CONFIDENTIAL INFORMATION REDACTED

IN THE COMPETITION APPEAL TRIBUNAL **Case Number: 1336/7/7/19**

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

Proposed Defendants

RE-AMENDED COLLECTIVE PROCEEDINGS CLAIM FORM

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY

1. This is an application for a Collective Proceedings Order (**"CPO"**) pursuant to section 47B Competition Act 1998 (the **"Act"**) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (SI 1648/2015, the **"CAT Rules"**). Mr Phillip Evans is the Proposed Class Representative.

2. The claims which it is proposed to combine in the Proposed Collective Proceedings are "follow-on" claims under section 47A of the Act. They are claims for damages caused by the Proposed Defendants' breaches of statutory duty in infringing Article 101 TFEU and Article 53 of the EEA Agreement, as determined by the European Commission (**"the Commission"**) in ~~two~~ four Decisions (**"the Decisions"**) ~~adopted on 16 May 2019~~:

   a. Commission Decision in Case AT.40135-FOREX (Three Way Banana Split) C(2019) 3631 final, adopted on 16 May 2019 (the **"Three Way Banana Split Decision"** or **"TWBS Decision"**); ~~and~~

   b. Commission Decision in Case AT.40135-FOREX (Essex Express) C(2019) 3621 final, adopted on 16 May 2019 (the **"Essex Express Decision"** or **"EE Decision"**); ~~.~~

   c. Commission Decision in Case AT.40135 FOREX (Sterling Lads) C(2021) 8613 final, adopted on 2 December 2021 (the **"Sterling Lads Settlement Decision"** or **"STG Lads Settlement Decision"**); and

   d. Commission Decision in Case AT.40135 FOREX (Sterling Lads) C(2021) 8612 final, adopted on 2 December 2021 (the **"Sterling Lads Ordinary Decision"** or **"STG Lads Ordinary Decision"**).

2A. The TWBS Decision, the EE Decision and the Sterling Lads Settlement Decision are referred to, collectively, as the **"Settlement Decisions"**.

2B. Each of the Decisions concerns the participation by employees of the addressees of the relevant Decision (which were foreign exchange dealers) in private, multilateral online "chatrooms" in which the participants, amongst other things, engaged in extensive and recurrent exchanges of current or forward-looking commercially sensitive information: see paragraphs 13 - 16 and 182 – 183D below. In each Decision, the Commission found that the undertakings concerned accordingly

infringed Article 101 TFEU and Article 53 EEA: see paragraphs 15 - 16 and 180 - 183 below.

2C. The findings made by the Commission in the Decisions, including that the addressees of each Decision committed the infringements found therein will be relied upon at trial for their full meaning and effect. Each of the Settlement Decisions has become final and is binding on the Tribunal and the relevant addressees thereof: see paragraphs 172, 174 – 174A and 242 below. Further, as the addressees of each Settlement Decision unequivocally admitted their participation in the infringements found therein (see paragraphs 16 and 176 below), those admissions and the findings of fact made by the Commission in the Settlement Decisions are binding on those Proposed Defendants.

2D. The Settlement Decisions are in abbreviated form: see paragraphs 21 and 177 – 177B below. However, Credit Suisse (as defined in paragraph 63I below) refused to participate in the Commission's settlement procedure: see paragraph 177A below. The Commission therefore undertook a full investigation into Credit Suisse's participation (with Barclays, RBS, UBS and HSBC, as defined in paragraphs 36, 58, 62 and 63C below, respectively) in the Sterling Lads chatroom, leading to the adoption of both the Sterling Lads Settlement Decision (addressed to Barclays, RBS, UBS and HBSC) and the Sterling Lads Ordinary Decision (addressed to Credit Suisse). The two decisions concern the same conduct and the same complex, single and continuous infringement (see paragraph 183A below), albeit that the Commission found Credit Suisse liable only for the extensive and recurrent exchanges of current or forward-looking competitively sensitive information in the Sterling Lads chatroom (see paragraphs 183A – 183C, 203B, 230F, 237D, 240A and 242 - 243 below).

2E. Each Infringement was based upon the participation by FX traders employed by the Proposed Defendants in a private, multilateral Bloomberg professional chatroom. The participating traders engaged in extensive and recurrent exchanges of confidential and competitively sensitive current and forward-looking information for their own, mutual benefit: see paragraphs 195 – 201L below (as to the evolution, membership and functioning of each chatroom), 202 - 207 and 222 – 223A (as to the arrangements and "*underlying understanding*" reached by the participants in each chatroom), 208 – 215D and 224 – 224B (as to the extensive exchange of information in each chatroom) and 216 – 219A (as to occasional instances of explicit coordination between the participants in each chatroom).

2F. Accordingly, the Proposed Class Representative will rely on the Sterling Lads Ordinary Decision solely to establish Credit Suisse's liability for the Infringement the Commission found it committed therein.

3. The Proposed Collective Proceedings are brought on an opt-out basis, on behalf of two classes (**"the Proposed Classes"**) and seek an aggregate award of damages for each class. The Proposed Classes are described in detail at paragraphs 71 - 112 below. In overview, one class concerns those who transacted directly with the Proposed Defendants during their participation in the infringements of Article 101 TFEU and Article 53 of the EEA Agreement identified in the Decisions (collectively, **"the Infringements"**) and the other class concerns those who transacted either with the Proposed Defendants during the periods when they did not participate in the Infringements or with certain entities that did not participate in the Infringements.[1]

The Proposed Collective Proceedings in outline

Foreign exchange trading: overview[2]

4. The Proposed Collective Proceedings concern the trading of currencies of certain ~~different~~ countries (as explained below, currencies known as the "G10 Currencies"[2A]), known as foreign exchange and often referred to in shorthand as **"Forex"** or **"FX"**. An overview of foreign exchange (FX) trading is provided below, with more detailed information being provided in paragraphs 184 - 194 below.

An overview of an FX transaction[3]

5. FX transactions are made on an "over-the-counter" basis, such that there is no central regulatory authority[3A] or exchange. FX trading involves the exchange of a sum of

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1 ~~This also includes the Proposed Defendants during the periods they did not participate in the Infringements.~~ See further paragraph 100 below.

2 This section of the Re-Amended Collective Proceedings Claim Form is intended solely as an overview of foreign exchange trading in order to provide context to the material that follows. A fuller description of FX trading, which details: (i) the elements of an FX transaction, including the currencies and instruments involved; (ii) the participants in FX trading; and (iii) the methods of FX trading, can be found in the first expert report of Richard Knight ("**First Knight Report**")~~, served with this Collective Proceedings Claim Form~~. See also recitals 6 – 16 of the STG Lads Ordinary Decision.

2A See paragraph 10 below.

3 See, for further information, section 4.1 of the First Knight Report ~~expert report of Richard Knight~~.

3A STG Lads Ordinary Decision, recital 25.

money in one currency for a sum of money in another currency at a particular rate, such that there is an "exchange" of the two currencies.[3B] A customer seeking to enter into an FX transaction will do so through an institution offering FX trading services (referred to in this Re-Amended Collective Proceedings Claim Form as an **"FX Dealer"**).[4] As explained by Arnold J in a recent judgment, there are two main ways in which a customer can transact with an FX Dealer:[5]

> *There is no particular magic to a foreign exchange transaction, but there are some terms of art. The provider can provide a quote, which the client can accept or reject; or the client can simply request the provider to buy or sell the requisite currency or currency [sic]. In the first case, the trade is completed when the client accepts the quote; in the second, it is completed when the provider accepts the request. Following the trade, a confirmation will be issued to the client containing details of the trade and of settlement instructions, if they have been provided. It is normal practice (and in accordance with the UK and US codes of practice) for individual foreign exchange trades (other than kiosk trades involving cash settlement) to be carried out against the background of a written master agreement.*

6. The two currencies involved in a particular transaction are quoted in pairs, known as a "currency pair",[5A] which consists of a "base" currency and a "quote" currency. A currency pair is displayed in the form "*[Base Currency] / [Quote Currency]*". For example, EUR/USD means that the Euro is the base currency, and the US Dollar is the quote currency.

7. The price of an FX transaction is stated as the amount of the quote currency it would take to purchase or sell one unit of the base currency.[5B] For example, a price of "EUR/USD 1.1105" means that the cost of €1 is $1.1105.[6]

[3B] See recital 6 of the STG Lads Ordinary Decision.

[4] Alternatively, FX transactions can be entered into with an FX Dealer via certain types of intermediaries. See section 5.4 of the First Knight Report ~~expert report of Richard Knight~~. See also recital 8 of the STG Lads Ordinary Decision.

[5] *Janus Capital Management LLC v Safeguard World International Limited* [2016] EWHC 1355 (Ch), [44].

[5A] STG Lads Ordinary Decision, recital 9. This is because an FX trade involves buying and selling two underlying currencies, each of which is valued in relation to the other.

[5B] See recital 10 of the STG Lads Ordinary Decision.

[6] Prices are usually quoted to five significant digits, with the final (or smallest) digit known as a "pip" (which is short for "Price Increment Point"). Therefore, if the price of EUR/USD were to increase from 1.110**5** to 1.110**6**, it can be said that the price has increased by one pip. See also STG Lads Ordinary Decision, recital 10.

8. A price for an FX transaction is typically quoted as a "two-way" price,[6A] which consists of:

   a. A "bid" price, which is the price (in the quote currency) at which the FX Dealer offers to buy the base currency; and

   b. An "ask" or ("offer") price, which is the price (in the quote currency) at which the FX Dealer offers to sell the base currency.

9. The difference between the bid price and the ask price is known as the "bid-ask spread". Generally, an FX Dealer aims to buy currency at a low price (i.e. the bid price), and sell it at a higher price (i.e. the ask price), thereby generating a return on its activities. As the Commission explains, "*FX traders make money by selling a currency against another at a higher price than that at which they bought it. Trading revenue therefore depends on the amount of currency volume traded and on the difference between the purchase price and the sale price of the same currency (the 'bid-ask spread'…)*".[6B] As such, FX Dealers will prefer wider bid-ask spreads, as this would increase the potential return that could be made on their activities.

Currencies involved in FX transactions[7]

10. The most frequently traded currencies in FX transactions are known as the "**G10 Currencies**",[8] which are the:[9] Euro (EUR); British Pound (GBP); Japanese Yen (JPY); Swiss Franc (CHF); US Dollar (USD); Canadian Dollar (CAD); New Zealand Dollar (NZD); Australian Dollar (AUD); Danish Krone (DKK); Swedish Krona (SEK); and Norwegian Krone (NOK).

6A See recital 8 of the STG Lads Ordinary Decision.

6B STG Lads Ordinary Decision, recital 23.

7 See, for further information, section 4.2 of the First Knight Report ~~expert report of Richard Knight~~.

8 While there are 11 currencies listed in this paragraph, the term "G10 Currencies" is used to describe these currencies by market convention. See further paragraphs 15 – 15B below.

9 Each currency has its own designated three letter "code" which was established in a standard first published by the International Organization for Standardization in 1978: ISO 4217. These codes are widely known and commonly used in trade, commerce and banking globally. Each currency listed in this paragraph has its relevant currency code identified in brackets.

11. If an FX transaction involves the exchange of sums of money in two G10 Currencies, that transaction can be said to involve a **"G10 Currency Pair"** as both the base and the quote currency are G10 Currencies.

Types of FX transactions[10]

12. A customer may enter into a range of different types of FX transactions with an FX Dealer. There are two types of transaction that are relevant for the purposes of these Proposed Collective Proceedings:

    a. **FX Spot Transactions,** which involve the exchange of two currencies where: (i) the price and quantity of currency to exchange is agreed in advance; and (ii) the exchange takes place (known as "settlement") within two business days; and

    b. **FX Outright Forward Transactions**, which are similar to FX Spot Transactions in that the price and quantity of the currency to be exchanged is agreed in advance, however the key difference is that settlement takes place more than two business days later.

The Decisions

13. The claims which it is proposed to combine in the Proposed Collective Proceedings are "follow on" claims pursuant to section 47A of the Act, relying on the Infringements established in the Decisions.

14. The Decisions will be relied on at trial for their full meaning and effect. The Commission published non-confidential versions of each of the Decisions on its website on 5 July 2022[10A] and summaries of each of the Decisions have been published in the *Official Journal of the European Union*.[10B] ~~Although they have not yet~~

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10 See, for further information, section 4.3 of the First Knight Report ~~expert report of Richard Knight~~.

10A Copies of the non-confidential versions of the Decisions published by the Commission are included as Annex 1A (TWBS Decision), Annex 1B (EE Decision), Annex 1C (STG Lads Settlement Decision) and Annex 1D (STG Lads Ordinary Decision) to this Re-Amended Collective Proceedings Claim Form.

10B Summaries of the Decisions have been published in the Official Journal of the European Union under the following references: [2019] O.J. C 219/5 (TWBS Decision), [2019] O.J. C 219/8 (EE Decision), [2022] O.J. C 185/50 (STG Lads Settlement Decision) and [2022] O.J. C 185/60 (STG Lads Ordinary Decision).

~~been published by the Commission,~~[11] ~~the~~ The Proposed Class Representative had previously sought, and obtained, copies of the non-confidential versions of the TWBS Decision and the EE Decision ~~Decisions~~ by making a request to the Commission pursuant to the EU's Access to Documents Regulation.[12] As explained further in paragraphs 15(b) and 15(m) of the First witness statement of Anthony John Maton dated 10 December 2019, that request was first made on 5 July 2019 and the TWBS Decision and the EE Decision ~~Decisions~~ were ultimately provided on 1 October 2019.

14A. Furthermore, on 20 March 2020, the Proposed Class Representative was provided with copies of the confidential versions of the TWBS Decision and of the EE Decision ~~Decisions~~ (together the **"Confidential Decisions"**) pursuant to paragraph 4(a) of an Order of the Tribunal made on 18 March 2020. The Confidential Decisions were disclosed into a confidentiality ring, established by a Confidentiality Ring Order of the Tribunal made on 18 March 2020, as Outer Confidentiality Ring Information (as defined in that Order).[12A]

14B. The Proposed Class Representative has requested those of the First to Fifteenth Proposed Defendants that are addressees of the STG Lads Settlement Decision (i.e. Barclays, RBS and UBS) to provide to him confidential versions of that Decision and, if in their possession, the STG Lads Ordinary Decision. Despite Barclays, RBS and UBS confirming that they were willing in principle to disclose a copy of the STG Lads

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11 ~~At the time of filing this Amended Collective Proceedings Claim Form, the only publicly available information regarding the Decisions is provided in a~~ The Commission has also published two press releases concerning the Decisions ~~release~~ (together, the **"Press Releases ~~Release~~"**), the first ~~issued by the Commission~~ on 16 May 2019, concerning the TWBS Decision and the EE Decision (see~~. See~~ "*Antitrust: Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel*". Available online at: https://europa.eu/rapid/press-release_IP-19-2568_en.htm and included at Annex 2A to this Re-Amended Collective Proceedings Claim Form) and the second on 2 December 2021, concerning the STG Lads Ordinary Decision and the STG Lads Settlement Decision (see "*Antitrust: Commission fines UBS, Barclays, RBS, HSBC and Credit Suisse €344 million for participating in a Foreign Exchange spot trading cartel*". Available online at https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6548 and included as Annex 2B to this Re-Amended Collective Proceedings Claim Form). In its Press Release of 2 December 2021, the Commission stated that "*Today's decisions in Forex (*Sterling Lads*) complete the wider Commission's Forex investigation. The other two infringements were concluded with settlement decisions adopted in May 2019*", i.e. the TWBS Decision and the EE Decision.

12 Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2011 regarding public access to European Parliament, Council and Commission Documents. OJ L 145, 31.5.2001, pp.43-48.

12A Confidential versions of the TWBS Decision and the EE Decision, which have been disclosed to the Proposed Class Representative, are included as Annex 1E and Annex 1F, respectively to this Re-Amended Collective Proceedings Claim Form.

Settlement Decision into the confidentiality ring in these Proceedings, subject to appropriate redactions, a confidential version of that Decision has not been provided despite repeated requests; they also confirmed that, as at January 2022, they did not possess a copy of the confidential version of the STG Lads Ordinary Decision. On 11 October 2023, that request was repeated and those Proposed Defendants were also requested to confirm if they possessed a copy of the confidential version of the STG Ordinary Decision addressed to Credit Suisse. On 1 December 2023, Macfarlanes LLP (on behalf of the First to Fifteenth Proposed Defendants) informed the Proposed Class Representative's legal representatives that they would disclose a "less redacted" version of the Sterling Lads Settlement Decision on the basis that it is designated as "Outer Confidentiality Ring Information"; however, this version has not yet been disclosed to the Proposed Class Representative. Macfarlanes also confirmed that the First to Fifteenth Proposed Defendants do not possess a copy of the confidential version of the Sterling Lads Ordinary Decision. The Proposed Class Representative intends to request HSBC to disclose a confidential version of the STG Lads Settlement Decision and Credit Suisse to disclose a confidential version of the STG Lads Ordinary Decision. Should the addresses of the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision refuse to disclose voluntarily to the Proposed Class Representative copies of the confidential versions of those decisions, the Proposed Class Representative will seek an Order from the Tribunal that they do so.

15. By way of summary, each of the Decisions finds, using substantially similar language, that the addressees of the relevant decision participated in infringements of Article 101 TFEU and Article 53 of the EEA Agreement regarding foreign exchange trading of G10 currencies covering the entire EEA. The ~~the~~ TWBS Decision and the EE Decision each ~~Decisions~~ establish that certain undertakings infringed Article 101 TFEU and Article 53 of the EEA Agreement by participating "*in a single and continuous infringement covering the whole EEA in G10 FX spot trading.*"[13] The Sterling Lads Settlement Decision found that the addressees of that Decision participated "*in a single and continuous infringement regarding foreign exchange spot trading of G10 currencies covering the entire EEA*"[13A], as does the Sterling Lads Ordinary Decision, which found that the addressees of that Decision participated "*in*

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[13] Article 1 of the TWBS Decision and of the EE Decision. ~~Decisions.~~

[13A] Article 1 of the Sterling Lads Settlement Decision.

extensive and recurrent exchanges of current or forward-looking commercially sensitive information which constitute agreements and/or concerted practices (within a wider single and continuous infringement) having the object of restricting and/or distorting competition regarding foreign exchange spot trading of G10 currencies covering the entire EEA".[13B]

15A. The ~~infringement~~ infringements found in each of the Settlement Decisions, each of which concerned FX spot trading of G10 currencies, are ~~is~~ explained in essentially identical terms in recital 1 of ~~both~~ each of the Settlement Decisions as consisting of:[14]

> "*… an underlying understanding reached among certain individual traders ("the participating traders") and implemented by them to exchange - on mostly multilateral, private chatrooms and on an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about certain of their trading activities and occasionally coordinate, their trading activity with respect to Forex (FX) spot trading of G10 currencies. The G10 FX currencies concerned by this Decision comprise the USD and CAD, JPY, AUD, NZD, GBP, EUR, CHF, SEK, NOK and DKK (in other words 11 currencies altogether, which corresponds to the market convention for currencies covered by the G10 designation).*"

15B. The infringement found in the STG Lads Ordinary Decision is explained in recital 1 of that Decision as consisting of:

> "*agreements and concerted practices that had the object of restricting and/or distorting competition in the sector of foreign exchange ("Forex" or "FX") spot trading of G10 currencies. The G10 currencies concerned by this Decision comprise the US, Canadian, Australian and New Zealand Dollars (respectively USD CAD, AUD and NZD), the Japanese Yen (JPY), the Swiss Franc (CHF), the Sterling Pound (GBP), the Euro (EUR), and the Swedish, Norwegian and Danish Crowns (respectively SEK, NOK and DKK). In other words, 11 currencies altogether, which correspond to the market convention for currencies covered by the G10 designation.*"

16. The periods of Infringement covered by the Decisions are: (i) 18 December 2007 - 31 January 2013 in respect of the TWBS Decision; ~~and~~ (ii) 14 December 2009 - 31 July 2012 in respect of the EE Decision; (iii) 25 May 2011 – 12 July 2012 in respect of the STG Lads Settlement Decision; and (iv) 7 February 2012 - 12 July 2012 in respect of

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[13B] Article 1 of the Sterling Lads Ordinary Decision.

[14] Internal footnotes omitted. There are a few minor differences in wording and use of punctuation in ~~both versions~~ the text of recitals 1 of the TWBS Decision, of the EE Decision and of the Sterling Lads Settlement Decision ~~Decisions~~, but these differences do not change their substantive content.

the STG Lads Ordinary Decision. Each of the Proposed Defendants is an addressee of one or more ~~both~~ of the Decisions.~~, and~~ Each of the Proposed Defendants that is an addressee of one or more of the Settlement Decisions has unequivocally acknowledged their liability for the Infringements as set out in the Settlement Decisions.[14A] On 15 February 2022, the Proposed Defendants that are addressees of the STG Lads Ordinary Decision, made an application to the General Court of the European Union for the annulment of that Decision.[14B] That application is pending before the General Court.

The Claim

17. As further particularised in Part III below, the Proposed Class Representative will say that the overall effect of the Infringements was that members of the Proposed Classes entered into FX Spot Transactions and FX Outright Forward Transactions on terms that were less advantageous to them than would otherwise have been the case had the Proposed Defendants not committed the Infringements.

18. Specifically, as a result of the Infringements, the Proposed Defendants were able to unlawfully widen the bid-ask spreads that they applied to FX Spot Transactions involving G10 Currency Pairs beyond that which would have prevailed in the absence of the Infringements. The effect of an unlawfully widened bid-ask spread was ~~is~~ twofold:

    a. The price offered to members of the Proposed Classes to sell currency (i.e. the bid price) was lower than would otherwise have been the case absent the Infringements; and

    b. The price charged to members of the Proposed Classes to buy currency (i.e. the ask price) was higher than would otherwise have been the case absent the Infringements.

[14A] See TWBS Decision, recitals 31 – 34 (in respect of all addressees), 127 (in respect of UBS), 129 and 130 (in respect of Barclays), 132 and 133 (in respect of RBS), 135 and 136 (in respect of Citigroup) and 138 and 139 (in respect of JP Morgan); EE Decision, recitals 27 – 30 (in respect of all addressees), 131 (in respect of UBS), 133 and 134 (in respect of Barclays), 136 and 137 (in respect of RBS) and 139 and 140 (in respect of BOTM); STG Lads Settlement Decision, recitals 34 – 37 (in respect of all addressees), 126 (in respect of UBS), 128 and 129 (in respect of Barclays), 131 and 132 (in respect of RBS) and 134 and 135 (in respect of HSBC).

[14B] Case T-84/22 *Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (Europe) Ltd v European Commission* [2022] O.J. C 148/39.

19. The Proposed Class Representative will also say that the Infringements produced additional effects, as follows:

    a. The Infringements also caused the unlawful widening of bid-ask spreads applicable to FX Outright Forward Transactions involving G10 Currency Pairs. This is because the price of an FX Outright Forward Transaction is partially based on the prevailing price of the equivalent FX Spot Transaction. Accordingly, the unlawful widening of bid-ask spreads applicable to FX Spot Transactions would, in turn, have caused ~~cause~~ the unlawful widening of the bid-ask spreads applicable to FX Outright Forward Transactions;

    b. The Infringements also caused bid-ask spreads to widen on FX Spot Transactions and/or FX Outright Forward Transactions entered into with persons who were not parties to the Infringements and/or did not implement the same; and

    c. Although the Decisions themselves do not make any findings relating to FX e-commerce trading activities,[15] but instead address "voice"[16] trading only, it is the Proposed Class Representative's case that an infringement affecting voice trading would affect all other forms of trading.

20. It is proposed that the Proposed Collective Proceedings be brought on an "opt-out" basis, having regard to: (i) the large size of the Proposed Classes ~~class~~; (ii) the complexity of the issues that fall for determination; and (iii) the likelihood that the *per capita* value of damages that might be recovered could be relatively modest for certain members of the Proposed Classes. As explained further in paragraphs 146 - 148 and 169 - 171 below, these factors mean that opt-out collective proceedings are the only practicable means by which to recover losses on behalf of members of the Proposed Classes.

20A. In a judgment dated 9 November 2023, the Court of Appeal ruled that the Tribunal should not have refused to certify the Proposed Class Representative's application for a CPO (in respect of the infringements found in the TWBS Decision and the EE

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15 TWBS Decision, footnote 6; EE Decision, footnote 6; STG Lads Ordinary Decision, footnote 9; STG Lads Settlement Decision, footnote 11.

16 Voice trading is explained in the First Knight Report ~~expert report of Richard Knight~~ at section 6.2. It concerns trades originated in person, by telephone, by telefax or by general messaging systems.

Decision) on the basis that it was proposed on an "opt-out" basis rather than on an "opt-in" basis and remitted the matter to the Tribunal for further decision and case management in accordance with the Court of Appeal's judgment.[16A] It is the Proposed Class Representative's case that the Tribunal should certify his application for a CPO, as set out in this Re-Amended Collective Proceedings Claim Form (in respect of the infringements found in each of the Decisions) on an opt-out basis.

21. ~~As explained in paragraph 14 above, the Proposed Class Representative has only seen non-confidential versions of the Decisions.~~ It must also be noted that the TWBS Decision, EE Decision and the STG Lads Settlement Decision ~~Decisions~~ are adopted pursuant to the Commission's settlement procedure, and as such contain an abbreviated description of the Infringements, giving much less detail than would otherwise be the case in a full infringement decision. Moreover, whilst the STG Lads Ordinary Decision contains a more detailed description of the Infringement found in that decision, the Proposed Class Representative has (and the members of the Proposed Classes have) no direct knowledge of many of the issues that would arise in this claim.

22. Accordingly, whilst this Re-Amended Collective Proceedings Claim Form has been particularised as far as possible in those circumstances, the Proposed Class Representative reserves his right to further amend this Re-Amended Collective Proceedings Claim Form and/or to provide further particulars following, *inter alia:* (i) disclosure; (ii) preparation and/or exchange of expert evidence; and/or (iii) preparation and/or exchange of factual evidence.

~~23. In addition, the Proposed Class Representative understands from the Press Release that the Commission continues to pursue "*ongoing procedures concerning past conduct in the Forex spot trading market.*" The Proposed Class Representative has no direct knowledge of any ongoing investigations by the Commission, and accordingly is not able to provide any further particulars, beyond what has been reported in the press and other publicly available sources, regarding, *inter alia,* the number of investigations that may be ongoing, and when these might conclude. In this regard, the Proposed Class Representative notes that:~~

~~The Commission's ongoing investigations are confirmed by reports in the press, including an article in the *Financial Times* which states that "*[t]he EU said there was*~~

16A [2023] EWCA Civ 876 at [138], [157] and [170]; Court of Appeal Order (9 November 2023), paragraphs 1, 3 and 5.

another investigation involving Credit Suisse, regarding "an alleged infringement which may have taken place in another chatroom" but it declined to provide any further details."[17]

a. In a Defence filed on behalf of HSBC Bank plc in proceedings before the Commercial Court,[18] it is stated that:[19]

i. An HSBC employee participated in a Bloomberg chatroom called "Sterling Lads" between 25 May 2011 until 26 June 2012 (referred to therein as the **"STG Lads chat room"**);[20]

ii. Employees of "*entities in the Barclays Bank, Royal Bank of Scotland, UBS and Credit Suisse banking groups also participated in the STG Lads chat room from time to time*";[21]

iii. The conduct involved in the STG Lads chat room is described in very similar terms to the conduct that is covered by the Decisions.[22] In particular, it is stated that "*[o]n occasions, HSBC and the other participants exchanged commercially sensitive information about current or forward-looking bid-ask spreads.*"[23]

24. While HSBC Bank plc does not admit that, by engaging the Admitted Conduct, it has infringed Article 101 TFEU, it nevertheless states that "*[i]f, or to the extent that, the Commission adopts a Decision finding in its operative part that, by engaging in all or some of the Admitted Conduct, HSBC infringed Article 101, HSBC admits that it would be bound by the operative part of that Decision and any recitals that form the basis for the said operative part.*"[24] The Proposed Class Representative infers from this

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[17] "*EU fines five banks €1bn over foreign exchange cartel*", *Financial Times*, 16 May 2019. Available online at: https://www.ft.com/content/73163fa0-77c5-11e9-bbad-7c18c0ea0201.

[18] Namely, *Allianz Global Investors GmbH v Barclays Bank PLC and others* (Claim Number: CL-2018-000840). These proceedings are discussed further in paragraph 149 below. The legal representatives of the Proposed Class Representative have obtained copies of all statements of case filed in these proceedings from the Commercial Court's records, as explained in the First Witness Statement of Anthony John Maton dated 10 December 2019 at paragraph 32.

[19] *Ibid*, paragraph 50. The conduct described in this paragraph is referred to in the Defence as the **"Admitted Conduct"**.

[20] *Ibid*, paragraph 50.1.

[21] *Ibid*, paragraph 50.2.

[22] *Ibid*, paragraphs 50.4 – 50.8.

[23] *Ibid*, paragraph 50.7.

[24] *Ibid*, paragraphs 50.10 – 50.11.

~~paragraph that the STG Lads chat room may currently be the subject of an investigation by the Commission.~~

~~24A.~~ OCR INFORMATION REDACTED

OCR INFORMATION REDACTED

~~24B.~~ OCR INFORMATION REDACTED

~~24C.~~ OCR INFORMATION REDACTED

~~25. In the circumstances, the Proposed Class Representative reserves his rights to amend this Amended Collective Proceedings Claim Form, in the event that the Commission issues further Decisions concerning FX trading.~~

Structure of the Re-Amended Collective Proceedings Claim Form

26. In accordance with paragraph 6.11 of the Competition Appeal Tribunal's (the **"Tribunal"**) Guide to Proceedings 2015 (the **"Guide"**), the remainder of this Re-Amended Collective Proceedings Claim Form is divided into three parts, namely:

    a. Part I: The required information and statements under Rule 75(2) of the CAT Rules;

    b. Part II: The required information and statements to comply with Rule 75(3)(a)-(e) of the CAT Rules; and

    c. Part III: The required information and statements to comply with Rule 75(3)(f)-(j) of the CAT Rules.

