

## Those affected by foreign exchange spot trading cartels between 2007 and 2013 could receive redress from proposed collective claim

### NOTICE OF HEARING

*This notice is published in relation to Competition Appeal Tribunal Case No. 1336/7/7/19. The applicant in that case – referred to herein as the “Applicant” – has applied for permission to begin collective proceedings. Further information about the application appears below and can be obtained from the Tribunal’s website.*

The Applicant has filed an application for permission to bring collective proceedings against certain entities forming part of the following banking groups (or a subset of them), based upon two decisions of the European Commission (the “**Commission**”) dated 16 May 2019 finding that they had infringed EU competition law (“**Application**”):

(1) Barclays; (2) Citigroup; (3) JPMorgan; (4) MUFG Bank (formerly Bank of Tokyo-Mitsubishi); (5) Royal Bank of Scotland/NatWest; and (6) UBS.

The Applicant subsequently applied to the Tribunal for permission to amend that Application to include an additional claim against Barclays, Royal Bank of Scotland/NatWest and UBS based upon two further decisions of the Commission dated 2 December 2021 and to add two further banks to the collective proceedings, namely: (1) HSBC and (2) Credit Suisse (together with the banking groups mentioned above, the “**Banks**”) (the “**Amended Application**”).

The Consumer Rights Act 2015 allows collective proceedings to be brought on behalf of a group or groups of persons (known as a “class” or “classes”) who are alleged to have suffered loss as a result of unlawful anticompetitive conduct. For collective proceedings to be brought, the Tribunal must first make a collective proceedings order (a “**CPO**”) authorising a person to act as a representative of the class and certifying the eligibility of the claims for inclusion in collective proceedings.

The Applicant seeks the Tribunal’s permission to bring collective proceedings for damages against the Banks on behalf of a proposed class of persons who it is alleged has suffered loss due to the Banks’ participation in the infringements of EU competition law found by the Commission in its decisions of 16 May 2019 and of 2 December 2021.

Each of the Banks has admitted infringements of, or has been found by the Commission to have infringed, EU competition law in relation to foreign exchange (“**FX**”) spot trading, as is explained further below.

The Amended Application, as well as other related applications, will be determined at a hearing scheduled to take place on **26 January 2024**. In the event the Tribunal also decides to make the CPO in favour of the Applicant at that hearing, you may have a right to take part

in the Tribunal’s consideration on that matter by objecting to the making of the CPO or applying to make written submissions.

## **THE PROPOSED CLAIM**

The proposed claim relies on two decisions of the Commission dated 16 May 2019. The Commission found that, between 18 December 2007 and 31 January 2013, traders employed by certain of the Banks exchanged commercially sensitive information and trading plans and occasionally coordinated their trading strategies through various private, online professional chatrooms known as “Essex Express” and “Three Way Banana Split”, contrary to EU competition law. The commercially sensitive information exchanged in these chatrooms related to outstanding customers’ orders, bid-ask spreads, those Banks’ open risk positions and other details of current or planned trading activities in the FX market. The information exchanges enabled those Banks to make informed market decisions on whether to sell or buy the currencies they had in their portfolios on given terms and when.

On 2 December 2021, the Commission adopted two further decisions concerning certain of the Banks exchanging commercially sensitive information and trading plans and occasionally coordinated their trading strategies through a private, online professional chatroom known as “Sterling Lads”. The Commission found that this was contrary to EU competition law. The Additional Application is based upon these two decisions.

The proposed claim alleges that this conduct led to the prices of FX spot and outright forward transactions being distorted, with the result that proposed class members entered into those transactions on terms that were less advantageous to them than would otherwise have been the case in the absence of the unlawful conduct. The purpose of the claim is to secure compensation for losses suffered as a result of entering into such transactions involving the G11 currencies with any of the Banks and/or other relevant financial institutions, which are identified at the end of this Notice.

For further information on the claim, please see the following links:

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| <b>Competition Appeal Tribunal Website</b><br><a href="https://tinyurl.com/EvansCATSummary">https://tinyurl.com/EvansCATSummary</a> |
| <b>Claim Website</b><br><a href="http://www.fxclaimuk.com">www.fxclaimuk.com</a>  |

## **THE APPLICANT**

When considering the question of certification – which is not automatically granted – the Tribunal must consider whether the Applicant would be suitable to represent the proposed class.

