

**IN THE COMPETITION APPEAL TRIBUNAL**

**IN THE MATTER OF PROPOSED COLLECTIVE PROCEEDINGS  
UNDER SECTION 47B OF THE COMPETITION ACT 1998  
RELATING TO FOREIGN EXCHANGE RATES**

**B E T W E E N : -**

**MICHAEL O'HIGGINS FX CLASS REPRESENTATIVE LIMITED**

**Applicant /  
Class Representative**

**-and-**

- (1) BARCLAYS BANK PLC  
(2) BARCLAYS CAPITAL INC.  
(a company incorporated under the laws of the State of Connecticut, United States of America)**
- (3) BARCLAYS EXECUTION SERVICES LIMITED  
(4) BARCLAYS PLC  
(5) CITIBANK N.A.  
(a national banking association incorporated under the laws of the United States of America)**
- (6) CITIGROUP INC.  
(a company incorporated under the laws of the State of Delaware, United States of America)**
- (7) JPMORGAN CHASE & CO.  
(a company incorporated under the laws of the State of Delaware, United States of America)**
- (8) JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
(a national banking association incorporated under the laws of the United States of America)**
- (9) J.P. MORGAN EUROPE LIMITED  
(10) J.P. MORGAN LIMITED  
(11) NATWEST MARKETS PLC  
(12) THE ROYAL BANK OF SCOTLAND GROUP PLC  
(13) UBS AG  
(a company incorporated under the laws of Switzerland)**

**Respondents/  
Defendants**

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***Draft* COLLECTIVE PROCEEDINGS ORDER**

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**UPON** receipt of a collective proceedings claim form on [date]

**AND UPON** hearing leading counsel for the parties at a hearing on [date]

**AND UPON** the Tribunal having given judgment on [date] on the application for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**2015 Rules**”).

**IT IS ORDERED** that:

**Forum**

- (1) Pursuant to Rules 18, 52 and 74 of the 2015 Rules, the proceedings be treated as proceedings in England and Wales.

**Authorisation of class representative**

- (2) Pursuant to section 47B of the Competition Act 1998 and Rules 77 and 80 of the 2015 Rules, the Applicant be authorised to act as class representative to continue collective proceedings on an opt-out basis claiming damages for loss suffered by the Class (as defined below), as a result of an infringement of competition law determined in the Settlement Decisions of the European Commission dated 16 May 2019 in Case AT.40135 – FOREX (Three Way Banana Split) and Case AT.40135 – FOREX (Essex Express).
- (3) The Applicant’s address for service be Scott+Scott UK LLP, St. Bartholomew House, 90-94 Fleet Street London, EC4Y 1DH (Attention: Belinda Hollway).

**Class**

- (4) The class shall be defined as: All persons (other than Excluded Persons) 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).
- (5) 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 the releases under the settlements 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 the releases under the 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 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.

### **Opting out**

- (6) Persons satisfying the Class Definition who are domiciled within the UK on [insert Domicile date], may opt out of the proceedings by post or email [at ...].

### **Opting in**

- (7) Persons satisfying the Class Definition who are domiciled outside of the UK on [insert Domicile date], may opt in to the proceedings by post or email [at ...].

### **Publicity**

- (8) The Applicant publicise the CPO by [date] in accordance with the draft Rule 81 Notice provided with the Collective Proceedings Claim Form and the proposal for publication set out in section 6 of Annex 1 of the Litigation Plan exhibited to O’Higgins1.

### **General**

- (9) Costs be reserved.

(10) There be liberty to apply.