

BETWEEN:

PHILLIP EVANS

Applicant
Proposed Class Representative

- and -

- (1) BARCLAYS BANK PLC
- (2) BARCLAYS CAPITAL INC.
- (3) BARCLAYS PLC
- (4) BARCLAYS EXECUTION SERVICES LIMITED
- (5) CITIBANK, N.A.
- (6) CITIGROUP INC.
- (7) MUFG BANK, LTD
- (8) MITSUBISHI UFJ FINANCIAL GROUP, INC.
- (9) J.P. MORGAN EUROPE LIMITED
- (10) J.P. MORGAN LIMITED
- (11) JPMORGAN CHASE BANK, N.A.
- (12) JPMORGAN CHASE & CO
- (13) NATWEST MARKETS PLC
- (14) NATWEST GROUP PLC
(FORMERLY THE ROYAL BANK OF SCOTLAND GROUP PLC)
- (15) UBS AG
- (16) HSBC HOLDINGS PLC
- (17) HSBC BANK PLC
- (18) UBS GROUP AG
(AS SUCCESSOR TO CREDIT SUISSE GROUP AG)
- (19) CREDIT SUISSE AG
- (20) CREDIT SUISSE SECURITIES (EUROPE) LIMITED

Respondents
Proposed Defendants

[DRAFT] COLLECTIVE PROCEEDINGS ORDER

UPON the application of the Applicant dated 11 December 2019 for a collective proceedings order (the “**CPO Application**”) pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648, the “**Tribunal Rules**”).

AND UPON [the applications made by the Applicant dated 14 December 2023 under Rule 32 to introduce] [the First to Fifteenth Defendants consenting under Rule 32 to the Applicant introducing] into the CPO Application claims against the First, Third and Fourth Defendants (“**Barclays**”), the Thirteenth and Fourteenth Defendants (“**RBS**”) and the Fifteenth Defendant (“**UBS**”) based upon the Sterling Lads Settlement Decision adopted by the European Commission (“**Commission**”) on 2 December 2021.

AND UPON the application made by the Applicant dated 14 December 2023 under Rule 38 of the Tribunal Rules to join the Sixteenth and Seventeenth Proposed Defendants (“**HSBC**”) and to introduce claims against HSBC into the CPO Application.

AND UPON the applications made by the Applicant dated 14 December 2023 under Rule 38 of the Tribunal Rules to join the Eighteenth, Nineteenth and Twentieth Proposed Defendants (“**Credit Suisse**”) to introduce claims against Credit Suisse into the CPO Application and under Rule 31(3) the CAT Rules 2003 (as applied by Rule 119(2)-(3)) for permission to make those claims.

AND UPON the applications made by the Applicant dated 14 December 2023 under Rules 32 and/or 38 of the Tribunal to re-amend the Amended Collective Proceedings Claim Form, including to amend the class definition.

AND UPON reading the material submitted by the parties.

AND UPON hearing counsel for all parties at a hearing on [DATE].

AND UPON the Tribunal having given judgment on [DATE] on the CPO Application.

IT IS ORDERED THAT:

Forum

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, these collective proceedings be treated as proceedings in England and Wales.

Authorisation of Class Representative

2. Pursuant to section 47B of the Competition Act 1998 and Rules 77 and 80 of the Tribunal Rules, Phillip Gwyn James Evans is, as from the date of this Order, authorised to act as the Class Representative to continue collective proceedings on an opt-out basis against the Respondents/Proposed Defendants (hereafter “**the Defendants**”).

