

APPENDIX 2
[CPO APPLICATION NOTICE]

NOTICE OF APPLICATION FOR A COLLECTIVE PROCEEDINGS ORDER

Persons who entered into FX spot or forward transactions between 18 December 2007 and 31 January 2013 could benefit from a proposed collective claim against certain banks which breached EU competition law

This Notice

This is a legal notice published on the direction of the Competition Appeal Tribunal (the “**Tribunal**”) because a Collective Proceedings Order is being sought from the Tribunal by Michael O’Higgins FX Class Representative Limited (the “**Proposed Representative**”) against the following banking companies, all of whom have been found by the European Commission (the “**Commission**”) to have infringed EU competition law in relation to foreign exchange (“**FX**”) transactions:

(1) Barclays Bank PLC; (2) Barclays Capital Inc.; (3) Barclays Execution Services Limited; (4) Barclays PLC; (5) Citibank N.A.; (6) Citigroup Inc.; (7) JPMorgan Chase & Co.; (8) JPMorgan Chase Bank, National Association; (9) J.P. Morgan Europe Limited; (10) J.P. Morgan Limited; (11) NatWest Markets Plc; (12) The Royal Bank of Scotland Group plc; and (13) UBS AG

(together, “**the Proposed Defendants**”).

The Consumer Rights Act 2015 allows for such a collective claim to be brought on behalf of a group of persons (known as a ‘class’) who are alleged to have suffered a common loss as a result of unlawful anticompetitive conduct. For a collective action to proceed, however, the Tribunal must first make a collective proceedings order authorising the class representative and certifying the claims as eligible to be included in collective proceedings. Once such an order has been made, any judgment on the common issues for the class members will bind represented persons in the class.

The Collective Proceedings Application can be viewed online at www.ukfxcartelclaim.com, along with other information about the claim. This Notice and the enclosed Questions & Answers give important information about the proposed collective proceedings. The Tribunal’s website is: www.catribunal.org.uk.

The Proposed Claim

Michael O’Higgins FX Class Representative Limited asks the Tribunal to appoint it as the class representative for a proposed collective action claim relying on findings of the Commission that certain banks engaged in anticompetitive conduct in respect of FX transactions between 18 December 2007 and 31 January 2013. The Proposed Representative’s position is that this conduct led to the prices of FX spot and outright forward transactions being distorted with the result that persons who entered into them paid higher prices than they would otherwise have in the absence of the illicit conduct (the “**Proposed Claim**”). By the Proposed Claim, the Proposed Representative seeks to recover those higher prices on behalf of, and for the benefit of, the class.

The Proposed Class

The Proposed Claim will be brought on behalf of a class of persons who meet the following conditions:

All persons (other than Excluded Persons – see the answer to Q8 below) who during the period from 18 December 2007 to 31 January 2013 entered into one or more Relevant Foreign Exchange Transactions in the European Economic Area (other than as an Intermediary).

For these purposes:

(A) “Relevant Foreign Exchange Transaction” means any foreign exchange Spot and/or Outright Forward transaction involving a Relevant Currency Pair and entered into with a Relevant Financial Institution or on an ECN, but excludes:

(a) Transactions which are the subject of:

(i) the US class action and/or settlement in case *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789-LGS (S.D.N.Y.); and/or

(ii) the Canadian class actions and/or settlements in cases CV-15-536174 (Superior Court of Ontario) and/or 200-06-000189-152 (Superior Court of Quebec).

(b) Transactions in respect of which (aside from the present (Proposed) Claim) there is ongoing litigation, or there has been a binding settlement, involving a person who would otherwise be a member of the present (Proposed) Class and covering conduct of the (Proposed) Defendants that is the subject of the present (Proposed) Claim.

(B) “Spot” transaction means a single outright transaction involving the exchange of two currencies at a rate agreed on the date of the contract for value or delivery (cash settlement) typically within two business days.