27. The following documents are relied upon in this application for a CPO:

    a. As annexes to ~~the~~ this Re-Amended Collective Proceedings Claim Form:

        i. The non-confidential versions of the Three Way Banana Split Decision, ~~and~~ the Essex Express Decision, the Sterling Lads Ordinary Decision and the Sterling Lads Settlement Decision, in accordance with Rule 75(5)(a) (~~Annex~~ Annexes 1A, 1B, 1C and 1D, respectively);

        ii. The confidential versions of the Three Way Banana Split Decision and the Essex Express Decision (Annexes 1E and 1F, respectively ~~Annex 1C and 1D~~);

        iii. The Press Releases of 16 May 2019 and 2 December 2021 (Annexes 2A and 2B, respectively ~~Annex 2~~);

        iv. A copy of the Class Definition for the Proposed Collective Proceedings (Annex 3), as to which, see further paragraphs 71 - 112 below;

        v. A draft Collective Proceedings Order in accordance with Rule 75(5)(b) and Rule 80 (Annex 4);

        vi. A draft notice of the Collective Proceedings Order in accordance with Rule 75(5)(c) (Annex 5);

    b. The following evidence is being lodged in support of this application for a CPO, as envisaged by paragraph 6.13 of the Guide:

i. Expert Reports which address the way in which the common issues identified in ~~the~~ this Re-Amended Collective Proceedings Claim Form may be determined on a collective basis, namely:

1. An Expert Report of Mr Richard Knight dated 9 December 2019 (the **"First Knight Report"**);

1A. Two further Expert Reports of Mr Knight having been filed in the course of these proceedings, dated 23 April 2021 (the "**Second Knight Report**") and 11 June 2021 (the "**Third Knight Report**") and a further Expert Report, dated 8 November 2023 (the "**Fourth Knight Report**") filed in support of this Re-Amended Collective Proceedings Claim Form;

2. An Expert Report of Professor Dagfinn Rime dated 16 April 2020 ~~9 December 2019~~ (the **"First Rime Report"**);

2A. Two further Expert Reports of Professor Rime having been filed in the course of these proceedings, dated 23 April 2021 (the "**Second Rime Report**") and 11 June 2021 (the "**Third Rime Report**") and a further Expert Report, dated 8 November 2023 (the "**Fourth Rime Report**") filed in support of this Re-Amended Collective Proceedings Claim Form;

3. An Expert Report of Mr John Ramirez dated 16 April 2020 ~~9 December 2019~~ (the **"First Ramirez Report"**); and

4. Two further Expert Reports of Mr Ramirez having been filed in the course of these proceedings, dated 23 April 2021 (the "**Second Ramirez Report**") and 11 June 2021 (the "**Third Ramirez Report**") and a further Expert Report, dated 8 November 2023 (the "**Fourth Ramirez Report**") filed in support of this Re-Amended Collective Proceedings Claim Form;

ii. ~~A~~ The following witness statements of the Proposed Class Representative filed in the course of these proceedings:

1. The first witness statement of ~~by~~ the Proposed Class Representative, dated 10 December 2019, which addresses the requirements of Rule 78 of the CAT's Rules and exhibits the

following documents: the Proposed Class Representative's curriculum vitae (Exhibit PGE1), the Consultative Panel Terms of Reference (Exhibit PGE2), a litigation plan for the Proposed Collective Proceedings, as per Rule 78(3)(c) (the "**Litigation Plan**") (Exhibit PGE3); a Litigation Funding Agreement between Donnybrook Guernsey Limited and the Proposed Class Representative (the "**Litigation Funding Agreement**") (Exhibit PGE4); and an ATE insurance policy (Exhibit PGE5);

2. The second witness statement of the Proposed Class Representative, dated 23 April 2021;

3. The third witness statement of the Proposed Class Representative, dated 27 September 2021.

4. ~~The Proposed Class Representative's curriculum vitae (Exhibit PGE1);~~

5. ~~The Consultative Panel Terms of Reference (Exhibit PGE2);~~

6. ~~A litigation plan for the Proposed Collective Proceedings, as per Rule 78(3)(c) (the **"Litigation Plan"**) (Exhibit PGE3);~~

7. ~~A Litigation Funding Agreement between Donnybrook Guernsey Limited and the Proposed Class Representative (the **"Litigation Funding Agreement"**) (Exhibit PGE4); and~~

8. ~~An ATE insurance policy (Exhibit PGE5).; and~~

iii. ~~A~~ The first ~~-~~witness statement of Anthony John Maton of Hausfeld & Co LLP dated 10 December 2019. Mr Maton's first witness statement addresses paragraph 6.32 of the Guide, where it is noted that if more than one applicant is seeking approval to act as the class representative for opt-out collective proceedings in respect of the same or overlapping claims, the Tribunal will consider who would be the most suitable class representative. Among the factors identified in paragraph 6.32 of the Guide as relevant to this assessment is "*the experience of the lawyers of the competing proposed class representatives.*" As explained at paragraphs 124 - 129 below, the Proposed Class Representative understands that Michael O'Higgins

FX Class Representative Limited (the "**O'Higgins PCR**") has also filed an application for a CPO before the Tribunal which concerns, at least in part, overlapping claims (the "**O'Higgins Application**"). Accordingly, Mr Maton's first witness statement addresses the experience of the legal representatives of the Proposed Class Representative.

On 31 March 2022 the Tribunal held that the application of the Proposed Class Representative was to be preferred over that of the O'Higgins PCR,[24A] which decision was upheld by the Court of Appeal in its judgment dated 9 November 2023, dismissing the O'Higgins PCR's appeal on this point.[24B]

iv. The second witness statement of Anthony John Maton dated 17 April 2020. Mr Maton's second witness statement: (i) explains certain amendments made to this application for a CPO, which were filed with the Tribunal on 17 April 2020; and (ii) provides additional information relating to the funding arrangements entered into by the Proposed Class Representative. In relation to point (ii), Mr Maton's second witness statement exhibits the following documents:

1. A copy of the Litigation Funding Agreement with fewer redactions than the copy exhibited at Exhibit PGE4. This is contained in Confidential Exhibit AJM6;

2. A copy of an ATE insurance policy with Quantum Legal Costs Cover Limited as agent for Hamilton Insurance DAC, which contains fewer redactions than the copy exhibited at Exhibit PGE5. This is contained in Confidential Exhibit AJM7;[24C] ~~[24A]~~ and

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[24A] [2022] CAT 16 at [389], [409] (Sir Marcus Smith and Prof, Neuberger) and [463] (Mr Lomas).

[24B] [2023] EWCA Civ 876 at [155] and [170]; Court of Appeal Order (9 November 2023), paragraphs 3 and 6.

[24C] ~~[24A]~~ The reasons that the Proposed Class Representative has disclosed less redacted versions of the Litigation Funding Agreement and the ATE insurance policy with Quantum Legal Costs Cover Limited as agent for Hamilton Insurance DAC are explained in paragraphs 25 – 27 of Mr Maton's second witness statement.

3. A copy of an ATE insurance policy with PartnerRe Ireland Insurance DAC. This is contained in Confidential Exhibit AJM8.

v. Six further witness statements of Anthony John Maton filed in the course of these proceedings, being Mr Maton's third witness statement (dated 20 October 2020), fourth witness statement (dated 23 April 2021), fifth witness statement (dated 11 June 2021), sixth witness statement (dated 5 July 2021) and seventh witness statement (27 September 2021), which provide inter alia information on the Proposed Class Representative's funding arrangements, as from time to time varied, and an eighth witness statement of Anthony John Maton dated 8 November 2023 filed in support of this Re-Amended Collective Proceedings Claim Form which exhibits the updated Litigation Funding Agreement between Donnybrook Guernsey Limited and the Proposed Class Representative, last updated on 22 September 2022 (the "**Updated Litigation Funding Agreement**").

vi. Five witness statements of Adrian Mark Chopin filed in the course of these proceedings on behalf of Bench Walk Advisors LLC, a litigation funding business, being Mr Chopin's first witness statement (dated 10 June 2020), second witness statement (dated 23 June 2020), third witness statement (dated 23 April 2021), fourth witness statement (dated 11 June 2021) and fifth witness statement (dated 5 July 2021), which provide information on the Proposed Class Representative's funding arrangements, as from time to time varied.

PART I: THE INFORMATION AND STATEMENTS REQUIRED BY RULE 75(2)

The Proposed Class Representative (Rule 75(2)(a)-(c))

28. The Proposed Class Representative is Mr Phillip Gwyn James Evans of a private residential address in Bristol, United Kingdom.[25]

29. The Proposed Class Representative's legal representatives are Hausfeld & Co. LLP of 12 Gough Square, London, EC4A 3DW.

30. Hausfeld & Co. LLP are instructed by Mr Evans to accept service of documents relating to these proceedings at the address in the previous paragraph (marked for the attention of David Lawne and Rachael Baillie ~~and William Widdess~~).

The Proposed Defendants (Rule 75(2)(d))

31. Each of the Proposed Defendants are addressees of one or more ~~both~~ of the Decisions. Their details are set out below.

Barclays

32. The First Proposed Defendant is Barclays Bank Plc, a public limited company incorporated in the United Kingdom under registered number 01026167, having its registered office at 1 Churchill Place, London, E14 5HP.

33. The Second Proposed Defendant is Barclays Capital Inc., a United States stock corporation registered in the State of Connecticut, with registered offices at 745 Seventh Avenue, New York, NY, 10019, United States of America.[26]

34. The Third Proposed Defendant is Barclays Plc, a public limited company incorporated in the United Kingdom under registered number 00048839, having its registered office at 1 Churchill Place, London, E14 5HP.

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[25] The Proposed Class Representative can be contacted via his legal representatives. His address will be provided to the Tribunal and the Proposed Defendants on a confidential basis, if required.

[26] This is the address indicated for Barclays Capital Inc. in the Connecticut Business Registry. However, it is different from the address provided in recital 15 of the EE Decision, which is: One Corporate Center, Floor 11, Hartford, CT 06103-3220, United States of America. Barclays Capital Inc. also has a registered agent: CT Corporation System, 67 Burnside Avenue, East Hartford, CT 06108-3408, United States of America.

35. The Fourth Proposed Defendant is Barclays Execution Services Limited, a private limited company incorporated in the United Kingdom under registered number 01767980, having its registered office at 1 Churchill Place, London, E14 5HP.[27]

36. The First to Fourth Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form ~~fForm~~ as **"Barclays"**. The Settlement Decisions explain that "*Barclays is a bank headquartered in the United Kingdom, which operates worldwide, including in the EEA.*"[28] The Proposed Class Representative understands that, during the periods covered by the Settlement Decisions, Barclays Plc held, directly or indirectly, at least 99.9% of the shareholdings of Barclays Bank Plc, Barclays Execution Services Limited and Barclays Capital Inc.[29]

37. Further:

    a. By a letter dated 8 November 2019, Barclays informed the legal representatives of the Proposed Class Representative that it had instructed Baker McKenzie to accept service on behalf of Barclays Bank Plc, Barclays Plc and Barclays Execution Services Limited.

    b. As to Barclays Capital Inc., the letter stated that it is a US-domiciled entity and should therefore be served in that jurisdiction via the usual methods. Accordingly, the Proposed Class Representative ~~will~~ filed, along with the ~~this~~ Collective Proceedings Claim Form, an application pursuant to Rule 31(2) of the CAT Rules for permission to serve the Collective Proceedings Claim Form and supporting documents out of the jurisdiction on Barclays Capital Inc. in the United States of America. Permission to serve Barclays Capital Inc. outside the jurisdiction was granted by an Order of Mr Justice Marcus Smith, made on 17 December 2019.

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27 The Settlement Decisions explain that Barclays Execution Services Limited was formerly known as "Barclays Capital Services Limited": see TWBS Decision, recital 15; EE Decision, recital 15; STG Lads Settlement Decision, recital 17. Furthermore, records at Companies' House indicate that: (i) Barclays Capital Services Limited changed its name to Barclays Services Limited on 7 February 2017; and (ii) Barclays Services Limited changed its name to Barclays Execution Services Limited on 7 May 2019.

28 TWBS Decision, recital 14; EE Decision, recital 14; STG Lads Settlement Decision, recital 16.

29 EE Decision, recital 134. In respect of Barclays Plc's ownership of Barclays Bank Plc and Barclays Execution Services Limited, see also STG Lads Settlement Decision, recital 129.

Citigroup

38. The Fifth Proposed Defendant is Citibank N.A., a national banking association incorporated in the United States, with registered offices at 388 Greenwich Street, New York, NY 10 013, United States of America.

39. The Fifth Proposed Defendant has a UK registered establishment under registration number BR001018, with a registered address at Citigroup Centre, Canary Wharf, Canada Square, E14 5LB.

40. The Sixth Proposed Defendant is Citigroup Inc., a United States stock corporation registered in the State of Delaware, with registered offices at 388 Greenwich Street, New York, NY 10 013, United States of America.[30]

41. The Fifth and Sixth Proposed Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form as **"Citigroup"**. The TWBS Decision explains that "*Citigroup is a global bank with business operations in more than 160 countries and jurisdictions, including the EEA.*"[31] The Proposed Class Representative understands that, during the period covered by the TWBS Decision, Citigroup Inc. indirectly owned 100% of the shareholding of Citibank, N.A.[32]

42. Further:

    a. By a letter dated 8 November 2019, Allen & Overy LLP informed the legal representatives of the Proposed Class Representative that it was instructed to accept service of the CPO application and associated documents on behalf of Citibank, N.A.

    b. However, the letter also stated that Allen & Overy LLP are not instructed to accept service on behalf of Citigroup Inc. Accordingly, the Proposed Class Representative ~~will~~ filed, along with the ~~this~~ Collective Proceedings Claim Form, an application pursuant to Rule 31(2) of the CAT Rules for permission to serve the Collective Proceedings Claim Form and supporting documents out of the jurisdiction on Citigroup Inc. in the United States of America. Permission

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30 Citigroup Inc. also has a registered agent: The Corporation Trust Company, Corporation Trust Centre, 1209 Orange Street, Wilmington, DE 19801-1120, United States of America.

31 TWBS Decision, recital 16.

32 TWBS Decision, recital 136.

to serve Citigroup Inc. outside the jurisdiction was granted by an Order of Mr Justice Marcus Smith, made on 17 December 2019.

MUFG / BOTM

43. The Seventh Proposed Defendant is MUFG Bank, Ltd., a company incorporated in Japan, having its registered office at 2-7-1, Marunouchi, Chiyoda-ku, Tokyo 100-8388, Japan.[33]

44. The Seventh Proposed Defendant has a UK registered establishment under registered establishment number BR002013, with a registered address at Ropemaker Place, 25 Ropemaker Street, London, EC2Y 9AN.

45. The Eighth Proposed Defendant is Mitsubishi UFJ Financial Group, Inc., a company incorporated in Japan, having its registered office at 2-7-1, Marunouchi, Chiyoda-ku, Tokyo 100-8330, Japan.

46. The Eighth Proposed Defendant has a UK registered establishment under registered establishment number BR015994, with a registered address at Ropemaker Place, 25 Ropemaker Street, London, EC2Y 9AN.

47. The Seventh and Eighth Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form as **"BOTM"** to reflect the same acronym used in the EE Decision ~~Decisions~~. This acronym is based on the fact that MUFG Bank, Ltd was, during the period covered by the EE Decision ~~Decisions~~, known as Bank of Tokyo-Mitsubishi UFJ Ltd (or BOTM). The EE Decision explains that "*Bank of Tokyo Mitsubishi (BOTM) is a commercial organisation that provides a broad range of commercial and retail banking services from its offices in Japan and in numerous countries around the world. Its activities include foreign exchange trading in the international market from its five global treasury units. BOTM belongs to the Mitsubishi UFJ Financial group of companies, which is active in the banking services industry.*"[34] The Proposed Class Representative understands that, during the period covered by the EE Decision, Mitsubishi UFJ Financial Group, Inc. directly owned 100% of the shareholding in MUFG Bank, Ltd.[35]

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33 On 1 April 2018, Bank of Tokyo-Mitsubishi UFJ, Ltd., changed its name to MUFG Bank, Ltd. See footnote 13 of the EE Decision.

34 EE Decision, recital 16.

35 EE Decision, recital 140.

48. Further, by a letter dated 11 November 2019, Herbert Smith Freehills LLP informed the Proposed Class Representative that it was instructed to accept service of the present CPO application on behalf of BOTM.

JP Morgan

49. The Ninth Proposed Defendant is J.P. Morgan Europe Limited, a private limited company incorporated in the United Kingdom under registered number 00938937, having its registered office at 25 Bank Street, Canary Wharf, London, E14 5JP.

50. The Tenth Proposed Defendant is J.P. Morgan Limited, a private limited company incorporated in the United Kingdom under registered number 00248609, having its registered office at 25 Bank Street, Canary Wharf, London, E14 5JP.[36]

51. The Eleventh Proposed Defendant is JPMorgan Chase Bank, N.A., a national banking association incorporated in the United States of America, with registered offices at 1111 Polaris Parkway, Columbus, Ohio 43 240, United States of America.

52. The Eleventh Proposed Defendant has a UK registered establishment under registered establishment number BR000746, with a registered address at 25 Bank Street, London, Canary Wharf, E14 5JP.

53. The Twelfth Proposed Defendant is JPMorgan Chase & Co, a company incorporated in the United States of America, with registered offices at 383 Madison Avenue, New York, NY 10179, United States of America.

54. The Ninth to Twelfth Proposed Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form as **"JP Morgan"**. The TWBS Decision explains that JP Morgan "*is a financial institution headquartered in the United States of America. It currently operates in more than 60 countries around the world, including in the EEA.*"[37] The Proposed Class Representative understands that during the period covered by the TWBS Decision, JPMorgan Chase & Co indirectly owned 100% of the shareholdings in JPMorgan Chase Bank, N.A., J.P. Morgan Europe Limited and J.P. Morgan Limited.[38]

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36 Recital 139 of the TWBS Decision explains that J.P. Morgan Limited was formerly known as J.P. Morgan plc.

37 TWBS Decision, recital 18.

38 TWBS Decision, recital 139.

55. Further:

a. By a letter dated 7 November 2019, Slaughter and May informed the legal representatives of the Proposed Class Representative that it was instructed to accept service of the CPO application on behalf of J.P. Morgan Europe Limited, J.P. Morgan Limited and JPMorgan Chase Bank, N.A.

b. However, the letter also stated that Slaughter and May were not instructed to accept service on behalf of JPMorgan Chase & Co and that, should the Proposed Class Representative wish to effect service out of the jurisdiction, documents should be directed to JPMorgan Chase & Co., c/o CT Corporation, 1209 Orange Street, Wilmington, DE 19801-1120, United States of America. Accordingly, the Proposed Class Representative ~~will~~ filed, along with the ~~this~~ Collective Proceedings Claim Form, an application pursuant to Rule 31(2) of the CAT Rules for permission to serve the Collective Proceedings Claim Form and supporting documents out of the jurisdiction on JPMorgan Chase & Co in the United States of America. Permission to serve JPMorgan Chase & Co outside the jurisdiction was granted by an Order of Mr Justice Marcus Smith, made on 17 December 2019.

RBS / NatWest

56. The Thirteenth Proposed Defendant is NatWest Markets Plc, a public limited company incorporated in the United Kingdom under registered number SC090312, having its registered office at 36 St. Andrew Square, Edinburgh, ~~Scotland,~~ EH2 2YB.[39]

57. The Fourteenth Proposed Defendant is NatWest Group plc ~~The Royal Bank of Scotland Group Plc~~, a company incorporated in the United Kingdom under registered number SC045551 ~~SC083026~~, having its registered office at 36 St. Andrew Square, Edinburgh, ~~Scotland,~~ EH2 2YB. On 22 July 2020, NatWest Group plc changed its name from "The Royal Bank of Scotland Group plc".[39A]

58. The Thirteenth and Fourteenth Proposed Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form as **"RBS"**, to reflect the acronym used in the Settlement Decisions. The Settlement Decisions state that "*RBS*

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39 On 30 April 2018, The Royal Bank of Scotland Plc changed its name to NatWest Markets Plc. See footnote 12 of the EE Decision and footnote 8 of the STG Lads Settlement Decision.

39A STG Lads Settlement Decision, footnote 7.

is a provider of banking and integrated financial services. It is headquartered in the United Kingdom and active in the EEA, United States and Asia Pacific."[40] The Proposed Class Representative understands that, during the period covered by the ~~EE Decisions and the TWBS~~ Settlement Decisions, NatWest Group plc (then known as The Royal Bank of Scotland Group plc) ~~The Royal Bank of Scotland Group Plc~~ owned 100% of the shareholding of NatWest Markets Plc.[41]

59. Further, by a letter dated 14 November 2019, Macfarlanes LLP confirmed to the legal representatives of the Proposed Class Representative that it was instructed to accept service of documents on behalf of RBS.

UBS

60. The Fifteenth Proposed Defendant is UBS AG, a company incorporated in Switzerland, having its registered office at Bahnhofstraße 45, 8001 Zürich, Switzerland.

61. The Fifteenth Proposed Defendant has a UK registered establishment under registered establishment number BR004507, with a registered address at 5 Broadgate, London, EC2M 2QS.

62. The Fifteenth Proposed Defendant shall be referred to in this Re-Amended Collective Proceedings Claim Form as **"UBS"**. The Settlement Decisions state that "*UBS is a global financial institution headquartered in Switzerland that has offices in more than 50 countries including all major financial centres, including the EEA. It offers financial services including wealth management, investment banking and asset management.*"[42]

63. Further, by a letter dated 7 November 2019, Gibson, Dunn & Crutcher UK LLP confirmed to the legal representatives of the Proposed Class Representative that it was instructed to accept service of documents on behalf of UBS.

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40 TWBS Decision, recital 12; EE Decision, recital 12; STG Lads Settlement Decision, recital 18.

41 TWBS Decision, recital 133; EE Decision, recital 137; STG Lads Settlement Decision, recital 132.

42 TWBS Decision, recital 10; EE Decision, recital 10; STG Lads Settlement Decision, recital 14.

HSBC

63A. The Sixteenth Proposed Defendant is HSBC Holdings plc, a public limited company incorporated in the United Kingdom under registered number 00617987 and having its registered office at 8 Canada Square, London, E14 5HQ.

63B. The Seventeenth Proposed Defendant is HSBC Bank plc, a public limited company incorporated in the United Kingdom under registered number 0014259 and having its registered office at 8 Canada Square, London, E14 5HQ.

63C. The Sixteenth and Seventeenth Proposed Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form as **"HSBC"**. The STG Lads Settlement Decision explains that HSBC is "*an undertaking headquartered in the United Kingdom, which operates worldwide, including the EEA*".[42A] The Proposed Class Representative understands that, during the period covered by the STG Lads Settlement Decision, HSBC Holdings plc owned 100% of the shareholding in HSBC Bank plc.[42B]

63D. Further, by a letter dated 31 October 2023, Norton Rose Fulbright LLP confirmed to the legal representatives of the Proposed Class Representative that it was instructed to accept service of documents on behalf of HSBC.

Credit Suisse

63E. The Eighteenth Proposed Defendant is UBS Group AG, a company incorporated in Switzerland with corporate identification number CHE-395.345.924 and having its registered office at Bahnhofstraße 45, 8001 Zürich, Switzerland. Pursuant to a Merger Agreement concluded on 19 March 2023, on 12 June 2023 UBS Group AG completed a legal merger with and absorbed Credit Suisse Group AG, such that UBS Group AG is the surviving company of that merger and has assumed by operation of Swiss law all assets and liabilities, and carries on the commercial activities, of Credit Suisse Group AG, which was then struck off the Commercial Register.[42C] UBS Group AG is

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[42A] STG Lads Settlement Decision, recital 20.

[42B] STG Lads Settlement Decision, recital 135.

[42C] Information on the merger of UBS Group AG and Credit Suisse Group AG is publicly available on Credit Suisse's website (at: https://www.credit-suisse.com/about-cs/en.html) and in a UBS press release dated 12 June 2023 (available at: https://www.ubs.com/global/en/investor-relations/press-releases.html). Information is also provided in UBS Group AG's Form 6-K filing (31 August 2023) filed with the United States Securities and Exchange Commission (available at: https://www.ubs.com/global/en/investor-relations/financial-information/sec-filings.html).

therefore the successor company to Credit Suisse Group AG. UBS Group AG holds 100% of the share capital of the Fifteenth Proposed Defendant.

63F. The Nineteenth Proposed Defendant is Credit Suisse AG, a company incorporated in Switzerland with corporate identification number CHE-106.831.974 and registered offices at Paradeplatz 8, 8001 Zürich, Switzerland.

63G. The Nineteenth Proposed Defendant has a UK registered establishment, under the name "Credit Suisse AG, London Branch", with registered establishment number BR000460 and a UK establishment office address at One Cabot Square, London, E14 4QJ.

63H. The Twentieth Proposed Defendant is Credit Suisse Securities (Europe) Limited, a company incorporated in the United Kingdom under registered number 00891553 and having its registered office at One Cabot Square, London, E14 4QJ.

63I. The Eighteenth to Twentieth Proposed Defendants shall be referred to collectively in this Re-Amended Collective Proceedings Claim Form as **"Credit Suisse"**, to reflect the name of the undertaking used in the STG Lads Ordinary Decision. The STG Lads Ordinary Decision explains that Credit Suisse is "*a bank headquartered in Switzerland, operating worldwide, including the EEA*".[42D] The Proposed Class Representative understands that, during the period covered by the STG Lads Ordinary Decision, Credit Suisse Group AG directly or indirectly owned 100% of the shareholdings in Credit Suisse AG and Credit Suisse Securities (Europe) Limited[42E] and that, accordingly, UBS Group AG now holds, directly or indirectly, 100% of the shareholdings in both companies.

63J. Further, by a letter dated 1 December 2023, Credit Suisse AG confirmed to the legal representative that:

a. UBS Group AG, Credit Suisse AG and Credit Suisse Securities (Europe) Limited have not instructed solicitors to accept service; and

b. Credit Suisse authorised the Proposed Class Representative to serve his claim on UBS Group AG (as successor to Credit Suisse Group AG) at the address of

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[42D] STG Lads Ordinary Decision, recital 57.

[42E] STG Lads Ordinary Decision, recital 567.

Credit Suisse AG's registered establishment, One Cabot Square, London, E14 4QJ

Application for a Collective Proceedings Order (Rule 75(2)(e)-(f))

64. The Proposed Class Representative applies for a Collective Proceedings Order. The said application relates to proposed opt-out collective proceedings. On 9 November 2023, the Court of Appeal ruled that the Tribunal should not have refused to certify the Proposed Class Representative's application for a CPO (in respect of the infringements found in the TWBS Decision and the EE Decision) on the basis that it was proposed on an "opt-out" basis rather than on an "opt-in" basis, and remitted the matter to the Tribunal for further decision and case management in accordance with the Court of Appeal's judgment.[42F] It is the Proposed Class Representative's case that the Tribunal should certify his application for a CPO, as set out in this Re-Amended Collective Proceedings Claim Form (in respect of the infringements found in each of the Decisions), on an opt-out basis.

Alternative Dispute Resolution (Rule 75(2)(g))

~~65. As explained further in paragraphs 124 - 129 below, the Proposed Class Representative is aware that an application for a CPO was registered at the Tribunal on 29 July 2019 under Case Number 1329/7/7/19 by Michael O'Higgins FX Class Representative Limited. The application proposes to combine follow-on claims for damages arising from the Decisions and is at least in part, seeking approval to act as class representative in respect of the same claims covered by the Proposed Collective Proceedings.~~

~~66. While the legal representatives of the Proposed Class Representative were preparing the present application for a CPO, they became aware that a case management conference had been fixed in Case 1329/7/7/19 for 6 November 2019. Accordingly, on 4 November 2019, the legal representatives of the Proposed Class Representative wrote to the Tribunal and the parties to that case in order to inform them of the Proposed Class Representative's intention to file an application for a CPO. In particular, the letters sent to the Tribunal and the parties:[43]~~

[42F] [2023] EWCA Civ 876, at [138], [157] and [170]; Court of Appeal Order (9 November 2023), paragraphs 1, 2 and 5.

~~[43] First Witness Statement of Anthony John Maton dated 10 December 2019, paragraphs 33 - 37.~~

a. ~~Provided a brief outline of the Proposed Class Representative's intended CPO application;~~

b. ~~Stated that the main reason for the delay in filing the present CPO application is that the legal representatives of the Proposed Class Representative have been engaged in extensive correspondence with the Commission with a view to obtaining copies of the Decisions, in order to plead the application as fully and accurately as possible;~~

c. ~~Noted that in view of the overlaps between the present CPO application and that in Case 1329/7/7/19, the Tribunal would likely be called upon to determine the most suitable class representative having regard to Rule 78(2)(c) of the CAT Rules and paragraph 6.32 of the Guide. This is the reason it was considered appropriate to inform the Tribunal of the Proposed Class Representative's intention to file this CPO application prior to the CMC on 6 November 2019, in case this is a matter the Tribunal wishes to take into account; and~~

d. ~~Stated that the Tribunal may consider it appropriate to manage the Proposed Collective Proceedings and Case 1329/7/7/19 together, once the former~~ had ~~has been filed and served, in order to minimise costs and avoid duplication of effort.~~

66A. On 31 March 2022 the Tribunal held that the application of the Proposed Class Representative was to be preferred over that of Michael O'Higgins FX Class Representative Limited. This decision was upheld by the Court of Appeal on 9 November 2023, dismissing the O'Higgins PCR's appeal on this issue: see paragraph 27.b.iii above and paragraph 124A below.

67. In ~~the~~ letters to the First to Fifteenth Proposed Defendants dated 4 November 2019 sent to them by the Proposed Class Representative's legal representatives informing them of his intention to file an application for a CPO, the legal representatives for the Proposed Class Representative stated that, in view of the fact that the present CPO application would be issued imminently, it was ~~would~~ not (due to the O'Higgins Application having been filed by the O'Higgins PCR and case management conference having been fixed for 6 November 2019) ~~be~~ feasible to engage in pre-action correspondence relating to the Proposed Collective Proceedings. Nevertheless, it was confirmed that the Proposed Class Representative would be amenable to any appropriate proposals as to the exchange of correspondence and/or

other means of ADR, once his application had ~~has~~ been filed. That remains the Proposed Class Representative's position. The Proposed Class Representative has also, in correspondence, informed HSBC and Credit Suisse that he would be amenable to any appropriate proposals as to the exchange of correspondence and/or other means of ADR.

The claims have a real prospect of success (Rule 75(2)(h))

68. The Proposed Class Representative believes that the claims which it is sought to combine in the Proposed Collective Proceedings have a real prospect of success for the reasons given in Part III of this Re-Amended Collective Proceedings Claim Form. In particular, the Proposed Collective Proceedings combine claims which are follow-on claims for damages in which the liability of the Proposed Defendants which are addressees of the Settlement Decisions (i.e. all Proposed Defendants, save Credit Suisse) for the Infringements ~~infringements of Article 101 TFEU and Article 53 EEA Agreement~~ has already been established by way of the Settlement Decisions, which are final and binding on the Tribunal and the Proposed Defendants: see paragraphs 172 and 174 – 174A below. As regards Credit Suisse (which participated in the same infringement as the addressees of the STG Lads Settlement Decision: see paragraphs 183A – 183B, 203B, 237B and 243 below), the STG Lads Ordinary Decision, in which the Commission found that Credit Suisse had committed an Infringement, has not yet become final and whether it will become final and binding on the Tribunal and Credit Suisse will depend on the withdrawal or determination of its appeal to the General Court of the European Union and any subsequent appeal that may be made to the Court of Justice of the European Union: see paragraphs 172 and 174 – 174A below.

69. Further, the Proposed Class Representative will say that the Infringements ~~infringements~~ identified in the Decisions have caused loss to members of the Proposed Classes in that they caused the unlawful widening of bid-ask spreads applicable to FX Spot Transactions and/or FX Outright Forward Transactions involving a G10 Currency Pair. As a result, members of the Proposed Classes paid more, and/or received less, when entering into those same transactions than would otherwise have been the case absent the Infringements.

