Party: Applicant / Proposed Representative
Witness: B A Hollway
Number of Statement: First
Exhibit: BAH1-BAH15
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.
(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

FIRST WITNESS STATEMENT OF
BELINDA ANNE HOLLWAY

I, **BELINDA ANNE HOLLWAY**, of Scott+Scott Europe LLP, whose registered address is St. Bartholomew House, 90-94 Fleet Street, London EC4Y 1DH, UK, **WILL SAY**:

1. I am a partner at the law firm of Scott+Scott Europe LLP ("**SSE**"). I received my Bachelor of Laws degree from the Australian National University in 2001 and received a Master of Arts degree in EU Competition Law from King's College London in 2008. I qualified as a legal practitioner in New South Wales, Australia in 2002. I have been practising English law since 2006 and qualified as a solicitor in England and Wales in 2008. Prior to joining SSE, I worked in the EU Dispute Resolution team of Freshfields Bruckhaus Deringer LLP from 2006 to 2015, practising primarily contentious competition law.

2. I am the partner at SSE with carriage of the above claim to be brought by Michael O'Higgins FX Class Representative Limited (the "**Proposed Representative**") before the Competition Appeal Tribunal (the "**Tribunal**") on a collective, opt-out basis pursuant to section 47B of the Competition Act 1998 (the "**Proposed Collective Proceedings**"). The class which the Proposed Representative seeks to represent in these Proposed Collective Proceedings (the "**Proposed Class**") is defined at paragraphs 32 to 34 of the Claim Form.

3. SSE is affiliated with a law firm in the United States ("**US**"), Scott+Scott Attorneys at Law LLP ("**SSAAL**") (SSE and SSAAL together are "**Scott+Scott**"), which is the co-lead counsel in the US foreign exchange ("**FX**") litigation case *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789-LGS (S.D.N.Y.) (the "**US Proceedings**"). The US Proceedings are class action proceedings which allege that entities from 16 banking groups caused loss by breaching US antitrust law. As explained in greater detail below, it is highly likely that some members of the Proposed Class are also members of the class represented by the plaintiffs in the US Proceedings.[1]

4. In this witness statement I will address the following:

   a. The history of the US Proceedings and settlements (all settlements collectively the "**US Settlements**") and the role of our affiliate firm, SSAAL;

[1] The relevant class definitions in the US Proceedings are set out in Appendix 1.

b. The interrelationship between the US Proceedings and the Proposed Collective Proceedings;

c. The plan of distribution employed in the US Settlements (the "**US Plan of Distribution**") and how this could act as a model or basis for a similar plan in the Proposed Collective Proceedings;

d. The data obtained during the course of the US Proceedings;

e. A summary of SSE's efforts to obtain data for use in the Proposed Collective Proceedings; and

f. Brief details of other proceedings in relation to FX manipulation.

5. Except where I state to the contrary, I am able to state the matters in this witness statement from my own knowledge. As such, the facts contained in this witness statement are true to the best of my knowledge, information and belief, save where otherwise indicated, in which case I identify the source of my information.

6. There is now produced and shown to me a number of exhibits marked "**BAH1**" to "**BAH15**" respectively which comprise true copies of the documents to which I will refer in this witness statement. References to pages in an exhibit will be shown after the exhibit reference, for example "**BAH1/1**".

7. I am informed by my colleagues at SSAAL that there is a protective order (akin to confidentiality rings in English litigation) in place in the US Proceedings. This restricts the use of material disclosed in those proceedings solely for the purposes of the prosecution or defence, including any settlement of the US Proceedings, and for no other purpose whatsoever (akin to CPR 31.22). Further, I am informed that there are also confidentiality provisions in the US settlements that preclude the use of certain confidential documents provided pursuant to the US Proceedings for any other purpose. For the avoidance of any doubt, I can confirm that I have not been shown documents that are subject to the US Proceedings protective order or the confidentiality provisions in the US Settlements (collectively the "**US Confidential Material**"). While I have discussed the case with my US colleagues, I have not seen, nor to the best of my knowledge and belief been informed of the content of, any US Confidential

Material. The information I provide in this witness statement about the US Proceedings and the US Settlements comes from publicly available sources, which are referenced throughout, or is non-confidential information provided to me by my colleagues at SSAAL.