- (C) “Outright Forward” transaction means a transaction involving the exchange of two currencies at a rate agreed on the date of the contract for value or delivery (cash settlement) at some time in the future (more than two business days later). This does not include non-deliverable forwards (NDFs) or contracts for difference (CFDs).
- (D) For the avoidance of doubt, none of the following is to be considered a Spot or Outright Forward transaction:
- (a) Branch retail spot transactions (e.g. foreign currency purchases at the “travel money” desk in a bank);
 - (b) Branch retail transfers of funds denominated in different currencies across any two accounts;
 - (c) Electronic transactions using ATMs;
 - (d) Transactions executed in a foreign currency on a credit, debit, prepaid or stored value card;
 - (e) Spread betting.
- (E) “Relevant Currency Pair” means any currency pair including [one/two] of the following: Australian Dollar, British Pound, Canadian Dollar, Danish Krone, Euro, Japanese Yen, New Zealand Dollar, Norwegian Krone, Swedish Krona, Swiss Franc, US Dollar.
- (F) “Relevant Financial Institution” means a banking group listed in the Schedule hereto.
- (G) “ECN” means an electronic communications network that matches buy and sell orders for financial products including currencies.
- (H) A person “entered into” a Relevant Foreign Exchange Transaction where either:
- (a) The person was the direct contractual counterparty to the Relevant Foreign Exchange Transaction; or
 - (b) The person instructed or engaged an Intermediary to enter into a Relevant Foreign Exchange Transaction on its behalf (regardless of whether the Intermediary, rather than that person, was the direct contractual counterparty).
- (I) A Relevant Foreign Exchange Transaction is entered into “in the European Economic Area” where the Relevant Foreign Exchange Transaction is priced and/or accepted by the Relevant Financial Institution or through the ECN within the European Economic Area.
- (J) “Excluded Persons” means:

- (a) Addressees of the European Commission decisions in Case AT.40135 – FOREX, their subsidiaries, holding companies, subsidiaries of those holding companies, and any entity in which any of the addressees has a controlling interest.
- (b) Relevant Financial Institutions and entities forming part thereof.
- (c) Officers, directors or employees of any of the companies referred to in (a), at any time since 18 December 2007.
- (d) All members of the (Proposed) Defendants’ and (Proposed) Representative’s legal teams and all experts or professional advisors instructed by them in these proceedings.
- (e) All members of the Tribunal panel assigned to these proceedings and any judge hearing any appeal in these proceedings.
- (K) “Intermediary” means broker and/or custodian engaged by another person to carry out a transaction.

(the “**Proposed Class**”)

Hearing of Application

A hearing will take place on **[X]** to decide whether the Proposed Claim can proceed. It is expected to last for **[three]** days. The location of the hearing will be: Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB.

Rights to Object and Make Submissions

Any person with an interest (including any member of the Proposed Class) may object to the Collective Proceedings Application or the authorisation of the Proposed Representative by stating their reasons for objecting in writing to be received by the Tribunal by **[X date at Y time]**.

Any person with an interest (including any member of the Proposed Class) objecting to the Collective Proceedings Application or the authorisation of the Proposed Representative may also apply to the Tribunal for permission to make oral submissions at the hearing on **[X date]**. Any such application must be made in writing and received by the Tribunal by **[X date at Y time]**.

Any third party with a legitimate interest (who is not a member of the Proposed Class) can also apply to the Tribunal for permission to make written and/or oral submissions at the hearing on **[X date]**. Any such application must be made in writing, supported by reasons, and received by the Tribunal by **[X date 10 days before time above]**.

Please see the answer to Q11 below for further details of the process for objecting.

Questions & Answers

Q1: Why has this Notice been issued?

The Tribunal has directed that this Notice be issued following the application by the Proposed Representative for a Collective Proceedings Order. The Collective Proceedings Application asks the Tribunal to: (i) approve the Proposed Claim as eligible to proceed as a collective claim on behalf of the Proposed Class; and (ii) approve the Proposed Representative to act in that capacity. To read the Collective Proceedings Claim Form, or a summary thereof, please visit www.ukfxcartelclaim.com.

This Notice has been issued to inform you of the Collective Proceedings Application and your right to object to it. This Notice explains: (i) the Proposed Claim; (ii) who is covered by the Proposed Claim; (iii) your right to object to the Proposed Claim; (iv) how to object; and (v) the deadline(s) by which you must do so. **Please read this Notice carefully.**

Q2: What is the Competition Appeal Tribunal?

The Tribunal is a specialist judicial body that is based in London but covers the whole of the UK and hears certain competition law and regulatory disputes. It has cross-disciplinary expertise in law, economics, business and accountancy. The Tribunal publishes its Rules and Guidance, together with information about what it does, on its website www.catribunal.org.uk.

Q3: Who are the Proposed Defendants?

The Proposed Claim is against the following major banking companies, each of which was held by the Commission to have participated in anticompetitive conduct in relation to the FX market:

(1) Barclays Bank PLC; (2) Barclays Capital Inc.; (3) Barclays Execution Services Limited; (4) Barclays PLC; (5) Citibank N.A.; (6) Citigroup Inc.; (7) JPMorgan Chase & Co.; (8) JPMorgan Chase Bank, National Association; (9) J.P. Morgan Europe Limited; (10) J.P. Morgan Limited; (11) NatWest Markets Plc; (12) The Royal Bank of Scotland Group plc; and (13) UBS AG.

