

Party: Applicant / Proposed Representative
Witness: Michael O'Higgins
Number of Statement: First
Exhibits: MOH1-4
Dated: 28 July 2019

IN THE COMPETITION APPEAL TRIBUNAL

Case no. _____

B E T W E E N : -

MICHAEL O'HIGGINS FX CLASS REPRESENTATIVE LIMITED

**Applicant /
Proposed Representative**

-and-

- (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
- (13) UBS AG

**Respondent /
Proposed Defendants**

EXHIBIT MOH4

This is the exhibit marked "MOH4" referred to in the first witness statement of Michael O'Higgins dated 28 July 2019.



Michael O'Higgins
Dated: 28 July 2019

B E T W E E N : -

MICHAEL O’HIGGINS FX CLASS REPRESENTATIVE LIMITED

**Applicant /
Proposed 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 /
Proposed Defendants**

LITIGATION PLAN

A. OVERVIEW

1. Unless otherwise stated, this Litigation Plan (the “**Plan**”) adopts the definitions used in the Collective Proceedings Claim Form (the “**Claim Form**”) and addresses the following matters:
 - (a) the background to these proceedings and definition of the Proposed Class;
 - (b) the proposed method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings (2015 Rules, Rule 78(3)(c)(i));
 - (c) the proposed procedure for governance and consultation, taking into account the size and nature of the class (2015 Rules, Rule 78(3)(c)(ii));
 - (d) the estimated costs, fees and disbursements, and details of associated funding arrangements (2015 Rules, Rule 78(3)(c)(iii));
 - (e) the way the Proposed Representative intends to publicise the proceedings to class members, the method proposed for communicating and reporting to class members and how inquiries from class members will be dealt with (Guide, paragraph 6.30, bullet points one to three);
 - (f) the degree of disclosure likely to be required, potential disclosure from individual class members and how disclosure will be managed (Guide, paragraph 6.30, bullet points four to six);
 - (g) witnesses of fact (Guide, paragraph 6.30, bullet point seven);
 - (h) expert evidence (Guide, paragraph 6.30, bullet point eight);
 - (i) proposed method for distribution of an aggregate award of damages (Guide, paragraph 6.30, bullet point ten); and
 - (j) proposed timetable for the litigation (Guide, paragraph 6.30, bullet point eleven).

2. The Tribunal is also referred to the following documents:
 - (a) First witness statement of Michael O’Higgins dated 28 July 2019 (“**O’Higgins1**”);
 - (b) Expert report of Professor Francis Breedon dated 28 July 2019 (the “**Breedon Report**”);
 - (c) First witness statement of Belinda Anne Hollway dated 28 July 2019 (“**Hollway1**”);
 - (d) First witness statement of Neil Andrew Purslow, Chief Investment Officer of Therium Capital Management, dated 28 July 2019 (“**Purslow1**”).
3. The Proposed Representative has instructed Scott+Scott Europe LLP as solicitors to act on behalf of the Proposed Class. Scott+Scott Europe LLP is affiliated with Scott+Scott Attorneys at Law LLP, co-lead class counsel in a class action in the United States (the “**US**”) against sixteen banks for manipulation of the foreign exchange market (the “**US Proceedings**”).¹ As at the date of this Plan, fifteen of the sixteen banks have settled, for a total sum in excess of \$2.3bn. The Proposed Representative recognises the considerable advantages and possible economies of scale which can be achieved by using the extensive experience gained from the US Proceedings. As set out in more detail in section III of Hollway1, as far as is practicable and permissible, the Proposed Representative intends to use the same claims administration services providers, quantitative experts and litigation support providers as were instructed in the US Proceedings.

B. BACKGROUND TO PROCEEDINGS AND PROPOSED CLASS

4. The Proposed Collective Proceedings arise out of two infringement decisions of the European Commission (the “**Commission**”) dated 16 May 2019 in Case AT.40135 FOREX (the “**Settlement Decisions**”), which found two separate cartels in the foreign exchange (“**FX**”) sector (the “**FX Cartels**”). The first cartel involved all of the Proposed Defendants and operated between 18 December 2007 and 31 January 2013 (the “**Relevant Period**”). The second cartel involved three of the Proposed

¹ *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789-LGS (S.D.N.Y.).