70. While the precise effects of the Infringements will be the subject of detailed disclosure, expert reports and factual evidence (and will be tested at trial, including by cross-examination), the Proposed Class Representative believes that members of the

Proposed Classes have a real prospect of recovering damages in these Proposed Collective Proceedings.

PART II: THE INFORMATION AND STATEMENTS REQUIRED BY RULE 75(3)(A)-(E)

Description of the Proposed Classes (Rule 75(3)(a)-(b))

Overview of the Proposed Classes

71. The Proposed Class Representative seeks the permission of the Tribunal to continue the Proposed Collective Proceedings on behalf of two classes of persons (i.e. the Proposed Classes). In overview, Class A encompasses the direct harm caused by the Infringements in transactions entered into with the Proposed Defendants (during the periods they participated in the Infringements), whereas Class B comprises persons making claims for losses suffered as a result of the "umbrella" effects of the Infringements. The persons it is intended to include in the Proposed Classes are customers that have entered into certain types of foreign exchange transaction, and will include entities such as hedge funds, pension funds, asset managers, corporations, investment banking firms and other banks.[44]

72. The Proposed Classes are 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.*

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[44] See, for example, recitals 6 and 114 of the TWBS Decision which identifies the main customers of institutions providing foreign exchange services. See also EE Decision, recitals 6 and 118; STG Lads Settlement Decision, recitals 9 and 113; STG Lads Ordinary Decision, recitals 17 - 19 and 552.

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.

72A. In the claims based upon the Sterling Lads Decisions, the word "persons" in the Class Definition is substituted with the defined term "Persons", which is defined as follows:

For these purposes:

"Persons" means all persons, whether legal or natural, and, in the event that 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 successors in title, including the Crown.

In respect of any legal person that is or was recorded as dissolved in the Register of Companies kept at Companies House that legal person will be considered as having ceased to exist unless it has been restored to the Register.

73. A full version of the amended Class Definition is attached to this Re-Amended Collective Proceedings Claim Form at Annex 3. It includes explanations of certain defined terms, such as "*Relevant Financial Institution*" and it sets out the persons and transactions excluded from the Proposed Classes.

74. The following paragraphs explain the parameters of the Proposed Classes. In defining the scope of the Proposed Classes, the Proposed Class Representative and his legal representatives have considered the guidance on class definition contained in paragraph 6.37 of the Guide, as follows:

a. "*[T]he class should be defined as narrowly as possible without arbitrarily excluding some people entitled to claim*": the Proposed Classes, as outlined

above, have been defined as narrowly as possible, while ensuring that they appropriately reflect the harm caused by the Infringements. The exclusions from the Proposed Classes are not arbitrary, but are based on clear rationales as detailed below.

b. "*If the class is too broad, the proposed collective proceedings may raise too few common issues and accordingly not be worthwhile.*" As explained further in paragraphs 140 - 144 below, the Proposed Classes have been defined in such a way that it is anticipated that all issues arising for determination in respect of each of the Proposed Classes will be common issues.

Explanation of the Proposed Classes

74A. For the avoidance of doubt, save where the contrary is expressed, the paragraphs below relate both to claims made in reliance on (i) the EE Decision and the TWBS Decision and (ii) the Sterling Lads Decisions.

Definition of 'person'

74B. This paragraph presently forms part of the Re-Amended Claim Form only for the purposes of the claims made in reliance on the Sterling Lads Decisions. For both Class A and Class B, "persons" is defined to include all persons, legal or natural, and, in the event that title to bring the claim in relation to a relevant transaction now vests in a third party, the successors in title to those persons, including the Crown.

a. That each of Class A and Class B includes both (i) those persons who entered into the relevant transactions; and (ii) where relevant, the successors in title to those persons. The successor in title to a person who entered into the relevant transaction will be the class member where the person who entered into the relevant transaction ceases to exist (for example, where a company has been dissolved, an individual has died or a trustee has retired and ceased to act) or the person has, whether in the course of business or otherwise (for example, as a gift or an assignment under insolvency or bankruptcy law), transferred title to sue in relation to those transactions to another person.

b. That a company (or other legal person, such as an LLP) will not have ceased to exist for the purpose of class membership if, having been dissolved, it has subsequently been restored to the Register of Companies kept at Companies House.

c. That where the successor in title is the Crown (or the Duchy of Cornwall or of Lancaster) (for example, when property of a dissolved company or deceased person vests in the Crown or a Duchy *bona vacantia*), Mr Evans will represent the Crown or a Duchy.

Reasons for including two classes in the Proposed Collective Proceedings

75. Although the claims made on behalf of the Proposed Classes raise a number of issues which are common to both Classes, the Proposed Class Representative considers they are sufficiently different to necessitate defining two separate Classes.[45] This is for two main reasons:

a. As explained in section 5 of the First Rime Report, the way in which the Infringements caused harm to members of Class A and Class B differs ~~differ~~ in certain respects. Specifically:

i. The harm suffered by members of Class A results from the direct effects of the Infringements, which are suffered in transactions entered into with the Proposed Defendants during their Relevant Class A periods;[45A] whereas

ii. The harm suffered by members of Class B was ~~is~~ caused in two ways:[46]

1. The impact of the Infringements, as further particularised in paragraph 252 below, was to enable the Proposed Defendants to unlawfully widen the bid-ask spreads charged to their customers. This, in turn, reduced the competitive pressures on the Relevant Financial Institutions and the Proposed Defendants (during their Relevant Class B Periods), enabling them, in turn, to charge widened spreads to their customers.

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45 For the avoidance of doubt, as noted in paragraph 74 above, the Proposed Class Representative will say that all issues arising for determination in respect of each of the Proposed Classes are common issues.

45A For full particulars, see paragraphs 249 - 251 below.

46 For full particulars, see paragraphs 252 – 252C below.

2. The Infringements created increased "adverse selection" risks in the inter-dealer market,[47] which increased the costs of buying and selling currency in that market. These costs were borne by Relevant Financial Institutions ~~institutions~~ and the Proposed Defendants (during their Relevant Class B Periods) which, in turn, were passed on to members of Class B.

b. As explained in section 6 of the First Ramirez Report and in section 5 of the Fourth Ramirez Report, the approach to calculating the harm suffered by Class A and Class B would differ as:

i. Different data sources would be used to calculate the harm to members of the Proposed Classes. Specifically:[48]

1. The harm suffered by members of Class A would be calculated on the basis of the Proposed Defendants' transaction data; whereas

2. The harm suffered by members of Class B would be calculated based on a combination of the following data sources: (i) the Proposed Defendants' transaction data to measure harm during their Relevant Class B periods; (ii) data from certain FX trading platforms such as multi-bank platforms;[49] (iii) data from CLS Bank International; and (iv) data from inter-dealer trading[50] platforms, such as Electronic Broking Services (**"EBS"**) and Thomson Reuters Matching (or **"Reuters"**).

ii. While Mr Ramirez intends to use multiple regression analysis to calculate the harm suffered by both Class A and Class B, the regression models used will vary somewhat, as:[51]

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47 The "inter-dealer market" is explained at paragraph 194 below and in the First Knight Report at section 5.1.2.

48 See further paragraph 164 below.

49 Multi-bank platforms are platforms whereby a customer can trade with multiple FX Dealers at the same time. This is explained further in section 6.2.4 of the First Knight Report.

50 Trading on the "inter-dealer market" is explained at paragraph 194 below and in the First Knight Report at section 5.1.2.

51 See further paragraphs 156 - 163 below.

1. The harm to Class A will be based on a multiple regression analysis applied to the Proposed Defendants' transaction data; whereas

2. The harm to Class B will be based on different multiple regression analyses, which will be applied to the data sources outlined above. In particular, these multiple regression analyses will be adapted, where necessary, to take account of the differences between the data sources used. The overcharges calculated as a result of these analyses will be combined into a weighted average overcharge for Class B.

76. It is therefore considered appropriate to define two separate classes to reflect these differences.

77. The Proposed Class Representative is aware that some class members may fall into both Class A and Class B.[52] For the avoidance of doubt, there is no conflict of interest between these classes, as they comprise entirely separate sets of transactions and the theories of harm are consistent with one another. In its judgment of 31 March 2022, the Tribunal found that there is no conflict between the members of Class A and the members of Class B.[52A] This finding was not appealed by either the O'Higgins PCR or the Proposed Defendants.

"FX Spot Transactions" and "FX Outright Forward Transactions"

78. The class member must have entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) to fall within the Proposed Classes.[53]

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52 For example, a customer may have traded ~~trade~~ with a Proposed Defendant both during their Relevant Class A Period and Relevant Class B Period. Alternatively, a customer might have conducted FX trading with both the Proposed Defendants and other Relevant Financial Institutions during the periods covered by the Infringements.

52A [2022] CAT 16, at [284].

53 The definitions of FX Spot Transactions and FX Outright Forward Transactions used in the class definition have been derived from those adopted by the Bank for International Settlements (**"BIS"**), and in particular in the *Reporting Guidelines* published for the Triennial Central Bank Survey of Foreign Exchange and OTC Derivatives Markets. The Reporting Guidelines are available online at: https://www.bis.org/statistics/triennialrep/2019survey_guidelinesturnover.pdf, and the relevant definitions adopted in this Re-Amended Collective Proceedings Claim Form can be found on pages 14 and 15 of the *Reporting Guidelines*.

79. An FX Spot Transaction is defined as follows:

> ***"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.*

80. FX Spot Transactions are included in the Proposed Collective Proceedings since each of the Decisions states in terms in Article 1 of their operative parts that the relevant undertakings participated, during the periods indicated in the relevant Decision, in a "*single and continuous infringement covering the whole EEA in G10 FX spot trading*"[53A] or "*a single and continuous infringement regarding foreign exchange spot trading of G10 currencies covering the entire EEA*".[53B] It follows, as further particularised in Part III below, that FX Spot Transactions were directly affected by the Infringements.

81. An FX Outright Forward Transaction is defined as follows:

> ***"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).*

82. As explained in paragraph 251 below, and further in the First Knight Report at section 4.3.2, the price of a given FX Outright Forward Transaction is determined by taking the price of the equivalent FX Spot Transaction and adding "forward points" which reflect the interest rate differential between the two currencies involved in that transaction. It follows that to the extent the Infringements affected the price of FX Spot Transactions, they would, in turn, have impacted the price of FX Outright Forward Transactions.

[53A] TWBS Decision, Article 1; EE Decision, Article 1.

[53B] STG Lads Settlement Decision, Article 1. Article 1 of the STG Lads Ordinary Decision uses similar language to describe the infringement found in that decision: "*agreements and/or concerted practices (within a wider single and continuous infringement) having the object of restricting and/or distorting competition regarding foreign exchange spot trading of G10 currencies covering the entire EEA*".

83. The reasons for excluding FXAs, NDFs and CFDs are explained in the First Knight Report at section 4.3.2.1. In short, these transactions are not FX Outright Forward Transactions as they do not involve the exchange of currencies.

"Directly or indirectly via an Intermediary"

84. The FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) must have been entered into either directly or indirectly via an Intermediary. An "*Intermediary*" is defined as "*any person entering into an FX Spot Transaction and/or an FX Outright Forward Transaction on behalf of a third party*."

Involving "a currency pair consisting of two G10 Currencies"

85. The FX Spot Transaction(s) or FX Outright Forward Transaction(s) must have involved a currency pair consisting of two G10 Currencies (i.e. a G10 Currency Pair, as explained in paragraph 11 above). This reflects the scope of the Infringements as found by the Commission, which concern FX spot trading in G10 Currencies.

86. As explained further in paragraph 209 of the First Rime Report, it is possible that some (but not all) currency pairs involving a G10 Currency on only one side of the pair may also have been ~~be~~ affected by the Infringements. However, these have not been included within the scope of the Proposed Collective Proceedings as their inclusion would result in an unacceptably complicated class definition. Specifically, it would require a prospective class member to consult a substantial list of affected currency pairs in order to identify which of their FX transactions fell within the scope of the class definition, which would be unduly onerous. Furthermore, as noted in paragraph 6.37 of the Guide, the definition of the Proposed Classes has "*practical implications, such as in relation to the requirements to give notice*." A class definition which included a substantial list of potentially affected currency pairs would be difficult to appropriately reflect in any notice issued to members of the Proposed Classes.

Transactions "entered into… in the European Economic Area"

87. The FX Spot Transaction and/or FX Outright Forward Transaction must have been entered into in the European Economic Area (**"EEA"**).[54] The purpose of this criterion is to reflect the territorial scope of the Infringements, which cover the "*whole EEA*".[55]

88. This criterion is defined in the class definition as follows:

> *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.

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54 It is to be noted that the European Economic Area is defined in the class definition as "*the then 27 Member States of the European Union as at 31 January 2013, Iceland, Liechtenstein and Norway*." This is to reflect the fact that Croatia joined the EU on 1 July 2013, after the period covered by the Decisions. Consequently, the European Economic Area has been defined as encompassing those Member States of the EU, along with the EFTA members (Iceland, Lichtenstein and Norway) on 31 January 2013 (being the last day of the total period covered by the Infringements). This has the effect of treating Croatia as if it were not a Member State of the EU, and therefore not part of the EEA, for the purposes of the Proposed Collective Proceedings. See also, as regards the United Kingdom's withdrawal from the European Union, footnote 3 of the STG Lads Ordinary Decision and of the STG Lads Settlement Decision; accordingly, the United Kingdom is, for the purposes of the Proposed Collective Proceedings, part of the EEA.

55 Article 1 of each of the ~~both~~ Decisions.

89. In short, a transaction is defined as being entered into in the EEA where the: (i) Proposed Defendant or Relevant Financial Institution; and/or (ii) the class member, is located in the EEA. The justification for including each of these two criteria is set out in more detail below.

90. The first way in which a transaction is defined as being entered into in the EEA is where the Proposed Defendant or Relevant Financial Institution entering into the FX Spot Transaction and/or FX Outright Forward Transaction with the class member is located in the EEA. This follows from the terms of the Decisions which, in their operative parts, find a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement "*covering the whole EEA.*"[56] In other words, the Decisions identify the territory encompassed by the Infringements as the entire EEA, and it follows that transactions entered into with the Proposed Defendants or Relevant Financial Institutions located within that territory would be affected by the conduct identified in the Decisions.

91. As explained in section 5.2.2 of the First Knight Report, large FX Dealers, such as the Proposed Defendants and the Relevant Financial Institutions, are likely to offer FX trading services in multiple jurisdictions via a sales desk or other business unit located in that country. In these circumstances, it is appropriate to define the circumstances in which a Proposed Defendant or Relevant Financial Institution is considered to be located in the EEA. This is defined in the class definition as follows:

> *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.*

92. The purpose of this definition is to make clear that defining the location of the Proposed Defendant or Relevant Financial Institution for the purposes of an FX Spot Transaction and/or an FX Outright Forward Transaction depends upon identifying the part of the Proposed Defendant or Relevant Financial Institution that entered into the transaction with the class member. This would be straightforward where a class member dealt directly with a particular representative or sales desk as the location of the latter would be clear. By contrast, where transactions are concluded via an electronic trading platform, they may not involve transacting with a particular individual

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56 See Article 1 of each of the Decisions.

or sales desk. In these circumstances, it may be more difficult to identify the location of the Proposed Defendant or Relevant Financial Institution.[57] However, as explained in the First Knight Report at section 6.3:

a. It is anticipated that the Proposed Defendants' transaction records will indicate which sales desk serviced a particular transaction; and

b. It may also be possible to identify the location of the electronic trading platform transacting with the customer, for example if it is run by a company incorporated in the EEA (or if the server itself is located in the EEA).

93. The second way in which a transaction is defined as being entered into in the EEA is if the class member is located in the EEA. This criterion has been included in the class definition for two main reasons:

a. As acknowledged in paragraph 92 above, there may be situations in which the exact location of the Proposed Defendant or Relevant Financial Institution is unclear, particularly where the class member trades via an electronic trading platform or an Intermediary. Consequently, the inclusion of an alternative criterion based on the location of the class member provides a clear and workable alternative in those cases of ambiguity.

b. Furthermore, the Proposed Class Representative infers from the Decisions that members of the Proposed Classes located in the EEA would also have suffered ~~suffer~~ harm as a result of the Infringements when entering into FX Spot Transactions and/or FX Outright Forward Transactions with a Proposed Defendant or a Relevant Financial Institution located outside of the EEA. This is because:

i. A number of the addressees of the Decisions are entities domiciled outside of the EEA. This indicates that the Infringements were implemented by entities outside of the EEA, yet within the territory of the EEA (i.e. in respect of transactions with customers located in the EEA);

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57 There may also be difficulties in identifying the location of a Proposed Defendant or Relevant Financial Institution where the class member enters into a transaction via an Intermediary. This is discussed further in paragraph 109 below.

ii. While the Decisions indicate that the Infringements covered the whole of the EEA, and therefore produced effects in the EEA, they do not appear to restrict the scope of the Infringements found to those involving the parts of the Proposed Defendants' respective undertakings that were located in the EEA. See, for example, recitals 113-115 of the TWBS Decision:[58]

> *In this case, the Commission finds that the participating traders' FX spot trading activities in G10 currencies were at least EEA-wide in scope.*
>
> *FX spot trading services are routinely used by multinational undertakings such as banks, corporations, hedge funds, pension funds and investment banking firms within the EEA. The infringement covered the entire EEA and related to trade within the EEA and was therefore capable of having an appreciable effect upon trade between EU Member States and between contracting parties to the EEA Agreement.*
>
> *Therefore, for the purposes of the application of Articles 101 of the Treaty and Article 53 of the EEA Agreement, the agreement and the agreements and/or concerted practices referred to in Section 5.1.1.2 covered the entire EEA*. (emphasis added)

While this extract of the Decisions states that the Infringements covered the whole EEA, and refers to FX trading services being used by customers located in the EEA, it makes no reference to the location of the Proposed Defendants;

iii. It is understood ~~is possible~~ that at least some of the traders participating in the chatrooms were not located in the EEA.[59] For example, the EE Decision indicates that some of the traders were

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58 Recitals 117 – 119 of the EE Decision, 551 – 553 of the STG Lads Ordinary Decision and 112 – 114 of the STG Lads Settlement Decision are in materially identical terms.

59 OCR INFORMATION REDACTED [redacted] ~~The Proposed Class Representative is not presently able to verify this given that the names of the traders participating in the chatrooms are redacted from the non-confidential versions of the Decisions.~~

trading in different time zones (and therefore may have been located outside of the EEA). For example, see recital 110 of the EE Decision, which discusses the decision to merge the "Grumpy Semi Old Men" and "Essex Express 'n Jimmy" chatrooms:

> *The short duration of Grumpy Semi Old Men (4 months and 4 days) shows that running both chatrooms in parallel soon became redundant for* [OCR INFORMATION REDACTED] *...] (Barclays) and* [OCR INFORMATION REDACTED] *...] (RBS). Indeed,* [OCR INFORMATION REDACTED] *...] and* [OCR INFORMATION REDACTED] *...] used both chatrooms interchangeably. They used the two chatrooms simultaneously instead of a single one because* [OCR INFORMATION REDACTED] *...] (BOTM) and* [OCR INFORMATION REDACTED] *...] (UBS) did not know each other and traded at different hours, but they used both chatrooms in pursuit of the same objective.* (emphasis added)

iv. It is also to be noted that the fines imposed on the Proposed Defendants were based in part upon identifying the value of FX spot transactions entered into with counterparties in the EEA and does not appear to distinguish between the location in which the Proposed Defendants were trading.[60]

> *Moreover, given that the infringement covered the entire EEA, the Commission considers it appropriate that the proxy of the value of sales is based on the G10 FX spot transactions entered into with counterparties located in the EEA.* (emphasis added)

Accordingly, each of these factors indicate that the Infringements found by the Decisions concern transactions entered into with customers located in the EEA, irrespective of the location of the Proposed Defendant.

94. The class definition also defines the circumstances in which a customer is to be considered located in the EEA, namely that "*a class member domiciled in the European Economic Area shall be considered located there.*" The rationale for this definition is twofold:

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60 Recital 178 of the TWBS Decision; recital 179 of the EE Decision; recital 157 of the STG Lads Settlement Decision and recital 587 of the STG Lads Ordinary Decision. These recitals ~~This recital~~ also indicate ~~indicates~~ that it is possible to identify the location of the customer in the Proposed Defendants' transaction data, including those counterparty customers located in the EEA.

a. A definition based on the domicile of the class member is clear and workable, especially as the class member will already have identified their domicile for the purposes of considering whether they are required to opt-in or opt-out of the Proposed Collective Proceedings; and

b. A class member's ~~members'~~ domicile may be the place in which they suffered loss as a result of the Infringements.

95. Finally, it is to be noted that the definition as to when a transaction is entered into in the EEA applies irrespective of whether the FX Spot Transaction and/or FX Outright Forward Transaction was entered into directly or indirectly via an Intermediary.

"With a Defendant, during that Defendant's Relevant Class A Period"

96. To fall within Class A, the class member must have entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) with a Proposed Defendant during that Proposed Defendant's Relevant Class A Period. The Relevant Class A Period is set by reference to the period during which each Proposed Defendant participated in one or more ~~either or both~~ of the Infringements. It is calculated on an aggregate basis across all of the ~~both~~ Infringements, as follows:

a. The Relevant Class A Period for each Proposed Defendant will start on the earliest date on which it participated in one or more ~~either~~ of the Infringements; and

b. The Relevant Class A Period for each Proposed Defendant ends on the last date on which that Proposed Defendant was found to have participated in any ~~either~~ of the Infringements.

97. Accordingly, the Relevant Class A Period for each of the Proposed Defendants is as set out in the table below.

Proposed Defendant	Relevant Class A Period
Barclays Bank Plc. Barclays Plc. Barclays Execution Services Limited.	18 December 2007 - 1 August 2012
Barclays Capital Inc.[61]	14 December 2009 - 31 July 2012
Citibank N.A. Citigroup Inc.	18 December 2007 - 31 January 2013
MUFG Bank, Ltd. Mitsubishi UFJ Financial Group, Inc.	8 September 2010 - 12 September 2011
J.P. Morgan Europe Limited. J.P. Morgan Limited. JPMorgan Chase & Co. JPMorgan Chase Bank, N.A.	26 July 2010 - 31 January 2013
NatWest Markets Plc.[62] NatWest Group plc (formerly The Royal Bank of Scotland Group PLC).	18 December 2007 - 19 April 2010 and 14 September 2010 - ~~8 November 2011~~ 12 July 2012
UBS AG.	14 December 2009 - 31 January 2013
HSBC Holdings plc HSBC Bank plc	25 May 2011 – 26 June 2012
UBS Group AG (as successor to Credit Suisse Group AG) Credit Suisse AG Credit Suisse Securities (Europe) Limited	7 February 2012 - 12 July 2012

"With a Relevant Financial Institution, between 18 December 2007 and 31 January 2013, and/or a Defendant, during the Defendant's Class B Period"

98. To fall within Class B, the transaction must have been entered into with: (i) a Relevant Financial Institution between 18 December 2007 and 31 January 2013;[63] and/or (ii) a Proposed Defendant, during that Proposed Defendant's Relevant Class B Period. The

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61 Barclays Capital Inc. has a separate Relevant Class A Period as it was found to have participated in the infringement identified in the EE Decision only.

62 There are two separate Relevant Class A Periods for RBS as there is a gap between the last day it was found to have participated in the infringement identified in the TWBS Decision, and the first day it was found to have participated in the infringement identified in the EE Decision.

63 Being the total period covered by the Infringements.

purpose of these criteria is to ensure that Class B encompasses transactions entered into with the main institutions offering FX trading services other than those participating in the Infringements.[64]

99. A Relevant Financial Institution is defined as any entity forming part of a banking group contained in the List of Relevant Financial Institutions which is annexed to the full class definition. This list contains 57 banking groups which have been identified from the following sources:

a. Institutions which are or were (at any time between 2007 - 2019) "*participating financial institutions*" in the Bank of England Foreign Exchange Joint Standing Committee's (**"FXJSC"**)[65] semi-annual turnover survey. These "*participating financial institutions*" are said to be those "*financial institutions active in the UK foreign exchange market*"; [66] and

b. Institutions which participated in the Bank of England's submission to the BIS *Triennial Central Bank Survey of Foreign Exchange and Over-the-counter*

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64 The Proposed Class Representative will say that transactions falling within Class B were affected by the "umbrella" effects of the Infringements. This is particularised at paragraphs 252 – 252C below.

65 The FXJSC is a "*market liaison group, established in 1973 by the banks and brokers of the London FX market, as a forum to discuss broad market issues. The Bank of England chairs the Committee, which comprises senior practitioners from institutions active in the UK wholesale foreign exchange market, from the broking community, from infrastructure providers and representatives from industry associations and the relevant UK public authorities.*" See footnote 66 below.

66 See, for example, the *Results of the Foreign Exchange Joint Standing Committee (FXJSC) Turnover Survey for April 2019.* Available online at: https://www.bankofengland.co.uk/-/media/boe/files/markets/foreign-exchange-joint-standing-committee/semi-annual-fx-turnover-survey-results/2019/april-2019-results.pdf?la=en&hash=9098BA25186F312DFDB78F76CF6A84E5E5037E27.

(OTC) Derivatives Markets (the **"BIS Triennial Survey"**) as a *"reporting dealer"*.[67] A "*reporting dealer*" is defined as:[68]

> *… mainly large commercial and investment banks and securities houses that (i) participate in the inter-dealer market and/or (ii) have an active business with large customers, such as large corporate firms, governments and non-reporting financial institutions; in other words, reporting dealers are institutions that are actively buying and selling currency and OTC derivatives both for their own account and/or in meeting customer demand.*

The Proposed Class Representative has used the list of reporting dealers for 2016, as this is the only publicly available version that he has been able to identify.[69]

100. Accordingly, the list of Relevant Financial Institutions includes the main institutions offering FX trading services in the UK.[70]

101. It is to be noted that the list of Relevant Financial Institutions: (i) includes entities forming part of the banking groups of Barclays, Citigroup/Citibank, JP Morgan, Mitsubishi Union Financial Group/Bank of Tokyo Mitsubishi, NatWest/Royal Bank of Scotland, ~~and~~ UBS, HSBC and Credit Suisse; and yet (ii) excludes the Proposed Defendants. This is because transactions entered into with entities forming part of these banking groups other than the Proposed Defendants will be treated as falling into Class B, provided all other conditions contained in the class definition are

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67 As explained further in section 3.4.1 of the First Knight Report, the BIS Triennial Surveys, which have been conducted (in respect of FX trading) every three years since 1986, are considered to be the most authoritative and comprehensive source of data on the size and structure of the global FX markets, as they involve data submitted by a large number of central banks and authorities worldwide. For example, the 2019 survey involved central banks and authorities in 53 jurisdictions, which collected data from close to 1,300 banks and other dealers in their jurisdictions and reported national aggregates to BIS. The data submitted is broken down into specified categories of currency, transaction and counterparty. In turn, BIS calculates global aggregates of the data submitted, which are presented in its Triennial Central Bank Survey reports. The data provided to BIS in respect of the United Kingdom is provided by the Bank of England and is published on its website.

68 BIS Reporting Guidelines, footnote 53 above.

69 The list of reporting dealers is available from BIS' website at: http://www.bis.org/statistics/triennialrep/2016survey_turnover_list_of_rep_dealers.xlsx.

70 The Proposed Class Representative has focussed on the UK since: (i) any other approach is liable to give rise to an unmanageable number of RFIs across the EEA and (ii) the centre of gravity of the proceedings (both due to the location of most of the individual traders that participated in the Infringements and the domicile of the opt-out class members) is likely to be the UK.

satisfied.[71] The Proposed Class Representative has no knowledge of whether other entities were involved in the implementation of the Infringements and has therefore decided, out of an abundance of caution, to treat such transactions as being affected by the "umbrella" effects of the Infringements.

102. The Relevant Class B Period for each Proposed Defendant comprises any period between 18 December 2007 - 31 January 2013 that is not covered by the Relevant Class A Period. This would include (if applicable): (i) the period prior to the Proposed Defendant's participation in any of the Infringements ~~either Infringement~~; and/or (ii) any period after their Relevant Class A Period, but before the end date of all the ~~both~~ Infringements (31 January 2013). As further particularised in paragraphs 252 – 252C below, the Proposed Class Representative will say that FX Spot Transactions and FX Outright Forward Transactions entered into with the Proposed Defendants during the Relevant Class B Period would have been affected by the "umbrella" effects of the Infringements. In other words, they would have been affected in the same way as transactions entered into with Relevant Financial Institutions. The Relevant Class B Periods for the Proposed Defendants are set out in the table below. It is to be noted there is no Relevant Class B Period for Citigroup, because their Relevant Class A Period covers the total period of the Infringements.

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71 By contrast, where the transaction is entered into with a Proposed Defendant, it will fall within Class A or Class B depending on whether it was entered into during that Proposed Defendant's Relevant Class A Period or Relevant Class B Period respectively.

Proposed Defendant	Relevant Class B Period
Barclays Bank PLC. Barclays PLC. Barclays Execution Services Limited.	2 August 2012 - 31 January 2013
Barclays Capital Inc.	18 December 2007 - 13 December 2009 and 1 August 2012 - 31 January 2013
Citibank N.A Citigroup Inc.	None
MUFG Bank, Ltd. Mitsubishi UFJ Financial Group, Inc.	18 December 2007 - 7 September 2010 and 13 September 2011 - 31 January 2013
J.P. Morgan Europe Limited. J.P. Morgan Limited. JPMorgan Chase & Co. JPMorgan Chase Bank, N.A.	18 December 2007 – 25 July 2010
NatWest Markets PLC. NatWest Group plc (formerly The Royal Bank of Scotland Group PLC).	20 April 2010 - 13 September 2010 and ~~9 November 2011~~ 13 July 2012 - 31 January 2013
UBS AG.	18 December 2007 - 13 December 2009
HSBC Holdings plc HSBC Bank plc	18 December 2007 – 24 May 2011 and 27 June 2012 – 31 January 2013
UBS Group AG (as successor to Credit Suisse Group AG) Credit Suisse AG Credit Suisse Securities (Europe) Limited	18 December 2007 – 6 February 2012 and 13 July 2012 – 31 January 2013

Excluded Transactions and Excluded Persons

103. Both Class A and Class B are defined to exclude certain transactions (the **"Excluded Transactions"**) as follows:

    a. Certain types of "retail" FX transactions, namely:

i. Transactions entered into in a retail branch. This encompasses, for example, purchases of currency at a *bureau de change* or travel money desk.

ii. Online purchases of currency for Non-Commercial Purposes.[72] This would include, for example, the purchase of currency for a personal holiday.

iii. Transfers of funds denominated in different currencies across any two bank accounts for Non-Commercial Purposes. An example of this type of transaction would be a transfer of funds between personal bank accounts, or a transfer from a customer to a friend or members of their family.

iv. Transactions involving an automated teller machine (or **"ATM"**), which will normally involve withdrawing funds in a foreign currency.

v. Transactions involving a credit card, debit card, prepaid card or other stored value card.