3. The claims certified for inclusion in these collective proceedings are those set out in the Re-Amended Collective Proceedings Claim Form dated 14 December 2023. They are claims on behalf of the Classes for loss and damage suffered as a result of ~~two~~ infringements of Article 101(1) TFEU and Article 53(1) EEA as determined by the European Commission in the following Decisions:
 - a. Commission Decision in Case AT.40135-FOREX (Three Way Banana Split) C(2019) 3631 final. dated 16 May 2019;
 - b. Commission Decision in Case AT.40135-FOREX (Essex Express) C(2019) 3621 final, dated 16 May 2019;
 - c. Commission Decision in Case AT40135-FOREX (Sterling Lads – settlement) C(2021) 8613 final, dated 2 December 2021; and
 - d. Commission Decision in Case AT40135-FOREX (Sterling Lads – ordinary) C(2021) 8612 final, dated 2 December 2021.
4. The remedies sought in these collective proceedings are:
 - a. An aggregate award of damages for each of the Classes, pursuant to section 47C(2) of the Competition Act 1998;
 - b. Interest;
 - c. Costs; and
 - d. Such further and other relief as the Tribunal may think fit.
5. The Applicant's address for service be Hausfeld & Co. LLP (attention: David Lawne / Rachael Baillie), 12 Gough Square, London, EC4A 3DW.

The Defendants

6. The First Defendant is Barclays Bank Plc of 1 Churchill Place, London, E14 5HP.
7. The Second Defendant is Barclays Capital Inc. of 745 Seventh Avenue, New York, NY, 10019, United States of America.
8. The Third Defendant is Barclays Plc of 1 Churchill Place, London, E14 5HP.
9. The Fourth Defendant is Barclays Execution Services Limited of 1 Churchill Place, London, E14 5HP.

10. The Fifth Defendant is Citibank N.A. of 388 Greenwich Street, New York, NY 10 013, United States of America.
11. The Sixth Defendant is Citigroup Inc. of 388 Greenwich Street, New York, NY 10 013, United States of America.
12. The Seventh Defendant is MUFG Bank, Ltd. of 2-7-1, Marunouchi, Chiyoda-ku, Tokyo 100-8388, Japan.
13. The Eighth Defendant is Mitsubishi UFJ Financial Group, Inc. of 2-7-1, Marunouchi, Chiyoda-ku, Tokyo 100-8330, Japan.
14. The Ninth Defendant is J.P. Morgan Europe Limited of 25 Bank Street, Canary Wharf, London, E14 5JP.
15. The Tenth Defendant is J.P. Morgan Limited of 25 Bank Street, Canary Wharf, London, E14 5JP.
16. The Eleventh Defendant is JPMorgan Chase Bank N.A. of 1111 Polaris Parkway, Columbus, Ohio 43 240, United States of America.
17. The Twelfth Defendant is JPMorgan Chase & Co of 383 Madison Avenue, New York, NY 10179, United States of America.
18. The Thirteenth Defendant is NatWest Markets Plc of 36 St. Andrew Square, Edinburgh, Scotland, EH2 2YB.
19. The Fourteenth Defendant is NatWest Group plc of 36 St. Andrew Square, Edinburgh, Scotland, EH2 2YB.
20. The Fifteenth Defendant is UBS AG of Bahnhofstraße 45, 8001 Zürich, Switzerland.
21. The Sixteenth Defendant is HSBC Holdings PLC of 8 Canada Square, London, E14 5HQ.
22. The Seventeenth Defendant is HSBC Bank PLC of 8 Canada Square, London, E14 5HQ.
23. The Eighteenth Defendant is UBS Group AG as the successor company to Credit Suisse Group AG of Bahnhofstraße 45, 8001 Zürich, Switzerland.
24. The Nineteenth Defendant is Credit Suisse AG of One Cabot Square, London, E14 4QJ.

25. The Twentieth Defendant is Credit Suisse Securities (Europe) Limited of One Cabot Square, London, E14 4QJ.

Definitions

26. Defined terms in this Order shall have the meanings given to them in the Schedule of Defined Terms, attached to this Order.

Classes

27. The Classes be defined as follows:

Class A

All Persons who entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) where each of those same transaction(s):

(a) Was entered into, directly or indirectly via an Intermediary:

- i. With a Defendant, during that Defendant's Relevant Class A Period;
- ii. In the European Economic Area; and

(b) Involved a currency pair consisting of two G10 Currencies.

Class A does not include Excluded Persons and Excluded Transactions.