Defendants and one bank which is not a Proposed Defendant (Bank of Tokyo-Mitsubishi) and operated between 14 December 2009 and 31 July 2012.

5. Neither the confidential nor the non-confidential versions of the Settlement Decisions is currently available to the Proposed Representative. However, according to the press release issued by the Commission on 16 May 2019, the cartelists exchanged commercially sensitive information and trading plans and coordinated their trading strategies.
6. Further information in relation to the operation of the FX Cartels is set out at paragraphs 61 to 66 of the Claim Form.
7. The Proposed Collective Proceedings are brought by the Proposed Representative on behalf of 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). 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.

C. BRINGING PROCEEDINGS AND NOTIFYING REPRESENTED PERSONS

Method for bringing proceedings on behalf of represented persons

8. Pursuant to section 47B of the 1998 Act, the Proposed Collective Proceedings seek to combine individual “follow-on” claims under section 47A of the 1998 Act for damages caused as a result of the Proposed Defendants’ breach of statutory duty.
9. The Proposed Representative considers the claims are eligible for inclusion in collective proceedings under Rule 79 of the 2015 Rules, and seeks to bring the proceedings on a collective opt-out basis (such that UK domiciled entities are included unless they opt out, and non-UK domiciled entities are included only if they opt in).

Method for notifying represented persons of the progress of the proceedings

10. The Proposed Representative has carefully considered its obligations under paragraphs 6.63 and 6.64 of the Guide, to provide the class members with information about the proceedings, and the need to effect all communications in ways which are clear, manageable, efficient, proportionate and likely to reach the greatest number of people within the class as possible.
11. To assist with managing the Proposed Collective Proceedings and communicating with the Proposed Class, the Proposed Representative has engaged Epiq Class Action & Claims Solutions, Inc. (“**Epiq**”). Epiq is a claims administrator with significant experience of handling class actions in the US and Canada, and is involved in a number of collective actions in the UK.
12. Epiq’s expertise includes: setting up and administering communication with class members; developing media and notice plan strategies; conducting demographic analyses to determine the most effective communication channels; designing, drafting and distributing plain-language notices that capture attention and are easily understood by class members; and developing case-specific websites to disseminate case information to class members.

13. In June 2018, Epiq acquired Garden City Group, the court-appointed claims administrator in the US Proceedings. In the US Proceedings, its responsibilities have included:
- (a) Distributing the Mail Notice of Class Action Settlement and the Proof of Claim and Release Form to class members, by post;
 - (b) Creating and operating a telephone inquiry service;
 - (c) Creating and operating a case-specific settlement website;
 - (d) Posting documents and notifications on the settlement website;
 - (e) Arranging for the publication of information about the claim (including the Notice of Class Action Settlement) in various press publications including the *Wall Street Journal*, *Financial Times*, *FX Week*, *Investor's Business Daily*, *The Guardian UK* and *La Presse*;
 - (f) Providing to brokers, nominees and settlement class members copies of the relevant claim documents, including translations thereof (upon request);
 - (g) Receiving and processing objections and requests for exclusion (opt-outs); and
 - (h) Receiving and processing claim forms (working with quantitative finance and data scientist firm Velador Associates Ltd (“**Velador**”) and analytics firm Ankura Consulting Group, LLC (“**Ankura**”)).
14. Epiq is also responsible for claims administration in the Canadian class actions for manipulation of the foreign exchange market (the “**Canadian Proceedings**”).²
15. Its experience of carrying out the claims administration process in the US Proceedings and Canadian Proceedings means that Epiq has gained a deep understanding of how class members in the US and Canada respond to notices and interact with claims. Members of the Proposed Class in this jurisdiction are similar in nature to class members in the US Proceedings. Indeed, many entities will be class members in both the US and the UK proceedings,³ and other members of the Proposed Class are

² CV-15-536174 (Superior Court of Ontario); and 200-06-000189-152 (Superior Court of Quebec)

³ Although transactions which are the subject of the US Proceedings are specifically carved out of the Proposed Class Definition to ensure that any such class members cannot recover in both the US and UK for the same losses.

expected to be similar sorts of entities (e.g. pension funds, hedge funds and multinational corporations, as explained further below). Epiq’s accrued knowledge is therefore readily transferable. The Proposed Representative believes Epiq’s experience will be extremely useful, and will enable the notice and administration process to be carried out effectively and at a proportionate cost. For the avoidance of doubt, claims administration in the Proposed Collective Proceedings will conform strictly with all confidentiality provisions in the US Proceedings and Canadian Proceedings.

