S.C. §§ 13(a), 25(a).

102. Defendants are liable to Plaintiff and members of the Class for the damages they sustained as a result of their CEA violations.

COUNT TWO

**AIDING AND ABETTING VIOLATIONS OF
COMMODITY EXCHANGE ACT, 7 U.S.C. § 25**

103. Plaintiff incorporates by reference the preceding allegations.

104. Defendants knowingly aided, abetted, counseled, induced, and/or procured the violations of the CEA alleged herein. Defendants did so knowing of each other's manipulation and suppression of COMEX silver futures and options contract prices, and willfully intended to assist these manipulations to unlawfully cause the price of COMEX silver futures and options contracts to be suppressed or to otherwise reach artificial levels during the Class Period, in violation of Section 22(a)(1) of the CEA, 7 U.S.C. § 25(a)(1).

105. Defendants are liable to Plaintiff and the Class for the damages they sustained as a result of the CEA violations.

COUNT THREE

VIOLATIONS OF SECTION 1 OF THE SHERMAN ACT

106. Plaintiff incorporates by reference the preceding allegations.

107. Defendants entered into and engaged in a conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act.

108. During the Class Period, Defendants possessed market power in the market for the sale of COMEX silver futures contracts.

109. The conspiracy consisted of a continuing agreement, understanding or concerted action between and among Defendants and their co-conspirators in furtherance of which Defendants fixed, maintained, suppressed and/or made artificial prices for COMEX silver futures and options contracts. Defendants and their co-conspirators engaged in

anticompetitive activities, the purpose and effect of which were to restrain trade in, fix or manipulate prices of COMEX silver futures and options contracts. These activities included the following:

(a) Defendants participated in “signals”, meetings and/or conversations to unlawfully discuss the price of COMEX silver and options contracts;

(b) Defendants agreed through these “signals”, meetings or conversations to unlawfully work to drive down the price of COMEX silver futures contracts, prevent such prices from increasing, or to otherwise collusively make artificial the prices of COMEX silver futures and options;

(c) Defendants held large positions in the markets;

(d) Defendants made large trades;

(e) Defendants entered large orders; and

(f) Defendants otherwise knowingly and collusively acted in order to restrain trade.

110. Defendants’ conspiracy, and resulting impact on the market for COMEX silver futures and options contracts, occurred in or affected interstate and international commerce.

111. As a proximate result of Defendants’ unlawful conduct, Plaintiff and members of the Class have suffered injury to their business or property.

112. Plaintiff and members of the Class are each entitled to treble damages for the violations of the Sherman Act alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

(A) For an order certifying this lawsuit as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and designating Plaintiff as the Class representative and his counsel as Class counsel;

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

(C) That the unlawful conduct alleged herein be adjudged and decreed to be an unlawful restraint of trade in violation of Section 1 of the Sherman Act;

(D) That Plaintiff and the Class recover damages, as provided under federal antitrust laws, and that a joint and several judgment in favor of Plaintiff and the Class be entered against Defendants in an amount to be trebled in accordance with such laws;

(E) For an award to Plaintiff and the Class of their costs of suit, including reasonable attorneys' and experts fees and expenses; and

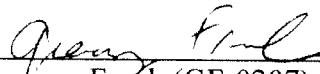
(F) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a trial by jury.

Dated: November 4, 2010

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