I. THE US LITIGATION

8. Below, I describe in chronological order key events from the US Proceedings.[2]

a. **12 June 2013**: On 12 June 2013 Bloomberg published an article indicating possible misconduct in the FX market.[3] Following publication of this article, SSAAL started investigating the alleged anticompetitive conduct referred to in the article. This investigation in summer 2013 included, *inter alia*: interviewing FX market participants and traders in London and the US; consulting with economic and finance experts to identify economic and statistical evidence of collusion and manipulation of the FX market; a review of publicly available information; and hiring an academic and FX trader to present on the FX market to the team prosecuting the case.

b. **1 November 2013**: As a result of this research, SSAAL filed the first FX claim in the US on 1 November 2013: *Haverhill Ret. Sys v Barclays Bank PLC*, Case No. 13-cv-7789. This was a class action filed in the District Court for the Southern District of New York by Haverhill Retirement System (a pension fund for employees of the City of Haverhill, Massachusetts) on behalf of itself and others in the US affected by the anticompetitive conduct against Barclays Bank plc ("**Barclays**"); Citigroup, Inc., Citibank, N.A. (together, "**Citi**"); Credit Suisse Group AG, Credit Suisse Securities (USA) LLC (together, "**Credit Suisse**"); Deutsche Bank AG ("**Deutsche Bank**"); JPMorgan Chase & Co., JPMorgan Chase Bank, National Association

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2 This information is derived from the *Joint Declaration of Christopher M. Burke and Michael D. Hausfeld in Support of (A) Class Plaintiff's Motion for Final Approval of Settlement Agreements and (B) Lead Counsel's Motion for An Award of Attorneys' Fees and Reimbursement of Litigation Expenses*, as filed on 12 January 2018 (the "**Joint Declaration for Settlement Approval and Attorneys' Fees**") (**BAH1/1**) (exhibits omitted).

3 "*Traders Said to Rig Currency Rates to Profit Off Clients*", Liam Vaughan, Gavin Finch and Ambereern Choudhury, Bloomberg, 12 June 2013, available here: https://www.bloomberg.com/news/articles/2013-06-11/traders-said-to-rig-currency-rates-to-profit-off-clients (**BAH2/88**).

(together, "**JPMC**"); Royal Bank of Scotland Group plc ("**RBS**"); UBS AG and UBS Securities LLC (together, "**UBS**").

c. **13 February 2014**: Following the initial claim, further class actions were filed in the US by other law firms. After a hearing on 13 February 2014, the Court consolidated all the cases pursuant to Federal Rule of Civil Procedure 42(a) (which provides for consolidation of cases involving a common question of law or fact), named the consolidated action "*In re Foreign Exchange Benchmark Rates Antitrust Litigation*", and appointed SSAAL as interim lead counsel.[4] SSAAL's appointment as lead counsel was based on factors including its work in identifying and investigating the claim (as described at paragraph 8a above), its experience in handling class actions and antitrust claims, its knowledge of applicable law and the resources it had committed.

d. **3 March 2014**: SSAAL subsequently requested that the Court approve Hausfeld LLP ("**Hausfeld**") to join it as co-lead counsel. SSAAL's appointment by the Court as lead counsel, and SSAAL's request to invite Hausfeld to serve as co-lead counsel, were contested by the law firm Quinn Emanuel Urquhart & Sullivan, LLP. At a hearing on 3 March 2014 the Court reaffirmed its appointment of SSAAL and Hausfeld as interim co-lead counsel for the claims ("**Lead Counsel**").[5]

e. **31 March 2014**: Lead Counsel continued their work investigating the action. Lead Counsel then filed the amended complaint on 31 March 2014 (the "**Amended Complaint**"). This added the following banks as defendants: Bank of America Corp. ("**Bank of America**"); BNP Paribas SA ("**BNP**");

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4 In addition to Haverhill Retirements System, the other class plaintiffs for the consolidated action were: Aureus Currency Fund, L.P., City of Philadelphia, Board of Pensions and Retirement, Employees' Retirement System of the Government of the Virgin Islands, Employees' Retirement System of Puerto Rico Electric Power Authority, Fresno County Employees' Retirement Association, Haverhill Retirement System, Oklahoma Firefighters Pension and Retirement System, State-Boston Retirement System, Syena Global Emerging Markets Fund, LP, Tiberius OC Fund, Ltd., Value Recovery Fund L.L.C., and United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund (the "**Class Plaintiffs**"). The Class Plaintiffs are the formal representatives of the class who have to approve any actions by counsel.