16. Epiq has produced a detailed notice and administration plan which is attached at Appendix 1 (the “**Epiq Plan**”). The Epiq Plan is designed to be read in conjunction with, and treated as forming part of, this Plan. The key features are summarised in Section F below.
17. Further, the Proposed Representative has engaged DRD Partnership (“**DRD**”) to assist with public relations and overall media strategy for the Proposed Collective Proceedings. DRD is a strategic communications company with expertise in litigation support and reputation management. DRD has extensive experience working with the UK (as well as international) media and will work closely with Epiq to ensure members of the Proposed Class will be kept informed as the Proposed Collective Proceedings progress.

D. PROCEDURE FOR GOVERNANCE AND CONSULTATION

18. At this stage of the matter it is not possible to determine the number of members of the Proposed Class with any precision. As set out in section III of Hollway¹, the initial distributions in the US proceedings have already led to over 27,000 class members being paid compensation. For that reason, the Proposed Representative estimates that the number of members in the opt-out portion of the Proposed Class (i.e. prior to any non-UK domiciled persons opting in) is likely to be in the thousands, if not the tens of thousands . This estimate is preliminary and may change.
19. Members of the Proposed Class will include, in particular, pension funds, asset managers, hedge funds, multinational corporations and mutual societies who engaged in FX transactions. They will generally be sophisticated investors and the Proposed

Representative recognises that the procedure for governance and consultation will have to be tailored accordingly.

20. The size and nature of the Proposed Class is such that it will not be possible to consult and liaise directly with all of the individual members on an ongoing basis. With that in mind, the Proposed Representative intends to set up an informal consultative group of individuals with legal and relevant sectoral expertise to allow it to obtain the views of others when considering the decisions it must make in the proceedings. The consultative group will be chaired by Sir Christopher Clarke, a former Lord Justice of Appeal. For the avoidance of doubt, all decisions will be taken exclusively by the Proposed Representative and will be its responsibility alone.
21. As set out at paragraphs 33 to 38 of O’Higgins¹, Michael O’Higgins’ own knowledge and experience, coupled with the ability to obtain the opinion of the consultative group, will assist the Proposed Representative in acting in the interests of the Proposed Class.

E. COSTS, FEES AND DISBURSEMENTS

22. As described in more detail in Purslow¹, the Proposed Representative has entered into a litigation funding agreement with Therium Litigation Finance Atlas AFP IC (“**Therium**”) annexed to Purslow¹ (the “**LFA**”). The Therium group is one of the longest-established providers of litigation funding in the world. The Proposed Representative recognises that the Proposed Defendants will want to understand the funding terms and adverse costs provisions. As the LFA is highly commercially-sensitive, the Proposed Representative requests that the LFA be treated as confidential under Rule 101 of the 2015 Rules and that an appropriate confidentiality ring be put in place under Rules 101, 53(1) and 53(2)(h) of the 2015 Rules.
23. As described in paragraph 18 of Purslow¹, in accordance with Schedule 1 and Appendix 1 of the LFA, Therium shall advance funds to the Proposed Representative up to an aggregate maximum amount of £29,375,043. The funds shall be paid in tranches, pursuant to the project plan set out at Appendix 1 to the LFA. This project plan contains a costs budget to the end of trial, which should be treated as if it were appended hereto as the Proposed Representative’s costs budget for the purposes of

paragraph 6.30 of the Guide, and as its estimate for the purposes of Rule 78(3)(c)(iii) of the 2015 Rules.

