

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

NO: 500-06-001120-217

**SUPERIOR COURT
(Class Action Division)**

PATRICK BENOIT

Applicant;

vs.

JPMORGAN CHASE & CO.

and

JPMORGAN CHASE BANK, N.A.

and

J.P. MORGAN BANK CANADA

and

J.P. MORGAN CANADA

and

MORGAN STANLEY CAPITAL GROUP INC.

and

BANK OF AMERICA CORPORATION

and

MERRILL LYNCH COMMODITIES INC.

Defendants

APPLICATION TO TEMPORARILY STAY A CLASS ACTION
(Articles 18, 49, 169 and 577 of the *Code of Civil Procedure* ("C.C.P."))

**TO THE HONORABLE DONALD BISSON, J.S.C., THE APPLICANT RESPECTFULLY
SUBMITS THE FOLLOWING:**

A. INTRODUCTION

1. The Applicant seeks a temporary stay of any and all proceedings related to the present Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff (hereinafter the "**Application for Authorization**");
2. The basis of this temporary stay application is the existence of parallel class actions and related proceedings filed before the Ontario Superior Court of Justice in *Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al.*, in court docket number CV-16-551067-00CP (hereinafter the "**Ontario Silver Action**") and in *Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al.*, in court docket number CV-15-543005-00CP (hereinafter the "**Ontario Gold Action**"), collectively (the "**Ontario Actions**");
3. The requested stay of the Application for Authorization is for a period ending sixty (60) days after the final decision to be rendered on the Motions to add parties and amend pleadings in the Ontario Actions. A copy of the motion records filed in the Ontario Actions is attached hereto, *en liasse*, as **Exhibit AS-1**;

B. THE PROCEDURAL BACKGROUND

(i) The Ontario Gold and Silver Actions

4. On December 18, 2015, the Ontario Gold Action was commenced before the Ontario Superior Court of Justice, by issuing a Notice of Action, which was subsequently served on all the Defendants named therein together with a Statement of Claim dated January 15, 2016;
5. The Ontario Gold Action was subsequently amended on February 25, 2016, on November 7, 2017 and on February 5, 2019;
6. On April 15, 2016, the Ontario Silver Action was commenced before the Ontario Superior Court of Justice, by issuing a Notice of Action, which was subsequently served on all the Defendants named therein, together with a Statement of Claim dated May 13, 2016;
7. The Ontario Silver Action was subsequently amended on November 7, 2017 and on June 21, 2019;

8. On October 30, 2020, Plaintiffs in each of the Ontario actions filed a *Motion to add parties and amend pleadings*;
9. These motions seek to add as defendants in the Ontario Actions, JP Morgan Chase & Co., JP Morgan Bank Canada, JP Morgan Canada, JP Morgan Chase Bank National Association, Morgan Stanley Capital Group Inc., Bank of America Corporation and Merrill Lynch Commodities Inc. (collectively, the "**Proposed New Defendants**");
10. The grounds for these motions are, notably, based on the allegations that the named defendants and the Proposed New Defendants conspired to manipulate precious metals markets and prices;
11. The proposed modified classes in the Ontario Gold and Silver Actions are as follows:

*All persons or entities in Canada who, between January 1, 2004 and, December 31, 2016 ("**Class Period**") transacted in a Gold Market Instrument¹ either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that transacted in a Gold Market Instrument. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates. [...]*

and

*All persons or entities in Canada who, between January 1, 2004 and, December 31, 2016 ("**Class Period**") transacted in a Silver Market Instrument¹ either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that transacted in a Silver Market Instrument. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates. [...]*

12. The hearing on the *Motions to add parties and amend pleadings* has been set for April 22, 2022;

(ii) The Quebec Gold and Silver Actions

13. On or about April 20, 2016, an Application for Authorization to Institute a Class Action and to Appoint the Status of Representative was filed by Plaintiff Raymond Ayas, as appears from the record in Court file no. **500-06-000789-160** (hereinafter the "**Quebec Silver Action**");

14. On or about May 23, 2017, an Application for Authorization to Institute a Class Action and to Appoint the Status of Representative was filed by Patrick Benoit, as it appears from the record in Court file no. **500-06-000861-175** (hereinafter the "**Quebec Gold Action**");
15. On September 13, 2017 this Court granted an application to temporarily stay the Québec Silver Action for a period ending 60 days after the certification judgement to be rendered in the Ontario Silver Action. A copy of the decision is attached hereto as **Exhibit AS-2**;
16. On April 25, 2019, this Court granted an application to temporarily stay the Québec Gold Action for a period ending 60 days after the certification judgement to be rendered in the Ontario Gold Action. Copy of the decision is attached hereto as **Exhibit AS-3**;