Q4: What did the Proposed Defendants do wrong?

In a press release published on 16 May 2019 (the “**Press Release**”), the Commission announced that it had found in two settlement decisions (Case *COMP/40135 - FOREX (ESSEX EXPRESS)* and Case *COMP/40135 - FOREX (THREE WAY BANANA SPLIT)* (the “**Settlement Decisions**”)) addressed to the Proposed Defendants as well as MUFG (formerly Bank of Tokyo-Mitsubishi) (the “**Addressee Banks**”) that unlawful anticompetitive conduct

between the Addressees took place between 18 December 2007 and 31 January 2013 (the “**Relevant Period**”). The Settlement Decisions are not currently publicly available, which means that (at the moment) relatively little information is known about the Proposed Defendants’ wrongful conduct. According to the Press Release, however, the Addressee Banks participated in the FX cartels at various times during the Relevant Period.

The Press Release records that the Addressee Banks exchanged sensitive information and trading plans and coordinated their trading strategies through various online professional chatrooms. The commercially sensitive information exchanged in these chatrooms related to outstanding customers’ orders, bid-ask spreads, the Addressee Banks’ open risk positions and other details of current or planned trading activities in the FX market. The information exchanges, following the tacit understanding reached by the participating traders, enabled the Addressee Banks to make informed market decisions on whether to sell or buy the currencies they had in their portfolios and when. The Press Release is available at [\[link to Press Release on the class website\]](#).

The Proposed Representative believes that these FX cartels had the effect that persons entering into FX spot and outright forward transactions during the Relevant Period paid more for them than they otherwise would have done.

The Tribunal will assess the Collective Proceedings Application to determine that the claims sought to be included in the collective proceedings: (1) are brought on behalf of an identifiable class of persons; (2) raise common issues; and (3) are suitable to be brought in collective proceedings.

Q5: Who is the Proposed Representative?

The Collective Proceedings Application requests that the Proposed Representative be authorised to act as the class representative for the Proposed Claim.

The Proposed Representative is a company limited by guarantee registered in England and Wales with the company number 12100525. Mr Michael O’Higgins is the sole director, member and guarantor of the Proposed Representative.

Mr O’Higgins has had a long and distinguished career in both the public and private sectors, with a focus on the finance sector and pensions industry, in which he has extensive experience. Mr O’Higgins served as Chairman of The Pensions Regulator (the UK regulator of work-based pension schemes) between January 2011 and March 2014. He is currently Chairman of the Local Pensions Partnership.

Mr O’Higgins also has a strong background in competition law and related consumer issues. Since July 2016, he has held the role of Chairman of the Channel Islands Competition and Regulatory Authorities (“**CICRA**”). CICRA has a wide range of functions including promoting competition in the telecommunications, postal services, electricity and port

operations on the islands of Jersey and Guernsey. As a result of his work with CICRA, Mr O’Higgins has a good working knowledge of competition issues and economic regulation.

The Tribunal will assess the Proposed Representative’s suitability to represent and to act for the Proposed Class in the Proposed Claim.

Q6: What is the role of the Proposed Representative?

If authorised by the Tribunal, the Proposed Representative will conduct the Proposed Claim against the Proposed Defendants on behalf of the Proposed Class (but not those who opt out of the Proposed Class). The Proposed Representative, directed by Mr O’Higgins, will be responsible for, amongst other things, communicating with the Proposed Class and issuing formal notices to its members (such as this one). The Proposed Representative will, for example, instruct the lawyers and experts, make decisions on the conduct of the Proposed Claim, and evaluate any offer of settlement that the Proposed Defendants may make and decide whether to present it for the Tribunal’s approval.

If approved, the Proposed Representative would update the class about the claim on the website www.ukfxcartelclaim.com, and through the media.

Q7: Who is in the Proposed Class?

The Consumer Rights Act 2015 (“**the 2015 Act**”) allows for a collective claim to be brought on behalf of a group of persons who are alleged to have suffered a common loss. The group is the “class” and all individual persons within the group (who could be individuals, companies, partnerships or other corporate entities) are “class members”. As a result of the 2015 Act, groups of persons who have all suffered harm through the anticompetitive conduct of others do not need each to bring an individual claim to obtain compensation for loss. Instead, these persons may all receive compensation through a single collective claim brought on their behalf by a representative.

The Collective Proceedings Claim Form asks the Tribunal to allow the Proposed Claim to proceed on an “opt-out” basis on behalf of all persons (other than Excluded Persons – see the answer to Q8 below) who during the Relevant Period entered into one or more Relevant Foreign Exchange Transactions in the European Economic Area (other than as an Intermediary). For the complete definition, please see “The Proposed Class” at the top of this notice.