24. To ensure that it will be able to pay the Proposed Defendants' recoverable costs if ordered to do so, the Proposed Representative has, to date, obtained After The Event ("ATE") insurance cover of up to £21 million by way of protection against adverse costs. The Proposed Representative has considered with its legal advisers the level of costs that the Proposed Defendants could reasonably and proportionately incur when defending the Proposed Collective Proceedings, and believes this level of cover to be sufficient. The Proposed Representative is, however, pursuing the possibility of further ATE insurance cover in the event that it is considered to be appropriate and/or necessary.

F. PUBLICISING, REPORTING TO CLASS MEMBERS AND DEALING WITH ENQUIRIES

25. Under paragraphs 6.55 to 6.57 of the Guide, a class representative is required to provide class members with information about the proceedings at the following stages of opt-out proceedings:
- (a) when the Tribunal makes a CPO (2015 Rules, Rule 81(1));
 - (b) if the class representative intends to withdraw from the role (2015 Rules, Rule 87(2));
 - (c) when the Tribunal issues a judgment or order in the proceedings (2015 Rules, Rule 91(2));
 - (d) when the Tribunal intends to have a hearing to determine how to quantify individual represented persons' claims from an aggregate award of damages (2015 Rules, Rule 92(3));
 - (e) if directed to do so by the Tribunal at other stages of the proceedings (2015 Rules, Rule 88(2)(d)); and
 - (f) when applying for approval of a settlement, as approved by the Tribunal (2015 Rules, Rules 94(4)(f) and 94(13)).

26. The Proposed Representative intends also to publicise the following information by way of a notice (the “**CPO Application Notice**”):
- (a) the fact of the Application;
 - (b) the parameters of the Proposed Class;
 - (c) the deadline for objections to the Application;
 - (d) the right of members of the Proposed Class to apply to the Tribunal to make oral submissions at the hearing of the Application; and
 - (e) the Application hearing date.
27. A draft CPO Application Notice is included at Appendix 2 to this Litigation Plan.
28. If the CPO is granted, the Proposed Representative will publicise the CPO by way of a notice (the “**CPO Notice**”). A draft CPO Notice is included at Appendix 3. This includes:
- (a) the details of each Proposed Defendant;
 - (b) a summary in easily understood language of the Claim Form and common issues;
 - (c) a statement explaining that any judgment on the common issues for the class members will bind represented persons in the Proposed Class;
 - (d) a statement drawing attention to the provisions of the CPO which set out what a class member is required to do and by what date so as to opt out of the Proposed Collective Proceedings.
29. In the final CPO Notice, the Proposed Representative intends to include this information and any other information that the Tribunal directs.

30. The Proposed Representative has carefully considered paragraph 6.63 of the Guide and, working with Epiq, has prepared a detailed proposal for how the CPO Notice will be published. This proposal is attached at section 6 of the Epiq Plan, but in summary:
- (a) the CPO Notice will be posted on the claim website and the website content (such as the “FAQs” tab) will be updated to explain the implications of the CPO and any deadlines set by the Tribunal;
 - (b) the claim website will be updated to include an opt-in facility;
 - (c) the claim website will be updated to include an explanation of how members of the Proposed Class can opt out either by post or email to a dedicated opt-out email address (Epiq will maintain a register of opt-outs);
 - (d) an email message will be sent to the email addresses of those who have registered their interest via the claim website;
 - (e) advertisements will be placed in printed media, including relevant newspapers and trade prints; and
 - (f) advertisements will be placed on online media, which will include sponsored search terms being purchased on major search engines.
31. Epiq has devised methods for ongoing communication with the Proposed Class that will take into account the objective of the particular communication and the nature of the members of the Proposed Class. As set out in section 5 of the Epiq Plan, the claim website will be the principal method of communication throughout proceedings. It will be updated on an ongoing basis and can be tailored to address any common themes or questions raised by members of the Proposed Class.
32. As set out at section 8 of the Epiq Plan, at significant points in proceedings the Proposed Representative will engage in a more comprehensive and targeted approach to notifying class members. These will include (but will not be limited to):
- (a) notification of any case management conference or other hearing;