(iii) **The Application for Authorization in the Present Case**

17. On January 8, 2021, the Applicant filed an Application for Authorization to Institute a Class Action and to Appoint the Status of Representative, as it appears from this Court's file;
18. The Application for Authorization is brought against the defendants JP Morgan Chase & Co., JP Morgan Bank Canada, JP Morgan Canada, JP Morgan Chase Bank National Association, Morgan Stanley Capital Group Inc., Bank of America Corporation and Merrill Lynch Commodities Inc. These are the same parties as the Proposed New Defendants in the Ontario Actions;
19. The Application for Authorization rests on allegations that the defendants conspired to manipulate precious metals markets and prices.
20. The proposed class is described in paragraph 1 of the Application for Authorization:

*« Toute personne du Québec qui, entre le 1er janvier 2004 et le 31 décembre 2016 (la « **Période visée par l'action** »), a effectué une transaction dans un instrument du marché des métaux précieux (« **Instruments du marché des métaux précieux*** »), soit directement ou indirectement par un intermédiaire, et/ou acheté ou autrement participé dans un investissement ou fonds d'action, fonds mutuel, fonds de couverture, fonds de pension ou tout autre véhicule d'investissement qui a souscrit à un Instrument du marché des métaux précieux.*

Sont exclus du groupe les Défenderesses, leurs sociétés mères, filiales et sociétés affiliées (ci-après le « Groupe »).

C. THE REQUESTED TEMPORARY STAY OF THE APPLICATION FOR AUTHORIZATION

21. As stated hereinabove, the basis for this Application is the existence of parallel class actions and related proceedings filed before the Ontario Superior Court of Justice;
22. The allegations advanced in the Application for Authorization are similar to, intertwined with, and generally duplicative of the allegations set forth in the Ontario Actions and in the *Motions to add parties and amend pleadings*;
23. If the aforementioned motions are granted in the Ontario Actions, then the Application for Authorization would, in all relevant respects, be similar to, intertwined with, and generally duplicative of the Ontario Actions, and Québec class members would be included in the proposed classes in the Ontario Actions;
24. The Application for Authorization rests on allegations which are also similar to, intertwined with, and generally duplicative of the allegations advanced in the Québec Silver and Gold Actions, which have both been stayed;
25. It should be noted that considerable resources and efforts have been spent in advancing the Plaintiffs and Class members cases in the Ontario Actions, and that expert reports have been prepared and filed in the Ontario, in support of the Plaintiffs claims, as shown in the table below:

Gold Action		Silver Action	
Document	Date	Document	Date
Certification Motion Record	February 28, 2017	Certification Motion Record	February 28, 2017
Supplementary Certification Motion Record (including expert report)	March 28, 2018	Supplementary Certification Motion Record (including expert report)	August 29, 2019
Second Supplementary Certification Motion Record	August 27, 2020	Second Supplementary Certification Motion Record	August 27, 2020
Third Supplementary Certification Motion Record	October 30, 2020	Third Supplementary Certification Motion Record	October 30, 2020
Fourth Supplementary Certification Motion Record (including supplemental expert report)	July 21, 2021	Fourth Supplementary Certification Motion Record (including supplemental expert report)	July 21, 2021

26. Counsel for the Applicant have been collaborating with counsel for the Plaintiffs in the Ontario Actions, where significant steps have been taken towards the hearing on the certification of the Ontario Actions;

D. THE DISCRETION OF THE COURT AND INTEREST OF JUSTICE

27. It is within this Court's discretion to stay the Application for Authorization in order to allow the *Motions to add parties and amend pleadings* to be decided in Ontario so as to determine whether the Proposed New Defendants will be involved in the Ontario Actions;
28. The Court has discretion to stay the Application for authorization until the outcome of these Motions is known given the impact this will have on the litigation in Québec;
29. Granting a temporary stay of the proceedings is consistent with the principle of proportionality given that Plaintiffs are entitled to know which defendants will be involved in the Ontario Actions to avoid a multiplicity of proceedings with the potential for contradictory decisions;
30. Depending on the outcome of the *Motions to add parties and amend pleadings*, in accordance with the principle of judicial economy, the parties are entitled to seek an order from the Court allowing them to prosecute a single proceeding in order to avoid the duplication of litigation in two jurisdictions;

E. PROTECTION OF THE RIGHTS AND INTERESTS OF QUÉBEC CLASS MEMBERS

31. The temporary stay of the Application for Authorization until a decision is rendered on the *Motions to add parties and amend pleadings* in Ontario is consistent with the Court's duty to protect the rights and interests of Québec residents under article 577 C.C.P.;
32. In the event that the *Motions to add parties and amend pleadings* are successful in the Ontario Actions, the causes of action advanced in the Ontario Actions are equivalent to those alleged in the Application for Authorization, such that if the rights and interests of the proposed class members in the Québec Action were adjudicated in Ontario, those rights and interests would be treated on a similar footing;

