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BofA, Barclays, 3 Others Duck Silver Price-Fixing Claims

By **Rachel Graf**

Law360, London (July 26, 2018, 10:49 PM BST) -- A New York federal judge dismissed Bank of America Corp., Barclays Bank PLC and three other major banks Wednesday from multidistrict litigation over an alleged conspiracy to fix the price of silver, saying the investors haven't demonstrated that the banks' manipulation of the silver market would necessarily cause them to pay different prices.

U.S. District Judge Valerie Caproni dismissed the five including Standard Chartered Bank, BNP Paribas Fortis SA/NV and UBS AG from the litigation because the investors didn't specify the impact the banks' alleged coordinated trading had on the markets for silver and silver derivatives. The court noted that the investors previously settled with Deutsche Bank AG for $38 million and "what plaintiffs hoped would be a treasure trove of preserved electronic chat messages" between traders at Deutsche Bank and the other banks.

Barclays and four other banks are able to avoid claims over an alleged conspiracy to fix the price of silver after a ruling by a New York federal judge. (AP)

"But what plaintiffs represented to be a mother lode of evidence of a vast conspiracy turns out to be less than overwhelming," the order said.

The court said there is insufficient evidence linking the five banks, which were added to the litigation last year, to an alleged scheme to artificially deflate benchmark silver prices by Deutsche Bank, HSBC Holdings PLC and Bank of Nova Scotia, which were existing defendants. The chats do, however, indicate that the newly added banks collaborated to otherwise manipulate the silver market, the order said.

The messages show that traders who worked at the five banks shared pricing information and coordinated their use of manipulative techniques that would either artificially inflate or deflate the price of silver derivatives to their advantage, the court said.

But the investors haven't explained the impact this conduct had on the prices of silver or silver derivatives, the court said.

The price that Deutsche Bank, HSBC and Bank of Nova Scotia allegedly fixed set a benchmark price for silver, which is 99.9 percent correlated to the price of silver futures on the COMEX, the order said. The alleged coordination by the other five banks has a much less apparent impact on the prices of derivatives the investors traded, the court said.

"In a highly liquid, broad market, manipulative trading is highly unlikely to have a persistent impact on market prices," the order said. "It is therefore unclear, and the [third amended complaint] alleges nothing to make it clear, the extent to which class members were injured by defendants' manipulation."

Judge Caproni separately dismissed UBS from multidistrict litigation over an alleged conspiracy to fix the benchmark price of gold Wednesday.

Although UBS was not involved in the benchmarking process, investors claimed the bank knew of and benefited from the conspiracy by making favorable trades. Investors in this litigation also relied on chat messages in an attempt to demonstrate a relationship between the banks, saying three messages between UBS and Deutsche Bank traders mention the so-called Gold Fixing, also referred to as the PM Fixing.

The court rejected the argument that the chats serve as evidence of a price-fixing conspiracy, and noted that most of the communication happened during the middle of the night rather than during the afternoons when the prices were determined.

"The court also is not persuaded by plaintiffs' characterization of certain of these chat messages as 'discuss[ing] tactics and efforts to manipulate the PM Fixing,' or as evidence of UBS conspiring to suppress gold prices 'around the PM Fixing,'" the order said. "As discussed above, the conversations occurred 'around' the PM Fixing only in the most general sense that the middle of the night is 'around' 3 p.m."

UBS had been similarly dismissed from the multidistrict litigation over silver prices, though the bank was added again in the investors' third amended complaint.

A Bank of America representative and counsel for Barclays and for the gold investors declined to comment. Counsel for the silver investors and the remaining parties didn't respond Thursday to requests for comment.

The silver plaintiffs are represented by Lowey Dannenberg PC and Grant & Eisenhofer PA.

The gold plaintiffs are represented by Berger & Montague PC and Quinn Emanuel Urquhart & Sullivan LLP.

UBS is represented by Gibson Dunn & Crutcher LLP. BNP Paribas is represented by Patterson Belknap Webb & Tyler LLP. Barclays is represented by Allen & Overy LLP. Standard Chartered is represented by Sidley Austin LLP. Bank of America is represented by Shearman & Sterling LLP.

The cases are In re: Commodity Exchange Inc., Gold Futures and Options Trading Litigation, case number 14-md-02548, and In re: London Silver Fixing Ltd., Antitrust Litigation, case number 14-md-02573, both in the U.S. District Court for the Southern District of New York.

--Editing by Dipti Coorg.