- (b) notification of any directions issued by the Tribunal, in particular where the participation of any represented person is necessary in order to determine individual issues, pursuant to Rule 88 of the 2015 Rules;
 - (c) notification of any judgment or order of the Tribunal, pursuant to Rule 91 of the 2015 Rules; and
 - (d) notification of any application for collective settlement approval, or approved collective settlement in accordance with Rule 94 of the 2015 Rules;
 - (e) notification in relation to the distribution of any aggregate award of damages.
33. The methods of notification adopted will depend on the objective of the communication, but will be based on those set out at paragraph 30 above.
34. As explained in O’Higgins¹, the Proposed Representative will operate as transparently and communicate as effectively as possible. Notwithstanding this, the Proposed Representative anticipates that members of the Proposed Class may have queries.
35. To address many of the queries which members of the Proposed Class may have, the claim website includes a detailed “FAQs” section listing frequently asked questions. The questions and answers have been prepared with the assistance of the Proposed Representative’s legal and expert teams, and Epiq. The list of frequently asked questions will be kept under review as the Proposed Collective Proceedings progress to ensure that potential enquiries of members of the Proposed Class are addressed as far as is practicable.
36. The claim website will include a “Register” tab, allowing potential class members and interested parties to register their interest and to request to receive automatic updates about progress of the claim, should they so wish. Persons who register their interest will have to give their explicit consent to their details being stored for the purposes of the Proposed Collective Proceedings. Their data will be hosted in the UK in a manner which is fully compliant with the General Data Protection Regulations (“GDPR”) and any other applicable data protection laws.

37. Subject to any order of the Tribunal pursuant to Rule 80(1)(h) of the 2015 Rules, when the Proposed Class has been certified, the Proposed Representative intends to make it possible for non-UK domiciled entities to opt in to the Proposed Collective Proceedings in accordance with Rule 82(1) of the 2015 Rules via the claim website. The website shall also provide instructions on how members of the Proposed Class can opt out of the Proposed Collective Proceedings. Pursuant to Rule 83 of the 2015 Rules, Epiq shall maintain a register of members of the Proposed Class who either opt in to or out of the Proposed Collective Proceedings, and shall make this register available for inspection by the Tribunal and any of the Proposed Defendants, and by any such other person as the Tribunal may direct.
38. The website will include a “Contact Us” section. This will give email addresses for general enquiries and media enquiries. These email accounts will be monitored by the legal team, PR team and Epiq, as appropriate. The general enquiry email address will produce an automatic response directing the sender to the FAQs page. The FAQs section will be updated as necessary to take account of enquiries received. Methods of communication offered in the “Contact Us” section will be kept under review, and additional methods of communication can be added as appropriate.
39. In previous cases in the US, Epiq has set up and operated a telephone enquiry service. Due to the extensive website content and the nature of the Proposed Class, Epiq do not consider that this is currently necessary or proportionate for the Proposed Collective Proceedings. However, it may be helpful to set this up at later stages of proceedings, for example to answer questions which members of the Proposed Class might have about the distribution of damages at the conclusion of proceedings, if the Proposed Collective Proceedings are successful.
40. The Proposed Representative considers these methods for dealing with queries to be the most suitable, effective and proportionate means of addressing queries from members of the Proposed Class, taking account of the size of the Proposed Class and the level of individual damages likely to be received from the aggregate award of damages at the conclusion of proceedings. It also ensures that the Proposed Representative can efficiently and effectively conduct the proceedings within the budget, whilst ensuring that the members of the Proposed Class are fully aware of all key developments and provided support as required.

41. To help minimise the risk of potential ‘ghost’ websites containing misleading or inaccurate information, Epiq has secured an additional 36 alternate website addresses which all redirect to the claim website. These comprise similar addresses to the claim website (for example, “www.ukfxcartelclaims.com”); and alternative addresses which members of the Proposed Class may search (for example, “www.foreignexchangelitigation.com”).

