

APPENDIX 3  
[DRAFT CPO NOTICE]

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NOTICE OF A COLLECTIVE PROCEEDINGS ORDER

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**Persons who entered into FX spot or forward transactions between 18 December 2007 and 31 January 2013 could benefit from a 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**”) which granted a Collective Proceedings Order on [date] in favour of Michael O’Higgins FX Class Representative Limited (the “**Class 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 “**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 illicit anti-competitive conduct.

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

**The Claim**

The Class Representative has been appointed by the Tribunal to pursue a collective action relying on findings of the Commission that the Defendants engaged in anticompetitive conduct in respect of FX transactions between 18 December 2007 and 31 January 2013. The Class 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 paid in the absence of the illicit conduct (the “**Claim**”). By the Claim, the Class Representative seeks to recover compensation for those higher prices on behalf of, and for the benefit of, the class.

The Claim therefore raises important issues that are common to all class members, including:

1. The extent (if any) to which the price of FX spot and outright forward transactions was inflated by the anticompetitive conduct of the Defendant banks between 18 December 2007 and 31 January 2013; and
2. The volume and value of such affected FX transactions.

Any judgment on the common issues for the class members will bind represented persons in the class. Importantly, there is no guarantee that money will be recovered by way of the Claim. The Class Representative will have to prove the case it advances at trial in due course.

### **The Class**

The Claim has been brought on behalf 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 Claim) there is ongoing litigation, or there has been a binding settlement, involving a person who would otherwise be a member of the present Class and covering conduct of the (Proposed) Defendants that is the subject of the present 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 “Class”).

### **Right to opt out of the Claim**

The Claim is being brought on behalf of a so-called “opt-out class”, meaning that anyone who meets the definition of the Class (and is domiciled in the UK on **[Insert Domicile Date]**) will be included in the Claim automatically and be bound by the result, unless they expressly opt out of the Class so as formally to remove themselves from the Claim. In simple terms, if you meet the definition of the Class and are domiciled in the UK on **[Insert Domicile Date]**, you will be in the Claim unless you take steps to opt out.

Any member of the Class may ask to opt out. In order to do so, that member of the Class should write to the Class Representative by **[date]** to request to leave the Claim. If a member of the Class wishes to opt out after this date, he/she/it should write directly to the Tribunal to seek approval. Opting out of the Claim will not stop a Class member applying to the Tribunal to start its own claim.

See further details about opting out of the Claim in the response to Q11 below.

### **Right to opt in to the Claim**

Any person who is legally domiciled outside of the UK but otherwise meets the relevant criteria under the definition of the Class has the right to “opt in” to the Claim to recover the losses suffered as a result of the FX cartels. Examples would include: a UCITS fund legally domiciled in Luxembourg or Ireland, a hedge fund legally domiciled in the Cayman Islands

or the Channel Islands, or a multinational based in Germany or Italy which entered into Relevant FX Transactions in London or elsewhere in the EEA. Details about how to register your interest in opting in to the Class are available at [www.ukfxcartelclaim.com](http://www.ukfxcartelclaim.com).

See further details about opting in to the Claim in the response to Q12 below.

## **Questions & Answers**

### **Q1: Why has this Notice been issued?**

The Tribunal has directed that this Notice be issued following the successful application by the Class Representative for a Collective Proceedings Order, which was granted by the Tribunal on **[date]**.

By making the Collective Proceedings Order, the Tribunal approved: (i) the Claim as eligible to proceed as a collective claim; and (ii) the Class Representative to act on behalf of the Class. To read the Collective Proceedings Claim Form, or a summary thereof, please visit [www.ukfxcartelclaim.com](http://www.ukfxcartelclaim.com).

This Notice has been issued to inform you of the making of the Collective Proceedings Order, including details of the Collective Proceedings Order and your right to object to it. It informs you of important legal rights you have related to the Claim. Exercising these rights could affect your ability to get a payment in the future (if compensation becomes available). This Notice explains: (i) the Claim; (ii) who is covered by the Claim; (iii) your rights in relation to the Claim; (iv) how to exercise those rights; and (v) any related deadlines. **Please read this Notice carefully as your decisions about the Claim will have legal consequences.**

### **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](http://www.catribunal.org.uk).

### **Q3: Who are the Defendants?**

The 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 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 Defendants as well as MUFG (formerly Bank of Tokyo-Mitsubishi) (“**the Addressees**”) 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 Defendants’ wrongful conduct.] According to the Press Release, however, the Addressees participated in the FX cartels at various times during the Relevant Period.

The Press Release records that the Addressees 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 Addressees’ 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 Addressees 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 Class 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.

#### **Q5: Who is the Class Representative?**

By making the Collective Proceedings Order, the Tribunal authorised the Class Representative to bring and pursue the Claim on behalf of the Class.

The Class 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 Class 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.

#### **Q6: What is the role of the Class Representative?**

The Class Representative will conduct the Claim against the Defendants on behalf of the Class (but not those who opt out of the Class).