33. Moreover, the Ontario Action asserts additional equitable causes of action that are not otherwise available under Québec law, which may serve the interests of the Quebec class members in the context of the Ontario Actions;
34. The Ontario Court will protect the rights and interests of Quebec residents in the same fashion as a Quebec Court would, given the experience of the class action bench in both jurisdictions;
35. Québec residents will not suffer any prejudice because the Application for Authorization is not dismissed but is only stayed until a decision is rendered on the *Motions to add parties and amend pleadings* in the Ontario Actions which will be heard on April 22, 2022;
36. In the event that such motions are not successful in the Ontario Actions, the Applicant Benoit will be able to defend the rights and interests of Québec residents by advancing the proceedings in the Application for Authorization;
37. Furthermore, counsel for the parties undertake to provide this Court with periodic reports on developments in the Ontario Actions;
38. The Québec Court and the Ontario Court, moreover, may engage in court-to-court communications about the Ontario Actions and the interests of Québec class members as appropriate and necessary;

F. APPROPRIATENESS OF A TEMPORARY STAY

39. The Applicant seeks a temporary stay of the Application for Authorization;
40. The *Motions to add parties and amend pleadings* in the Ontario Actions will be heard on April 22, 2022;
41. The Ontario Action is proceeding in a diligent manner, such that the rights and interest of all class members – including those who reside in Québec – will be properly advanced and protected;
42. The Applicant therefore seeks a stay of the Application for Authorization for a period ending 60 days after a final decision is rendered on the *Motions to add parties and amend pleadings* in the Ontario Actions;

43. The Defendants do not oppose the present Application, but reserve all rights to contest the Court's jurisdiction at a later stage;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the Application to Temporarily Stay the Application for Authorization;

TEMPORARILY STAY any and all proceedings related to the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative for a period ending sixty (60) days after the final decision to be rendered on the Motions to add parties and amend pleadings in the Ontario Actions, in Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al., in court docket number CV-15-543005 and in Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al., in court docket number CV-16-551067-00CP;

RESERVE the rights of the parties to seek a further temporary stay or a permanent stay in the present file and **RESERVE** the Defendants' right to contest jurisdiction;

ACKNOWLEDGE the undertakings made by the parties to continue to provide the Court with periodic reports on important developments in the Ontario Actions;

ALL OF WHICH IS SOUGHT without costs.

Quebec, November 10, 2021

Siskinds, Desmeules

SISKINDS, DESMEULES, AVOCATS
(Me Karim Diallo)
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AFFIDAVIT

I, the undersigned, KARIM DIALLO, lawyer, exercising my profession at Siskinds Desmeules, Avocats, s.e.n.c.r.l., located at 43 rue de Buade, bureau 320, Quebec, Quebec, G1R 4A2, do solemnly affirm as follows:

1. I am one of the lawyers for the Applicant;
2. On the basis of information and belief, I verily believe to be true all of the facts alleged in the Application to Temporarily Stay the Class Action.

In consideration of current health emergency measures, I am signing this affidavit remotely and requesting that it be recognized as an original on this November 10, 2021.

AND I HAVE SIGNED:

DocuSigned by:
Karim Diallo
471A0202F85C497...
KARIM DIALLO

I, Christine Béland, employee of Siskinds Desmeules Avocats s.e.n.c.r.l., having a place of business at 320-43 rue De Buade, Quebec (Quebec) G1R 4A2, declare to have seen Karim Diallo sign this affidavit by videoconference this November 10, 2021.

IN WITNESS WHEREOF, I HAVE SIGNED and have affixed hereto my official seal, in Quebec, this November 10, 2021.

DocuSigned by:
Christine Béland
442F4BA4795E196...
Christine Béland (#177805)
Commissioner for Oaths for the Province
of Quebec

NOTICE OF PRESENTATION

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TAKE NOTICE that the present Application to Temporarily Stay the Class Action, will be presented to the Honorable Donald Bisson, J.S.C., at any place and time to be determined by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Quebec, November 10, 2021

Siskinds, Desmeules

SISKINDS, DESMEULES, AVOCATS

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**C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

(Class Action Division)
SUPERIOR COURT

NO : 500-06-001120-217

PATRICK BENOIT
Applicant

c.
JPMORGAN CHASE & CO.
et
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et
J.P. MORGAN BANK CANADA
et
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MORGAN STANLEY CAPITAL GROUP INC.
et
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Defendants

**APPLICATION TO TEMPORARILY STAY THE
CLASS ACTION**

(Articles 18, 49, 169 and 577 of the *Code of Civil
Procedure* ("C.C.P."))

BB-6852

Mtre Karim Diallo

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