It is important to note that you will only automatically be in the Proposed Class if you are UK domiciled (e.g. if you are a company or partnership incorporated in the UK) as at a date which the Tribunal will set in due course if the Collective Proceedings Application is granted (and which will be sometime after the Collective Proceedings Application is granted). If you are not domiciled in the UK as at that date but otherwise fall within the definition of the

Proposed Class, you will be able to opt in to the class in due course. Further information will be available at www.ukfxcartelclaim.com.

Q8: Who is excluded from the Proposed Class?

If you fall in to one of the following categories, you will be excluded from the Proposed Class:

- (a) Addressee Banks of the Commission decisions in Case AT.40135 – FOREX, their subsidiaries, holding companies, subsidiaries of those holding companies, and any entity in which any of the Addressee Banks has a controlling interest.
- (b) Relevant Financial Institutions and entities forming part thereof.
- (c) Officers, directors or employees of any of the companies referred to in (a), at any time since 18 December 2007.
- (d) All members of the Proposed Defendants’ and Proposed Representative’s legal teams and all experts or professional advisors instructed by them in these proceedings.
- (e) All members of the Tribunal panel assigned to these proceedings and any judge hearing any appeal in these proceedings.

Q9: Do I need to do anything in order to be part of the Proposed Claim?

Not at this stage.

The Proposed Claim is called an “opt-out claim” because, if the Tribunal allows the Proposed Claim to proceed, anyone who meets the Proposed Class definition and is domiciled in the UK on the relevant date will be included in the Proposed Claim automatically and be bound by the result, unless he/she/it asks to opt out (i.e. takes steps to leave the Proposed Claim). The steps which will have to be taken in order to opt out will be publicised in due course, if the Collective Proceedings Application is granted.

Q10: How much money does the claim ask for?

The Proposed Claim seeks damages to compensate the Proposed Class for paying more than they should have paid in relation to the FX spot and outright forward transactions they entered into as a result of the FX cartels during the Relevant Period (see the response to Q4 above). It is too early to quantify the value of the Proposed Claim, as this will only be

possible after disclosure of trading data by the Proposed Defendants, but at this stage the experts retained by the Proposed Representative estimate that the value is likely to be in excess of £1 billion.

It is important to note that recovery of any money by way of the Proposed Claim is not guaranteed, however. Even if the Collective Proceedings Application is granted, the Proposed Representative will still need to prove its case at trial in due course.

Q11: Who can object and to what?

Any person with an interest (including anyone who would be a member of the Proposed Class) may object to the Collective Proceedings Application or the authorisation of the Proposed Representative. You should review the information above and visit both www.ukfxcartelclaim.com and www.catribunal.org.uk for information.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send it by post, or fax, so it is received no later than **[date]** at 4pm, using the following contact details:

The Registrar
Competition Appeal Tribunal
Victoria House
Bloomsbury Place
London WC1A 2EB

Fax: +44 (0)20 7979 7978

When writing to the Tribunal you must include the reference **[insert CAT reference and case number]**.

Any person with an interest (including any Proposed Class member) objecting to the Collective Proceedings Application or the authorisation of the Proposed Representative may also apply to the Tribunal for permission to make oral submissions at the hearing on **[date]**. Any such application must be made in writing and received by the Tribunal by **[date]** at 4pm.

Q12: Who is funding the Proposed Claim?

Whilst the Proposed Representative is seeking to run the Proposed Claim for the Proposed Class, it is not able to fund a claim of this size and public importance without outside funding.

The Proposed Representative has obtained funding to bring the Proposed Claim from third party litigation funder Therium. Founded in 2009, Therium is one of the longest-established litigation funders in the world and is a founding member of the Association of Litigation Funders of England and Wales.

Therium has committed £29,375,043 to fund all elements of the Claim, such amounts to be paid in tranches. In addition, the Proposed Representative has obtained a sum of £21 million by way of “after the event” insurance, which is available to cover the Proposed Defendants’ costs in the event that the Proposed Claim is ultimately unsuccessful.

Q13: Will I have to pay the legal costs in order to benefit from the Proposed Claim?

No. The funding arrangements in place described under Q12 above mean that members of the Proposed Class will not need to pay anything to be part of the Proposed Claim and that they will have no financial risk in relation to the Proposed Claim.

Q14: How can I stay updated on the progress of the Proposed Claim?

You can visit www.ukfxcartelclaim.com for periodic updates on the Proposed Claim.