Class B

All Persons who entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) where each of those same transaction(s):

(a) Was entered into, directly or indirectly via an Intermediary:

- i. With a Relevant Financial Institution, between 18 December 2007 and 31 January 2013, and/or a Defendant during that Defendant's Relevant Class B Period;
- ii. In the European Economic Area; and

(b) Involved a currency pair consisting of two G10 Currencies.

Class B does not include Excluded Persons and Excluded Transactions.

Exclusions

28. For the avoidance of doubt, Excluded Persons and Excluded Transactions shall be excluded from the Classes.

Opting-out and Opting-in

29. These collective proceedings shall be designated as opt-out collective proceedings pursuant to section 47B(7)(c) of the Competition Act 1998.
30. Pursuant to Rule 80(1)(g) of the Tribunal Rules, the date for the purposes of determining whether a person is domiciled in the United Kingdom (the “**Domicile Date**”) be [DATE].
31. Any person domiciled in the United Kingdom on the Domicile Date that falls within the Classes as defined in paragraph 27 shall be included in these collective proceedings unless they opt-out. If a person wishes to opt-out of these collective proceedings, they must:
 - a. Follow the procedure set out in the Collective Proceedings Order Notice, which is attached to this Order; and
 - b. Notify their decision to opt-out of these collective proceedings by 4pm on [DATE – it is proposed this be at least three months after the Domicile Date].
32. Any person that is not domiciled in the United Kingdom on the Domicile Date and would otherwise fall within the Classes shall not be included in these collective proceedings unless they opt-in. If a person wishes to opt-in to these collective proceedings, they must:
 - a. Follow the procedure set out in the Collective Proceedings Order Notice, which is attached to this Order; and
 - b. Notify their decision to opt-in to these collective proceedings by 4pm on [DATE – it is proposed this be at least three months after the Domicile Date].

Publicity

33. The Class Representative shall publicise the making of this Order:
 - a. By publishing the Collective Proceedings Order Notice, attached to this Order;
 - b. In accordance with:
 - i. The proposal set out in paragraphs 71 - 75 of the Amended Collective Proceedings Litigation Plan exhibited at Exhibit PGE21 to the Fourth Witness Statement of Phillip Gwyn James Evans dated 18 December 2023; and

- ii. The proposal set out in section 6 of the Angeion Plan at Annex 1 of the Amended Collective Proceedings Litigation Plan.

Further directions

34. The Defendants file and serve their Defences by 4pm on [DATE].
35. The Class Representative file and serve any Reply by 4pm on [DATE].

General

36. [Costs be reserved].
37. There be liberty to apply.

Schedule of Defined Terms

Defined terms in this Order shall have the following meanings:

1. An FX Spot Transaction and/or an FX Outright Forward Transaction is “**entered into... in the European Economic Area**” where:

- (a) The Defendant or Relevant Financial Institution entering into that transaction is located in the European Economic Area.

For these purposes, a Defendant or Relevant Financial Institution is located in the European Economic Area where their individual representative, sales desk or other business unit (such as an agency, branch or office) entering into the transaction is located in the European Economic Area.

and/or

- (b) The class member entering into the transaction is located in the European Economic Area.

For these purposes, a class member domiciled in the European Economic Area shall be considered located there.

For the avoidance of doubt, the above definition applies irrespective of whether the class member entered into an FX Spot Transaction and/or FX Outright Forward Transaction with a Defendant or Relevant Financial Institution directly or indirectly via an Intermediary.

2. “**European Economic Area**” means the then 27 Member States of the European Union as at 31 January 2013, and Iceland, Liechtenstein and Norway.

3. “**Excluded Persons**” means the following persons:

- (a) Relevant Financial Institutions.

- (b) Any person that has participated in the Bank of International Settlements’ Triennial Central Bank Survey of Foreign Exchange Turnover as a “*Reporting dealer*”.

- (c) The Defendants, including:

- a. Their subsidiaries, holding companies and any subsidiaries of those holding companies; and

b. Any other entities: (i) which have a controlling interest in a Defendant; and/or (ii) in which a Defendant has such an interest.