## THE PROPOSED CLASS DEFINITION

The Applicant has defined the class in his proposed claim. In summary, the proposed claim is brought on behalf of persons who, during the period from 18 December 2007 to 31 January 2013, entered into certain FX spot and outright forward transactions (other than certain excluded transactions) involving G11 currency pairs with the Banks and/or other relevant financial institutions (which are identified at the end of this Notice) in the European Economic Area (other than as an intermediary).

If the claim is certified: those persons who are domiciled in the UK and fall within the class definition of the claim would automatically be included in that claim, and would be bound by any judgment or settlement, unless they choose to opt out. Those who are not domiciled in the UK but wish to participate in the claim would have the opportunity to opt in to the claim.

## HEARING

A hearing for the Amendment Application, and certain other applications will take place on **26 January 2024**.

The location of the hearing will be: Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London, EC4Y 8AP.

## YOUR OPTIONS

In the event that the Tribunal considers making the CPO at the hearing on 26 January 2024, any person with an interest (including a member of the proposed classes) may object to the proposed claim being brought on a collective basis or to apply to make written submissions for the Tribunal's consideration.

The Tribunal's contact details are below:

The Registrar, Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP. The Tribunal's website is [www.catribunal.org.uk](http://www.catribunal.org.uk).

When writing to the Tribunal you need to include the reference "Case 1336/7/7/19 *Phillip Evans v Barclays Bank PLC and Others*".

## RELEVANT FINANCIAL INSTITUTIONS

The proposed claim includes certain FX spot and outright forward transactions entered into with the Banks and/or other relevant financial institutions. A full list of the relevant financial institutions included in the proposed claim is set out in the table below.

|   |   |  |
|---|---|--|
| 1. ABN Amro                                   | 22. Crédit Agricole CIB   | 42. Nationwide Building Society*         |
| 2. Adam & Co                                  | 23. Credit Suisse   | 43. Natwest / Royal Bank of Scotland     |
| 3. ANZ  | 24. Danske Bank*  | 44. Nomura                               |
| 4. Banco Bilbao Vizcaya Argentaria SA (BBVA)* | 25. Deutsche Bank   | 45. Norinchukin Bank*                    |
| 5. Bank of America                            | 26. Goldman Sachs   | 46. Rabobank                             |
| 6. Bank of America Merrill Lynch              | 27. Halifax Bank of Scotland (HBOS)                             | 47. Royal Bank of Canada                 |
| 7. Bank of China*                             | 28. HSBC  | 48. Skandinaviska Enskilda Banken        |
| 8. Bank of Montreal*                          | 29. Hypovereinsbank (HVB)                                       | 49. Société Générale                     |
| 9. Bank of New York Mellon                    | 30. ING Bank  | 50. Standard Chartered                   |
| 10. Bank of Nova Scotia*                      | 31. ICBC Standard Bank*   | 51. State Street                         |
| 11. Bank of Scotland                          | 32. JP Morgan   | 52. Sumitomo Mitsui Banking Corporation* |
| 12. Barclays                                  | 33. Lehman Brothers   | 53. Svenska Handelsbanken*               |
| 13. BNP Paribas                               | 34. Lloyds Banking Group  | 54. Toronto-Dominion                     |
| 14. Canadian Imperial Bank of Commerce*       | 35. Lloyds TSB  | 55. Unicredit                            |
| 15. Calyon                                    | 36. Macquarie Bank*   | 56. UBS                                  |
| 16. CIBC World Markets*                       | 37. Merrill Lynch   | 57. Westpac Banking Corporation          |
| 17. Citigroup / Citibank                      | 38. Mitsubishi Union Financial Group / Bank of Tokyo Mitsubishi |  |
| 18. China Construction Bank*                  | 39. Mizuho Corporate Bank*                                      |  |
| 19. Commerzbank*                              | 40. Morgan Stanley  |  |
| 20. Commonwealth Bank of Australia            | 41. National Australia Bank                                     |  |
| 21. Coutts & Co                               |   |  |

For the avoidance of doubt, the Applicant does not allege that all the financial institutions on this list were involved in anticompetitive conduct, simply that the anticompetitive conduct by the Banks identified in the Commission's Decisions affected pricing by all these entities, even those not involved in any anticompetitive conduct.