The Class Representative will be responsible for, amongst other things, communicating with the Class and issuing formal notices to its members (such as this one). The Class Representative will, for example, instruct the lawyers and experts, make decisions on the conduct of the Claim, and evaluate any offer of settlement that the Defendants may make and decide whether to present it for the Tribunal's approval.

The Class Representative will update the class about the Claim on the website [www.ukfxcartelclaim.com](http://www.ukfxcartelclaim.com) and through the media.

#### **Q7: Who is in the Class?**

The Claim is to proceed on an "opt-out" basis on behalf 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 the complete definition, please see "The Class" at the top of this notice.

It is important to note that you are only automatically in the Class if you are UK domiciled (e.g. you are a company or partnership incorporated in the UK, or you are an individual who lives in the UK) on **[Insert Domicile Date]**. If you are not domiciled in the UK on **[Insert Domicile Date]** but otherwise fall within the Class definition, you will be able to opt in to the class. For further information about opting into the Claim, please see the response to Q12 below.

#### **Q8: Who is excluded from the Class?**

If you fall into one of the following categories, you will be excluded from the Class:

- (a) Addressees 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 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 Defendants’ and Class 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 Claim?**

If you fall within the definition of the Class, you do not have to take any action at this stage.

As explained above, the Claim is called an “opt-out claim” because anyone who meets the definition of the Class (and is domiciled in the UK on **[Insert Domicile Date]**) will be included in the Claim automatically and be bound by the result, unless he/she/it asks to opt out (i.e. takes steps to leave the Claim – see the response to Q11 below).

If you fall within the class definition but are not domiciled in the UK on **[Insert Domicile Date]**, you will need to opt in to the Claim, if you want to be a part of it. For information about opting in to the Claim, please see the response to Q12 below.

**Q10: How much money does the Claim ask for?**

The Claim seeks damages to compensate the 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 banks’ unlawful conduct between 18 December 2007 and 31 January 2013 (see the response to Q4 above). It is too early to quantify the value of the Claim, as this will only be possible after disclosure of trading data by the Defendant banks, but at this stage the experts retained by the Class 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 Claim is not guaranteed, however. The Class Representative will need to prove its case at trial in due course.

### **Q11: Who can opt out of the Claim, and how?**

Any member of the Class may ask to opt out. By opting out, you will not be able to receive a payment from the Claim if money becomes available in due course. However, you may be able to bring your own separate claim against the Defendants for the same issues. Opting out of the Claim will not stop a class member applying to the Tribunal to start its own claim.

If you are considering opting out, you should review the information above and visit both [www.ukfxcartelclaim.com](http://www.ukfxcartelclaim.com) and [www.catribunal.org.uk](http://www.catribunal.org.uk) for information, before deciding.

If you are a member of the Class and wish to opt out, you can do so by sending a letter to the Class Representative indicating that you wish to opt out of the Claim. That letter can be sent by post, or email using the contact details set out below. That letter must be postmarked no later than **[date]**. You will receive an email acknowledging receipt of the letter – if you do not send the letter by email, please provide an email address to which the acknowledgment of receipt can be sent.

**[Address]**

If a member of the Class wishes to opt out after **[date]**, he/she/it should write directly to the Tribunal to seek approval using the contact details listed below. Under the Tribunal's rules, any request to opt out received after **[date]** will have to be considered by the Tribunal, which will decide whether or not to grant permission for the class member to opt out.

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]*. A template letter is available on [www.ukfxcartelclaim.com/\[exact location to be added\]](http://www.ukfxcartelclaim.com/[exact location to be added]) containing suggested wording for confirming your decision to opt out.

### **Q12: Who can opt in to the Claim, and how?**

If you fall within the definition of the Class but are not UK domiciled on **[Insert Domicile Date]**, you must take steps to opt in to the class if you want to be part of the Claim and

eligible to receive a payment in the future. You can opt in to the Claim by [*steps required on the website/with Epig*]/– give date(s)].

If you do not opt in to the Class by [*date*] and money later becomes available, the only way for you to be eligible to receive a payment is for the Tribunal to give you permission to opt in at a later time. There is no guarantee this permission will be given, so you should opt in by [*date*] if you want to be eligible to get a payment.

You should review the information above and visit both [www.ukfxcartelclaim.com](http://www.ukfxcartelclaim.com) and [www.catribunal.org.uk](http://www.catribunal.org.uk) for information.

### **Q13: Who is funding the Claim?**

Whilst the Class Representative is authorised to run the Claim on behalf of the Class, it is not able to fund a claim of this size and public importance without third party funding.

The Class Representative has obtained funding for the 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 Class Representative has obtained a sum of £21 million by way of “after the event” insurance, which is available to cover the Defendants’ costs in the event that the Claim is ultimately unsuccessful.

### **Q14: Will I have to pay the legal costs in order to benefit from the Claim?**

No. The funding arrangements in place described under Q13 above mean that the class members will not need to pay anything to be part of the Claim and that they will have no financial risk in relation to the Claim.

### **Q15: How can I stay updated on the progress of the Claim?**

You can visit [www.ukfxcartelclaim.com](http://www.ukfxcartelclaim.com) for periodic updates on the Claim.