5 See the Law360 article "*Quinn Emanuel Can't Lead Forex-Rigging Action, Judge Says*" by Max Stendahl, available at: https://www.law360.com/articles/514748 (**BAH3/94**),

Goldman Sachs Group Inc. ("**Goldman Sachs**"); HSBC Holdings PLC ("**HSBC**") and Morgan Stanley ("**Morgan Stanley**").

f. **5 January 2015**: Lead Counsel executed a settlement agreement with JPMC (a Proposed Defendant to the Proposed Collective Proceedings) on behalf of the class. This initial settlement was for USD 99,000,000 (subsequently amended on 1 October 2015 to USD 104,500,000) and provided for JPMC to provide cooperation in the action against the remaining US defendants.

g. **28 January 2015**: On 30 May 2014 certain of the US defendants filed a motion to dismiss the Amended Complaint on four principal grounds: (i) the complaint did not adequately allege an agreement in restraint of trade, as required by US case law; (ii) the complaint did not adequately allege harm to competition; (iii) the complaint did not adequately allege an injury in fact; and (iv) the complaint failed to establish antitrust injury. A hearing on this motion to dismiss was held on 20 November 2014. On 28 January 2015 the Court denied the motion to dismiss, rejecting all the grounds alleged by the US defendants.

h. **6 March 2015**: Lead Counsel executed a settlement agreement with UBS (the US Department of Justice leniency applicant, one of whose entities is another Proposed Defendant to these Proposed Collective Proceedings) on behalf of the class. This settlement was for USD 135,000,000 (subsequently amended on 5 October 2015 to USD 141,075,000) and provided for UBS to cooperate with the Class Plaintiffs.

i. **12 June 2015**: Lead Counsel proposed to file a second amended complaint (the "**Second Amended Complaint**") based on the cooperation they had received from JPMC and UBS. The Second Amended Complaint added the following additional four banks as defendants to the action: Bank of Tokyo-Mitsubishi UFJ Ltd ("**MUFG-BTMU**"); RBC Capital Markets, LLC ("**RBC**"); Société Générale S.A. ("**SocGen**"); and Standard Chartered plc. The Court granted leave for Lead Counsel to file the Second Amended Complaint on 25 June 2015 and this was subsequently filed on 16 July 2015. A third amended complaint (the "**Third Amended Complaint**") was filed on 3 June 2016. This was identical to the Second Amended Complaint but

replaced Standard Chartered plc with a different Standard Chartered entity, Standard Chartered Bank.[6]

j. **30 September to 2 October 2015**: Lead Counsel executed settlement agreements on behalf of the class with the following defendants: Barclays (USD 384,000,000), Citi (USD 402,000,000), RBS (USD 255,000,000), HSBC (USD 285,000,000), Bank of America (USD 187,500,000), BNP Paribas (USD 115,000,000), and Goldman Sachs (USD 135,000,000).

k. **20 September 2016**: In November 2015 all non-settling US defendants filed a motion to dismiss the Second Amended Complaint (as the Third Amended Complaint had not yet been filed) claiming that: (i) the Second Amended Complaint failed to adequately plead an anticompetitive agreement; (ii) certain claims were barred by the US Foreign Trade Antitrust Improvements Act; (iii) certain claims were time-barred by the statute of limitations; and (iv) the Second Amended Complaint failed to adequately plead claims under the Commodity Exchange Act ("**CEA**"). On 20 September 2016 the Court denied the motion to dismiss, save for granting the motion to dismiss with respect to: (i) transactions executed on non-US exchanges; (ii) claims based on transactions between US-domiciled claimants acting outside the US and a foreign desk of a defendant; (iii) claims based on transactions executed before 1 December 2007; and (v) CEA false reporting claims.

l. **14 February 2017**: Lead Counsel negotiated a settlement with MUFG-BTMU on behalf of the class (USD 10,500,000).

m. **28 July 2017**: Lead Counsel executed settlement agreements on behalf of the class with Morgan Stanley (USD 50,000,000), RBC (USD 15,500,000), Standard Chartered (USD 17,200,000) and SocGen (USD 18,000,000).

n. **29 September 2017**: Lead Counsel executed a settlement agreement with Deutsche Bank on behalf of the class (USD 190,000,000).