These transactions are excluded from the Proposed Classes because, as explained in section 5.5 of the First Knight Report, these types of transactions are priced in a very different way to other types of FX Spot Transaction or FX Outright Forward Transaction, as: (i) they often involve much wider bid-ask spreads and the prices tend to be set at certain intervals, such as on a daily basis; and (ii) at least some of these transactions, particularly those involving an ATM or credit/debit card, will be priced against a daily price set by card processors, such as Visa and MasterCard, with the card provider then charging a transaction fee or a commission on the transaction.

b. FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) whereby the member of the Proposed Class entered into the transaction(s) as an Intermediary, defined as "*any person entering into an FX Spot Transaction and/or an FX Outright Forward Transaction on behalf of a third party*." The proper claimant in respect of such transactions will be the ultimate customer

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72 In the class definition, 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.*"

on whose behalf the Intermediary is acting, as they will have suffered the loss and damage particularised in Part III below.

c. Transactions to execute an FX Spot Transaction and/or an 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 rates. As explained in the First Knight Report at paragraph 108, FX transactions whereby the price is set by reference to a foreign exchange benchmark rate typically do not involve the application of a bid-ask spread. Accordingly, such transactions would not be affected by the unlawful widening of bid-ask spreads, which is the subject of the Proposed Collective Proceedings.

d. Transactions resulting from a class member leaving a limit order or a resting order. As explained in Annex 1 of the First Knight Report, a limit order or a resting order entails a party (i.e. the customer) leaving an order to enter into an FX transaction at a particular price. Given that: (i) a bid-ask spread may not be applied to a number of these transactions;[73] and (ii) these orders involve the customer specifying the price for the FX transaction,[74] it would be difficult to identify whether, and if so how, these transactions would be affected by any widened bid-ask spreads resulting from the Infringements.[75]

e. Any transaction which is the subject of ongoing litigation or a binding settlement that would otherwise fall within the Proposed Classes. This exclusion is to ensure that the Proposed Collective Proceedings do not involve claims that are already included in other proceedings, such as the class action proceedings

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73 First Knight Report, footnote 114.

74 First Knight Report, footnote 114.

75 For the avoidance of doubt, the Proposed Class Representative's position is that at least some of these orders may have been affected by the Infringements established by the Decisions (see, in this regard, the First Knight Report at paragraph 108), but that harm may not be consistent across all transactions. In those circumstances, it is considered appropriate to exclude these transactions from the Proposed Collective Proceedings.

commenced in the United States,[76] Canada[77] and Australia[78]. However, this exclusion does not apply to any claim included in another application for a CPO, such as the O'Higgins Application (as to which, see paragraphs 124 - 129 below).

104. The Proposed Classes also exclude certain persons (the **"Excluded Persons"**):

a. A Relevant Financial Institution and any person that has participated in the BIS Triennial Central Bank Survey of Foreign Exchange Turnover as a "*reporting dealer*".[79] These persons are excluded as members of the Proposed Classes as the Proposed Class Representative understands that, to the extent that these persons suffered loss as a result of the Infringements, they would be in a position to pass that harm on to their customers;

b. The Proposed Defendants, including their subsidiaries, holding companies, any other subsidiaries of those holding companies and any other entity ~~which~~: (i) which has a controlling interest in a Proposed Defendant; and/or (ii) in which a Proposed Defendant has a controlling interest.

c. The officers, directors and employees of any entity referred to in the previous paragraph.

d. Persons whose involvement in the Proposed Collective Proceedings may give rise to a conflict of interest, namely:

i. Any member of the Proposed Class Representative's, and the Proposed Defendants' legal teams and all experts/professional advisors instructed by them in the Proposed Collective Proceedings (including the professional staff assisting them); and

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76 Namely, *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.

77 Namely, 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.

78 Namely, *J Wisbey & Associates Pty Ltd v UBS AG and others*, filed before the Federal Court of Australia under Case Number VID567/2019.

79 For the definition of a reporting dealer, see paragraph 99 above.

ii. All members of the Tribunal and staff assigned to these proceedings and any members of the appellate courts and staff who may hear any matter arising in these Proposed Collective Proceedings.

Opting-in and opting-out of the Proposed Collective Proceedings

105. All persons, except those identified in paragraph 104 above (and subject also to the Excluded Transactions explained in paragraph 103 above), who fall within the definition of the Proposed Classes and who are domiciled in the United Kingdom on the "domicile date", to be determined by the Tribunal, are proposed to be included in the Proposed Collective Proceedings.

106. It is further proposed that all persons who are not domiciled in the United Kingdom on the domicile date should be able to opt-in to the Proposed Collective Proceedings to the extent that they would otherwise fall within Class A and/or Class B. However, the Proposed Class Representative anticipates that class members seeking to opt-in to the Proposed Collective Proceedings will be asked to provide their FX transaction records for the periods covered by the Infringements so their transactions can be included in the claim.[80]

107. The likely process to be followed in this regard is set out in section 5.3 of the First Ramirez Report, where it is explained that:

a. Mr Ramirez will develop a structured data template which class members seeking to opt-in to the Proposed Collective Proceedings can populate with details of their qualifying transactions with the Proposed Defendants and Relevant Financial Institutions during the period covered by the Infringements; and

b. To the extent class members are unable to provide transaction data, Mr Ramirez may be able to assist potential class members to identify their transaction records from the Proposed Defendants' transaction data in the event that it is disclosed in these proceedings. This would not be possible for

80 The main reason for this requirement is the Proposed Class Representative will be unable to estimate the quantum of transactions entered into by class members (which are not domiciled in the UK) with Relevant Financial Institutions, and therefore such information must be provided in order to be included in the Proposed Collective Proceedings.

transactions concluded with Relevant Financial Institutions, as the Proposed Class Representative would not have access to these records.

Ascertaining whether a person is a member of the Proposed Classes

108. As is clear from the foregoing, the Proposed Classes have been defined in order to ensure that a given person would be able to easily identify whether they are a member of one or both of the Proposed Classes. Many of the factors that determine whether a person falls within the Proposed Classes are matters that would be known at the time of entering into an FX transaction, namely:

a. **The date of the transaction, the type of transaction entered into and the currency pair involved** would be agreed at the time of entering into the FX transaction; and

b. **The counterparty to the transaction with the customer** would usually be known in advance, thereby enabling a person to identify whether they entered into a transaction with a Proposed Defendant or a Relevant Financial Institution either directly or indirectly via an Intermediary. As explained in the First Knight Report at section 6.2.4, some trading platforms are "pre-trade anonymous", meaning that the identity of the counterparty is only revealed after the transaction is concluded.

109. In relation to transactions entered into via Intermediaries, it is necessary to distinguish between the two types of Intermediary:[81]

a. Intermediaries dealing "as agent", which enter into FX transactions directly on behalf of their clients. In those circumstances, the FX transaction will be concluded in the names of the customer and the FX Dealer, and each party will be aware of the identity of the other. Accordingly, a prospective class member will be in a position to identify whether they have entered into an FX Spot Transaction and/or an FX Outright Forward Transaction with a Proposed Defendant and/or a Relevant Financial Institution.

b. Intermediaries dealing "as principal", which interpose themselves between an FX Dealer and a customer, dealing with each party individually. As a result, the FX Dealer would potentially be unaware of the ultimate customer's identity.

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81 See further the First Knight Report, section 5.4.

However, Mr Knight suggests that it may be possible for the customer to ask the Intermediary to provide the identity of the FX Dealer that it traded with on their behalf, albeit that he is unaware of whether the Intermediary would disclose that information.[82] Accordingly, the Proposed Class Representative will direct members of the Proposed Classes to contact their Intermediary in the first instance in order to identify the ultimate counterparty to their FX transactions, with a view to ascertaining whether or not they fall within the Proposed Classes. If it transpires that customers are unable to ascertain this information, the Proposed Class Representative will consider this matter further with his expert advisors and propose an alternative approach.

110. It would also be necessary to consider whether ~~a~~ an FX transaction was entered into in the EEA, which entails identifying whether the: (i) Proposed Defendant or Relevant Financial Institution; and/or (ii) the class member, is located in the EEA. This is addressed in paragraphs 87 - 95 above.

111. Furthermore, the Excluded Persons and Excluded Transactions are defined in a straightforward and clear fashion such that a person would be able to identify whether they, or any FX transactions they had entered into, were excluded from the Proposed Classes.

112. As noted in paragraph 5 above, and confirmed in the First Knight Report at section 3.4.2, following an FX transaction, an FX Dealer will normally issue a trade confirmation to its customer. This may also contain information, such as that listed above, that may assist a person in identifying whether they are a member of the Proposed Classes.

Estimate of the number of class members (Rule 75(3)(c))

113. The First Ramirez Report provides a preliminary estimate of the size of the Proposed Classes.[83] It is estimated that:

a. Class A would consist of between 14,201 and 42,015 class members; and

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82 First Knight Report, paragraph 154(a).

83 Specifically, the size of the UK-domiciled members of the Proposed Classes. As explained in paragraph 11 of the First Ramirez Report, the size and composition of non-UK domiciled class members depends on the number of persons opting-in to the Proposed Collective Proceedings, and as such it is infeasible to determine the number of these persons on an *a priori* basis.

b. Class B would consist of between 27,814 and 42,015 class members.

113A. The Fourth Ramirez Report provides an updated preliminary estimate of the size of the Proposed Classes, using the same approach as in the First Ramirez Report, to include the Infringements found by the Commission in the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.[83A] It is estimated that, on this, revised basis:

a. Class A would consist of between 15,578 and 42,015 class members; and

b. Class B would consist of between 26,537 and 42,015 class members.

114. These estimates have been developed based on publicly available statistics concerning the number of certain types of businesses operating in the UK. The First Ramirez Report explains that, broadly, members of the Proposed Classes can be characterised as financial institutions or non-financial customers. Different data sources are used to enumerate these two categories of potential members of the Proposed Classes, as follows:

a. Data from the UK's Office for National Statistics (**"ONS"**) is used to enumerate the financial institutions that may form part of the Proposed Classes.[84] In particular, the ONS maintains annual statistics on the population of UK enterprises by industry and size (in terms of number of employees). The data is broken down into certain "*subclasses*" for industry sectors and Mr Ramirez has identified the subclasses corresponding to the types of financial institutions that may fall within the Proposed Classes and used these to inform his estimates; and

b. To enumerate non-financial customers in the Proposed Classes ~~classes~~, Mr Ramirez focuses on entities engaged in importing and/or exporting goods,

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83A Fourth Ramirez Report, paragraph 29. As Mr Ramirez explains in paragraphs 18 and 19 of the Fourth Ramirez Report, this would have the effect of the HSBC and Credit Suisse entities which are addressees of the STG Lads Settlement Decision and the STG Lads Ordinary Decision (none of which participated in either the TWBS or EE chatrooms) ceasing to be a "Relevant Financial Institution", which will require certain FX transactions (during their respective "Class A Periods") to be reallocated from Class B to Class A

84 For years in which that data source was not available, another source maintained by the UK government was used: the Business Populations Estimates Data Series. This data set contains counts of UK enterprises for earlier years by, *inter alia*, industry and size.

utilising data published by the Organisation for Economic Co-operation and Development.[85] For the purposes of providing an estimate of class sizes, Mr Ramirez has excluded micro and small-sized enterprises (i.e. those firms with employees of between 0-9 and 10-49 employees) on the basis that they are less likely to trade FX.[86]

115. This combined size of Class A and Class B is then disaggregated between Class A and Class B based on the Proposed Defendants' market shares, drawn from Euromoney, which conducts an annual survey of the FX market and publishes a number of market share calculations.[87]

116. The broad range of these class size estimates is due to the inability, at this stage of proceedings, to ascertain the number of persons that may belong to both classes. As explained at paragraphs 70 - 71 of the First Ramirez Report,[88] it is entirely possible that a person could belong to both classes. This would be the case, for example, if they transacted with a Proposed Defendant during that Proposed Defendant's Relevant Class A Period and their Relevant Class B Period. To account for this, the First Ramirez Report adopts two approaches to estimating the size of the Proposed Classes:[89]

a. A "maximal" approach, which assumes that all class members belong to both classes; and

b. A "conservative" approach, which assumes that a class member belongs to only one class.

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85 The assumption underpinning this approach is that the non-financial customers most likely to transact FX are those importing and exporting goods, which would require FX in the ordinary course of business. Mr Ramirez therefore considers that enumerating the number of importers and/or exporters in the UK is a reasonable metric for the purpose of formulating preliminary estimates of the number of non-financial entities in the Proposed Classes: First Ramirez Report, paragraph 61.

86 The estimates also do not include high net worth individuals that might have transacted FX, as Mr Ramirez does not consider there is an accurate basis for estimating the proportion of such individuals trading FX at this early stage of proceedings. See First Ramirez Report, paragraph 63.

87 First Ramirez Report, paragraph 73

88 This is also discussed in paragraph 77 above.

89 First Ramirez Report, paragraph 70.

117. While neither of these approaches will yield an accurate assessment of the class size in isolation, they indicate the estimated maximum and minimum size of the classes.[90]

118. It is to be noted that these estimates are necessarily incomplete given the early stage of proceedings. As explained in the First Ramirez Report at paragraph 55, FX markets are opaque, which precludes visibility of the number of customers transacting FX within the boundaries of the class definition at this early stage. The limitations of the class size estimates are set out at paragraph 69 of the First Ramirez Report.

119. Nevertheless, Mr Ramirez states that he views these estimates as a reasonably broad overview of the number of class members, which are perhaps conservative as they do not account for certain persons, such as high net worth individuals and smaller firms, who might have traded FX during the periods covered by the Decisions. In addition, Mr Ramirez has explained the methodology he would use to provide more accurate estimations of the size of the Proposed Classes on the basis of the Proposed Defendants' transaction data, if he is requested to do so.[91]

Summary of the basis upon which the Proposed Class Representative seeks to be authorised to act in that capacity in accordance with Rule 78 of the CAT Rules (Rule 75(3)(d))

120. The Proposed Class Representative applies to be authorised to act as the class representative on the basis that such authorisation is just and reasonable in accordance with Rule 78(1)(b).

120A In its judgment of 31 March 2022, the Tribunal found that the Proposed Class Representative satisfied the conditions in Rule 78(2) to act as class representative on behalf of the Class Members in respect of claims based upon the TWBS Decision and the EE Decision.[91A] These findings were not appealed by either the O'Higgins PCR or the Proposed Defendants, other than the O'Higgins PCR's appeal against the Tribunal's decision on carriage, which the Court of Appeal dismissed.[91B] The matter

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90 First Ramirez Report, paragraph 71.

91 First Ramirez Report, sections 4.1 and 4.2 for Class A and B respectively.

91A [2022] CAT 16, at [358] – [360]. See below paragraphs 122A (appropriate qualification and acting fairly and adequately in respect of the Class Members), 123A (absence of a material conflict of interest), 124A (most suitable person to represent the Class Members), 131A (ability to meet the Proposed Defendants' costs) and 132 (no interim injunction sought).

91B [2023] EWCA Civ 876, at [155] and [170]; Court of Appeal Order (9 November 2023), paragraph 3.

of certification has been remitted by the Court of Appeal to the Tribunal for further decision on certification, including consideration, if appropriate, of the implications (if any) of the Supreme Court's decision in *R (on the application of PACCAR Inc.) v Competition Appeal Tribunal* [2023] UKSC 28.[91C] It is the Proposed Class Representative's case that the Tribunal's findings as to his suitability to act as representative of the Class Members apply equally to the claims in these Proposed Collective Proceedings based on the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.

121. In accordance with paragraph 6.13 of the Guide, this Re-Amended Collective Proceedings Claim Form is accompanied by a witness statement from the Proposed Class Representative addressing in detail the considerations raised by Rule 78 of the CAT Rules.

First consideration: the Proposed Class Representative would act fairly and adequately in the interests of the class members

122. In assessing whether the Proposed Class Representative would act fairly and adequately in the interests of all members of the Proposed Classes, the Tribunal will have regard to "*all the circumstances*" including those set out in Rule 78(3). As to the matters set out in Rule 78(3):

a. The Proposed Class Representative is not a member of Class A or Class B, and would be able to act impartially in the interests of all members of the Proposed Classes.

b. The Proposed Class Representative is well-suited to manage the Proposed Collective Proceedings. Mr Evans' First Witness Statement sets out, at paragraphs 29 – 33, his motivation to act as class representative. In addition, he has substantial professional experience in the field of competition law, and extensive experience in managing substantial inquiries as part of his role as an Inquiry Chair in a number of major cases for the Competition and Markets Authority. This, in combination with his advisory work in consumer affairs, as well as the numerous positions of responsibility he has held over the course of his career, clearly demonstrate his ability to manage an action such as this,

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91C [2023] EWCA Civ 876, at [157], [165] – [168] and [170]; Court of Appeal Order (9 November 2023), paragraphs 5 (in respect of Mr Evans' application for an opt-out CPO) and 6 (in respect of the O'Higgins PCR's application for an opt-out CPO).

and can leave no doubt that he would act fairly and adequately in the interests of members of the Proposed Classes.

c. Furthermore, the Proposed Class Representative has appointed a Consultative Panel, which has been carefully assembled in order to ensure that he has access to the necessary expertise to enable him to effectively manage the Proposed Collective Proceedings in the best interests of the Proposed Classes. The members of that Group at the time of filing this Re-Amended Collective Proceedings Claim Form are:

   i. Lord Carlile of Berriew CBE KC ~~QC~~ (lead panel member): Lord Carlile is a crossbench member of the House of Lords who was a deputy High Court ~~part time~~ judge for 28 years ~~in the High Court~~ and a former member and Chair of the Competition Appeal Tribunal. Lord Carlile will contribute a wealth of knowledge on competition law and Tribunal procedure;

   ii. Professor Philip Marsden: Professor Marsden is a Professor of Law and Economics at the College of Europe, Bruges. Professor Marsden is very experienced in the fields of competition law and competition litigation, having worked as a prosecutor, defence counsel, enforcement official and advisor to corporates and governments at different stages throughout his career. Professor Marsden continues to act as a competition and enforcement decision-maker at various regulators, specialising in particular in financial services.

   iii. Professor Joseph Stiglitz: Professor Stiglitz is a University Professor at Columbia University, New York and Chief Economist of the Roosevelt Institute. In 2001, he shared the Nobel Memorial Prize in Economic Sciences with George Akerlof and Michael Spence for their work on markets with asymmetric information. He is a former Senior Vice-President and Chief Economist of the World Bank and a former member and chair of the US President's Council of Economic Advisers. Professor Stiglitz's contributions on various sub-fields of economics underpin some of the economic theories of the expert reports in these Proposed Collective Proceedings.

   iv. David Woolcock: Mr Woolcock is a senior banker and FX markets and trading expert. He has more than 30 years' experience in FX markets,

having worked as an FX dealer at HSBC, and subsequently worked as Head of FX at United Overseas Bank, Chief Dealer at the Co-operative Bank, Treasury Manager at Credit du Nord and a Director at Société Générale, before moving into specialist FX trading businesses. He presently runs his own consultancy company, Derivative Consulting Ltd. He has held senior industry roles, including as Vice Chair of the ACI Financial Markets Association's FX Committee, as Chair of the ACI's Committee for Professionalism and as a member of the Bank for International Settlements Market Participants Group, which was responsible for writing the FX Global Code, which was launched in 2017.

d. The Proposed Class Representative has prepared, along with his legal and expert team, a Litigation Plan for the Proposed Collective Proceedings,[92] which comprehensively details, in accordance with Rule 78(3)l:

i. A method of bringing proceedings on behalf of the represented persons and for notifying represented persons of the progress of proceedings;

ii. A procedure for governance and consultation which takes into account the size and nature of the Proposed Classes ~~class~~. To assist with this, and with the matters in point (i) above, the Proposed Class Representative has engaged an experienced class action and administration company, Angeion Group (**"Angeion"**). Angeion have produced ~~produce~~ a Notice and Administration Plan which is annexed to the Litigation Plan;[93] and

iii. An estimate of, and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the Proposed Class Representative shall provide.

122A. In its judgment of 31 March 2022, the Tribunal determined that the Proposed Class Representative was appropriately qualified to act as a class representative for the

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92 First Witness Statement of Phillip Gwyn James Evans dated 10 December 2019, Exhibit PGE3.

93 The Litigation Plan is exhibited to the First Witness Statement of Phillip Gwyn James Evans dated 10 December 2019, Exhibit PGE3.

Proposed Classes in these Proposed Collective Proceedings (as regards the claims based on the TWBS Decision and the EE Decision).[93A] It also determined that he would act fairly and adequately in the interests of the members of the Proposed Classes.[93B] These findings were not appealed by the O'Higgins PCR or by the Proposed Defendants. It is the Proposed Class Representative's case that the Tribunal's findings as to his suitability to act as representative of the Class Members apply equally to the claims in these Proposed Collective Proceedings in this Re-Amended Collective Proceedings Claim Form based on the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.

122B. As explained in the Eighth Witness Statement of Mr Maton, the Proposed Class Representative is in the process of updating his funding and insurance arrangements, including to take account of the Supreme Court's decision in *R (on the application of PACCAR Inc.) v Competition Appeal Tribunal*). He is also preparing an updated Litigation Plan for the Proposed Collective Proceedings. The revised funding arrangements and updated Litigation Plan will demonstrate the Proposed Class Representative's continued suitability to act as representative for the proposed Classes in respect of all claims within these Proposed Collective Proceedings.

Second consideration: the Proposed Class Representative does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of the classes

123. The Proposed Class Representative does not have any material interest that is in conflict with the interests of the Proposed Classes as is explained in his first witness statement at paragraphs 6 - 69.

123A. In its judgment of 31 March 2022, the Tribunal determined that the Proposed Class Representative did not have any conflict of interest.[93C] This finding was not appealed by the O'Higgins PCR or by the Proposed Defendants. The reasons why the Proposed Class Representative does not have a conflict of interest apply equally to the proposed claims in this Re-Amended Collective Proceedings Claim Form based upon the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.

93A [2022] CAT 16, at [254], [259] and [359(1)].

93B [2022] CAT 16, at [346] and [359(7)].

93C [2022] CAT 16, at [267], [271] and [359(4)].

Third consideration: the Proposed Class Representative would be the most suitable to act as class representative in respect of the claims covered by these Proposed Collective Proceedings

124. The Proposed Class Representative is aware that an application for a Collective Proceedings Order was registered at the Tribunal on 29 July 2019 under Case Number 1329/7/7/19 by Michael O'Higgins FX Class Representative Limited (hereafter **"the O'Higgins Application"**). The O'Higgins Application proposed ~~proposes~~ to combine follow-on claims for damages arising from the TWBS Decision and the EE Decision. ~~Decisions.~~

124A. In a judgment of 6 March 2020,[93D] ~~[96A]~~ the Tribunal decided that there should be a single substantive hearing, taking place in March 2021, to decide both "*whether a CPO should be made at all and, if so, to which class representative*" as between Mr Evans and Michael O'Higgins FX Class Representative Limited.[93E] ~~[96B]~~ In its judgment of 31 March 2022, the Tribunal determined that the Proposed Class Representative was the most suitable person to act as class representative in respect of the claims covered by these Proposed Collective Proceedings (based upon the TWBS Decision and the EE Decision), such that, were the Tribunal minded to certify on an opt-out basis, "carriage" of the proceedings should be granted to the Proposed Class Representative and not to the O'Higgins PCR.[93F] This decision was upheld by the Court of Appeal in its judgment of 9 November 2023, dismissing the O'Higgins PCR's appeal on this issue.[93G]

124B. As the Court of Appeal, in its judgment of 9 November 2023, remitted the matter to the Tribunal for further consideration and case management, including consideration of the implications, if any, of the Supreme Court's judgment in *R (on the application of PACCAR Inc.) v Competition Appeal Tribunal*, there remains a "*possibility that the O'Higgins team survives*".[93H] The O'Higgins PCR accepts that there is a "*'theoretical' possibility that the Evans PCR might not, in the light of this judgment* [i.e. *PACCAR*]

[93D] ~~[96A]~~ *Michael O'Higgins FX Class Representative Limited v Barclays Bank Plc and Others; Phillip Evans v Barclays Bank Plc and Others* [2020] CAT 9.

[93E] ~~[96B]~~ *Ibid*, paragraph 75.

[93F] [2022] CAT 16, at [389]-[390] (Sir Marcus Smith and Prof. Neuberger) and [463] (Mr Lomas).

[93G] [2023] EWCA Civ 876, at [155] and [170]; Court of Appeal Order (9 November 2023), paragraph 3.

[93H] [2023] EWCA Civ 876, at [169(iv)].

be able to proceed and that the O'Higgins team might be substituted".[93I] It Is the Proposed Class Representative's case that his revised funding arrangements are compliant with the *PACCAR* judgment (see paragraph 122B above and the Eighth Witness Statement of Mr Maton), such that that judgment has no implications for the Proposed Class Representative's suitability to act as the representative of the proposed Class Members. Therefore, the Tribunal's decision that he was the most suitable person to act as class representative in respect of the claims covered by these Proposed Collective Proceedings (based on the TWBS Decision and the EE Decision) apply equally to the proposed claims in this Re-Amended Collective Proceedings Claim Form based upon the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision. However, pending determination of the O'Higgins PCR's application to the Supreme Court for permission to appeal the Court of Appeal's judgment of 9 November 2023 (the Court of Appeal having refused it permission to appeal[93J]), paragraphs 125 - 129 of this Re-Amended Collective Proceedings Claim Form (as amended) are retained on a provisional basis.

125. The proposed class definition in the O'Higgins Application was ~~is~~ as follows:[94]

> *All persons (other than Excluded Persons) who during the period from 18 December 2007 - 31 January 2013 entered into one or more Relevant Foreign Exchange Transactions in the European Economic Area (other than as an Intermediary)*.

126. Accordingly, the O'Higgins Application was ~~is~~, in part, seeking approval to act as class representative in respect of the same claims covered by the Proposed Collective Proceedings. The main overlaps in the scope of the claims were ~~are~~:

a. They were ~~are~~ both based on the TWBS Decision and the EE Decision ~~Decisions~~ and covered ~~cover~~ the same time period (namely, 18 December 20–7 - 31 January 2013); and

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93I [2023] EWCA Civ 876, at [167]; Court of Appeal Order (9 November 2023), paragraphs 5 (in respect of Mr Evans' application for an opt-out CPO) and 6 (in respect of the O'Higgins PCR's application for an opt-out CPO).

93J Court of Appeal Order (9 November 2023), paragraph 16.

94 The class definition is available on the website established for the O'Higgins Application at: https://www.ukfxcartelclaim.com/Content/Documents/Class%20Definition.pdf.

b. They both encompassed ~~encompass~~ FX Spot Transactions and FX Outright Forward Transactions entered into with the Proposed Defendants and certain other Relevant Financial Institutions~~.~~; and

c. As a result of amendments to the O'Higgins Application which, it is understood, were filed with the Tribunal on 28 January 2020, it was ~~is now~~ clear that the O'Higgins Application also concerned ~~concerns~~ currency pairs where both currencies involved in that pair are G10 Currencies (as is the case for these Proposed Collective Proceedings, for the reasons set out in paragraphs 85 and 86 above). Prior to these amendments to the O'Higgins Application, it appears that the proposed class representative in that Application had not taken a concrete decision on this point, as its original class definition defined a "Relevant Currency Pair" as "*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.*"

127. The main differences between the claims were are:[95]

a. The Proposed Class Representative seeks to bring the Proposed Collective Proceedings on behalf of two classes of person, namely Class A and Class B, whereas the O'Higgins Application concerned ~~concerns~~ one class. Those classes were ~~are~~ very similar in overall scope, as is clear from the previous paragraph. However, for the reasons set out in paragraphs 75 - 77 above, the Proposed Class Representative considered ~~considers~~ it to be more appropriate to subdivide prospective claimants into two classes covering, essentially: (i) transactions entered into with the Proposed Defendants during the period they participated in the Infringements ~~infringements~~ established in the Decisions (Class A); and (ii) transactions entered into with Relevant Financial Institutions between 18 December 2007 - 31 January 2013, or with the Proposed Defendants during a period that they did not participate in the Infringements (Class B);

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95 There were ~~are~~ also a number of other, more specific, differences between the claims, such as the definitions adopted for certain excluded persons and transactions. These are not covered in detail in this Re-Amended Collective Proceedings Claim Form as it was ~~is will be~~ anticipated that the similarities and differences between the two claims would have been the subject of detailed submissions in due course (as to which, see paragraphs 0 – 0 below).

~~b. The Proposed Collective Proceedings concern currency pairs where both currencies involved in that pair are G10 Currencies. It appears that the O'Higgins Application has not yet taken a concrete decision on this point, as its class definition defines a "Relevant Currency Pair" as "*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.*"~~

c. While both claims included ~~include~~ FX Spot Transactions and FX Outright Forward Transactions entered into with a number of other financial institutions (referred to in both claims as "Relevant Financial Institutions") that were not involved in the Infringements, the list of Relevant Financial Institutions was ~~are~~ different. The O'Higgins Application included ~~includes~~ 39 Relevant Financial Institutions, whereas the Proposed Collective Proceedings includes 57 for the reasons set out in paragraph 99 above.[96] ~~The Proposed Class Representative has been unable to ascertain the basis upon which the O'Higgins Application has compiled its list of Relevant Financial Institutions.~~

~~128. The Proposed Class Representative understands that, in these circumstances, the Tribunal will consider which applicant would be the most suitable class representative. In accordance with paragraph 6.32 of the Guide, the Tribunal will seek to arrive at a decision which is in the best interests of all class members and is fair to the Defendants. Considerations which are likely to be relevant to this assessment include: the proposed class definition and scope of the claims; the quality of the litigation plan; and the experience of the lawyers of the competing proposed class representatives.~~

129. ~~In a judgment of 6 March 2020,[96A] the Tribunal decided that there should be a single substantive hearing, taking place in March 2021, to decide both "*whether a CPO should be made at all and, if so, to which class representative*" as between Mr Evans and Michael O'Higgins FX Class Representative Limited.[96B] The Proposed Class Representative is unable to address these matters in detail at this early stage of proceedings, as there is limited publicly available information regarding the O'Higgins~~

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96 The 57 Relevant Financial Institutions include the 39 Relevant Financial Institutions identified in the O'Higgins Application.