G. DISCLOSURE

42. The Proposed Representative intends to seek disclosure pursuant to Rules 60, 63 and 89 of the 2015 Rules. Due to the asymmetry of information between it and the Proposed Defendants, the Proposed Representative intends to request that the Tribunal order the Proposed Defendants to file a disclosure report and completed Electronic Documents Questionnaire, pursuant to Rule 60(2) of the 2015 Rules, at the earliest opportunity.
43. As set out at paragraph 5.39 et seq. of the Breedon Report, certain information is required to calculate the pricing impact of the FX Cartels. The trading records of the Proposed Defendants and/or their counterparties are the key source of this information. Although not available in the public domain, this data ought to exist as the Proposed Defendants will have had to collect and retain this data to keep track of their trades. It is highly unlikely that such data would have been destroyed, particularly given the regulatory investigations and other litigation against the Proposed Defendants (amongst other banks), in various jurisdictions. As is made clear by the Breedon Report, the information contained in this data is necessary to deal with the case justly.

Data from the US Proceedings

44. As set out in section IV of Hollway1, in the US Proceedings, the banks (including the Proposed Defendants and/or their subsidiaries, holding companies and subsidiaries of those holding companies) disclosed approximately 1.6 million documents, including chatroom conversations, and an additional 7,000 files of transaction data from over 30 different trading systems. The plaintiffs obtained a further 2.5 terabytes of data from third parties such as Hotspot, Reuters Matching, EBS and WM/Reuters.

45. Velador has already carried out extensive data ‘cleaning’ (as the data produced in the US Proceedings was unfiltered) and ‘normalization’ (as the data came from several sources, it had to be put into uniform data extracts) in relation to the data disclosed in the US Proceedings.
46. However, as explained at paragraph [7] of Hollway¹, the material disclosed in the US Proceedings, including in relation to the settlement agreements reached with the defendant banks, (together, the “**US Confidential Material**”), is subject to strict confidentiality provisions stipulating that the US Confidential Material is to be used solely for the purposes of the prosecution or defence of the US Proceedings (including any settlement of the same) and for no other purpose whatsoever. The US Material cannot therefore currently be used in the present proceedings.
47. Assuming these Proposed Collective Proceedings reach disclosure stage, the Proposed Representative intends to explore the possibility of obtaining the US Confidential Material. The Proposed Representative recognises the potential time and cost savings that could be made from making use of the US Confidential Material, since it understands that much of that material will be relevant to the Proposed Collective Proceedings as well.
48. However, even if it is not possible to access the US Confidential Material disclosed in the US Proceedings, as explained in section IV of Hollway¹, there is no reason to believe that, following disclosure in the Proposed Collective Proceedings, the legal and expert teams retained by the Proposed Representative will be unable to similarly process the disclosed materials for use in damages quantification and, ultimately, distribution of damages.

Disclosure by the Proposed Defendants

49. Until receipt of pleadings from the Proposed Defendants, together with production of the disclosure report and Electronic Documents Questionnaire, the Proposed Representative is unable to identify definitively what documents will be relevant and/or available. However, it anticipates that disclosure will include (but not be limited to) the following:

- (a) the confidential versions of the Settlement Decisions (i.e. the full versions issued to the addressees by the Commission);
 - (b) evidence provided (whether voluntarily or in response to requests or seized during dawn raids) by the Proposed Defendants to the Commission during the course of the Commission's investigation into the FX market;
 - (c) evidence provided (whether voluntarily or in response to requests or seized during dawn raids) by the Proposed Defendants to any other regulator in the course of any investigation into wrongdoing in the FX market in the period 2007 to 2013, including investigations by the UK's Financial Conduct Authority and the US Department of Justice;
 - (d) the Proposed Defendants' trading data, so far as relevant, for the period from 18 December 2007 to present; and
 - (e) Transcripts or other records of all chatroom conversations which relate to trading in which any of the G10 currencies, or Danish Krone, is one leg of a currency pair, during the Relevant Period.
50. As described above, the Proposed Representative expects that most or all of these documents have already been collated and produced for the US Proceedings and/or the Commission investigation, and so disclosing them for the purposes of the Proposed Collective Proceedings ought to be a comparatively straightforward exercise which could be carried out for a relatively modest cost, regardless of whether the US courts lift or vary the Protective Order.