- (d) Officers, directors and employees of any entity referred to in point (c).
- (e) Members and staff of the Competition Appeal Tribunal assigned to these proceedings.
- (f) Members and staff of any other court (such as an appellate court) that may from time to time hear any matter arising in these proceedings.
- (g) The Class Representative's and Defendants' legal representatives, as well as any experts or other professional advisers instructed by them in these proceedings, including the professional staff assisting them.

4. **“Excluded Transactions”** means the following transactions:

- (a) Transactions entered into in a retail branch. Such transactions include, but are not limited to, transactions at a “travel money desk” or a “*bureau de change*”.
- (b) Online purchases of currency for Non-Commercial Purposes.
- (c) Transfers of funds denominated in different currencies across any two bank accounts for Non-Commercial Purposes.
- (d) Transactions involving an automated teller machine (or “**ATM**”).
- (e) Transactions involving a foreign currency using a credit card, debit card, prepaid card or other stored value card.
- (f) Transactions that the class member entered into as an Intermediary.
- (g) Transactions to execute an FX Spot Transaction and/or FX Outright Forward Transaction at a specific foreign exchange benchmark rate, such as the WM/Reuters Closing Spot Rates and the European Central Bank foreign exchange reference rates.
- (h) Transactions resulting from a class member leaving a limit order or a resting order (such as a “take profit” or “stop loss” order).
- (i) Any transaction which is the subject of ongoing litigation or a binding settlement which would otherwise fall within Class A or Class B (with the

exception of any claims covered by other applications for a Collective Proceedings Order before the Competition Appeal Tribunal). For the avoidance of doubt, this includes, but is not limited to, transactions which are included in the following proceedings:

- i. *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*, filed before the United States District Court, Southern District of New York under case number 1:13-cv-07789-LGS.
 - ii. The *Canadian FX National Class Action*, which comprises actions commenced in the Ontario Superior Court of Justice under Court File No. CV-15-536174 and the Superior Court of Quebec under Court File No. 200-06-000189-152.
 - iii. *J Wisbey & Associates Pty Ltd v UBS AG and others*, filed before the Federal Court of Australia under Case Number VID567/2019.
5. **“FX Spot 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) within two business days.
6. **“FX 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) more than two business days later but excluding Forward Foreign Exchange Agreements (FXAs), Non-Deliverable Forwards (NDFs) and forward Contracts for Differences (CFDs).
7. **“G10 Currencies”** means the British Pound (GBP), Euro (EUR), Japanese Yen (JPY), Swiss Franc (CHF), United States Dollar (USD), Canadian Dollar (CAD), New Zealand Dollar (NZD), Australian Dollar (AUD), Danish Krone (DKK), Norwegian Krone (NOK) and Swedish Krona (SEK).
8. **“Intermediary”** means any person entering into an FX Spot Transaction and/or an FX Outright Forward Transaction on behalf of a third party.
9. A transaction is entered into for **“Non-Commercial Purposes”** where the reason(s) for entering into the transaction are not connected to any business, speculative or investment purpose.
10. **“Person”** means a legal or natural person who has entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) as defined under Class A

or Class B and, in the event that that person’s title to bring the claim in relation to one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) as defined under Class A or Class B now vests in a third party (including because the person who entered into the transaction no longer exists), their successor(s) in title, including the Crown.

11. Where a legal person is or has been recorded as dissolved in the Register of Companies kept at Companies House, that legal person will be considered as having ceased to exist unless they have been restored to the Register.
12. **“Relevant Financial Institution”** means any entity forming part of a banking group identified in the List of Relevant Financial Institutions attached to this Order.
13. A **“Defendant’s Relevant Class A Period”** and a **“Defendant’s Relevant Class B Period”** comprises the periods set out in the table below:

Defendant	Relevant Class A Period	Relevant Class B Period
Barclays Bank Plc Barclays Plc Barclays Execution Services Limited	18 December 2007 – 1 August 2012	2 August 2012 – 31 January 2013
Barclays Capital Inc.	14 December 2009 – 31 July 2012	18 December 2007 – 13 December 2009 <u>and</u> 1 August 2012 – 31 January 2013
Citibank N.A. Citigroup Inc.	18 December 2007 – 31 January 2013	None.
MUFG Bank, Ltd. Mitsubishi UFJ Financial Group, Inc	8 September 2010 – 12 September 2011	18 December 2007 – 7 September 2010 <u>and</u> 13 September 2011 – 31 January 2013
J.P. Morgan Europe Limited J.P. Morgan Limited JPMorgan Chase & Co. JPMorgan Chase Bank N.A.	26 July 2010 – 31 January 2013	18 December 2007 – 25 July 2010
NatWest Markets Plc NatWest Group plc (formerly The Royal Bank of Scotland Group Plc)	18 December 2007 – 19 April 2010 <u>and</u> 14 September 2010 – 12 July 2012	20 April 2010 – 13 September 2010 <u>and</u> 13 July 2012 – 31 January 2013
UBS AG	14 December 2009 – 31 January 2013	18 December 2007 – 13 December 2009

<p>HSBC Holdings plc HSBC Bank plc</p>	<p>25 May 2011 – 26 June 2012</p>	<p>18 December 2007 – 24 May 2011 and 27 June 2012 – 31 January 2013</p>
<p>UBS Group AG (as successor to Credit Suisse Group AG) Credit Suisse AG Credit Suisse Securities (Europe) Limited</p>	<p>7 February 2012 - 12 July 2012</p>	<p>18 December 2007 – 6 February 2012 and 13 July 2012 – 31 January 2013</p>

List of Relevant Financial Institutions

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. ABN AMRO 2. Adam & Co 3. ANZ 4. Banco Bilbao Vizcaya Argentaria SA (BBVA) 5. Bank of America 6. Bank of America Merrill Lynch 7. Bank of China 8. Bank of Montreal 9. Bank of New York Mellon 10. Bank of Nova Scotia 11. Bank of Scotland 12. Barclays¹ 13. BNP Paribas 14. Canadian Imperial Bank of Commerce 15. Calyon 16. CIBC World Markets 17. Citigroup / Citibank² 18. China Construction Bank 19. Commerzbank 20. Commonwealth Bank of Australia 21. Coutts & Co 22. Crédit Agricole CIB 23. Credit Suisse³ 24. Danske Bank 25. Deutsche Bank 26. Goldman Sachs 27. Halifax Bank of Scotland (HBOS) 28. HSBC⁴ | <ol style="list-style-type: none"> 29. Hypovereinsbank (HVB) 30. ING Bank 31. ICBC Standard Bank 32. JP Morgan⁵ 33. Lehman Brothers 34. Lloyds Banking Group 35. Lloyds TSB 36. Macquarie Bank 37. Merrill Lynch 38. Mitsubishi Union Financial Group / Bank of Tokyo Mitsubishi⁶ 39. Mizuho Corporate Bank 40. Morgan Stanley 41. National Australia Bank 42. Nationwide Building Society 43. NatWest / Royal Bank of Scotland⁷ 44. Nomura 45. Norinchukin Bank 46. Rabobank 47. Royal Bank of Canada 48. Skandinaviska Enskilda Banken 49. Société Générale 50. Standard Chartered 51. State Street 52. Sumitomo Mitsui Banking Corporation 53. Svenska Handelsbanken 54. Toronto-Dominion 55. Unicredit |
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¹ Excluding Barclays Bank Plc, Barclays Capital Inc., Barclays Plc and Barclays Execution Services Limited.

² Excluding Citibank N.A. and Citigroup Inc.

³ Excluding UBS Group AG (in its capacity as successor to Credit Suisse Group AG), Credit Suisse AG and Credit Suisse Securities (Europe) Limited.

⁴ Excluding HSBC Holdings PLC and HSBC Bank PLC.

⁵ Excluding J.P. Morgan Europe Limited, J.P. Morgan Limited, JPMorgan Chase & Co and JPMorgan Chase Bank, N.A.

⁶ Excluding MUFG Bank, Ltd and Mitsubishi UFJ Financial Group, Inc.

⁷ Excluding NatWest Markets Plc and the Royal Bank of Scotland Group Plc.

56. UBS⁸

57. Westpac Banking Corporation

⁸ Excluding UBS AG.