

Party: Applicant / Proposed Representative
Witness: B A Hollway
Number of Statement: Second
Exhibits: BAH16-18
Dated: 28 January 2020

IN THE COMPETITION APPEAL TRIBUNAL
B E T W E E N : -

Case no. 1329/7/7/19

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

SECOND WITNESS STATEMENT OF
BELINDA ANNE HOLLWAY

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

1. I have previously provided a witness statement in relation to the above claim (the “**Claim**”) dated 28 July 2019 (my “**First Statement**”) and filed with the Competition Appeal Tribunal (the “**Tribunal**”) on 29 July 2019. This is my second witness statement in these proceedings and it is provided to the Tribunal by way of update on certain developments in matters addressed in my First Statement since my First Statement. I group the updates under the same headings as used in my First Statement.
2. As with my First Statement, I make this statement in my role as the partner with carriage of the Claim by Michael O’Higgins FX Class Representative Limited (the “**Proposed Representative**”) before the Tribunal on a collective, opt-out basis pursuant to section 47B of the Competition Act 1998 (the “**Proposed Collective Proceedings**”).
3. In this witness statement I will address the name change of my firm and two recent developments 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**”): (i) a class judgment by the US court; and (ii) the dismissal by the US Court of Appeals for the Second Circuit (the “**Second Circuit**”) of an objector’s appeal of the trial court’s award of attorneys’ fees.
4. 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.
5. There is now produced and shown to me a number of exhibits marked “**BAH16**” to “**BAH18**” respectively which comprise true copies of the documents to which I will refer in this witness statement.

6. As with my First Statement, 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 my US partner firm, Scott+Scott Attorneys At Law LLP (“SSAAL”).

I. NAME CHANGE

7. On 20 August 2019, Scott+Scott Europe LLP changed its name to Scott+Scott UK LLP. This was notified to the Tribunal on 28 August 2019 (**BAH16**).

II. CLASS CERTIFICATION IN US PROCEEDINGS

8. My First Statement provided an overview of the US Proceedings (see paragraphs 8 and 9) up to the date of the First Statement. As set out in my First Statement, 15 defendants had settled the US Proceedings (as identified in Appendix 2 of my First Statement), while the US Proceedings continued against Credit Suisse Group AG and Credit Suisse Securities (USA) LLC (together, “**Credit Suisse**”). The US Plaintiffs sought to certify two classes: (i) the “OTC Class”; and (ii) the “Exchange Class”.
9. Since my First Statement, the US District Court for the Southern District of New York (the “**US District Court**”) handed down a judgment dated 3 September 2019 (**BAH17**). In this judgment, the District Court granted class certification of the OTC Class on two specific issues: (i) the existence of a conspiracy to widen spreads in the market; and (ii) whether Credit Suisse participated in that conspiracy. This certification was under Federal Rule of Procedure 23(c)(4) which provides that “*an action may be brought or maintained as a class action with respect to particular issues*”.
10. Accordingly, the US Proceedings against Credit Suisse continue, with expert discovery concluding at the end of April 2020 and fact discovery to be completed substantially by the end of June 2020. A pre-motion conference is set for 16 July 2020 during which the District Court will determine the schedule for exchange of written submissions in relation to any summary judgment motions by Credit Suisse. Assuming the claims survive summary judgment, a trial on the

existence of a conspiracy to widen spreads and Credit Suisse's participation in the same will likely take place in early 2021.

11. However, the US District Court denied certification of the OTC Class for the purpose of determining damages pursuant to Federal Rule of Civil Procedure 23(b)(3) "*because Plaintiffs have failed to establish the predominance of common issues over issues affecting only individual OTC Class Members*", a requirement for class certification under the US rules. Specifically, the Court held that such predominance was not established given "*the necessity of individualized inquiries to determine, for each trade: (1) the location of the class members' trading activity, (2) the type of trade and (3) whether the class member or the Defendant provided liquidity*".¹ This requirement of predominance does not exist under the UK collective action regime: see *Merricks v. Mastercard* [2017] CAT 16 at [67]. The US District Court did not rule on whether a generalised proof or common formula could be employed to calculate damages.

III. DECISION UPHOLDING ATTORNEY FEES IN US PROCEEDINGS

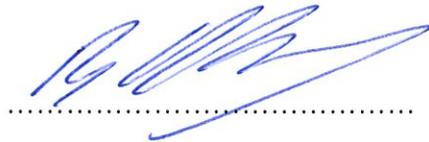
12. As set out in paragraph 9 of my First Statement, there were settlements in the US of USD 2,310,275,000 (the "**US Settlement Fund**"). At the time of my First Statement, payments to approximately 50% of expected authorised claimants had been distributed.
13. However, as set out in paragraph 12(h) of my First Statement, further distributions were on hold, pending resolution of a sole objector's appeal of the US District Court's award of attorneys' fees to the Second Circuit.
14. In a judgment dated 1 November 2019, the Second Circuit, after written and oral submissions, rejected arguments from that sole objector as to the level of attorneys' fees to be awarded to counsel. The Second Circuit issued a brief summary opinion upholding the District Court's judgment in all respects (**BAH18**).

¹ The District Court also denied certification of the Exchange Class. As the proposed Exchange Class related to those who traded futures contracts, which are not included with the scope of the Proposed Collective Proceedings, this is irrelevant to the Proposed Collective Proceedings.

15. Since the sole objector's appeal has been dismissed, distribution of the remainder of the US Settlement Fund is proceeding, with further substantial distribution projected to take place in 2020.

STATEMENT OF TRUTH

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



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BELINDA ANNE HOLLWAY

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