[6] Following complaints by the Standard Chartered group, the Third Amended Complaint removed Standard Chartered plc as a defendant and replaced it with Standard Chartered Bank.

o. **12 January 2018**: This was the deadline for Class Plaintiffs to file papers in support of final approval of the US Settlements and Lead Counsel's application for attorneys' fees and expenses. Accordingly, Lead Counsel filed the Joint Declaration for Settlement Approval and Attorneys' Fees at Court on this date. This document explained the work involved in the US Proceedings to date for the purposes of approving the US Settlements and paying the fees of Lead Counsel. This document notes the involvement of 33 separate law firms in the prosecution of the US Proceedings. SSAAL's involvement was by far the largest, having "*directed all aspects of the litigation and its settlement*"[7] and having by 12 January 2018 spent 74,625.20 hours on the US Proceedings,[8] Hausfeld having spent 34,949.50 hours[9] and Korein Tillery LLP having spent 41,348.68 hours.[10]

p. **7 February 2018**: Any objections to the US Settlements were due by this date from members of the class, as well as requests for permission to apply to speak at the hearing to determine whether the US Settlements were fair, reasonable and adequate (the "**Fairness Hearing**").

q. **23 April 2018**: Class Plaintiffs filed reply papers in support of final approval of the US Settlements and Lead Counsel's application for attorneys' fees and expenses.

r. **23 May 2018**: Further to paragraph 8(p) above, the Fairness Hearing, at which the Court determined whether the US Settlements were fair, reasonable and adequate, was held on this date. Three objections were submitted and heard at the Fairness Hearing, but were ultimately dismissed.

s. **6 August 2018**: The US Settlements agreed to date were approved by the Court on 6 August 2018. For ease of reference, a full list of all the US Settlements negotiated to date is included in Appendix 2 to this statement. In

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7 See the Declaration of Daryl F. Scott filed on behalf of SSAAL as part of the Joint Declaration for Settlement Approval and Attorneys' Fees (**BAH4/95**) (exhibits omitted).

8 *Ibid at* (**BAH4/97**).

9 See the Declaration of Michael D. Hausfeld filed on behalf of Hausfeld as part of the Joint Declaration for Settlement Approval and Attorneys' Fees (**BAH5/101**) (exhibits omitted).

10 See the Declaration of George A. Zelcs filed on behalf of Korein Tillery as part of the Joint Declaration for Settlement Approval and Attorneys' Fees (**BAH6/107**) (exhibits omitted).

addition, the US Plan of Distribution for the US Settlements (which is described in detail in paragraph 12 below) was approved by the Court on this date.

t. **Currently**: The US Proceedings continue against Credit Suisse, the only US defendant who has not settled. Discovery (i.e. disclosure) has been obtained from all 16 US defendants, including Credit Suisse. Class certification has not yet taken place (it is standard practice, in the US, for substantial disclosure to be obtained before class certification). All the relevant documents for class certification were filed in February 2019 and Lead Counsel, on the Lead Plaintiffs' behalf, requested a hearing on class certification to be held at the Court's discretion. No hearing has yet been scheduled. It is possible that the Court will make a decision on class certification without holding a hearing.

9. In total, Lead Counsel negotiated US Settlements totalling USD 2,310,275,000 (the "**US Settlement Fund**"). The US Plan of Distribution is currently underway and, to date, payments to approximately 50% of expected authorised claimants have been made. How the USD 2.3 billion is being distributed is summarised in the following section. I am informed by my US colleagues that they have informed the US Court that there has, to date, been a take-up rate in the US Settlements of approximately 35% by value of commerce, i.e. class members who collectively represent 35% of trading captured by the claim have come forward to collect the compensation to which they are entitled. The basis on which the US Settlements are being distributed is explained at paragraph 12 below.

II. INTERRELATIONSHIP BETWEEN THE US PROCEEDINGS AND THE PROPOSED COLLECTIVE PROCEEDINGS

10. The US Proceedings relate to, and the US Settlements resolve, claims for: (a) US domiciled entities; and (b) non-US domiciled entities to the extent that their FX trading was transacted through the US. Accordingly, to the extent that the members of the Proposed Class in the Proposed Collective Proceedings suffered losses on FX trading through the US due to anticompetitive conduct (whether the anticompetitive conduct identified by the European Commission or wider

anticompetitive conduct alleged in the US Proceedings), those losses are already subject to the US Proceedings and the US Settlements.

11. The Proposed Collective Proceedings have been crafted to ensure that there can be no double-recovery by class members through both the US Proceedings and the Proposed Collective Proceedings in this jurisdiction. For example, where a UK domiciled pension fund undertook a voice USD to GBP spot trade with a defendant bank in New York during the period to which the Proposed Collective Proceedings relates, that trade is subject to the US Proceedings and it does not form part of the Proposed Collective Proceedings. By contrast, where the same UK domiciled pension fund undertook a voice USD to GBP spot trade with a Proposed Defendant bank which was priced or accepted in London, this is not subject to the US Proceedings and instead is subject to the Proposed Collective Proceedings.