~~96A *Michael O'Higgins FX Class Representative Limited v Barclays Bank Plc and Others; Phillip Evans v Barclays Bank Plc and Others* [2020] CAT 9.~~

~~96B *Ibid*, paragraph 75.~~

~~Application. As such, it is understood that the matters referred to in the previous paragraph will be the subject of detailed submissions in due course, and accordingly the Proposed Class Representative reserves his right to make further submissions, and to adduce further evidence, in support of his submission that he would be the most suitable class representative. Nevertheless,~~ In view of the Court of Appeal remitting this matter to the Tribunal for further consideration,[96A] the Proposed Class Representative makes the following non-exhaustive preliminary observations on the matters set out in paragraph 6.32 of the Guide:

a. The definition of the Proposed Classes in the Proposed Collective Proceedings is more focused, and appropriately reflects the important differences between members of Class A and Class B, which are detailed in paragraphs 75 – 77 above. Accordingly, the definition of the Proposed Classes, as explained in paragraphs 71 – 112 above, will facilitate a more efficient assessment of the common issues arising for the Proposed Classes.

b. The Litigation Plan, along with the attached Notice and Administration Plan produced by Angeion Group, demonstrates a detailed consideration of how the Proposed Class Representative intends to manage the Proposed Collective Proceedings efficiently, effectively and in the best interests of all members of the Proposed Classes.

c. The Proposed Class Representative's legal representatives have substantial experience in the field of competition litigation, and in particular in proceedings before the Tribunal under section 47A and 47B of the Act. This is explained further in paragraphs 38 – 39 of the First Witness Statement of Anthony John Maton dated 10 December 2019.

Fourth consideration: the Proposed Class Representative would be able to pay the Proposed Defendants' recoverable costs if ordered to do so

130. As explained in paragraphs 75 – 79 of the Proposed Class Representative's first witness statement and in paragraphs 34 – 37 and 147 - 149 of the Litigation Plan, the Proposed Class Representative has sufficient funding arrangements in place to

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[96A] Court of Appeal Order (9 November 2023), paragraphs 5 (in respect of Mr Evans' application for an opt-out CPO) and 6 (in respect of the O'Higgins PCR's application for an opt-out CPO).
[96C] [2022] CAT 16, at [359(6)] and [360].

ensure that he will be able to pay the Proposed Defendants' recoverable costs if ordered to do so. Specifically:

a. The Proposed Class Representative has entered into a Litigation Funding Agreement with Donnybrook Guernsey Limited (the **"Funder"**), a wholly owned subsidiary of Bench Walk Capital LLC, to enable him to pay the costs of pursuing the Proposed Collective Proceedings. The Funder has agreed to provide funding of up to ~~£18,654,088~~ £36,478,283 in respect of the Proposed Collective Proceedings;

b. The Funder has agreed, under the Litigation Funding Agreement, to indemnify the Proposed Class Representative in respect of any costs orders the Proposed Class Representative becomes liable to pay up to and including the final determination of the Proposed Class Representative's application for a CPO; and

c. The Proposed Class Representative has taken out ATE insurance in the sum of up to £33.5 ~~£10~~ million to cover potential adverse costs arising after the final determination of the Proposed Class Representative's CPO application.

131. Considering that the Proposed Defendants will already have substantial knowledge of the factual and legal issues that will arise in the Proposed Collective Proceedings, adverse costs cover of £33.5 ~~£10~~ million is considered adequate. The Proposed Class Representative intends to take out additional ATE insurance as necessary and will monitor the level of ATE insurance throughout the Proposed Collective Proceedings to ensure that there is adequate provision for the Proposed Defendants' recoverable costs.

131A. In its judgment of 31 March 2022, the Tribunal determined that the Proposed Class Representative's then level of ATE insurance (£23 million) did not preclude certification.[96C] This determination was not appealed by the O'Higgins PCR or by the Proposed Defendants. The Proposed Class Representative has since increased his level of ATE insurance from £23 million to £33.5 million.

[96C] [2022] CAT 16, at [359(6)] and [360].

Fifth consideration: the Proposed Class Representative does not seek an interim injunction in respect of the Proposed Collective Proceedings

132. The Proposed Class Representative confirms that he will not be seeking an interim injunction in the Proposed Collective Proceedings, and accordingly the consideration in Rule 78(2)(e) is not applicable.

Summary of the basis upon which it is contended that the criteria for certification and approval in Rule 79 are satisfied (Rule 75(3)(e))

133. Rule 79(1) of the CAT Rules details three requirements which must be satisfied in order for claims to be certified as eligible for inclusion in collective proceedings:

a. They must be brought on behalf of an identifiable class of persons;

b. The claims must raise common issues; and

c. The claims must be suitable to be brought in collective proceedings.

134. Each of these criteria are met in relation to the Proposed Collective Proceedings.

134A. In its judgment of 31 March 2022, the Tribunal determined that the each of these requirements was satisfied (in respect of a Proposed Collective Claim based upon the TWBS Decision and the EE Decision) and that the "eligibility condition" was "*clearly met*"[96D] such that this application for a CPO succeeded in relation to the "certification issue".[96E] This determination was not appealed by either the O'Higgins PCR or the Proposed Defendants. It is the Proposed Class Representative's case that the Tribunal's findings as to the "eligibility" criteria are also applicable to the claims in these Proposed Collective Proceedings based upon the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision. It is noted that Green LJ, giving the judgment of the Court of Appeal in its judgment of 9 November 2023, observed that it is "*intrinsically likely*" that considerable evidence, including large quantities of data, will be generated by the disclosure exercise, which will assist in assessing and

[96D] [2022] CAT 16, at [361] – [363].

[96E] [2022] CAT 16, at [364].

quantifying the loss suffered by the Class Members.[96F] The learned Lord Justice concluded, in respect of disclosure, that:[96G]

> *From a reading of the detailed expert reports and the data sources they describe to be relevant to a regression analysis, and in the light of the findings in the Commission decisions, it does though seem to me that the disclosure exercise is intrinsically likely to generate relevant material, especially if gaps can be plugged with witness statement evidence and the judicially wielded broad axe.*

134B. In the Fourth Ramirez Report, Mr Ramirez re-summarises the categories of data sources (set out in the First Ramirez Report) that he intends to use to calculate the class-wide loss and damage that the Infringements caused to the members of Class A and Class B, in terms of calculating the Volume of Commerce and the overcharge.[96H] This data includes FX transaction data (covering both transactions between FX dealers and their customers, and transactions between FX dealers conducted on the inter-dealer market)[96I] which is in the possession of the Proposed Defendants, as well as several sources of publicly available information.[96J] Mr Ramirez considers that the data that he requires to calculate the loss and damage that the Infringements have caused to the members of Class A and Class B will be available to him and, if certain data is not available, how he nevertheless intends to calculate the overcharge.[96K]

134C. In the Fourth Knight Report, Mr Knight identifies a non-exhaustive list of the information that he considers is necessary to properly understand the conduct of the undertakings that participated in the Infringements and the effect of that unlawful conduct.[96L] This information is all of a type that would be held by a financial institution carrying on business in FX trading and will be in the possession of the Proposed Defendants.

96F [2023] EWCA Civ at [109] - [112].

96G [2023] EWCA Civ at [112].

96H Fourth Ramirez Report, section 5.

96I Fourth Ramirez Report, paragraph 38.

96J Fourth Ramirez Report, Table 5 and paragraphs 38 - 39.

96K Fourth Ramirez Report, paragraph 40.

96L Fourth Knight Report, section 3.2.6.

First criterion: the claims are brought on behalf of identifiable classes of persons

135. As detailed in paragraphs 71 - 112 above, the Proposed Classes are defined in a clear, objective manner such that a given person will be able to identify whether or not they fall within one or both of the Proposed Classes. This ensures that when a person is considering whether to opt-out of, or opt-in to, the proceedings, they will be able to readily ascertain whether they are (otherwise) within the Proposed Classes. Consequently, this has enabled Angeion to develop a Notice and Administration Plan which is focused on ensuring that those persons within the Proposed Classes will be made aware of the Proposed Collective Proceedings and appropriately targeted with the relevant notices.

136. Accordingly, as per paragraph 6.37 of the Guide, the parameters of the Proposed Classes are clearly delineated, thus determining who will be bound by any resulting judgment.

137. Indeed, it is also possible to identify the types of persons falling within the Proposed Classes. As explained in paragraph 163 of the First Ramirez Report, the persons falling within each of the Proposed Classes comprise a range of financial and non-financial customers, as follows:

a. The financial institutions will include smaller commercial banks; investment funds and securities houses; mutual funds; pension funds; hedge funds; currency funds; building societies; leasing companies; insurance/reinsurance companies and endowments; other financial subsidiaries of corporate firms; central banks; sovereign wealth funds; international financial institutions of the public sector; and development banks and agencies.

b. The non-financial customers will include corporations (including a number of SMEs); high-net worth individuals; and non-financial government entities.

138. As such, the definition of the Proposed Classes, explained in paragraphs 71 - 112 above, encompasses the persons identified in the Press Releases ~~Release~~, which explain ~~explains~~ that "*the main customers of Forex traders include asset managers, pension funds, hedge funds, major companies and other banks.*"[97]

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97 See also TWBS Decision, recitals 6 and 114; EE Decision, recitals 6 and 118; STG Lads Ordinary Decision, recitals 17 - 19 and 552; STG Lads Settlement Decision, recitals 9 and 113.

139. Furthermore, and in accordance with the Tribunal's guidance at paragraph 6.37 of the Guide, the Proposed Class Representative has sought to define the Proposed Classes as narrowly as possible without arbitrarily excluding persons entitled to claim. As explained in paragraph 74 above, the overall objective of the proposed class definition is to encompass within the Proposed Collective Proceedings all those persons who entered into one or more FX Spot Transaction(s) and/or ~~an~~ FX Outright Forward Transaction(s) during the period of the Infringements, while defining two separate Classes to reflect the differences between certain categories of claimant, as explained in paragraphs 75 - 77 above. To the extent that there are exclusions from the Proposed Classes, these have been carefully considered and included in the interests of creating clearly defined Classes.

139A. In its judgment of 31 March 2022, the Tribunal determined that the Proposed Collective Proceedings were brought on behalf of an identifiable class of persons.[97A] This determination was not appealed by the O'Higgins PCR or by the Proposed Defendants. It is the Proposed Class Representative's case that the Tribunal's findings as to the "identifiable class of persons" criterion are also applicable to the claims in these Proposed Collective Proceedings based upon the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.

Second criterion: the Proposed Collective Proceedings raise common issues

140. Common issues are defined in section 47B(6) of the Act, and Rule 73(2), as the same, similar, or related issues of fact and law.

141. The Proposed Class Representative anticipates that all issues arising for determination in respect of each Proposed Class will be common issues. Furthermore, a number of those same issues will be common to both Proposed Classes.

142. Accordingly, as per paragraph 6.37 of the Guide, the common issues which can suitably be determined on a collective basis in the Proposed Collective Proceedings are as follows:

a. Does the Tribunal have jurisdiction to hear the claims made in the Proposed Collective Proceedings?

97A [2022] CAT 16, at [280]-[282] and [362(1)].

b. What is/are the relevant substantive law(s) applicable to the claims?

c. What is/are the relevant limitation period(s) applicable to the claims?

d. What is the scope of the Infringements established by the Decisions?

e. Did the Infringements cause or materially contribute to wider bid-ask spreads on FX Spot Transactions and/or FX Outright Forward Transactions entered into by members of Class A?

f. What is the aggregate volume of commerce for Class A affected by the Infringements?

g. Did the Infringements cause or materially contribute to wider bid-ask spreads on FX Spot Transactions and/or FX Outright Forward Transactions entered into by members of Class B?

h. What is the aggregate volume of commerce for Class B affected by the Infringements?

i. What are the total amounts of any aggregate awards of damages for Class A and Class B?

j. What is the level of interest to be awarded on any damages awarded to the Proposed Classes?

k. Should that interest be awarded on a simple or compound basis?

143. This Re-Amended Collective Proceedings Claim Form is accompanied by reports from experts instructed by the Proposed Class Representative which explain how the common issues in the Proposed Collective Proceedings can be suitably determined on a common basis. In particular, the First Ramirez Report advances a credible and plausible methodology which offers a realistic prospect of establishing loss on a class-wide basis.[98] Furthermore, as explained in the First Knight Report and the First Ramirez Report,[99] there is a range of available data to which that methodology can be applied. In particular, it is anticipated that the Proposed Defendants will have trading records which identify, *inter alia*, all transactions entered into with them by the

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98 First Ramirez Report, section 6. This methodology is summarised in paragraphs 155 - 165 below.

99 First Ramirez Report, paragraphs 99 - 100.

members of Class A, and will provide further data that will assist in calculating damages for members of Class B.[100]

144. As explained further in paragraphs 153 - 166 below, in the interests of proportionality, practicability and efficiency, it is not proposed that there be an individualised assessment of damages for each member of the Proposed Classes.

144A. In its judgment of 31 March 2022, the Tribunal determined that the Proposed Collective Proceedings (based upon the TWBS Decision and the EE Decision) raise common issues.[100A] This determination was not appealed by the O'Higgins PCR or by the Proposed Defendants. It is the Proposed Class Representative's case that the Tribunal's findings as to the "common issues" criterion are also applicable to the claims in these Proposed Collective Proceedings based upon the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.

Third criterion: the claims are suitable to be brought in collective proceedings

145. The third criterion is elaborated upon in Rule 79(2) of the CAT Rules, which explains that the Tribunal will take into account all matters it thinks fit, including seven specific considerations. Each of those is met in the case of the Proposed Collective Proceedings, and is addressed in turn below.

The collective proceedings are an appropriate means for the fair and efficient resolution of the common issues

146. The Proposed Collective Proceedings present the most appropriate means for the fair and efficient resolution of the common issues. Indeed, the most efficient and economically viable way for members of the Proposed Classes to obtain compensation for the losses suffered as a result of the Infringements is through collective proceedings that determine the common issues arising for each member of the Proposed Classes. As to this:

a. The number of potential members of the Proposed Classes is substantial and ranges between: (i) 14,201 - 42,015 members of Class A (or between 15,578 and 42,015 class members including a claim in respect of the Infringement

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100 It is further anticipated that the Proposed Defendants' transaction records will identify all transactions entered into with them by ~~class~~ members of Class B during the Proposed Defendants' Relevant Class B Periods.

100A [2022] CAT 16, at [283] - [285] and [362(2)].

found in the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision); and (ii) 27,814 - 42,015 members of Class B (or between 26,537 and 42,015 class members on the same, revised basis).[101] It would, accordingly, be inefficient to require each prospective claimant to bring proceedings before the Tribunal on an individual basis (even assuming that such individual claims are economically worthwhile). This would impose a heavy burden on both the courts (particularly in terms of case management), the claimants and the Proposed Defendants. It would not be an appropriate use of the Tribunal's resources, especially when a number of individual claims may need to be dealt with together in any event.[102] This reality strongly militates in favour of collective proceedings, which would realise substantial economies in terms of time, effort and expense.

b. The issues raised by the Proposed Collective Proceedings include a number of highly technical matters relating to the structure and operation of FX markets. As explained in the Litigation Plan, this will require the Tribunal to hear expert evidence in the fields of, *inter alia*, FX trading, FX market microstructure, financial economics and forensic accountancy. It is plainly a more efficient use of the Tribunal's resources for this evidence to be heard as part of collective proceedings, thus avoiding the substantial expense and duplication associated with a multiplicity of individual actions.[103]

c. Relatedly, the common issues to be resolved are issues of mixed fact, law and expert evidence, particularly in relation to the determination of the impact of the Infringements when compared with the appropriate counterfactual. These are

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101 See paragraphs 113 - 119 above. As explained in the First Ramirez Report at paragraph 74, these estimates are potentially conservative.

102 By way of an example, the Tribunal has managed together a number of individual actions arising from the Commission's Decision in Case AT.39824 *Trucks*, where case management issues have arisen across certain actions. Nevertheless, there is still an inevitable degree of procedural inefficiency created by numerous individual actions. For example, there are a number of separate confidentiality rings which have been established in these separate proceedings.

103 The reality of a multiplicity of actions following a Commission Decision can be seen in respect of the Commission's Decision in Case AT.39824 *Trucks.* As Roth J observed in *Suez Group SAS & Others v Fiat Chrysler Automobiles N.V. and Others* [2018] EWHC 1994 (Ch) at [5]: "*[t]he Decision has given rise to a significant number of damages claims, both in this jurisdiction and before the courts of other Member States. The evidence before me indicates that there are now over 160 such claims brought around the EU. Mr Singla, appearing for the Iveco defendants, said that new claims are being brought "literally on a daily basis".*"

likely to be substantial and costly exercises that members of the Proposed Classes could not reasonably be expected to undertake individually.

d. The Proposed Class Representative anticipates that the aggregate claim value will be substantial,[104] which makes collective proceedings economically viable relative to the costs of bringing a claim.

e. Certain members of the Proposed Classes may have transacted comparatively small amounts in FX Spot Transactions and/or FX Outright Forward Transactions over the period covered by the Infringements and/or conducted such transactions on an infrequent basis. This may be the case, for example, in respect of the non-financial customers that form part of the Proposed Classes.[105] Individual claims by these persons would be uneconomic when the costs of those proceedings (including those outlined above) are compared with the potential limited *per capita* recovery. As such, collective proceedings are an appropriate means to ensure these persons are able to recover damages for losses suffered as a result of the Infringements.

f. As explained in the First Ramirez Report, the impact of the Infringements can be estimated based upon well-established methodologies which can be applied across all members of Class A and Class B respectively.

The costs and benefits of continuing the collective proceedings

147. For the reasons set out in paragraph 146, collective proceedings represent the most appropriate approach in terms of costs/benefits to determining the claims from the perspective of all parties (that is to say, the members of the Proposed Classes, the Proposed Defendants and the Tribunal).

148. While there are clearly meaningful costs associated with bringing the Proposed Collective Proceedings and administering the claims on behalf of classes of a substantial size, as is set out in the costs budget,[106] such costs are proportionate in view of the aggregate value of the claims advanced in the Proposed Collective Proceedings. Further, they are outweighed by the benefits to the members of the

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104 As is explained further in paragraphs 258 – ~~262~~ 262A below.

105 The categories of persons that may fall within each of the Proposed Classes is discussed at paragraph 137 above.

106 The costs budget can be found at Annex 2 to the Litigation Plan which is exhibited to the First Witness Statement of Phillip Gwyn James Evans dated 10 December 2019.

Proposed Classes from being able to pursue compensation for losses suffered due to the Infringements. This is especially the case in respect of those persons, identified in paragraph 146.e above, for whom proceedings might otherwise be uneconomic.

Whether any separate proceedings making claims of the same or a similar nature have already been commenced by members of the class

149. The Proposed Class Representative is aware of two proceedings making claims of the same or similar nature in the United Kingdom:

a. Proceedings in the Commercial Court issued under CL-2018-000840 in *Allianz Global Investors GmbH and others v Barclays Bank Plc and others.* These are proceedings brought by around 170 ~~100~~ entities, primarily investment management firms, that engage in FX trading as part of or ancillary to their commercial activities. These proceedings were transferred to the Tribunal by Order of Mr Justice Butcher dated 15 December 2021 and bear Tribunal Case No. 1430.5.7.22 (T). ~~These entities~~ The claimants in these proceedings sought ~~seek~~ damages for alleged infringements of Article 101 TFEU and/or the Chapter I prohibition contained in section 2 of the Act. These proceedings were subsequently settled and the claimants' claims in those proceedings against the defendants were withdrawn in their entirety pursuant to a Consent Order dated 23 May 2023. These proceedings were ~~are~~ substantially different to the Proposed Collective Proceedings, in particular as they were ~~are~~ advanced, at least in part,[107] on a "standalone" basis. Further:

i. The Claimants sought ~~seek~~ damages relating to all their FX activities for the period 2003 - 2013;

ii. The Defendants included ~~include~~ some (but not all) of the Proposed Defendants, and, when the claim was filed, included ~~include~~ certain entities not identified in the TWBS Decision and/or the EE Decision ~~Decisions~~;[108] and

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107 The Proposed Class Representative's understanding ~~and expectation~~ is that the Claimants ~~will~~ rely on the TWBS Decision and the EE Decision ~~Decisions~~ as part of their claim.

108 For example, HSBC Bank plc was ~~is~~ a defendant in the *Allianz* proceedings, but was not an addressee of either the TWBS Decision or the EE Decision, although it was subsequently an addressee of the STG Lads Settlement Decision. ~~, whereas BOTM is not.~~

iii. The claim made ~~makes~~ specific allegations of manipulation of certain FX benchmark rates and manipulation of bid-ask spreads.

b. The O'Higgins Application. As stated in paragraph 124A above, in its judgment of 31 March 2022, the Tribunal determined that the Proposed Class Representative was the most suitable person to act as class representative in respect of the claims covered by these Proposed Collective Proceedings (based on the TWBS Decision and the EE Decision) and that, were the Tribunal minded to certify on an opt-out basis, "carriage" of the proceedings should be granted to the Proposed Class Representative and not to the O'Higgins PCR. This decision was upheld by the Court of Appeal in its judgment of 9 November 2023 dismissing the O'Higgins PCR's appeal on the "carriage" issue.[108A] For the (non-exhaustive) reasons given on a provisional basis in paragraphs 124 – 129 above, the Proposed Class Representative submits that he would be the more suitable class representative.

150. Accordingly, neither of these proceedings impact on the appropriateness of bringing the Proposed Collective Proceedings. For the reasons set out in paragraphs 124A and 124B above, notwithstanding the Court of Appeal, in its judgment of 9 November 2023, having remitted the matter to the Tribunal for further consideration and case management, it is the Proposed Class Representative's case that he remains the more suitable class representative in these Proposed Collective Proceedings, in respect both of the claims based on the TWBS Decision and the EE Decision and the claims based on the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.

The size and nature of the classes

151. As set out at paragraph 113 – 119 above, the estimated size of the Proposed Classes ranges between: (i) 14,201 – 42,015 members of Class A (or between 15,578 and 42,015 class members, including a claim in respect of the Infringement found in the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision); and (ii) 27,814 and 42,015 members of Class B (or between 26,537 and 42,015 class members on the same, revised basis). Given the size of the Classes, it would plainly

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[108A] [2023] EWCA Civ 876, at [155] and [170].

be more appropriate to bring their individual claims by way of the Proposed Collective Proceedings, having regard to the matters detailed in paragraph 146 above.

Whether it is possible to determine in respect of any person whether that person is or is not a member of the Proposed Classes

152. For the reasons set out in paragraphs 71 - 112 above, the definition of the Proposed Classes has been formulated in a manner so as to ensure that any person can clearly determine whether they are a member of either or both of those Classes.

Whether the claims are suitable for an aggregate award of damages

153. The claims arising in the Proposed Collective Proceedings are suitable for an aggregate award of damages, as:

a. There is a credible and plausible methodology, and available data, for calculating the losses suffered by the Proposed Classes on a class-wide basis, as summarised in paragraphs 155 - 166 below and explained further in section 6 and paragraphs 151 - 154 of the First Ramirez Report;

b. To assess the overcharge incurred by each member of the Proposed Classes on an individual basis would be impracticable and disproportionate, having regard to the substantial size of the Proposed Classes;[109] and

c. Furthermore, an individual assessment of the harm suffered would not be possible for members of Class B that entered into FX Spot Transactions and/or FX Outright Forward Transactions with Relevant Financial Institutions, as the Proposed Class Representative will not have access to transaction records from those Institutions.

154. It follows that it is more appropriate for the harm suffered by the Proposed Classes to be calculated on a class-wide basis.

155. Section 6 of the First Ramirez Report explains how it is proposed to calculate the loss suffered by the Proposed Classes on a class-wide basis. The discussion below provides a brief summary of the: (i) proposed methodology; and (ii) available data, that will be used to calculate an aggregate award of damages for Class A and Class B separately.

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[109] See paragraphs 113 – 119 above.

Proposed methodology

156. Mr Ramirez proposes to use multiple regression analysis to quantify the harm caused by the Infringements. This is a commonly used statistical technique which estimates the dependence (or relationship) between one variable (known as the "dependent variable") on one or many other variables (known as "explanatory variables").

157. The use of multiple regression analysis is firmly rooted in the academic literature on FX markets. As explained in paragraph 211 of the First Rime Report, multiple regression analysis is the most common method of analysing FX trading in academic studies, and there is a wealth of published material which uses this technique. In particular, the use of regression analysis to analyse the factors that influence bid-ask spreads is common in the financial economic literature.[110] Furthermore, multiple regression analysis is well-recognised as a methodology to identify the presence, and magnitude, of overcharges caused by cartels.[111]

158. The focus of the regression analysis will be the "half-spreads"[112] paid by members of the Proposed Classes. A half-spread represents the trade cost incurred by an individual class member on a given FX transaction, and is calculated as the difference between: (i) the price agreed by a class member for a particular FX transaction (i.e. the transaction price, or exchange rate); and (ii) a reference price for the currency pair involved in that transaction (known as the "market-wide reference price" or "market-wide mid-point") which is calculated based upon the difference between the best bid price, and best ask price available on the inter-dealer market platforms Reuters and EBS.[113]

159. Professor Rime considers that the effect ~~effects~~ of the Infringements was to increase bid-ask spreads, and this would, in turn, be reflected in increased half-spreads.[114] Accordingly, the multiple regression analysis detailed in the First Ramirez Report will

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110 First Ramirez Report, paragraph 106.

111 First Ramirez Report, paragraph 106.

112 In other words, this is the dependent variable in the regression analysis.

113 These are known as "top of the book" quotes. Professor Rime explains at paragraph 213 of the First Rime Report that FX Dealers typically set their prices as a mark-up to the inter-dealer prices. Therefore, the inter-dealer market serves as a reference market for FX trading, and therefore a reference price can be calculated from the EBS and Reuters platforms. As explained in the First Knight Report at section 6.1, the majority of inter-dealer trading takes place on the EBS and Reuters platforms.

114 First Rime Report, paragraph 214.

compare half-spreads during the period covered by the Infringements with half-spreads in an unaffected control period, after holding constant (or "controlling for") factors (or "variables") that determine half-spreads other than the Infringements. This will enable an assessment of the extent to which half-spreads were inflated as a result of the Infringements, and therefore the overcharge incurred by members of the Proposed Classes in their FX Spot Transactions and FX Outright Forward Transactions.

160. While Mr Ramirez is not, at this early stage of proceedings, able to identify the exact variables that would be used in his multiple regression analysis, he has nevertheless conducted a very detailed survey of the academic literature on FX markets in order to identify a range of potential variables that may be included in his analysis.[115]

161. It is to be noted that Mr Ramirez's proposed methodology is also supported by Professor Rime in section 6 of the First Rime Report ~~his report~~ and in section 4 of the Fourth Rime Report. Professor Rime has considerable experience in using multiple regression analysis in analysing FX markets, and indeed all of his empirical research into FX markets is based on the use of this technique.

162. As noted in paragraph 75 above, the multiple regression analysis used to calculate the harm suffered by Class A and Class B will differ, as:

a. The harm to Class A will be based on a multiple regression analysis applied to the Proposed Defendants' transaction data for their Relevant Class A Periods; whereas

b. The harm to Class B will be based on multiple regression analyses applied to different data sources, which are described in paragraph 164 below. The First Ramirez Report explains that different multiple regression analyses may be applied to these data sources, and where necessary they will be adapted to take account of the differences between these sources. The overcharges calculated as a result of these multiple regression analyses will be combined into a weighted average overcharge for Class B.

163. The increase in half-spreads identified as a result of these multiple regression analyses, expressed as a percentage, is the overcharge incurred by the Proposed

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115 First Ramirez Report, section 6.1.4.

Classes. An aggregate award of damages for each class will be calculated as follows:[116]

a. The overcharge for Class A will be applied to the total volume of commerce for Class A to calculate aggregate pre-interest damages for Class A; and

b. The weighted average overcharge for Class B will be applied to the total volume of commerce for Class B to calculate aggregate pre-interest damages for Class B.

Available data

164. Mr Ramirez's report also confirms the availability of data to which he will apply his methodology for estimating harm to the Proposed Classes, specifically:[117]

a. Harm to Class A during the Proposed Defendants' Relevant Class A Periods can be calculated on the basis of the Proposed Defendants' transaction data; and

b. Harm to Class B can be calculated from a combination of the following data sources:

i. The Proposed Defendants' transaction data from their Relevant Class B Periods;

ii. Data from FX trading platforms, such as multi-bank platforms.[118] In particular, Mr Ramirez has confirmed that data would be available from Cboe FX, and a sample of that data is included at paragraph 137 of the First Ramirez Report;[119]

iii. Data from CLS Bank International, which was set up by a group of major FX market participants, known as the G20 banks, for settling FX transactions. By 2010, it settled roughly 43% of all spot

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116 First Ramirez Report, paragraphs 151 – 153.

117 First Ramirez Report, paragraph 99 (Class A) and paragraphs 130 – 131 (Class B) and Fourth Ramirez Report, section 5.

118 Multi-bank platforms are defined in footnote 49 above.

119 Cboe FX was formerly known as "*Hotspot*" which was one of the first electronic communication networks for the institutional FX marketplace. Mr Ramirez further notes at footnote 230 of the First Ramirez Report that other platforms he might investigate include FXall, FX Connect, 360T and Currenex.

transactions.[120] Mr Ramirez has confirmed that data would be available, and a sample is included at paragraph 138 of the First Ramirez Report; and

iv. Data from the Reuters and EBS platforms.

c. The market-wide mid-points can be calculated from data obtained from the Reuters and EBS platforms. Mr Ramirez has confirmed the availability of data from Reuters, and a sample of that data is provided at paragraph 103 of the First Ramirez Report. Furthermore, Mr Ramirez has confirmed that the experts in the class action proceedings in the United States had access to data from EBS.[121]

165. It follows from the foregoing that the Proposed Class Representative is confident that the aggregate loss across members of the Proposed Classes can be calculated with some precision.

166. The Proposed Class Representative is aware that a determination will need to be made as to how to distribute the aggregate award of damages to members of the Proposed Classes. The present proposal in this regard is set out in the Litigation Plan at paragraphs 136 - 146. In considering the appropriate distribution of any aggregate award of damages, the Proposed Class Representative has reviewed the distribution plans adopted in class action proceedings involving FX in Canada and the United States in order to inform the current proposal for the Proposed Collective Proceedings.

The availability of alternative dispute resolution and any other means of resolving the dispute, including the availability of redress through voluntary schemes whether approved by the CMA under section 49C of the Act or otherwise

167. Paragraphs 0 - 67 above explain the correspondence with the Proposed Defendants to date, where the legal representatives of the Proposed Class Representative have explained his willingness to engage in ADR to all the Proposed Defendants. Indeed, the Proposed Class Representative is open to engaging in any appropriate form of ADR with a view to reaching a settlement that is in the best interests of members of the Proposed Classes. In that regard, it is noted that all of the Proposed Defendants

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120 First Ramirez Report, paragraph 138.

121 First Ramirez Report, paragraph 103.

have reached binding settlements in respect of similar proceedings issued against them in ~~both the United States and~~ Canada and all of the Proposed Defendants except for Credit Suisse have reached binding settlements in respect of similar proceedings issued in the United States.

168. The Proposed Class Representative understands that the Proposed Defendants have not proposed any form of voluntary redress scheme to compensate customers.

The Proposed Collective Proceedings should be opt-out proceedings (Rule 79(4))

169. In determining whether the Proposed Collective Proceedings should be brought on an opt-in or opt-out basis, the Tribunal may, pursuant to Rule 79(3) of the CAT Rules, take into account all matters it thinks fit, including two matters additional to those detailed in Rule 79(2):

a. The strength of the claims; and

b. Whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover.