Disclosure by third parties

51. Pursuant to Rule 63 of the 2015 Rules, the Tribunal may order disclosure by a person who is not a party to the proceedings, where the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and disclosure is necessary in order to dispose fairly of the Proposed Collective Proceedings or to save costs. As set out at paragraph 5.51 et seq. of the Breedon Report, depending on the quality of the Proposed Defendants' data, it may be necessary to obtain further trading data from

third parties such as other market making banks and electronic communications networks used for FX trading (for example Hotspot, Reuters Matching, EBS, WM/Reuters and ECB). The Proposed Representative recognises the potential cost consequences of third-party disclosure. However, as described above, a significant quantity (if not all) of the relevant data has been produced by the third parties in the US Proceedings, and so obtaining it for the purposes of the Proposed Collective Proceedings ought to be possible for a relatively modest cost.

Disclosure by the Proposed Representative and members of the Proposed Class

52. The Proposed Representative does not anticipate that it and/or UK domiciled opt-out members of the Proposed Class will be in possession of any relevant documents for the purposes of disclosure to the Proposed Defendants, and/or that it would be proportionate for disclosure of any such documents to be made. While disclosure of data for opt-in members may be appropriate, the Proposed Representative does not anticipate that a significant volume of documents will be ‘exchanged’ in the proposed proceedings, but rather that there will primarily be one-way disclosure from the Proposed Defendants and third parties only.

Disclosure process

53. The Proposed Representative will liaise with the Proposed Defendants at an early stage in proceedings to discuss appropriate processes for the management of disclosure, including issues of e-disclosure. Pending receipt of pleadings, disclosure reports and completed Electronic Documents Questionnaires, the Proposed Representative is unable to determine definitively how the disclosure exercise should be managed. However, the Proposed Representative recognises the likely substantial scale of disclosure.
54. In order to facilitate the disclosure process, the Proposed Representative has engaged Open Text UK Ltd (“**OpenText**”) to provide support with the disclosure and document management process. OpenText will work with the Proposed Defendants and relevant non-parties at the appropriate times, to ensure that the disclosure process can be carried out in an effective and proportionate manner.

55. OpenText’s US affiliate, Open Text Corporation (“**OpenText US**”), provided the data hosting and e-discovery services in the US Proceedings. OpenText is therefore familiar with the volume and nature of the data and has the necessary infrastructure to process it. Subject to the Protective Order being lifted or varied or the data being made available by other means, some or all of the data provided in the US Proceedings may be able to be exported to a UK database from the existing OpenText US database, thereby increasing the efficiency of the disclosure process, saving considerable time and cost. Again, any export of data would comply strictly with the US Protective Order, and subject to any order of the Tribunal.
56. The Proposed Representative will respectfully invite the Tribunal to use its active case management powers under Rule 4 of the 2015 Rules and specifically Rule 4(5)(a) and (d).

H. WITNESSES OF FACT

57. The Proposed Collective Proceedings raise complex factual issues which will need to be determined at trial.
58. While the Proposed Representative is optimistic that many of the factual issues can be substantively resolved as a result of the disclosure process, it recognises that there will be a number of issues on which the Proposed Defendants will wish to adduce factual witness evidence.
59. The Proposed Representative may also wish to adduce witness evidence but it is premature to say whether this will be necessary. It does not envisage at this stage that this will involve witness evidence from individual members of the Proposed Class.

I. EXPERT EVIDENCE

60. The Proposed Representative has instructed the following experts, and may seek permission from the Tribunal to call some or all of them as experts in the Proposed Collective Proceedings in due course (as required):
- (a) Professor Francis Breedon of Queen Mary University of London, who specialises in FX Microstructures;

- (b) Reto Feller of Velador Associates, a former FX trader and industry expert; and
- (c) Steven Law (forensic accountant) and Tom Robinson (economist) of BDO LLP.

As the proceedings develop it is possible that further, or other, experts will be necessary.

- 61. The Proposed Representative has instructed these experts to assist with:
 - (a) the definition of the Proposed Class and identification of common issues;
 - (b) the value of commerce associated with the Proposed Collective Proceedings;
 - (c) the level of overcharge as a result of the FX Cartels;
 - (d) the aggregate loss suffered by members of the Proposed Class;
 - (e) the interest that should be applied to the losses suffered; and
 - (f) market terminology and practices.
- 62. If the Proposed Representative considers that any additional experts are required, it will make such a proposal after the CPO has been granted and the pleadings closed (and possibly after disclosure).
- 63. The Proposed Representative anticipates that the Proposed Defendants will instruct separate experts in similar fields.