III. THE US PLAN OF DISTRIBUTION

12. After the last settlement with Deutsche Bank on 29 September 2017, class members of the US Settlements were notified and invited to submit completed claim forms. I detail below the procedural and logistical steps which have been taken in the US Plan of Distribution to date.

    a. **29 September 2017**: The notice of the class action settlement was approved by the Court (the "**Notice**") (**BAH7/109**). The Notice informed potential members of the class of the US Settlements and was sent to potential class members by the claims administrator for the US Settlements. The claims administrator was Garden City Group, LLC ("**GCG**"), which was subsequently acquired by Epiq Class Action and Claims Solutions, Inc. ("**Epiq**") on 15 June 2018. The Notice was sent to all potential class members that the US defendants identified from their data. The Notice was published in various newspapers including The Wall Street Journal, The International New York Times, The Financial Times, The Guardian (UK), FX Week, The Globe and Mail (Canada), and Investor's Business Daily. Copies were also provided to FX brokers for distribution to their clients.

b. **16 May 2018**: Class members who wished to participate in the US Settlements were required to submit claim forms. An example of the claim form is included at **BAH8/121**. The claim forms presented two options for claiming: (i) 'Option 1', under which the US claims administrator estimated the class member's eligible transaction volume using data provided by the US defendants ("**Option 1 Claims**"); or (ii) 'Option 2', under which the claims administrator estimated the class member's eligible transaction volume using data submitted by the relevant class member itself ("**Option 2 Claims**"). For Option 2 Claims, significant guidance was provided by Lead Counsel on how to submit transaction data (see **BAH9/132**). For example, templates were provided for including trade data from different instruments. These templates provided for information to be completed on: class member name, counterparty, location of executing bank, class member ID, venue, prime broker, transaction ID, FX transaction type, trade date, timestamp, time zone, trade rate, base currency, quoted currency, whether the class member bought or sold the base currency, base amount, contra amount and value date. An example of a template for spot transactions is included at **BAH10/144**.

c. As to the basis on which the US Settlements are being distributed, I understand that the basic approach taken by the claims administrator in the US is as follows. First, it determines each class member's eligible transaction volume based on either the Option 1 Claim or Option 2 Claim data. Second, it then estimates the claim value for that class member based on various weightings based upon certain trade characteristics such as currency pair and trade size, to generate the estimate of each class members' damages. In this way, the share of the US Settlements which each class member receives is broadly compensatory. This is set out in greater detail in the US Plan of Distribution filed in the US proceedings which is exhibited at **BAH11/145**.

d. In carrying out these calculations, GCG/Epiq has been assisted by Velador Associates ("**Velador**") and Ankura Consulting Group, LLC ("**Ankura**") due to the claims' complexity and the need for financial expertise in handling FX trading data.

e. **31 May 2018**: The claims administrator began the initial mailing of the claims assessment notifications. These claims assessments notifications included the transaction volume and payment estimates associated with a particular claim. These claims assessment notifications continue to be circulated on an ongoing basis.

f. **6 August 2018**: The Court granted final approval for the US Settlements and the US Plan of Distribution and Notice. In approving the US Plan of Distribution, the Court took into account the numbers of class members who submitted claim forms.

g. **8 March 2019**: The Court granted final approval of an initial distribution of the US Settlement Fund ("**Initial Distribution**"). For the Initial Distribution, there were 23,019 Option 1 Claims and 3,918 Option 2 Claims. A total of approximately USD 54,000,000 was paid out under this Initial Distribution.[11]

h. **Currently**: Further distributions are currently on hold, pending resolution of an objector's appeal of the trial court's award of attorneys' fees to the US Court of Appeals for the Second Circuit. That appeal is fully briefed.

13. In light of the Court of Appeal decision in *Merricks v Mastercard*,[12] the Proposed Representative has not at this stage instructed the experts to prepare a proposed distribution methodology. Nevertheless, I note that the US Plan of Distribution appears to provide a sound starting point for developing a distribution model for any aggregate damages which may ultimately be awarded in the Proposed Collective Proceedings. The US experience shows that it is perfectly possible to develop a workable and broadly compensatory methodology and system for distributing substantial amounts of damages to individual class members.