170. The Proposed Class Representative submits that the application of these two considerations to the Proposed Collective Proceedings, along with the factors considered under Rule 79(2) (which are pleaded to in paragraphs 146 - 148 above), support the Proposed Collective Proceedings being certified to proceed on an opt-out basis. In particular:

a. For the reasons set out in paragraphs 68 - 70 above, and in Part III below, the Proposed Class Representative considers that the claims which it is sought to combine in the Proposed Collective Proceedings have a real prospect of success.

b. Furthermore, the Proposed Collective Proceedings are advanced entirely on a follow-on basis, relying on the Decisions. It is noted that paragraph 6.39 of the Guide states that "*… where the claims seek damages for the consequence of an infringement which is covered by a decision of a competition authority (follow-on claims), they will generally be of sufficient strength for the purpose of this criterion.*"

c. Paragraphs 146 - 150 above explain that it is impracticable for proceedings to be brought on an individual basis. Those same reasons explain why it is

impracticable for proceedings to be maintained on an opt-in basis. The Proposed Class Representative notes that possible factors identified in paragraph 6.39 of the Guide as indicating that an opt-in approach could be workable and in the interests of justice were "*the fact that the class is small but the loss suffered by each class member is high*" or that "*it is straightforward to identify and contact the class members*." Neither factor applies to the Proposed Collective Proceedings:

i. As explained in paragraphs 113 - 119 above, the size of the Proposed Classes is substantial and**,** for certain class members, their *per capita* loss may be relatively small; and

ii. It would not be practicable to identify and contact the class members. Indeed, as explained further in the First Ramirez Report at paragraph 163 there are a wide range of individuals and entities that might form part of the Proposed Classes, making it unrealistic to identify and contact each member of the Proposed Classes ~~Class~~ on an individual basis.

171. Accordingly, the Proposed Class Representative considers that the only practicable, efficient and effective approach to the Proposed Collective Proceedings is for them to be brought on an opt-out basis.

171A. In its judgment of 9 November 2023, the Court of Appeal ruled that the Tribunal should not have refused to certify the Proposed Class Representative's application for a CPO (based on claims based on the TWBS Decision and the EE Decision) on the basis that it was proposed on an "opt-out" basis rather than on an "opt-in" basis, and remitted the matter to the Tribunal for further decision and case management.[121A] It remains the Proposed Class Representative's case that these Proposed Collective Proceedings are suitable for certification, and should be certified, by the Tribunal on an "opt-out" basis in respect of claims based on the TWBS Decision and the EE Decision and also the claims based under the Sterling Lads Settlement Decision and Sterling Lads Ordinary Decision.

[121A] [2023] EWCA Civ 876, at [133] – [134], [138], [157] and [170].

PART III: INFORMATION AND STATEMENTS REQUIRED BY RULE 75(3)(F)-(J)

172. Pursuant to Rule 75(3) of the CAT Rules, the Proposed Class Representative states that:

a. The claims are brought in respect of four ~~two~~ infringement decisions within the meaning of section 47A(6)(c) of the Act, namely the Decisions; ~~and~~

b. The TWBS Decision and the EE Decision ~~Decisions~~ became final when the time limit for instituting proceedings against each of those decisions ~~the Decisions~~ expired, namely at the earliest on 27 July 2019;~~.~~[122]

c. The STG Lads Settlement Decision became final when the time limit for instituting proceedings against the decision expired, namely at the earliest on 14 February 2022;[122A] and

d. The STG Lads Ordinary Decision has not become final, as Credit Suisse has applied to the General Court of the European Union for the annulment of that Decision, as regards both the finding of infringement made by the Commission and the penalty imposed on it,[122B] and, accordingly, it has not yet become final; whether it will become final depends upon the withdrawal or determination of the appeal and any subsequent appeal that may be made to the Court of Justice of the European Union.[122C]

173. In accordance with Rule 75(3)(g) and (h), the following paragraphs set out a concise statement of the facts and contentions of law relied on. It is structured as follows:

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122 The deadline foreseen by Article 263 TFEU for bringing proceedings against the decision is "*two months of the publication of the measure, or its notification to the plaintiff.*" Pursuant to Article 60 of the General Court's Rules of Procedure, "*procedural time limits shall be extended on account of distance by a single period of 10 days.*" Accordingly, taking 16 May 2019 as the date on which time began running, any appeal would have needed to be brought by 26 July 2019. In any event, the deadline for instituting proceedings has now passed.

122A *Ibid*. Accordingly, taking 2 December 2021 at the date on which time began running, any appeal would have needed to be brought by 14 February 2022 (12 February 2022 being a Saturday, such that the deadline expired on the next working day, i.e. 14 February 2022: Article 58(2) of the General Court's Rules of Procedure). In any event, the deadline for instituting proceedings has now passed.

122B Case T-84/22 *Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (Europe) Ltd v European Commission*, application for annulment under Article 263 TFEU of 15 February 2022 [2022] O.J. C 148/39.

122C Competition Act 1998 s.58A(3)(b).

a. Paragraphs 174 - 240 summarise the content of the Decisions;

b. Paragraphs 241 - 266~~258~~ provide the particulars of the claims for breach of statutory duty pursued in these Proposed Collective Proceedings.

The Decisions

174. The TWBS Decision and the EE Decision were both adopted by the Commission on 16 May 2019, when the United Kingdom was a Member State of the European Union. Accordingly, at the time they were adopted, both Decisions, having become final on 27 July 2019,[122D] were ~~are~~ binding pursuant to s.58A of the Act and Article 16 of Regulation 1/2003.~~,~~[123] Following the expiry at 11.00 p.m. on 31 December 2020 ("**IP Completion Day**") of the transition (or implementation) period under Article 126 of the UK/EU Withdrawal Agreement (which entered into force on 1 February 2020 ("**the Withdrawal Agreement**")),[123A] the TWBS Decision and the EE Decision remain binding on the Tribunal pursuant to the combined effect of the transitional and saving provisions on the application of s.58A of the Act contained in paragraphs 7(3), 7(4), 14(2) and 15 of Schedule 4 to The Competition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/93), as amended by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1343). The effect of these provisions is to preclude ~~which precludes~~ the Tribunal from reaching findings that are inconsistent with the findings made by the ~~taking a decision running counter to a~~ Commission in those Decisions ~~decision~~.

174A. The Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision were both adopted by the Commission on 2 December 2021, after IP Completion Day. As stated in footnote 3 of each Decision, notwithstanding the expiry of the transition period in Article 126 of the Withdrawal Agreement, the Commission continued to be competent under Article 92(1) of the Withdrawal Agreement to apply EU competition law in its administrative procedures in those cases in respect of the United Kingdom,

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122D See paragraph 172.b above.

123 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, pp.1-25. Regulation 1/2003 was revoked as at IP Completion Day by paragraph 1(f) of Schedule 3 to The Competition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/93), as amended by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1343).

123A Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01), OJ C 384 I, 12.11.2019, pp.1-387.

having initiated its proceedings (in accordance with Article 92(3) of the Withdrawal Agreement) before the end of the transition period. Accordingly, as those Decisions were each addressed to one or more legal persons established in the United Kingdom,[123B] they are binding in the United Kingdom pursuant to Article 95(1) of the Withdrawal Agreement. Pursuant to the transitional and saving provisions on the application of s.58A of the Act contained in paragraphs 7(3), 7(4), 14(2) and 15 of Schedule 4 to The Competition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/93), as amended by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1343), each Decision is, from the date on which it has become final, binding on the Tribunal, which is precluded from reaching findings that are inconsistent with the findings made by Commission in that Decision. The Sterling Lads Settlement Decision became final on 14 February 2022.[123C] The Sterling Lads Ordinary Decision has not yet become final.[123D]

174B. The summary of the Decisions pleaded below and the recitals referred to are non-exhaustive, and the Decisions will be relied upon for their full meaning and effect. The Proposed Class Representative relies on each of the Decisions to establish the liability of a Proposed Defendant that is an addressee of a particular Decision for the Infringement that the Commission therein found that it committed.

~~175. It is to be noted that the Proposed Class Representative currently only has access to non-confidential versions of the Decisions. Accordingly, he reserves his right to amend this Collective Proceedings Claim Form in the event that he is provided with~~

123B As to Barclays Bank plc, Barclays plc and Barclays Execution Services Limited, see paragraphs 32, 34 and 35 above; as to RBS, see paragraphs 56 and 57 above; as to UBS AG, see paragraphs 60 and 61 above; as to HSBC Holdings plc and HSBC Bank plc, see paragraphs 63A – 63B above; as to Credit Suisse AG and Credit Suisse Securities (Europe) Limited, see paragraphs 63F – 63H above; and. For the avoidance of doubt, whilst it is accepted that UBS Group AG (which is the successor to Credit Suisse Group AG is not established in the United Kingdom (see paragraph 63E above), the Sterling Lads Ordinary Decision (which is addressed to Credit Suisse Group AG) is nevertheless binding on UBS Group AG, as (i) it is binding in the United Kingdom (pursuant to Article 95(1) of the Withdrawal Agreement), including on the Tribunal, since its other addresses are established in the United Kingdom, (ii) UBS Group AG has assumed all liabilities of Credit Suisse Group AG, including for breaches of competition law and, since the merger of those two companies, has carried on the commercial activity previously carried on by Credit Suisse Group AG: see paragraph 63E above) and, in the alternative, (iii) UBS Group AG (as successor to Credit Suisse Group AG) is liable for the Infringement that the Commission found, in the Sterling Lads Ordinary Decision, was committed by the undertaking known as "Credit Suisse" which was a single economic unit that carried on a banking activity that included FX trading, of which Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (Europe) Limited were a part.

123C See paragraph 172.c above.

123D See paragraph 172.d above.

~~confidential versions of the Decisions, or any confidential part thereof. Paragraph 21 above is repeated.~~

The Settlement Decisions were adopted pursuant to the Commission's settlement procedure and the STG Lads Ordinary Decision was adopted by it following a full investigation

176. The Settlement Decisions (i.e. the TWBS Decision, the EE Decision and the STG Lads Settlement Decision) were each adopted pursuant to the Commission's settlement procedure, meaning that the addressees of the Settlement Decisions have clearly and unequivocally acknowledged their participation in the infringements established therein.[124] As such, the Commission has relied upon the settlement submissions of the Parties in adopting the Settlement Decisions. This is confirmed in the Settlement Decisions as follows:[125]

> *Having regard to the body of evidence in the Commission's file referred to in this Decision, the clear and unequivocal acknowledgments of the facts and the legal qualification thereof contained in the settlement submissions introduced by the addressees of this Decision, as well as their explicit and unequivocal confirmation that the Statement of Objections reflected the contents of their settlement submissions, the Commission concludes that the addressees of this Decision took part in the cartel as described in Section 4 and should be held liable for the infringement as set out in this Decision.*

177. An important implication of the Settlement Decisions being adopted pursuant to the Commission's settlement procedure is that they contain an abbreviated description of the Infringements found in those Decisions, and give much less detail than would otherwise be the case in a full infringement decision.

177A. By contrast, the STG Lads Ordinary Decision (which concerns Credit Suisse's participation in the same Bloomberg "chatroom", known as "Sterling Lads", as the

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[124] In particular, the Commission's settlement procedure entails each addressee submitting a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No. 773/2004. The Settlement Decisions each state that the settlement submissions of each addressee (referred to in section 3 of the relevant Settlement Decision as a "*Party*") include an acknowledgement in clear and unequivocal terms of its liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the Party's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions. A summary of the settlement submissions made by each Party is provided in the TWBS Decision, recital 31; ~~and~~ the EE Decision, recital 27; and the STG Lads Settlement Decision, recital 37.

[125] TWBS Decision, recital 34; EE Decision, recital 30; STG Lads Settlement Decision, recital 37.

addressees of the STG Lads Settlement Decision) was adopted by the Commission following a full investigation undertaken by it under Regulation 1/2003, Credit Suisse having declined to request settlement.[125A]

177B. ~~Accordingly,~~ However, while the Proposed Class Representative has sought to particularise his claim as far as possible, he does not have access to all relevant particulars of the Infringements and their effects on competition and, accordingly, he reserves his right to amend this Re-Amended Collective Proceedings Claim Form following further disclosure (particularly of the confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision, as well as the documents contained in the Commission's file), along with exchange of factual and expert evidence.

The approach adopted in the Re-Amended Collective Proceedings Claim Form to pleading the Decisions

178. The Decisions follow the same structure, although the STG Lads Ordinary Decision contains considerably more detail than the Settlement Decisions in respect of the Commission's descriptions of the industry subject to the proceedings (section 2 of each Decision) and the events constituting the relevant Infringement (section 4 of each Decision) and its legal assessment on the application of Article 101 TFEU and Article 53 EEA (section 5 of each Decision). Accordingly, the summary of the Decisions below will adopt that structure, and plead the relevant aspects of each Decision together (rather than pleading each Decision entirely separately).

179. The content of the Decisions is substantively identical in a number of material respects.[126] Therefore, in order to avoid undue repetition, this Re-Amended Collective Proceedings Claim Form will:

a. Refer to **"the Decisions"** when pleading to a part of each of the ~~both~~ Decisions that is substantively identical; ~~and~~

125A STG Lads Ordinary Decision, recital 76; STG Lads Settlement Decision, recital 33.

126 "Substantively identical" means that the relevant ~~two~~ parts of each of the Decisions or (as the case may be) the Settlement Decisions are identical in the substantive matters discussed, but may contain minor differences (including, but not limited to, differences in the use of punctuation and/or ordering of words) which do not alter their overall content.

b. Refer to "**the Settlement Decisions**" when pleading to a part of each of the Settlement Decisions (i.e. the TWBS Decision, the EE Decision and the STG Lads Settlement Decision) that is substantively identical; and

~~b~~c. Where a quotation is included from a part of two or more of the Decisions that is in substantively identical terms, the quotation included in this Amended Collective Proceedings Claim Form is from the TWBS Decision unless otherwise specified.

Operative parts of the Decisions

180. The operative part of the TWBS Decision includes the following:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement covering the whole EEA in G10 FX spot trading:

(a) UBS AG, from 10 October 2011 until 31 January 2013.

(b) The Royal Bank of Scotland Group plc and NatWest Markets Plc, from 18 December 2007 until 19 April 2010.

(c) Barclays PLC, Barclays Services Limited and Barclays Bank Plc, from 18 December 2007 until 8 July 2011 and from 19 December 2011 until 1 August 2012.

(d) Citibank, N.A. and Citigroup Inc., from 18 December 2007 until 31 January 2013

(e) JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Europe Limited and J.P. Morgan Limited, from 26 July 2010 until 31 January 2013.

181. The operative part of the EE Decision includes the following:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement covering the whole EEA in G10 FX spot trading:

(a) UBS AG, from 14 December 2009 until 31 July 2012.

(b) The Royal Bank of Scotland Group plc and NatWest Markets plc, from 14 September 2010 until 8 November 2011.

(c) Barclays PLC, Barclays Services Limited, Barclays Capital Inc and Barclays Bank Plc [from] 14 December 2009 until 31 July 2012.

(d) MUFG Bank, Ltd. and Mitsubishi UFJ Financial Group, Inc., from 8 September 2010 until 12 September 2011.

181A. The operative part of the STG Lads Settlement Decision includes the following:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement regarding foreign exchange spot trading of G10 currencies covering the entire EEA:

(a) UBS AG, from 25 May 2011 until 12 July 2012.

(b) Barclays PLC, Barclays Execution Services Limited and Barclays Bank PLC, from 25 May 2011 until 12 July 2012.

(c) NatWest Group plc and NatWest Markets Plc, from 5 August 2011 until 12 July 2012.

(d) HSBC Holdings plc and HSBC Bank plc from 25 May 2011 until 26 June 2012.

181B. The operative part of the STG Lads Ordinary Decision includes the following:

Article 1

Credit Suisse Group AG, Credit Suisse Securities (Europe) Limited and Credit Suisse AG have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, from 7 February 2012 until 12 July 2012, in extensive and recurrent exchanges of current or forward-looking commercially sensitive information which constitute agreements and/or concerted practices (within a wider single and continuous infringement) having the object of restricting and/or distorting competition regarding foreign exchange spot trading of G10 currencies covering the entire EEA.

The subject matter of the Decisions

182. Recital 1 of each of the Settlement Decisions summarises their subject matter. Each of the Settlement Decisions ~~Decision~~ concerns a single and continuous infringement

of Article 101 TFEU and Article 53 EEA ~~Agreement~~ concerning FX spot trading of G10 currencies:[126A]

> *This Decision concerns a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("the Treaty") and Article 53 of the Agreement on the European Economic Area ('the EEA Agreement'). The single and continuous infringement, for which the addressees of this Decision are held liable, consisted in an underlying understanding reached among certain individual traders ("the participating traders") and implemented by them to exchange - on mostly multilateral,*[127] *private chatrooms and on an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about certain of their trading activities and to occasionally coordinate their trading activity with respect to Forex (FX) spot trading of G10 currencies. The G10 FX currencies concerned by this Decision comprise the USD and CAD, JPY, AUD, NZD, GBP, EUR, CHF, SEK, NOK and DKK (in other words 11 currencies altogether, which corresponds to the market convention for currencies covered by the G10 designation).*

183. The infringement covered by the TWBS Decision lasted from 18 December 2007 until 31 January 2013,[128] ~~and~~ the infringement covered by the EE Decision lasted from 14 December 2009 until 31 July 2012~~.~~[129] and the infringement covered by the STG Lads Settlement Decision lasted from 25 May 2011 until 12 July 2012.[129A]

183A. The STG Lads Ordinary Decision concerned a single and continuous infringement of Article 101 TFEU and Article 53 EEA committed by Credit Suisse concerning the FX spot trading of G10 currencies as a result of its participation in the same "chatroom" (known as "Sterling Lads") as the addressees of the STG Lads Settlement Decision.[129B] The STG Lads Settlement Decision (which was addressed to Barclays,

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126A Recital 1 of the STG Lads Settlement Decision is slightly differently worded, in that information was exchanged between participating traders "*on a multilateral private chatroom and on an extensive and recurrent basis*"; however, the infringement found in that Decision was of a substantially similar nature to that described in recital 1 of both the TWBS Decision and the EE Decision.

127 Footnote 4 of the TWBS Decision, inserted here, states: "*For the purpose of this Decision, "mostly multilateral chatrooms" means chatrooms that in limited instances were bilateral as only two participants attended (each of them attending for a different bank), but most frequently were multilateral, with three or more participants attending.*" See also EE Decision, footnote 4.

128 TWBS Decision, recital 2.

129 EE Decision, recital 2.

129A Sterling Lads Settlement Decision, recital 2.

129B Sterling Lads Ordinary Decision, recital 3.

RBS, UBS and HSBC[129C]) and the STG Lads Ordinary Decision (which was addressed to Credit Suisse[129D]) thus both concern the same conduct by those five undertakings (referred to in both decisions as the "*participating undertakings*"[129E]) in "*the same infringement, irrespective of whether their liability is established in one or two procedures*".[129F] Recital 1 of the Sterling Lads Ordinary Decision describes the infringement relating to the "Sterling Lads" chatroom in the following terms:

> *The Addressees of this Decision have engaged in an infringement of Article 101(1) of the Treaty and Article 53(1) of the Agreement on the European Economic Area ("the EEA Agreement"). This infringement covered at least the whole of the EEA and consisted of agreements and concerted practices that had the object of restricting and/or distorting competition in the sector of foreign exchange ("Forex" or "FX")* [[129G]] *spot trading of G10 currencies. The G10 currencies concerned by this Decision comprise the US, Canadian, Australian and New Zealand Dollars (respectively USD CAD, AUD and NZD), the Japanese Yen (JPY), the Swiss Franc (CHF), the Sterling Pound (GBP), the Euro (EUR), and the Swedish, Norwegian and Danish Crowns (respectively SEK, NOK and DKK). In other words, 11 currencies altogether, which correspond to the market convention for currencies covered by the G10 designation.*

183B. Recital 3 of the STG Lads Ordinary Decision explains that:

> *The infringement involves the participation of Credit Suisse and four other undertakings (all together the "participating undertakings") in a conduct that took place within a […] chatroom called 'Sterling Lads' (identification number ddc0d4) (the chatroom is hereinafter referred to as the "STG Lads chatroom" or "the chatroom").*

183C. The infringement committed by Credit Suisse relating to the Sterling Lads chatroom lasted from 7 February 2012 until 12 July 2012,[129H] which reflects the duration of its employee's participation in the chatroom.[129I] However, the Commission considered

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129C Sterling Lads Settlement Decision, recital 3. These four undertakings are each referred to as a "non-addressee" in recital 4 of the Sterling Lads Ordinary Decision.

129D Sterling Lads Ordinary Decision, recital 2.

129E Sterling Lads Settlement Decision, recital 4; Sterling Lads Ordinary Decision, recital 3.

129F Sterling Lads Ordinary Decision, recital 5. See also Sterling Lads Settlement Decision, recital 6.

129G Footnote 5 of the Sterling Lads Ordinary Decision, inserted here, reads: "*The term "foreign exchange" ('Forex' or 'FX') refers to the trading of currencies, which happens in a decentralised manner. It includes all aspects of buying, selling and exchanging currencies at current or determined prices*".

129H Sterling Lads Ordinary Decision, recital 573 and Article 1.

129I Sterling Lads Ordinary Decision, recitals 98, 100, 307, 308, 566 - 568 and 573.

that "*…the overall single and continuous infringement relating to the STG Lads chatroom concerned the period from 25 May 2011 until 12 July 2012 (date in [sic] which the communications ceased)*".[129J]

183D. Employees of Barclays, RBS and UBS were involved in all three Infringements, as set out in the table below.

Proposed Defendant	**Three Way Banana Split**	**Essex Express**	**Sterling Lads**
Barclays	✓	✓	✓
Citigroup	✓		
MUFG / BOTM		✓	
JP Morgan	✓		
RBS	✓	✓	✓
UBS	✓	✓	✓
HSBC			✓
Credit Suisse			✓

The industry and product subject to the proceedings[130]

184. Section 2 of the Decisions is entitled "*[t]he industry subject to the proceedings*". Section 2.1 of the Settlement Decisions explains "*[t]he product*", which is "*G10 FX spot trading*".[130A] Section 2 of the STG Lads Ordinary Decision contains a substantially more detailed description of "*FX spot trading… of G10 currencies*"[130B] than the Settlement Decisions.

[129J] Sterling Lads Ordinary Decision, recital 570.

[130] Section 2 of each of the Decisions.

[130A] TWBS Decision, recital 4; EE Decision, recital 4; STG Lads Settlement Decision, recital 7.

[130B] STG Lads Ordinary Decision, recital 6.

184A. The Decisions, and the Proposed Collective Proceedings, concern the FX spot trading of G10 currencies, where the transaction involves two G10 currencies, known as a "currency pair".[130C]

FX spot trading: overview

185. Recital 4 of the TWBS Decision and of the EE Decision (and recital 7 of the STG Lads Settlement Decision and recital 6 of the STG Lads Ordinary Decision) ~~Decisions~~ state that the infringements addressed in those ~~the~~ Decisions relate to the G10 spot trading activities of the undertakings involved. A spot transaction is defined in ~~that recital~~ those recitals as follows:

> *A spot foreign exchange or FX spot transaction is defined as an agreement between two parties to exchange two currencies, that is to buy a certain amount (the "notional amount") of one currency against selling the equivalent notional amount of another currency at the current value at the moment of the agreement (the "exchange rate"), for the settlement on the spot date (which is usually T (transaction's [sic] day) plus 2 days).*

186. However, the Decisions make no findings on FX spot e-commerce trading activity, as is explained in footnote 6 of the TWBS Decision[130D] ~~Decisions~~:

> *The case does not concern FX spot e-commerce trading activity within the meaning of FX spot trades that are automatically booked by, or executed by either the relevant bank's proprietary electronic trading platforms or computer algorithms. These transactions take place without the intervention of any trader.*

187. Nevertheless, as pleaded in paragraph 253 below, the Proposed Class Representative will say that the Infringements caused harm to FX Spot Transactions and/or FX Outright Forward Transactions concluded via all methods of FX trading, including via electronic trading platforms.

Market participants in FX spot trading

187A. In the STG Lads Ordinary Decision, the Commission identifies three groups of market participants: end-customers, dealers and traders, and brokers.

130C See paragraphs 4 - 9 above; see also STG Lads Ordinary Decision, recitals 6 - 9. The term "G10 currencies" is explained in paragraphs 10 - 11 above; see also STG Lads Ordinary Decision, recital 10.

130D See also EE Decision, footnote 6; STG Lads Settlement Decision, footnote 11; STG Lads Ordinary Decision, footnote 9.

187B. End-customers "*typically include corporate customers and financial institutions, comprising asset managers, hedge funds, corporations, banks and central banks*".[130E] Corporate customers typically use FX trading to support their core business activities, either as a medium of exchange or to hedge their foreign cashflows.[130F] Financial institutions (such as hedge funds, asset managers, banks and central banks) "*typically trade larger amounts of currencies than corporate customers, hold FX positions for longer and use currencies primarily as a store of value. Financial institutions therefore have strong incentives to acquire information liable to influence the evolution of FX rates and consequently tend to be better informed than other end-users. Their trades may anticipate short-term FX movements and returns, hence, they are considered 'informative'.*"[130G]

187C. "FX dealers" are financial institutions, such as large commercial and investment banks, that engage in FX trading and they employ "FX traders" to conduct their currency exchange trades from specific trading desks for specific currency groups.[130H] They make money by (i) selling a currency against a higher price than that at which they bought it and (ii) holding open risk positions in their trading books (long or short) in anticipation of better trading conditions at a later date.[130I]

187D. "Brokers" are financial intermediaries which match counterparties to an FX transaction.[130J]

Market dynamics in FX spot trading

187E. FX transactions are made on an "over the counter" basis: there is no central exchange.[130K]

188. The Decisions explain that FX spot trading activity encompasses two main functions:[131]

130E STG Lads Ordinary Decision, recital 17.

130F STG Lads Ordinary Decision, recital 18.

130G STG Lads Ordinary Decision, recital 19.

130H STG Lads Ordinary Decision, recitals 20 - 22.

130I STG Lads Ordinary Decision, recital 23.

130J STG Lads Ordinary Decision, recital 24.

130K STG Lads Ordinary Decision, recital 25.

131 Recital 5 of the TWBS Decision and of the EE Decision; recital 8 of the STG Lads Settlement Decision; recitals 26 - 27 of the STG Lads Ordinary Decision ~~Decisions~~.

a. "*Market making*", which involves the execution of customers' orders to exchange a currency amount for its equivalent amount in another currency;[131A] and

b. "*Trading on own account*" which entails executing other currency exchanges (i.e. FX transactions) in order to manage the exposure resulting from market making transactions (also known as "*proprietary trading*").[131B]

189. The distinction between market making and trading on own account is that market makers provide liquidity in the market and trading on own account involves the trader trading and speculating with the bank's own money.[131C] These activities were undertaken by spot trading desks at the relevant undertakings:[132]

> *The G10 FX spot trading desks of the relevant undertakings stood ready to trade any of those currencies depending on market demand. While the participating traders themselves were primarily responsible for market making in specific currencies or pairs, their mandate authorised them to further engage in trading activity on behalf of their own undertaking with respect to any G10 currency available in their books, which they also did to different extents during the relevant period, with a view to maximising the value of their respective holdings.*

189A. In the case of the Sterling Lads chatroom, whilst the participating traders had a particular focus on the GBP, they could trade in all G10 currencies, all of which were discussed in that chatroom:[132A]

> *The FX spot trading desks of G10 currencies of the participating undertakings stood ready to trade any of those currencies depending on market demand. The participating traders in the STG Lads chatroom had a particular focus on the GBP, which was most traded against the two main currencies (EUR and USD) but they could trade in all G10 currencies. In fact, the file contains evidence of discussions on every single currency of the G10, showing that all of them were*

131A Market making is further explained in paragraphs 190 – 191C below.

131B Trading on account is further explained in paragraphs 193 – 194A below.

131C STG Lads Ordinary Decision, recital 27.

132 Recital 8 ~~7~~ of the TWBS Decision and of the EE Decision. ~~Decisions.~~

132A Recitals 11 and 12 of the STG Lads Settlement Decision. See also recital 91 of the STG Lads Ordinary Decision. Footnote 16 of the STG Lads Settlement Decision and footnote 66 of the STG Lads Ordinary Decision give examples of G10 currencies other than GBP being discussed in the Sterling Lads chatroom: "*See, among others, […], of 18 April 2012, for EUR, GBP and USD; […], of 22 May 2012, for CHF; […], of 5 July 2012, for DKK; […], of 9 March 2012, for NOK, SEK; […], of 26 March 2012, for AUD, NZD and JPY; […], of 6 March 2012, for CAD*" (redactions in the original non-confidential versions).

> *discussed at some point throughout the STG Lads communications since the creation of the chatroom.*
>
> *While the participating traders themselves were primarily responsible for market making in specific currencies or pairs, they could also engage in trading activity on behalf of their own undertaking with respect to any G10 currency available in their books, which they also did to different extents during the relevant period, with a view to maximising the value of their respective holdings.*

Market-making

190. The Settlement Decisions explain that, generally, undertakings involved in FX spot trading (i.e. FX dealers) will seek to generate revenues from these activities by buying the relevant currencies at lower prices, and selling them at higher prices.[133] In the STG Lads Ordinary Decision, the Commission explains that:[133A]

> *FX traders make money by selling a currency against another at a higher price than that at which they bought it. Trading revenue therefore depends on the amount of currency volume traded and on the difference between the purchase price and the sale price of the same currency (the 'bid-ask spread'…). Additionally, traders may also make profit from holding a particular open risk position in their book (long or short) in anticipation of better trading conditions at a later stage (…). To align the interests of FX traders with those of bank shareholders, traders typically receive bonuses tied to their individual profits and the profits of the entire trading floor while their individual risk-taking is constrained by position and loss limits.*

191. Recital 6 of the TWBS Decision (and also recital 6 of the EE Decision, and recital 9 of the STG Lads Settlement Decision) ~~Decisions~~ explains the market making function of FX trading in more detail. It explains, in particular, that market makers stand ready to trade on behalf of customers at quoted prices which are typically "two-way" prices comprising of a "bid" and an "ask" price:

> *In their capacity as market makers, traders stand ready to trade on behalf of customers at the quoted prices. Customers include asset managers, hedge funds, corporations and other banks. In industry terms, a market maker quotes two-way prices in a certain currency pair: the "bid price" which is the price at which the trader is ready to buy a currency against another, and the "ask price" which is the price at which the trader is ready to sell a currency against another currency. The difference between the bid and ask prices is the "bid-*

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133 Footnote 10 of the TWBS Decision and the EE Decision; footnote 15 of the STG Lads Settlement Decision ~~Decisions~~.

133A STG Lads Ordinary Decision, recital 23.