J. DISTRIBUTION OF AWARD

- 64. The Proposed Representative considers distribution of an aggregate award of damages to be a two-stage process:
 - (a) first, there must be a method to calculate the share of any aggregate award of damages payable to individual members of the Proposed Class (the “**Method of Calculation**”); and

(b) second, there must be a process by which members of the Proposed Class claim their share of the aggregate award of damages (the “**Method of Distribution**”). This must be proportionate to the level of damages payable, accessible and designed to ensure that the maximum number of members of the Proposed Class claim for the damages to which they are entitled.

65. As set out in more detail in section I of Hollway1, in the US Proceedings, the court approved a plan of distribution for a settlement sum in excess of \$2.3bn. The plan of distribution employed in the US Proceedings could act as a model or basis for a similar plan in the Proposed Collective Proceedings.

66. Due to the likely complexity of the distribution process, the Proposed Representative has provisionally engaged Velador to assist Epiq with both the calculation and the distribution of damages (including any analysis of data). Velador are the quantitative finance experts responsible for distribution of the settlement award in the US Proceedings.

Method of Calculation

67. The Method of Calculation will ultimately depend on the data obtained during disclosure and will be the subject of further expert work. As set out in section 6 of the Breedon Report, the methodology employed in the US Proceedings could act as a basis for a similar Method of Calculation in the Proposed Collective Proceedings. The data on which the US methodology was based is set out in section IV of Hollway1.

68. In summary, in the US Proceedings, the claims administrators determined each class member’s eligible transaction volume based either on data provided by the defendants (referred to as ‘Option 1’) or data submitted by the class member itself (referred to as ‘Option 2’). The claims administrator then estimated the claim value for that class member by applying certain weightings to the eligible transactions, based on trade characteristics such as currency pair and trade size.

69. While at this stage the Proposed Representative considers a Method of Calculation similar to that employed in the US Proceedings to be potentially viable, it will be developed and adapted in due course.

Method of Distribution

70. As with the Method of Calculation, the Method of Distribution which is ultimately adopted will depend on the data obtained during disclosure and will be the subject of further expert work in due course.
71. A possible process by which members of the Proposed Class could claim for their share of an award of damages is set out in sections 10 and 11 of the Epiq Plan. In summary:
- (a) members of the Proposed Class would be notified of their right to claim for their share of any aggregate award of damages in the manner set out at section 9 of the Epiq Plan;
 - (b) members of the Proposed Class would be directed to the claim website to submit an online claim form, or could submit a hard-copy claim form which would be available upon request;
 - (c) claimants would be required to submit certain information or data necessary to verify their claim (by way of example, see paragraph 12 of Hollway¹, giving a description of the information which claimants were required to submit in the US Proceedings);
 - (d) claims would be processed and checked to ensure that no duplicate or conflicting or fraudulent claims are filed, and claims would either be accepted, or rejected if the necessary authentication fails;
 - (e) for claims which are accepted, the appropriate Method of Calculation would be applied to determine the proportion of the aggregate award of damages to which the relevant claimant is entitled;
 - (f) for claims which are rejected, requests may be sent for additional information or verification; and
 - (g) eligible claimants would select the means by which they would like to receive payment, and the damages would be distributed accordingly.

72. In the US Proceedings, when carrying out the distribution (in particular the verification and application of the Method of Calculation) the claims administrators were assisted by third parties, including Velador. To capitalise on their expertise gained in the US Proceedings, the Proposed Representative intends to instruct Velador to assist with the execution of the Method of Distribution, and may instruct additional third parties to assist as appropriate.
73. For the avoidance of doubt, any information disclosed by members of the Proposed Class for this purpose shall be held in a manner fully compliant with the GDPR.

K. TIMETABLE

74. A proposed timetable for the litigation is set out in Appendix 4 to this Litigation Plan. Given that the proposed timetable has been prepared at such an early stage in proceedings, and without contribution from the Proposed Defendants, while the Proposed Representative considers the proposed timetable to be realistic, it recognises that inevitably it will require some degree of flexibility.