14. In order to promote efficiencies and costs savings, the Proposed Representative has engaged the same claims administrator as used for the US Plan of Distribution (Epiq). If further support is needed the Proposed Representative could seek to retain Velador or BDO LLP (both of whom have assisted with other elements of the expert work to date), or Ankura. Again, for the avoidance of any

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11 See the Epiq Declaration (**BAH12/184**).

12 *Walter Hugh Merricks CBE v Mastercard Incorporated & Ors* [2019] EWCA Civ 674.

doubt, to the best of my knowledge and belief, both Velador and Epiq have appropriate systems and controls in place to prevent any breach of the restrictions around the use of the US Confidential Material described at paragraph 7 above.

15. The Litigation Plan also envisages publicising the claim in some of the same newspapers and journals used for the US Notice, e.g. The Financial Times, The Guardian (UK) and FX Week.

IV. DATA OBTAINED IN THE US

16. During the course of the US Proceedings, the US defendants have produced very large quantities of information and data, by way of discovery. Specifically, I understand that, as at 12 January 2018, the following had been disclosed by the US defendants:

    a. **Documents**: The US defendants produced approximately 1.6 million documents, amounting to more than 16.5 million printable pages.[13]

    b. **Transaction data**: Additionally, the US defendants produced over 7,000 files of transaction data from over 30 different trading systems, amounting to approximately 10 billion rows, occupying 4 terabytes.[14]

    c. **Third party transaction data**: Further, Lead Counsel also obtained – pursuant to subpoenas – an additional 2.5 terabytes of data from non-party sources, including Hotspot, Reuters Matching, EBS, and WM/Reuters.[15]

17. My colleagues at SSAAL believe the transaction database to be one of the largest ever assembled for use in a single piece of litigation. To produce this database, extensive work was conducted with Velador including data 'cleaning' (as the US defendants produced the data unfiltered) and data 'normalization' (as the data came from so many sources, it had to be put into uniform data extracts). In connection with the data cleaning and normalization processes, Velador had to develop over 1,000 scripts of code.

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13 See paragraph 63 of the Joint Declaration for Settlement Approval and Attorneys' Fees (**BAH1/27**).

14 *Ibid*.

15 *Ibid.*

18. A large proportion of these documents and databases obtained in the US and referred to above constitutes US Confidential Material. The Proposed Representative, the legal and expert teams and I have not seen any such US Confidential Material, but I can confirm from my review of the publicly available sources and from conversations with SSAAL partners that the US Confidential Material (together with other information) has been used to form the basis of the expert work in the US Proceedings and to implement the US Plan of Distribution for Option 1 Claims in the US Settlement.

19. I have no reason to believe that, following disclosure in these 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.

V. ATTEMPTS TO OBTAIN DATA IN UK

20. For the purposes of the Collective Proceedings Order (***CPO***) application, SSE has sought to obtain data in the UK. Data was sought for two purposes. First, to assist the expert instructed by the Proposed Representative, Professor Francis Breedon, in formulating a methodology to quantify loss. In particular, we sought data on trading by UK domiciled entities. Second, to assist with defining the Proposed Class. Without any waiver of privilege other than in the written communications with third parties identified herein and exhibited to this statement, and to assist the Tribunal, I summarise below the results of certain of our enquiries.

21. The enquiries SSE has made to date, in relation to data on trading by UK domiciled entities, include contacting the following (email exchanges referred to in paragraphs 21 and 22 are exhibited at **BAH13/195**):

    a. **Nex (formerly known as EBS)**: We contacted Nex on 25 June 2019 to obtain access to timestamped transactional data for all FX spot trades (and, if possible, forward (non-deliverable forwards ("**NDFs**")) and option trades) conducted between 2007 and 2014. Representatives from my firm (Cian Mansfield, a Senior Associate, and Ruth Manson, an Associate) then spoke to a sales representative on 26 June 2019. After receiving no response, we

again contacted Nex on 1 July 2019. The relevant sales manager confirmed on 4 July 2019 that Nex would not sell us the data as it only sells the data to "*trading participants*".

b. **Refinitiv (formerly known as Reuters)**: We contacted Refinitiv on 25 June 2019 to obtain access to timestamped transactional data for all FX spot trades (and, if possible, forward (NDF) and option trades) conducted between 2007 and 2014. Having had no response, we emailed a contact at Refinitiv on 2 July 2019 who forwarded the request to the relevant person. The same representatives from our firm held a call with a sales person from Refinitiv on 3 July 2019. Having received no response, we again contacted Refinitiv on 11 July 2019. As at the date of this statement, we have received no response.