> *ask spread".*[134] *A market maker would: (i) set bid prices and ask prices for a certain currency pair; (ii) commit to accepting spot transactions at these prices; and (iii) subsequently take the resulting exposure on to his/her own book.*[135] *As such, a market maker is a counterparty in a Forex transaction, who, - unlike brokers, - bears the resulting exposure of the transactions he or she enters into.*

191A. In the STG Lads Ordinary Decision, the Commission explains the functions of market makers in the following manner:[135A]

> *In their capacity as market makers, traders stand ready to trade any currency pair at any moment on behalf of customers at the quoted prices. To initiate a FX trade, an end-customer typically contacts a trader (usually via the sales desk) indicating the currency pair and the quantity the end-customer wishes to trade and asking for the price. The trader then states a price at which he or she is willing to buy (the "bid price") and a price at which he or she is willing to sell (the "ask price"). Finally, the customer decides whether to buy, sell, or pass. So, a market maker "makes the market" by ensuring that customers willing to buy and customers willing to sell meet, indirectly, with him playing an intermediary role. A market maker is responsible for creating the so-called "market liquidity".*
>
> *Thus, a market maker: (i) sets bid prices and ask prices for a certain currency pair; (ii) commits to accepting spot transactions at these prices; and (iii) subsequently takes the resulting exposure onto his/her own book. As such, a market maker is a counterparty in a Forex transaction, who - unlike brokers - bears the resulting exposure of the transactions he or she enters into.*

191B. The Commission further explains, in relation to the market making function, the concepts of the FX trader's "*bid-ask spread*" and "*open risk position*":[135B]

> *The difference between a trader's ask price and bid price, for a given currency pair and a certain notional amount, is called the* ***bid-ask***

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134 Footnote 8 of the TWBS Decision ~~Decisions~~, inserted here, explains that "*[f]or currency pairs, prices are often referred to as exchange rates, though the terms prices and exchange rates can be used interchangeably in this context.*" See also footnote 8 of the EE Decision and recital 13 of the STG Lads Settlement Decision.

135 Footnote 9 of the TWBS Decision ~~Decisions~~, inserted here, explains that "*[a] trader's book is his/her transactions portfolio.*" See also footnote 9 of the EE Decision and footnote14 of the STG Lads Settlement Decision.

135A STG Lads Ordinary Decision, recitals 28 – 29. Internal footnotes omitted. In footnote 31, the Commission observes that, by playing an indirect intermediary role, "*Market makers therefore permit continuous trading by overcoming the asynchronous timing of investor orders. See Madhavan A. "Market microstructure: A survey", Journal of Financial Markets 3 (2000) 205-258.*"

135B STG Lads Ordinary Decision, recitals 32 – 34. Bold emphasis in the original. Internal footnotes omitted.

> ***spread***. *This spread enables the trader to be compensated for the immediacy service they provide and the subsequent risk of holding a certain currency in inventory.*
>
> *As a result, by agreeing to buy or sell at any point in time, traders are exposed to market fluctuations as they may accumulate unbalanced positions if, for example, they have sold more than what they have bought. Those unbalanced positions are called open risk positions.*
>
> *An **open risk position** in a certain currency is a position that has been recorded by a trader in his/her trading book following a spot FX transaction. The position remains open until an opposing trade takes place. An open risk position represents market exposure (the risk) for the trader. Open risk positions can be 'long' or 'short'. In long positions, the trader holds a positive amount of a certain currency in his/her trading book and will have to sell this currency in order to close the position. In short positions, the trader holds a negative amount of a certain currency in his/her portfolio and will have to buy this currency in order to close the position. The "size" of a position is the positive or negative amount of a certain currency that a trader holds in his/her trading book. If a trader wants to reduce or to close an open risk position, he will pass the accumulated inventory onto other traders or another client with matching needs. This process has been greatly facilitated by the advance of electronic trading technologies.*

191C. The Commission concludes in the following terms:[135C]

> *In his role as market maker, a trader receives orders from end-customers and offers them immediacy services by quoting bid and ask prices and showing its readiness to trade. Traders are able and expected to conclude their trades autonomously.*
>
> *In determining their prices and spreads, … traders will take into account their own inventory of open risk positions in order to manage their inventory risk. Traders will also analyse all the public information they consider relevant to the evolution of FX rates and that is available on electronic platforms. Finally, traders will rely on their own expectations about FX rates development.*
>
> *Traders' expectations are determined mainly by the flow of incoming trades from informed end-customers because they are expected to anticipate FX rate movements. Informed trades typically originate from financial institutions like hedge funds, asset managers, banks and central banks. Those institutions use currencies as a store of value and so tend to be better informed than other end-customers…*

[135C] STG Lads Ordinary Decision, recitals 54 – 56.

Types of customer orders

192. The Decisions identify three types of orders that may be placed by customers, which are pertinent to the Infringements:[136]

> *The following three types of orders characterising the customer-driven trading activity (market making) of the participating traders are pertinent in the present infringement:*
>
> *(1) Customer immediate orders, to immediately enter trades for a certain amount of currency based on the prevailing market rate;*
>
> *(2) Customer conditional orders, which are triggered when a given price level is reached and opens the traders' risk exposure. They only become executable when the market reaches a certain level (for example a stop-loss or take-profit order);*
>
> *(3) Customer orders to execute a trade at a specific Forex benchmark rate or "fixing" for particular currency pairs, which in the current case only concerned the WM/Reuters Closing Spot Rates (hereinafter the "WMR fixes") and the European Central Bank foreign exchange reference rates (hereinafter the "ECB fixes").*

"Trading on own account" and the inter-dealer market

193. As well as engaging in market making (i.e. trading on behalf of customers), FX traders also engage in proprietary trading on their own account (i.e. using the bank's own money). As to the activity of "trading on their own account" (or "proprietary trading"),

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136 Recital 9 of the TWBS Decision and of the EE Decision; recital 13 of the STG Lads Settlement Decision. See also recital 30 of the STG Lads Ordinary Decision ~~Decisions~~. As footnote 11 of the TWBS Decision and of the EE Decision and footnote 17 of the STG Lads Settlement Decision state, "*the WMR fix and the ECB fix are based on spot FX trading activity by market participants at or around the times of the respective WMR or ECB fix.*" In recital 31 of the STG Lads Ordinary Decision, the Commission provides a comprehensive explanation of WMR fixes and ECB fixes:

> *The WMR and ECB fixes are two benchmark rates in the Forex market. The rates are determined over a one-minute fix period, from 30 seconds before to 30 seconds after the time of the fix. The client enters into a trade before the underlying benchmark rate is published. Once the fix rate is known (usually a few minutes after the fix period), the trader then completes the trade with the client at the specified volume and at the price determined by the published benchmark. From clients' orders at the fix, traders get a certain trading exposure also called 'open risk position' (…) that they typically want to hedge in the market in order to close it. The traders can choose to execute this hedging trade before the fix, at the time of the fix, or after the fix. Traders might also choose not to hedge their positions. In addition, traders can execute transactions at the time of the fix that are not related to client fix orders.*

this is described in recital 7 of the TWBS Decision and of the EE Decision, and in recital 10 of the STG Lads Settlement Decision ~~Decisions~~ as follows:

> *When trading on their own account, traders may, after having taken a certain currency exposure into their books, choose to subsequently (i) hold it, (ii) close it by entering into an equivalent reverse transaction or (iii) increase the exposure further. Both the magnitude of currency exposure market makers are willing or able to keep in their books and the pace at which they modify currency exposure depends on their market expectations, their risk appetite and regulatory limits. This activity is called trading on own account, because it takes place on behalf of a trader's own undertaking*

193A. In the STG Lads Ordinary Decision, the activity of "trading on their own account" (or "proprietary trading"), is described (in recitals 35 and 36) as follows:[136A]

> *Traders might also be willing to create, keep or increase open risk positions in their trading book, not necessarily in connection to end-customer (market making) trades… Indeed, if a trader holds a long position in a certain currency, the trader will gain if the value of this currency increases as compared to other currencies. Conversely, for short positions, the trader will gain if the value of this currency decreases as compared to other currencies.*
>
> *Proprietary trading occurs when traders primarily engage in trading activity on the banks' own money rather than on behalf of their clients, and look to exploit a competitive advantage over the market by building open risk positions that would enable them to earn excess returns. When trading on their own account, traders having a certain currency exposure into their books may choose to (i) hold it, (ii) close it by entering into an equivalent reverse transaction or (iii) increase the exposure further. Both the magnitude of currency exposure traders are willing or able to keep in their books and the pace at which they modify currency exposure depends on their expectations on future FX movements and the risk they are ready to take within their position and risk limits. This activity is called* ***trading on own account*** *because it takes place on behalf of a trader's own undertaking.*
>
> ~~*When trading on their own account, traders may, after having taken a certain currency exposure into their books, choose to subsequently (i) hold it, (ii) close it by entering into an equivalent reverse transaction or (iii) increase the exposure further. Both the magnitude of currency exposure market makers are willing or able to keep in their books and the pace at which they modify currency exposure depends on their market expectations, their risk appetite and regulatory limits. This activity is called trading on own account, because it takes place on behalf of a trader's own undertaking.*~~

[136A] Bold emphasis in the original; internal footnotes omitted.

194. This type of trading is often referred to as taking place on the "inter-dealer market". This is not a physical market, but instead is a term commonly used to describe the trading that takes place between FX Dealers for the purposes of "trading on their own account".[137] It is undertaken by a trader on behalf of their own undertaking[137A] "*with a view to maximising the value of their respective holdings*".[137B]

194A. In the interdealer market, traders are each other's counterparties and can trade with each other either directly (or bilaterally), usually over an electronic platform, or through a broker, whether a voice broker or an electronic broker.[137C] FX traders may trade in the interdealer market for several reasons:[137D]

> *First, they may want to adjust their own inventory positions after incoming market making trades from end-customers. Second, they may act as counterparties to other traders adjusting their inventory. Finally, they may want to take a position for the purposes of their proprietary trading activities.*

The importance of information in FX spot trading

194B. FX transactions are made on an "over-the-counter" basis[137E] and are negotiated bilaterally between the counterparties to each trade, such that information on FX trading is not in the public domain, other than limited data on reported trades that is published on online platforms.[137F] Access to information is "*at the heart*" of FX trading[137G] and is therefore very important to FX traders, as an FX trader with non-public, proprietary information will have a competitive advantage in determining their

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137 Albeit that, as explained in the First Knight Report at section 6.1, the majority of inter-dealer trading takes place on two electronic platforms: (i) EBS; and (ii) Reuters.

137A Recital 10 of the STG Lads Settlement Decision. See also recitals 7 of the TWBS Decision and of the EE Decision.

137B Recital 12 of the STG Lads Settlement Decision. See also recitals 8 of the TWBS Decision and of the EE Decision.

137C STG Lads Ordinary Decision, recitals 37 – 38.

137D STG Lads Ordinary Decision, recital 39. According to footnote 38, this recital is derived from Bjønnes, Rime. "Dealer behavior and trading systems in foreign exchange markets", Journal of Financial Economics 75 (2005) 571–605.

137E STG Lads Ordinary Decision, recital 25; First Knight Report, section 3.3.

137F First Rime Report, paras 74 – 81.

137G First Rime Report, para 82.

trading decisions and managing their risk over other traders and customers that do not possess such information.[137H]

194C. Information on prices, exchange rates and volumes is available on the EBS and Reuters electronic trading platforms, and is updated as trades are executed and reported on the platforms. The Commission considered that this information was sufficient for an FX trader to be able to make their own trading decisions and to determine their own pricing,[137I] without needing to participate in online bilateral or multilateral chatrooms to exchange non-public information.[137J]

194D. An FX trader will gain a competitive advantage in setting their bid-ask spreads and prices to end customers and in their dealing on the interdealer market if they have access to additional, confidential, non-public and proprietary information. Access to information is important because FX rates "*move in response to new information about their fundamental value*" and information originating from informed counterparties (i.e. financial institutions) can become "*embedded*" in the market price.[137K] Such information may be macroeconomic information about a country's economy (which is not available in real time)[137L] or customer order flow information (which is confidential to each trader and its customer)[137M] and will be more valuable where the customer is "informed" and will also be trading on information in its possession as to future price dynamics.[137N]

194E. Although information on pricing and volumes of trades is reported on online platforms, much other, valuable information used by FX traders is not publicly available and is thus confidential and proprietary in nature. In addition to the limited information available on electronic trading platforms:[137O]

> *… traders have other available sources of information such as the market analysts or fellow traders of their own banks and the orders they receive from their own customers. Credit Suisse acknowledges that market information is gathered in practice from multiple channels*

137H First Rime Report, paras 82 – 87 and 109 - 132.

137I STG Lads Ordinary Decision, recitals 12 – 16 and 428

137J STG Lads Ordinary Decision, recitals 49 and 53.

137K STG Lads Ordinary Decision, recital 40.

137L First Rime Report, paras 92 – 94.

137M First Rime Report , paras 95 - 99.

137N First Rime Report , paras 100 - 102.

137O STG Lads Ordinary Decision, recital 427.

> *either internally (FX sales, FX traders, other FX spot/derivative/proprietary trading desks, market research, etc.) or externally (traders from other banks, brokers, clients). All these information sources allow traders to predict market trends and to make their trading decisions using their own means.*

194F. Therefore, confidential and commercially sensitive non-public information received by a trader on customer orders provided that trader with a considerable informational advantage in determining prices, spreads and the management of inventory risk.[137P] Therefore, "*access to reliable and up-to-date market information is essential for FX traders*", given its importance in decision-making and setting FX rates.[137Q] Such information is generally not in the public domain (and thus is confidential and proprietary) and may be obtained from informed customers (such as financial institutions) and trading counterparties; accordingly, "*access to customer orders is regarded as one of the most important sources of private information*".[137R] The Commission therefore found that:[137S]

> *… traders actively alter prices and spread levels in response to modifications in their inventory and information considerations. Inventory risk and the information effect of incoming trades are therefore considered as key parameters in the setting of FX rates and spreads.*

194G. The Commission found that the FX Global Code (a set of global principles of good practice in the FX market) "*establishes as a principle that market participants (including traders) should limit access to information relating to the past, present and future trading activity or positions of the market participant itself or of its clients [which] market participants should not disclose … to external parties, except under specific circumstances, for example to the extent necessary for settling a transaction*". Information on specific clients and individual trading positions should also not be disclosed.[137T]

137P STG Lads Ordinary Decision, recitals 41 - 43

137Q STG Lads Ordinary Decision, recital 49.

137R STG Lads Ordinary Decision, recital 45.

137S STG Lads Ordinary Decision, recital 46.

137T STG Lads Ordinary Decision, recital 52. The FX Global Code is published by the Global Foreign Exchange Committee. The current version (July 2021) is available online at https://www.globalfxc.org/docs/fx_global.pdf. The first version was published in May 2017 and is available online at https://www.globalfxc.org/docs/fx_global_may17.pdf.

194H. It is averred that an FX dealer will gain a competitive advantage in setting its bid-ask spreads and prices (both to end customers and on the interdealer market) if it has access to confidential, non-public and proprietary information. The Proposed Class Representative will say, that, by unlawfully sharing non-public, confidential and commercially sensitive information in the chatrooms on a regular basis, for their own benefit, the Proposed Defendants not only lessened competition between themselves in FX spot trading with end customers (by enabling them to widen their bid-ask spreads quoted to end-customers), but that this also reduced competition in the market for FX spot trading as a whole (leading to all traders widening their spreads) and, by giving the Proposed Defendants an information advantage in the FX interdealer market over other traders (which did not have this information), enabled them to trade in that market to the detriment of other FX traders, causing those traders to also increase their bid-ask spreads to end-customers.

Description of the events constituting the infringements[138]

195. Section 4 of each of the Decisions is entitled "*[d]escription of the events*". Each version of Section 4 starts with a description of the chatroom (or chatrooms) used by the traders participating in each of the Infringements, which is followed in each Decision by subsection 4.1.1. describing the evolution and duration of their membership. The Commission states that the individuals participating in the chatrooms were "*traders employed by their respective undertakings during the relevant period, and all of them were authorised to trade G10 FX currencies in spot transactions on behalf of their respective employing undertaking at the corresponding dedicated FX spot trading desk.*"[139]

TWBS Decision: evolution and duration of chatroom membership

196. Recital 35 of the TWBS Decision explains that the Decision concerns conduct documented in communications that took place within three private Bloomberg chatrooms[140] called, consecutively, "*Three way banana split*", "*Two and a half men*"

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138 Section 4 of each of the Decisions.

139 TWBS Decision, recital 36; EE Decision, recital 32; STG Lads Settlement Decision, recital 39; STG Lads Ordinary Decision, recital 87.

140 Bloomberg chatrooms are explained in footnote 14 of the TWBS Decision as follows: "*Bloomberg chatrooms (or Instant Bloomberg) are a messaging /chat tool integrated into the Bloomberg Professional service (https://www.bloomberg.com/professional). Bloomberg Professional service users can create electronic chatrooms using the Instant Bloomberg tool,*

and "*Only Marge*".[141] ~~It appears that four individuals participated in the chatrooms, although their names have been redacted. Instead, these individuals are described by reference to their employing undertaking, namely: (i) "*Barclays and later UBS*"; (ii) "*RBS and later JPM*"; (iii) "*Citigroup*"; and (iv) "*Barclays*".~~[142]

197. A detailed description of the evolution and duration of the membership of the Three Way Banana Split chatrooms is provided in section 4.1.1. of the TWBS Decision. Overall, the chatrooms were consecutively open from 18 December 2007 until 3 June 2013, and were "*actively used for extensive communications between 18 December 2007 and 31 January 2013. Not all Parties participated for the whole duration of the chatroom.*"[143]

198. Recitals 38 - 44 of the TWBS Decision identify the individual traders that participated in the chatrooms, and explain the dates on which particular traders entered or left the chatrooms:~~.~~

> *The Three Way Banana Split chatroom was created by* OCR INFORMATION REDACTED *(Barclays at the time) on 18 December 2007.* OCR INFORMATION REDACTED *(Citigroup) and* OCR INFORMATION REDACTED *(RBS) joined on the same day, i.e. 18 December 2007.*
>
> *RBS left the chatroom on 19 April 2010,* OCR INFORMATION REDACTED
>
> *JPM joined the chatroom on 26 July 2010. On that date,* OCR INFORMATION REDACTED *was hired by JPM and re-joined the chatroom.*
>
> *Barclays left the chatroom on 7 July 2011, when its trader* OCR INFORMATION REDACTED *left Barclays. Thus, the chatroom became bilateral until 9 October 2011. Barclays re-entered the chatroom on 20 December 2011, when* OCR INFORMATION REDACTED *joined. Barclays left the chatroom again on 1 August 2012.*

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and invite other Bloomberg Professional users." This footnote is also included at footnote 15 of the EE Decision in substantively identical terms and (although some text, relating to the name of the provider of the service, is redacted in the published non-confidential version presently available to the Proposed Class Representative) at footnote 20 of the STG Lads Settlement Decision. A detailed explanation of how such chatrooms operate is set out in recitals 88 – 90 of the STG Lads Ordinary Decision.

141 Referred to collectively in the TWBS Decision ~~Decisions~~ as the "Three Way Banana Split chatrooms" or "the chatrooms".

~~142 The references to "*Barclays and later UBS*" and "*RBS and later JPM*" are understood to signify that a given trader was employed by multiple undertakings during the relevant period.~~

143 TWBS Decision, recital 37.

UBS joined the chatroom on 10 October 2011, when [redacted] *re-joined it in his new capacity as a UBS FX spot mandated trader.*

Citigroup left the chatroom on 31 January 2013, upon withdrawal of [redacted]

[redacted] *(JPM) and* [redacted] *(UBS) continued communicating in the chatroom after 31 January 2013. However,* [redacted] *departure from the chatroom on 31 January 2013 served as a warning to the remaining members as to the problematic nature of some of the communications within the chatroom and led to a marked change in their content. As such, 31 January 2013 is considered to be the final day of the period of the infringement.*

The above ~~This~~ is also summarised in section 4.2 of the TWBS Decision (recitals 64 and 65), which provides a table detailing the periods during which the undertakings participated in the conduct identified in the TWBS Decision. This is reproduced below.

BANK	TRADER	ENTRY	EXIT
CITIGROUP	[redacted] ~~[REDACTED]~~	18/12/2007	31/01/2013
BARCLAYS	[redacted] ~~[REDACTED]~~	18/12/2007	7/07/2011
	[redacted] ~~[REDACTED]~~	20/12/2011	1/08/2012
RBS	[redacted] ~~[REDACTED]~~	18/12/2007	19/04/2010
[JP MORGAN]	[redacted] ~~[REDACTED]~~	26/07/2010	31/01/2013
UBS	[redacted] ~~[REDACTED]~~	10/10/2011	31/01/2013

EE Decision: evolution and duration of chatroom membership

199. Recital 31 of the EE Decision states that the Decision concerns conduct documented in communications that took place in two private Bloomberg chatrooms called "*Essex Express 'n Jimmy*"[144] and "*Grumpy Semi Old Men*".[145] As to those two chatrooms:

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144 The Press Release dated 16 May 2019 (relating to the adoption of the TWBS Decision and the EE Decision) explains the name of this chatroom as follows: "*all the traders but "James" lived in Essex and met on a train to London.*"

145 Referred to collectively in the EE Decision ~~Decisions~~ as the "Essex Express chatrooms" or "the chatrooms".

a. Essex Express 'n Jimmy was created on 14 December 2009;[146]

b. Grumpy Semi Old Men was created on 8 September 2010;[147] and

c. The two chatrooms were merged into one chatroom called "*Essex Express*" on 12 January 2011.[148]

200. A detailed description of the evolution and duration of the membership of the chatrooms is provided in section 4.1.1. of the EE Decision. Overall, the chatrooms were open from 14 December 2009 until 1 August 2013, and were "*actively used between 14 December 2009 and 31 July 2012. Not all Parties participated in the chatrooms for their entire duration.*"[149]

201. Recitals 34 - 43 of the EE Decision identify the individual traders that participated in the chatrooms, and explain the dates on which particular traders entered or left the chatrooms:

> *The Essex Express 'n Jimmy chatroom was created by* [redacted] *(UBS) on 14 December 2009.* [redacted] *(Barclays) joined on the same day, that is. [sic] 14 December 2009. Until 14 September 2010, the Essex Express 'n Jimmy chatroom was bilateral.*
>
> *RBS* [redacted] *joined the Essex Express n' Jimmy chatroom on 14 September 2010.*
>
> [redacted] *(also Barclays) joined the Essex Express n' Jimmy chatroom on 6 January 2011.*
>
> *The Grumpy Semi Old Men chatroom was created by* [redacted] *(BOTM) on 8 September 2010.* [redacted] *(Barclays) joined on the same day, that is, 8 September 2010. Until 16 September 2010, the Grumpy Semi Old Men chatroom was bilateral (but run parallel to the Essex Express 'n Jimmy chatroom).*
>
> *RBS* [redacted] *joined the Grumpy Semi Old Men chatroom on 16 September 2010.*
>
> *On 12 January 2011, following the initiative of* [redacted] *(Barclays), Essex Express 'n Jimmy and Grumpy Semi Old Men*

146 EE Decision, recital 34.

147 EE Decision, recital 37.

148 EE Decision, recital 39.

149 EE Decision, recital 33.

merged into a single chatroom (Essex Express), administrated by [redacted] *(UBS).*

BOTM left the chatroom on 12 September 2011, when [redacted] *quit BOTM. His last intervention in the chat happened at 07:20:52 on that day.*

RBS left the Essex Express chatroom on 8 November 2011, when its trader [redacted] *left* [redacted] *and the chatroom.*

Barclays was in the Essex Express chatroom until 31 July 2012, through its traders [redacted] *and* [redacted] *(also Barclays). The latest quitted the chatroom on 1 August 2012.*

UBS was in the Essex Express chatroom until 31 July 2012, through its [redacted]

The above ~~This~~ is also summarised in section 4.2 of the EE Decision (recitals 64 and 65), which provides a table summarising the periods during which the undertakings participated in the conduct identified in the Decision. This is reproduced below.

BANK	TRADER	ESSEX EXPRESS*	GRUMPY SEMI OLD MEN*
UBS	[redacted] ~~[REDACTED]~~	**14/12/2009 - 31/07/2012**	
BARCLAYS	[redacted] ~~[REDACTED]~~	**14/12/2009 - 31/07/2012**	08/09/2010 - 12/01/2011
	[redacted] ~~[REDACTED]~~	06/01/2011 - **31/07/2012**	
RBS	[redacted] ~~[REDACTED]~~	**14/09/2010 - 08/11/2011**	16/09/2010 - 12/01/2011
BOTM	[redacted] ~~[REDACTED]~~	12/01/2011 - **12/09/2011**	**08/09/2010 -** 12/01/2011

** Periods in bold are said to "identify the beginning and end of the participation in Essex Express for each bank."*

Individuals participating in the Three Way Banana Split and Essex Express chatrooms

201A. The TWBS Decision and the EE Decision ~~Decisions~~ contain limited information on the individuals that participated in the Three Way Banana Split and Essex Express chatrooms on behalf of the Proposed Defendants that are addressees of those Decisions, and in particular regarding the roles they held during the periods covered

by those ~~the~~ Decisions.[149A] The Proposed Class Representative intends to seek disclosure concerning these matters in due course, if a CPO is granted in his favour.

OCR INFORMATION REDACTED

a. OCR INFORMATION REDACTED

b. OCR INFORMATION REDACTED

149A As noted in paragraph 195 above, the TWBS Decision and the EE Decision each ~~Decisions~~ describe the roles of the individuals in high-level terms, noting that they were "*traders employed by their respective undertakings during the relevant period, and all of them were authorised to trade G10 FX currencies in spot transactions on behalf of their respective employing undertaking at the corresponding dedicated FX spot trading desk.*" See TWBS Decision, recital 36; EE Decision, recital 32.

149B OCR INFORMATION REDACTED

149C OCR INFORMATION REDACTED

149D OCR INFORMATION REDACTED

149E OCR INFORMATION REDACTED

149F OCR INFORMATION REDACTED

149G OCR INFORMATION REDACTED

149H OCR INFORMATION REDACTED

OCR INFORMATION REDACTED

c. OCR INFORMATION REDACTED

d. OCR INFORMATION REDACTED

i. OCR INFORMATION REDACTED

ii. OCR INFORMATION REDACTED

OCR INFORMATION REDACTED

149I OCR INFORMATION REDACTED

149J OCR INFORMATION REDACTED

149K OCR INFORMATION REDACTED

149L OCR INFORMATION REDACTED

iii. OCR INFORMATION REDACTED [redacted]

STG Lads Settlement Decision and STG Lads Ordinary Decision: evolution and duration of chatroom membership

201B. Recital 38 of the STG Lads Settlement Decision and recital 86 of the STG Lads Ordinary Decision explain that those Decisions concern conduct documented in communications that took place within a chatroom called "Sterling Lads"[149M] between employees of five undertakings: Barclays, RBS, UBS, HSBC and Credit Suisse.[149N] The names of the individuals that participated in the chatroom have been redacted from the non-confidential versions of the two Decisions that have been published by the Commission and which are presently available to the Proposed Class Representative. Instead, these individuals are described in anonymised form by reference to their employing undertaking at the time of their involvement. However, the Proposed Class Representative has been able to identify each individual who participated in the Sterling Lads chatroom from publicly available documents: see paragraph 201F below. One participating trader, John Erratt, was, at the commencement of the chatroom, employed by Barclays until leaving that bank's employment during the period of the chatroom's operation, on 4 November 2012; Mr Erratt subsequently rejoined the chatroom on 7 February 2012 as an employee of Credit Suisse.

201C. A detailed description of the evolution and duration of the membership of the Sterling Lads chatroom is provided in section 4.1.1. of the each of the STG Lads Settlement

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149M The name of the company providing the chatroom is redacted from the published non-confidential versions of the STG Lads Settlement Decision (footnote 20) and the STG Lads Ordinary Decision (recital 88 and recital 64). However, the wording of footnote 20 of the STG Lads Settlement Decision is identical to that of the corresponding footnotes in the TWBS Decision (footnote 14) and the EE Decision (footnote 14) and, accordingly, the Proposed Class Representative believes that the Sterling Lads chatroom was provided by Bloomberg. See also footnote 140 above.

149N Recital 4 of the STG Lads Settlement Decision and recital 3 of the STG Lads Ordinary Decision state that the respective decisions concern participation by, in total, five undertakings (Barclays, HSBC, UBS, RBS and Credit Suisse) in a single chatroom. In the STG Lads Settlement Decision, Credit Suisse is referred to as a "*[non-addressee]*" or as "*[the other participating undertaking]*" (see recital 5) and in the STG Lads Ordinary Decision, Barclays, HSBC, UBS and RBS are each referred to as a "*[non-addressee]*" or as "*participating undertakings*" (see recital 4).

Decision and the STG Lads Ordinary Decision. Recital 40 of the STG Lads Settlement Decision records that:[149O]

> *The chatroom was created by its administrator [employee of Barclays* [Christopher Ashton]*] (Barclays) on 25 May 2011 and formally closed on 1 August 2012. The communications took place from 25 May 2011 to 12 July 2012. Not all participating undertakings participated in the chatroom for its entire duration.*

201D. Recitals 41 to 44 of the STG Lads Settlement Decision explain the dates on which particular traders employed by Barclays, HSBC, UBS or RBS entered or left the chatroom:

> *Barclays participated in communications in the chatroom from 25 May 2011 to 12 July 2012 ([employee of Barclays* [Christopher Ashton]*] for the entire period, [employee of Barclays* [John Erratt]*] from 25 May 2011 to 4 November 2011, [employee of Barclays* [Mark Clark]*] from 8 November 2011 to 12 July 2012).*
>
> *HSBC participated in communications in the chatroom from 25 May 2011 to 26 June 2012 ([employee of HSBC* [Frank Cahill]*] for the entire period).*
>
> *UBS participated in communications in the chatroom from 25 May 2011 to 12 July 2012 ([employee of UBS* [name unknown]*] from 25 May 2011 to 4 November 2011, [employee of UBS* [name unknown]*] from 8 November 2011 to 12 July 2012 and [employee of UBS* [name unknown]*] from 30 May 2011 to 12 July 2012).*
>
> *RBS participated in communications in the chatroom from 5 August 2011 to 12 July 2012 ([employee of RBS* [Paul Nash]*] for the entire period).*

201E. As regards Credit Suisse, recitals 99 to 101 of the STG Lads Ordinary Decision explain that:

> *[Employee of Credit Suisse* [John Erratt]*][149P] joined the STG Lads chatroom for the first time as a member on 25 May 2011, trading on behalf of [non-addressee* [Barclays]*], i.e. he was one of the founding*

149O See also recital 93 of the STG Lads Ordinary Decision. OCR INFORMATION REDACTED [redacted]

149P The Commission explains (in a footnote on p.21 of the public version of the STG Lads Ordinary Decision) that "*In the public version of this Decision, the individual referred as '[employee of Credit Suisse]' previously worked for a 'non-addressee'. In the interest of clarity, this individual is always referred as [employee of Credit Suisse], but an '*' will be added when his place of employment was not Credit Suisse.*" That individual was John Erratt, who initially worked for Barclays.

members. He remained a member of the STG Lads chatroom until the day he left [non-addressee [Barclays]*], on […*[4 November 2011]*].*

[Employee of Credit Suisse [John Erratt]*] later re-joined the STG Lads chatroom as a member on behalf of Credit Suisse, on 7 February 2012. He remained in the chatroom trading on behalf of Credit Suisse until 12 July 2012.*

Therefore, [employee of Credit Suisse [John Erratt]*] ceased to be a member of the STG Lads chatroom on […* [4 November 2011]*] [non-addressee* [Barclays]*], and re-joined the chatroom […* [on 7 February 2012]*] after he was employed by Credit Suisse ([…* [on 6 February 2012]*] following the beginning of his contract with Credit Suisse).*

201F. The above is also summarised in section 4.2 of the STG Lads Settlement Decision (recitals 64 and 65) and of the STG Lads Ordinary Decision (recitals 307 and 308), from which the table set out below summarising the periods during which the undertakings participated in the conduct identified in the Decisions has been drawn.

