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HSBC, Scotiabank Beat Silver Price Manipulation Suit

By Jon Hill

Law360 (May 22, 2023, 1:48 PM EDT) -- A New York federal judge on Monday shot down the remainder of a long-running lawsuit accusing HSBC and Scotiabank of conspiring to rig prices for silver, ruling that the traders behind the litigation hadn't plausibly pled the banks' alleged manipulations harmed them.

U.S. District Judge Valerie Caproni granted judgment on the pleadings to HSBC Holdings PLC, The Bank of Nova Scotia and subsidiaries named as defendants in the 2014 case, in which traders alleged the existence of a joint effort by banks to periodically suppress a daily silver benchmark price set in London.

The traders' latest complaint, filed in 2017, "does not allege sufficient facts to allow the court to infer that it is plausible, as opposed to merely possible, that the artificial pricing conditions caused by defendants' episodic conduct persisted long enough to affect plaintiffs' trades," Judge Caproni wrote in a 24-page ruling that dismissed the case with prejudice.

A Scotiabank representative declined to comment. Representatives for HSBC and counsel for the traders did not immediately return requests for comment Monday.

U.K.-based HSBC and Canada-based Scotiabank were the last banks left in the traders' case, which alleged their participation in an unlawful, anti-competitive scheme with Germany-based Deutsche Bank AG and other banks to manipulate the silver market from 2007 to 2013.

According to the traders, HSBC, Scotiabank and Deutsche "controlled" the price of silver as part of the panel that met every day for the so-called London Silver Fixing, an auction process that set a benchmark price used in the trading of billions of dollars of physical silver and silver derivatives.

The traders said the three banks coordinated their silver trading activity among themselves and with other silver market-makers to influence the fixing price and "extract illicit profits."

Deutsche Bank settled out of the case in 2016 for **$38 million**. It did not admit liability but provided bank trader chatroom logs that the plaintiffs called "smoking gun evidence of a conspiracy" and cited heavily in their 2017 complaint, which named **additional defendants** like Barclays Bank PLC and Bank of America Corp.

Those additional defendants were **dismissed from the case** in 2018, with Judge Caproni writing that the "mother lode" of new collusion evidence touted by the trader plaintiffs had turned out to be "less than overwhelming."

In Monday's ruling, Judge Caproni said the trader plaintiffs failed to show they have standing to assert their claims, which were brought under the Sherman Act and Commodity Exchange Act. The Second Circuit has tightened up those standing requirements since 2018, according to the judge.

The traders needed to demonstrate, for example, that the alleged rigging of the daily silver fix, which would have occurred before markets opened in the U.S., had a lasting and distorting effect on prices that carried over to their own transactions, potentially many hours later.

Although the traders sought to show this in their complaint with statistical analyses, the picture it paints is only that "the effect of the manipulation of the fix abated gradually over time," Judge Caproni said.

"Because there were undoubtedly other market forces that affected prices in the market on days on which defendants purportedly manipulated the fix, those vague allegations are insufficient for the court to infer that plaintiffs, in fact, traded at artificial prices," the judge wrote.

Judge Caproni also said the traders' alleged losses on silver derivatives would have been too indirectly caused by the alleged manipulation to support standing even if the timing weren't an issue, and calculating damages would likely be fraught, too.

"Plaintiffs' alleged injury occurs too far down the chain of causality, and any damages are too speculative due to the lack of allegations that would allow the court plausibly to infer that plaintiffs traded at a time during which artificial prices persisted," the judge wrote.

The trader plaintiffs are represented by Vincent Briganti, Margaret MacLean and Johnathan Seredynski of Lowey Dannenberg PC and by Robert Eisler and Chad Holtzman of Grant &

Eisenhofer PA.

The HSBC defendants are represented by Damien Marshall, Leigh Nathanson, Laura Harris, Paul Mezzina, Brian Donovan and Ryan Gabay of King & Spalding LLP.

The Scotiabank defendants are represented by Stephen Ehrenberg and William H. Wagener of Sullivan & Cromwell LLP.

The case is In re London Silver Fixing Ltd. Antitrust Litigation, case number 1:14-md-02573, in the U.S. District Court for the Southern District of New York.

--Editing by Gemma Horowitz.

Update: This story has been updated to include additional details of the decision and case background information, as well as to reflect that Scotiabank declined to comment.

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