c. **Bank of England**: We contacted the Bank of England on 25 June 2019 to enquire as to whether it has any data on domicile of entities conducting FX trading in the UK. Having received no response, we further contacted the Bank of England on 1 and 5 July 2019. On 8 July 2019 the Bank of England confirmed that it does not have data on the domicile of trading, only where the commerce takes place. The data from the Bank of England which is available is discussed in detail in section 6 of the expert report of Professor Francis Breedon (the "**Breedon Report**").

d. **Euromoney**: We contacted Euromoney on 28 June 2019 to ask for data on domicile of entities conducting trading in the UK. One of our associates (Ruth Manson) then spoke to a sales manager from Euromoney on 2 July 2019. On 11 July 2019, Euromoney confirmed that market share and trading volume data was available for 2007 to 2013 but (further to an exchange of emails with the aforementioned SSE representatives) Euromoney informed us that it only had information on the country in which an entity is operating and not the country in which the entity is legally registered.

e. **Bank of International Settlements ("BIS")**: We contacted BIS on 4 July 2019 to ask for data on domicile of entities conducting trading in the UK. On 8 July 2019 BIS confirmed that it does not have this information.

22. The following enquiries were made by SSE in relation to data sought to help define the Proposed Class:

a. **CLS Group**: Having obtained a list of the CLS membership from the CLS Group website, we contacted the CLS Group, which provides FX settlement services (akin to clearing house services for debt and equity transactions), on 12 July 2019 to ask for historical versions of the publicly available list of CLS settlement members during the period 2007 to 2013. We sought this information to assist with our understanding of which banks could be regarded as market makers in the FX market. After seeking clarification regarding the purpose of the request on 15 July 2019, CLS confirmed on 18 July 2019 that it does not maintain records of its membership which could be easily provided to SSE. We then used an internet archive portal called the "Wayback Machine" to access historical versions of the CLS lists.

b. **Bank of England**: We requested copies of the results of the Bank of England's "Semi-Annual FX Turnover Survey" from 2007, 2010 and 2013. The only response we have had from the Bank of England on this point to date is to confirm that our enquiry has been passed on to another team within the bank. We then again used the internet archive portal called the "Wayback Machine" to access historical versions of the Bank of England website which allowed us to access the "Results of the Semi-Annual FX Turnover Survey" for 2007, 2010 and 2013. This information is discussed in section 6 of the Breedon Report.

23. However, as explained in the Breedon Report, these various third party data sources of which we have made enquiries to date are not the principal source of data that it is envisaged would be relied upon if a CPO is granted. In that situation, we would expect to obtain extensive disclosure from the Proposed Defendants.

24. The experience in the US Proceedings (which I have described at length above) indicates that the Proposed Defendants hold detailed and voluminous documentary and transactional data, which I anticipate they would be required to provide to the Proposed Representative and its experts by way of disclosure in due course if a CPO is made by the Tribunal. There is no reason I am aware of to

think that the Proposed Defendants would hold any less detailed data in relation to the Proposed Collective Proceedings than was produced in the US Proceedings.

25. In addition, should it prove necessary, the Proposed Representative could seek equivalent transactional information from non-defendant banks or from other organisations with relevant data.

VI. OTHER PROCEEDINGS IN RELATION TO FX MANIPULATION

26. I am aware that, in addition to the US Proceedings, there is litigation in relation to anticompetitive conduct in the FX market that is on foot both in England and in other jurisdictions:

a. **England**: A claim has been filed in the High Court (Commercial Court), *Allianz Global Investors GmbH v Barclays Bank plc*, case number CL-2018-000840. Based on my review of the publicly available materials, only two of the 191 claimants in those proceedings are domiciled in the UK.

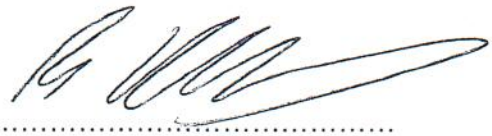
b. **Canada**: Class actions in Canada in cases CV-15-536174 (Superior Court of Ontario) and/or 200-06-000189-152 (Superior Court of Quebec), which have been settled. Information about these settlements is available at https://www.canadianfxnationalclassaction.ca/index; and

c. **Australia**: A class action in the Federal Court of Australia, J Wisbey & Associates Pty Ltd v Ubs Ag & Ors, case number VID567/2019. Information is available at https://www.mauriceblackburn.com.au/class-actions/current-class-actions/foreign-exchange-cartel-class-action/.

27. In addition, there may be other litigation in relation to anticompetitive conduct in the FX market of which I am not currently aware. To avoid any risk of double-recovery, the Proposed Class has been defined to exclude any FX trading which is subject to other litigation or settlement.

STATEMENT OF TRUTH

I believe the facts stated in this witness statement are true.



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BELINDA ANNE HOLLWAY

Date: 28 July 2019

Appendix 1: US Proceedings selected class definitions

1. Class definition in the ongoing US Proceedings against Credit Suisse described at paragraph 8t

All persons who, between December 1, 2007 and December 31, 2013 (inclusive) entered into a total of 10 or more FX spot, forward, and/or swap trades directly with one or more Defendants in the 52 Affected Currency Pairs via voice or on a single-bank platform, where Defendants provided liquidity and such persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, traded in the United States or its territories.

Excluded from the Class are the Defendants and their parents, subsidiaries, and affiliates, directors, and employees. Also excluded from these Classes are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action. Finally, trades whose prices were set on the basis of benchmark rates, such as the WM/Reuters FX closing spot rates or the ECB reference rates, are excluded.

2. Class definition in the US Settlements

All Persons who, between January 1, 2003 and December 15, 2015, entered into an FX Instrument directly with a Defendant, a direct or indirect parent, subsidiary, or division of a Defendant, a Released Defendant Party, or co-conspirator where such Persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted FX Instruments in the United States or its territories. Specifically excluded from the Direct Settlement Class are Defendants; Released Defendant Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Defendant Party, or co-conspirator; any entity in which any Defendant, Released Defendant Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Defendant Party, or co-conspirator and any person acting on their behalf; provided, however, that Investment Vehicles shall not be excluded from the definition of the Direct Settlement Class. Also excluded from the Direct Settlement Class are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this Action.

Selected Definitions:

"FX Instruments" means FX spot transactions, forwards, swaps, futures, options, and any other FX instrument or FX transaction the trading or settlement value of which is related in any way to FX rates.

"Investment Vehicles" means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but of which

a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest.

Appendix 2: US Settlements

Settling party	Execution date of settlement	Total settlement amount (USD)
Defendants to the Proposed Collective Proceedings		
Barclays	30 September 2015	384,000,000
Citi	1 October 2015	402,000,000
JPMC	5 January 2015, amended on 1 October 2015	104,500,000
RBS	2 October 2015	255,000,000
UBS	6 March 2015, amended on 5 October 2015	141,075,000
Other addresses of European Commission Decisions		
MUFG-BTMU	14 February 2017	10,500,000
Addressees of other regulatory decisions		
Credit Suisse[16]	Not settled	Not settled
HSBC[17]	1 October 2015	285,000,000
Deutsche Bank	29 July 2017	190,000,000
Bank of America	1 October 2015	187,500,000

[16] I am aware of press reports that Credit Suisse is being investigated by the European Commission in relation to collusion in a third chatroom – see Bloomberg article, *Citigroup Hit Hardest as EU Fines Banks $1.2 Billion Over FX*, Aoife White and Stephanie Bodoni, 16 May 2019 (**BAH14/221**), available at: https://www.bloomberg.com/news/articles/2019-05-16/citigroup-jpmorgan-among-banks-fined-1-2-billion-in-fx-probe.

[17] I am also aware of press reports that suggest that HSBC may be under investigation also – see Reuters article, *Seven banks face EU antitrust fines for forex rigging*, Foo Yun Chee, 9 May 2019 (**BAH15/223**), available at: https://uk.reuters.com/article/us-eu-antitrust-banks/seven-banks-face-eu-antitrust-fines-for-forex-rigging-sources-idUKKCN1SF1VJ.

Settling party	Execution date of settlement	Total settlement amount (USD)
BNP	30 September 2015	115,000,000
Goldman Sachs	1 October 2015	135,000,000
Morgan Stanley	28 July 2017	50,000,000
RBC	28 July 2017	15,500,000
Standard Chartered	27 July 2017	17,200,000
SocGen	27 July 2017	18,000,000
Total	**USD 2,310,275,000**	

Party: Applicant / Proposed Representative
Witness: B A Hollway
Number of Statement: First
Exhibit: BAH1-BAH15
Dated: 28 July 2019

Case no. _____

IN THE COMPETITION APPEAL TRIBUNAL

B E T W E E N : -

MICHAEL O'HIGGINS

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)
(5) 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

FIRST WITNESS STATEMENT OF BELINDA ANNE HOLLWAY