BANK	TRADER	ENTRY	EXIT
BARCLAYS	Christopher Ashton[149Q]	25/05/2011	12/07/2012
	John Erratt[149R]	25/05/2011	04/11/2011
	Mark Clark[149S]	08/11/2011	12/07/2012
HSBC	Frank Cahill[149T]	25/05/2011	26/06/2012
UBS	Niall O'Riordan	25/05/2011	04/11/2011
	Ralf Klonowski	08/11/2011	12/07/2012
	Daniel Evans[149U]	30/05/2011	12/07/2012
RBS	Paul Nash[149V]	05/08/2011	12/07/2012
CREDIT SUISSE	John Erratt[149W]	07/02/2012	12/07/2012

Individuals participating in the Sterling Lads chatroom

201G. The published non-confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision contain no information on the individuals that participated in the Sterling Lads chatroom on behalf of the Proposed Defendants that are addressees of those Decisions, and in particular regarding the roles they held during the periods covered by those Decisions; that information has been redacted.

149Q Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and Barclays Defence, paragraphs 6A.3(c) and 6A.5. See also U.S. Federal Reserve System Penalty Notice, *In the Matter of Christopher Ashton* (30 June 2016), paragraphs [22]-[23].

149R Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and Barclays Defence, paragraphs 6A.3(c) and 6A.5. The FCA authorised traders register confirms Mr Erratt's period of employment at Barclays to be 1 November 2007 to 4 November 2011.

149S Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and Barclays Defence, paragraphs 6A.3(c) and 6A.5.

149T Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and HSBC Amended Defence, paragraph 90.1, in which HSBC admits that Mr Cahill participated in the Sterling Lads chatroom between 25 May 2011 and 26 June 2012.

149U Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and UBS Amended Defence, paragraphs 44 and 48.3 (confirming Mr O'Riordan, Mr Klonowski and Mr Daniel Evans participated in the Sterling Lads chatroom, but not the periods of their respective participation). The Proposed Class Representative has been unable to determine the dates on which each of Messrs. O'Riordan, Klonowski and Evans participated in the Sterling Lads chatroom.

149V Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and RBS Amended Defence, paragraph 6J(b), in which it is admitted that Mr Nash participated in the Sterling Lads chatroom from 5 August 2011 to 12 August 2012.

149W Source: *Allianz v Barclays*, Re-Re-Amended Particulars of Claim, paragraphs 51 and 56 and Barclays Amended Defence, paragraph 6A.5 (admitting Mr Erratt was employed by Barclays until 4 November 2011). The FCA authorised traders register confirms Mr Erratt's period of employment at Credit Suisse to be 6 February 2012 to 8 July 2013.

Whilst the Proposed Class Representative has been able to identify, from public sources, the names of the individuals that participated in the Sterling Lads chatroom (see paragraphs 201B and 201F above), he nevertheless intends to seek disclosure concerning these matters in due course, if a CPO is granted in his favour.

201H. From publicly available information, the Proposed Class Representative understands that OCR INFORMATION REDACTED was one of the traders employed by Barclays that participated in the Sterling Lads chatroom[149X] and that he established and was the administrator for the chatroom. As set out above, OCR INFORMATION REDACTED [redacted].

Organisation and functioning of the Sterling Lad chatroom

201I. The STG Lads Ordinary Decision is addressed to Credit Suisse and therefore focuses on the participation of that undertaking's employee in the Sterling Lads chatroom.[149Y] However, that employee (whose name is redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative, but has been identified as John Erratt) had previously participated, as a founding member, in the chatroom as an employee of another undertaking (Barclays)[149Z] between 25 May 2011 and 4 November 2011 (the date on which he left that undertaking, i.e. Barclays),[149AA] before rejoining on 7 February 2012 having commenced employment with Credit Suisse on 6 February 2012. Therefore, there is an extensive description of that individual's (i.e. Mr Erratt's) involvement in the Sterling Lads chatroom before joining Credit Suisse, in section 4.1.2.1 of the STG Lads Ordinary Decision.

149X OCR INFORMATION REDACTED [redacted]

149Y STG Lads Ordinary Decision, recital 5 states that "*in so far as any content of this Decision makes reference to the participation of undertakings other than Credit Suisse, such references are made for the sole purpose of allowing Credit Suisse to fully exercise its rights of defence and to ensure that the equal treatment of all participating undertakings emerges from the text of the Decision*".

149Z The name of this undertaking is redacted from the published non-confidential version of the STG Lads Ordinary Decision presently available to the Proposed Class Representative, who believes that this undertaking was Barclays: see paragraph 201E and footnote 149P above

149AA STG Lads Ordinary Decision, recitals 94 and 99 – 101.

201J. From that description, the following facts emerge of Mr Erratt's involvement in the Sterling Lads chatroom when employed by Barclays between 25 May 2011 and 4 November 2011:

a. Mr Erratt was aware of the full chatroom membership over time.[149AB]

b. Whilst trading on behalf of Barclays, Mr Erratt:[149AC]

> *engaged in extensive, recurrent and reciprocal exchanges of commercially sensitive information relating to different aspects of FX spot trading of G10 currencies that were not necessary for traders to perform their role and did not respond to the need to price effectively and to formulate their own risk strategy.*
>
> *Some of the chats were explicit in: (i) expressing gratitude when receiving certain current or forward-looking information… (ii) indicating willingness to coordinate their trading to benefit any of the chatroom participants… or (iii) apologizing to each other when they may have departed from the trust and/or mutual expectations…*
>
> *The participating traders provided updates when the sensitive information was superseded to ensure that inferences drawn from the exchanges remained relevant… and they trusted each other not to use that information against its provider.*

c. Signing up to the chatroom was dependent on mutual trust between the members, requiring that invitations of new members had to be discussed and unanimously agreed to beforehand.[149AD] The chatroom was "*a circle of trust*" to which new members had to "*make a deliberate choice to sign up to*".[149AE]

d. The members of the chatroom helped each other within this closed circle of trust,[149AF] which was designed to favour each other's interests.[149AG] In the course of a conversation on 4 October 2011 in which the EUR/GBP rate was

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149AB STG Lads Ordinary Decision, recital 102.

149AC STG Lads Ordinary Decision, recitals 103 - 105.

149AD STG Lads Ordinary Decision, recitals 106 – 112.

149AE STG Lads Ordinary Decision, recital 108.

149AF STG Lads Ordinary Decision, recitals 113 - 121.

149AG STG Lads Ordinary Decision, recitals 122 - 125.

discussed, one participant "*referred to the chatroom participants as 'the new cartel'*".[148AH]

e. The traders participating in the Sterling Lads chatroom understood and expected the information they exchanged to be used for their mutual benefit, and not against each other's interests,[149AI] which involved exchanging confidential information on their current trading strategies: participants "*who are competitors in the market, find that they have common trading interests at a specific point and do share information on how they are going to act upon those interests*".[149AJ] Through chats on 9 June 2011, traders "*indicated willingness to adapt their trading activities to benefit any of the chatrooms participants*" by adapting their trading strategies and sharing their intention "*to raise the price of one currency against the other*" as, holding stop orders for GBP, "*it was in their interest that the price of GBP rose in order to trigger the stops*".[149AK]

201K. The Commission then examined the conduct of the Credit Suisse employee, i.e. Mr Erratt, when he rejoined the Sterling Lads chatroom on 7 February 2012 (section 4.1.2.2 of the STG Lads Ordinary Decision),[149AL] having received a personal invitation to do so, been welcomed back by the other members and being "*cheered and called by his nickname, showing the close relationship between the members*".[149AM] Thereupon, "*the information exchanges simply resumed in [employee of Credit Suisse* [John Erratt]*]'s presence and with his active participation*" and did so almost immediately.[149AN] According to the Commission:

a. By reference to a chat on 2 April 2012, participants knew that they were required to exchange information on a continuous basis:[149AO]

> *[the Credit Suisse employee* [John Erratt]*] was aware that it was important for the participating traders to keep up a constant flow of information, since the information exchanged*

148AH STG Lads Ordinary Decision, recital 122.

149AI STG Lads Ordinary Decision, recitals 126 – 135.

149AJ STG Lads Ordinary Decision, recital 131.

149AK STG Lads Ordinary Decision, recitals 132 – 135.

149AL Mr Erratt had started employment with Credit Suisse on 6 February 2012, the day before: STG Lads Ordinary Decision, recital 139.

149AM STG Lads Ordinary Decision, recitals 136 – 139.

149AN STG Lads Ordinary Decision, recitals 140 – 142.

149AO STG Lads Ordinary Decision, recital 142.

> *was only useful for a specific time window. Therefore, if the traders fail to exchange their information timely* [sic]*, they fall short of the tacit rules that the participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day and that the information exchanged could be used to the benefit of the participating traders.*

b. By reference to a chat on 26 April 2012, "*information was provided so that the other participating traders could operate on the market with the benefit of that common knowledge*"[149AP] so as to "*guide the other participating traders, which were their competitors, on their subsequent behaviour in the market.*"[149AQ]

201L. The Commission made the following observations on the participation of the Credit Suisse employee, i.e. Mr Erratt, in the Sterling Lads chatroom after he rejoined the chatroom on 7 February 2012:[149AR]

> *In conclusion, [employee of Credit Suisse* [John Erratt]*] did not join a chatroom of traders at random, nor was he invited by chance. Rather, after joining Credit Suisse, [employee of Credit Suisse* [John Erratt]*] re-joined the on-going conduct in a chatroom of which he had been a founding member with the same understanding he had when he was employed by [non-addressee* [Barclays]*]…*
>
> *Moreover, as a founding member of the STG Lads chatroom, [employee of Credit Suisse* [John Erratt]*] was aware that the participation in the chatroom would bring the participating traders the ability to adjust their respective market behaviours in mutually advantageous ways. Therefore, it is logical to conclude that [employee of Credit Suisse* [John Erratt]*] brought to his position at Credit Suisse the knowledge that he acquired during his time as [non-addressee* [Barclays]*]' trader vis-à-vis the functioning of the STG Lads chatroom.*

Arrangements reached in the chatrooms[150]

202. Sections 4.1.2. of each of the Settlement Decisions and section 4.1.3. of the Sterling Lads Ordinary Decision explains the "*[a]rrangements reached within the chatrooms*". These are divided into three subsections, as follows:

149AP STG Lads Ordinary Decision, recital 147.

149AQ STG Lads Ordinary Decision, recital 149.

149AR STG Lads Ordinary Decision, recitals 155 - 156.

150 Section 4.1.2. of each of the TWBS Decision and EE Decision ~~Decisions~~.

a. "*Underlying understanding to participate in the relevant private, mostly multilateral chatrooms"*;

b. "*Extensive exchange of information amongst competitors pursuant to the underlying understanding"*; and

c. "*Occasional instances of coordination facilitated by the exchange of information*."

Underlying understanding to participate in the relevant private, mostly multilateral chatrooms[151]

203. The Settlement Decisions each explain that the relevant traders of each undertaking participating in the chatrooms engaged "*in nearly daily communications*." Further, as part of these communications, "*they engaged in extensive, recurrent and reciprocal exchange of information… relating to different aspects of FX spot trading of G10 currencies (although not all 55 combinations of the G10 currencies might necessarily have been discussed or actually implicated in the relevant conduct…).*"[152]

203A. In the STG Lads Ordinary Decision, in describing the "underlying understanding", the Commission found that "*[p]articipating in the STG Lads chatroom entailed for the participating traders membership of a closed group of traders who trusted each other and tacitly committed to comply with an underlying understanding*".[152A]

203B. Whilst the Commission "*exceptionally decided, in its discretion, not to hold Credit Suisse liable for the underlying understanding*"[152B] (but only for "*its participation in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information that took place in the STG Lads chatroom as part of the single and continuous infringement* [which also included occasional coordination facilitated

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151 Section 4.1.2.1. of each of the Settlement Decisions; section 4.1.3.3 of the STG Lads Ordinary Decision.

152 TWBS Decision, recital 45; EE Decision, recital 44; STG Lads Settlement Decision, recital 46. ~~The~~ These Decisions also state that they do not concern "*the communications between the participating traders in the… chatrooms, in the ordinary course of their business, relating to matters such as the provision of information needed and intended to explore trading opportunities with each other as potential counterparties or as potential customers, or communications about market colour"*: TWBS Decision, recital 46; EE Decision, recital 45; STG Lads Settlement Decision, recital 47. Internal footnotes omitted.

152A STG Lads Ordinary Decision, recital 301.

152B STG Lads Ordinary Decision, recital 547.

by the exchanges of information and the underlying understanding[152C]")[152D,] the Commission did establish as a fact that Credit Suisse was a party (with Barclays, RBS, UBS and HSBC) to this "tacit" understanding,[152E] that this understanding constituted an agreement that had the object of restricting competition[152F] and that Credit Suisse both intended to contribute to the parties' anti-competitive aim during the whole duration of the infringement committed by it and was aware of the full scope of the infringement.[152G] It is therefore averred that, notwithstanding the Commission's finding on the scope of the infringement committed by it, Credit Suisse participated in the unlawful exchange of information in the Sterling Lads chatroom (which was a closed "*circle of trust*"[152H]) pursuant to the "tacit rules" contained in the unwritten underlying understanding, as this provided its employee (Mr Erratt) with the necessary trust and confidence to disclose to and receive from the other participants confidential information and that Mr Erratt did so with the same unlawful, anti-competitive objective and aim as the other participating traders.

204. The Commission states that participation in the chatrooms (which were "private" chatrooms, access to which was reserved to members of the relevant chatroom)[152I] entailed an underlying understanding, which is detailed in the Settlement Decisions as follows:[153]

> *In addition to such communications, the participating traders however agreed to exchange - in private, mostly multilateral chatrooms and on*

152C STG Lads Ordinary Decision, recital 539.

152D STG Lads Ordinary Decision, recital 543.

152E STG Lads Ordinary Decision, recitals 163, 301 – 302 and 344 – 349. Professor Rime considers that "it is artificial to separate the exchanges of information from the underlying understanding", as there was mutual trust and expectation of mutual trust between all the participating traders, such that the harm to the Proposes Classes arose from the exchanges of information (and not the underlying understanding in isolation), in which Credit Suisse participated and from which Credit Suisse derived benefits, such that it would not have been rational for it to have departed from the tacit understanding between it and the other participants: Fourth Rime Report, paragraphs 114 - 118.

152F STG Lads Ordinary Decision, recitals 344 – 346, 349 (existence of agreement) and 417 (restriction of competition by object). See below, paragraphs 223A and 230C – 230D.

152G STG Lads Ordinary Decision, recitals 500 – 506 and 542. See below, paragraphs 237B – 237D.

152H See paragraphs 201J – 201L and 203A above.

152I TWBS Decision, footnote 17; EE Decision, footnote 18; STG Lads Settlement Decision, footnote 23.

153 TWBS Decision, recital 47; EE Decision, recital 46. Internal footnotes omitted. The STG Lads Settlement Decision, recital 48, is similarly worded, but refers to an exchange of information in a "*private multilateral chatroom*" (internal footnote omitted).

> *an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about their trading activities. This information exchange took place in accordance with a tacit underlying understanding that: (i) such information could be used to the traders' respective benefit and in order to identify occasions to coordinate their trading; (ii) such information would be shared within the private chatrooms; (iii) the traders would not disclose such shared information received from other chatroom participants to Parties outside of the private chatrooms; and (iv) such shared information would not be used against the traders who shared it (hereinafter referred to as the "underlying understanding")…*

204A. In recital 163 of the STG Lads Ordinary Decision, the "underlying understanding" between the participating traders was described in the following terms:[153A]

> *Participating in the STG Lads chatroom also entailed for the participating traders operating in a circle of trust, mutual expectations and benefits. This required respecting a set of tacit rules that manifested in the exchanges of information and in occasional instances of coordination. These rules could be summarised as follows: (i) the participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day; (ii) the information exchanged in the chatroom would not be disclosed by the recipient traders to other competing traders outside the private chatroom; (iii) the information exchanged could be used to the benefit of the participating traders including to identify occasions appropriate for coordination; and, (iv) this information would not be used against those who shared it. Taken together, those tacit rules are referred to as the '**underlying understanding**'*

204B. The significance of the "*underlying understanding*" to the participation in the chatroom by, and the unlawful conduct of, the participants that constitutes the Infringements (in the case of Credit Suisse, limited to the exchange of information) is described in recital 302 of the STG Lads Ordinary Decision in the following terms:[153B]

> *Evidence ([…]) shows that the underlying understanding manifested itself in an extensive and recurrent pattern of exchanges of information consistently held over time, including information updates to account for fresh orders or new context, including during the whole participation of [employee of Credit Suisse] in the chatroom…. The commitments and mutual expectations implicit in the underlying understanding enabled the traders to contribute to and rely on such a continuous pattern of recurrent exchanges of current or forward-looking commercially sensitive information, as well as to identify*

153A Bold emphasis in the original.

153B "[ ]" identifies text redacted from the published, non-confidential version of the decision presently available to the Proposed Class Representative.

> *additional occasions to avoid mutual interference by coordinating their trading activities with respect to FX spot trading of G10 currencies.*

205. This underlying understanding facilitated coordination between participating traders. It is noted that "*pursuant to this underlying understanding, the participating traders occasionally coordinated their trading activities with respect to FX spot trading of G10 currencies.*"[154] This is explained in more detail in the Settlement Decisions as follows:[155]

> *In particular, the exchange of information pursuant to the underlying understanding facilitated the participating traders, at times, to better predict each other's market conduct and potentially informed their subsequent decisions, allowing for occasional opportunistic coordinated behaviour relating to trading activities. Through their participation in nearly daily exchanges, the participating traders had the expectation of standing a better chance to coordinate behaviour opportunistically…*

206. The traders participating in the chatrooms engaged in the exchanges of information and occasional trading coordination expecting some degree of reciprocity, as is said to be evidenced by "*numerous chats*":[156]

> *In particular, the participating traders involved in the private chatrooms engaged in the exchanges of information and occasional trading coordination, expecting some degree of reciprocity, without which the strategy would have been generally self-defeating. Such an underlying understanding appears from numerous chats, in which traders (i) expressed gratitude when receiving certain current or forward-looking information, (ii) indicated willingness to coordinate their trading to benefit any of the chatrooms participants, or (iii) apologized to each other when they may have departed from the underlying understanding.*

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154 TWBS Decision, recital 48; EE Decision, recital 47; STG Lads Settlement Decision, recital 49.

155 TWBS Decision, recital 49; EE Decision, recital 48; STG Lads Settlement Decision, recital 50. While recital 48 of the EE Decision is largely substantively identical to recital 49 of the TWBS Decision and recital 50 of the STG Lads Settlement Decision, it is to be noted that: (i) recital 49 of the TWBS Decision and recital 50 of the STG Lads Settlement Decision both state ~~states~~ that the exchange of information pursuant to the underlying understanding facilitated the participating traders, at times, to better predict each other's market conduct "*and potentially informed their subsequent decisions*…"; whereas (ii) recital 48 of the EE Decision omits the word "*potentially*".

156 TWBS Decision, recital 50; EE Decision, recital 49; STG Lads Settlement Decision, recital 51. Internal footnotes omitted. Recital 303 of the STG Lads Ordinary Decision is in similar terms and also finds that "*The settling parties* [i.e. Barclays, RBS, UBS and HSBC] *agree that the participating traders involved in the private chatroom engaged in the exchanges of information and occasional trading coordination, expecting some degree of reciprocity*".

207. In summary, the link between the underlying understanding and the other types of conduct (namely: (i) the extensive exchange of information amongst competitors pursuant to the underlying understanding; and (ii) occasional instances of coordination facilitated by the exchange of information) is explained as follows:[157]

> *As a result, participating in [the]… chatrooms entailed membership of a closed group of traders who trusted each other and tacitly committed to comply with the terms of the underlying understanding. The underlying understanding provided a basis for, and was implemented through, extensive and recurrent exchanges of certain current or forward-looking commercially sensitive information about their trading in mostly multilateral private chatrooms, which in turn enabled the relevant traders to identify, and in some cases, seize opportunities for coordinated trading.*

Extensive exchange of information amongst competitors pursuant to the underlying understanding[158]

208. Section~~s~~ 4.1.2.2. of each of the Settlement Decisions explains that the traders participating in the chatrooms shared current or forward-looking commercially sensitive information in a recurrent and extensive fashion. This is described, in summary, as follows:[159]

> *Pursuant to the underlying understanding, the participating traders exchanged in a recurrent and extensive fashion with each other, in mostly multilateral private chatrooms, certain current or forward-looking commercially sensitive information about their trading of either immediate commercial value, or of commercial value lasting for a period of minutes or at most hours after it had been shared, depending on the type of information or until it had been superseded by new updated information that overrode it (a practice hereinafter referred to as 'exchange of information')…*

209. The Settlement Decisions identify the following specific types of information that were shared in the chatrooms:

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157 TWBS Decision, recital 51; EE Decision, recitals 50 and 51; STG Lads Settlement Decision, recital 52. Internal footnotes omitted. Recitals ~~recitals~~ 50 and 51 of the EE Decision are substantively identical to recital 51 of the TWBS Decision, save that the text is split over two paragraphs in the former. Recital 52 of the STG Lads Settlement Decision is also substantively similar, although it refers to exchanges of information "*in a multilateral private chatroom*".

158 Section ~~4.1.2.1.~~ 4.2.2.2 of each of the TWBS Decision and the EE Decision ~~Decisions~~.

159 TWBS Decision, recital 52; EE Decision, recital 52. Recital 53 of the STG Lads Settlement Decision is similarly worded, but refers to the exchange of information being "*in a multilateral private chatroom*".

a. Open risk positions of the participating traders;[160]

b. Outstanding customers' orders;[161]

c. Other details of current or planned trading activities;[162] and

d. Bid-ask spreads.[163]

209A. The Settlement Decisions contain very limited descriptions and particulars of these exchanges of information.[163A] The STG Lads Ordinary Decision contains more detailed description and particulars and identifies, at recital 161, four specific categories of exchanges of information that occurred in the Sterling Lads chatroom:

a. Exchange of information on outstanding customers' orders (i.e. conditional orders, orders for the fix and immediate orders);[163B]

b. Exchange of information on open risk positions;[163C]

c. Exchange of information on bid-ask spreads;[163D] and

d. Exchange of information on other details of current or planned trading activities.[163E]

209B. Further particulars of each of these categories of exchanges of information, including extensive extracts from "chats" on specific dates, are set out in recitals 164 – 285 of the STG Lads Ordinary Decision.

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160 TWBS Decision, recital 53; EE Decision, recital 53; STG Lads Settlement Decision, recital 54.

161 TWBS Decision, recitals 54-55; EE Decision, recitals 54-55; STG Lads Settlement Decision, recitals 55-56.

162 TWBS Decision, recitals 56-57; EE Decision, recitals 56-57; STG Lads Settlement Decision, recitals 57-58.

163 TWBS Decision, recitals 58-59; EE Decision, recitals 58-59; STG Lads Settlement Decision, recitals 59-60.

163A See TWBS Decision, recitals 52 - 59; EE Decision, recitals 52 – 59; STG Lads Settlement Decision, recitals 53 – 60.

163B STG Lads Ordinary Decision, recitals 170 – 228.

163C STG Lads Ordinary Decision, recitals 229 – 238.

163D STG Lads Ordinary Decision, recitals 239 – 251.

163E STG Lads Ordinary Decision, recitals 252 – 285.

209C. The Commission found that the traders participating in the Sterling Lads chatroom "*took part in nearly daily communications*".[163F] As part of those near daily communications, "*they engaged in extensive, recurrent and reciprocal exchanges of information, in the STG Lads chatroom, relating to different aspects of FX spot trading of G10 currencies*".[163G]

209D. Recitals 159 and 160 of the STG Lads Ordinary Decision state that:[163H]

> *This Decision concerns communications between the participating traders in the STG Lads chatroom, exchanging - in a private multilateral chatroom and on an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about their trading activities, such as their outstanding customer orders, open risk positions and bid-ask spreads, with respect to FX spot trading of G10 currencies. This current or forward-looking commercially sensitive information shared was of either immediate commercial value, or of commercial value lasting for a period of minutes or at most hours after it had been shared (depending on the type of information), or until it had been superseded by new updated information that overrode it (a practice hereinafter referred to as '**exchange of information**').*
>
> *The exchange of information removed part of the uncertainties that are inherent to Forex trading, increased the level of transparency and entailed an asymmetry of information between the participating and the non-participating traders, increasing the likelihood that the former would make a profit from it.*

209E. The Commission emphasised that the exchanges of information "*were not random or limited to punctual* [sic] *incidents*" and that they "*followed a persistent pattern of recurrent and extensive exchanges of information consistently held over time*".[163I] It described the "*persistent pattern*" followed by the exchanges in the following terms:[163J]

- *The participating traders would typically join the chatroom in the early hours of their working day and start their day by exchanging commercially sensitive information on their current and intended trading activity, based on the constant flow of customer orders (including conditional orders) and their variable hedging needs.*

163F STG Lads Ordinary Decision, recital 157.

163G STG Lads Ordinary Decision, recital 157.

163H Bold emphasis in the original.

163I STG Lads Ordinary Decision, recital 164.

163J STG Lads Ordinary Decision, recital 165 (bullet points in the original). Examples of chats on specific days are set out in recital 166, showing that traders participated in the chatroom and exchanged information throughout their working day, from – in some cases – before 06.00 until – in others – after 17.00.

Exchanges typically extended for several hours, usually until the end of their working day.

- *The participating traders reported continuously and kept each other updated on most moves: their strategies on the market, their outstanding customers' orders, identity of clients, bid-ask spreads quoted for certain trade sizes, long or short open risk positions and corresponding amounts, and other current or forward-looking information.*

- *The participating traders typically made sure the information they had provided did not become obsolete, once superseded by fresh orders or new context. They therefore maintained a running commentary of their trading activity providing frequent updates throughout the day to avoid any misunderstanding.*

- *In the hour preceding fixing time, the participating traders would typically start exchanging information on their orders at the fix.*

209F. Accordingly, the Commission found that:[163K]

This constant flow of information shared within the chatroom allowed the participating traders to have a full picture of what their competitors were doing – and also what they were not doing - while actually trading in the market. This flow of information contributed to create mutually consistent expectations and to remove uncertainty between the participating traders as regards the timing, extent and details of the intended conducts to be adopted on the market. It also comforted the participating traders in making their subsequent decisions informed by that knowledge.

Exchange of information on open risk positions of the participating traders

210. Recital 53 of each of the TWBS Decision and the EE Decision, and recital 54 of the STG Lads Settlement Decision explain ~~Decisions explains~~ that traders shared information on their open risk[164] positions on a recurrent basis, which could be relevant to their subsequent trading decisions, by providing the participating traders with an insight into competitors' hedging conduct, and enabling ~~enabled~~ the participating traders to identify opportunities for coordination:

The exchange of information on open risk positions consisted in the recurrent sharing of certain current or forward-looking commercially sensitive information on open risk positions with competitors (the direction of the position (either "short" or "long") and, at times, the size

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163K STG Lads Ordinary Decision, recital 167.

164 This is defined in footnote 26 of the TWBS Decision, ~~and~~ footnote 27 of the EE Decision. footnote 33 of the STG Lads Settlement Decision and recital 34 of the STG Lads Ordinary Decision.

of the position or an indication of it) pursuant to the underlying understanding. The exchange of such information could provide the traders with an insight into each other's potential hedging conduct. The recurrent knowledge update of such open risk positions of major competitors provided the participating traders with information which could be, for a window of minutes or until new information superseded it, relevant to their subsequent trading decisions and enable the participating traders to identify opportunities for coordination.

210A. In the Fourth Knight Report, Mr Knight explains how FX traders can use this information "*in their trading decisions to their benefit*" and that expressions of gratitude made by traders in chats "i*mplies that information of this nature was considered to be of value*".[164A]

210B. In the STG Lads Ordinary Decision, the Commission set out in its findings on the exchange of information by the participating traders on their open risk positions. These exchanges were described in the following terms in recitals 229 – 231 of that Decision:

> *The exchange of information on open risk positions… consisted in the recurrent sharing of certain current or forward-looking commercially sensitive information on open risk positions with competitors (i.e. the direction of the position - either "short" or "long"-, and, at times, the size of the position or an indication of it). The exchange of such information could provide the participating traders with an insight into each other's potential hedging conduct, thereby reducing uncertainty and giving them a competitive advantage over the non-participating traders.*
>
> *Traders do not typically disclose their open risk position to their competitors because of the risk that other traders could use that information to attempt to move the market against them. Despite the risk of market opportunism by the information recipients, the participating traders in the chatroom disclosed their open risk position to their competitors without fearing that they could use the information against the disclosing trader. […]. Against this background, the Commission considers that sharing such information in the STG Lads chatroom, given its nature and time sensitivity, was relevant to the traders' decision-making and informed their future trading strategies, availing the participating traders of reciprocally shared privileged information not otherwise available.*
>
> *The recurrent disclosure of such open risk positions of major competitors provided the participating traders with information which*

[164A] Fourth Knight Report, paragraphs 49 - 51.

could be, for a window of minutes or until new information superseded it, relevant to their subsequent trading decisions.

210C. The Commission found that these exchanges of information enabled other traders to decide whether to coordinate their behaviour, in particular, "*by refraining from trading by withholding bids or offers, so that the price of the involved currency pair would not move in a direction adverse to the trader with the open risk position.*"[164B]

210D. In recitals 233 – 238 of the STG Lads Ordinary Decision, the Commission sets out in detail "*some instances*" of chats in the Sterling Lads chatroom relating to the period in which the employee of Credit Suisse (John Erratt) was trading on behalf of Credit Suisse. Those exchanges of information on current or intended risk positions took place on 2 March 2012, 18 April 2012, 23 April 2012, 22 May 2012 and 22 June 2012.

210E. In the footnotes to each of the TWBS Decision and the EE Decision ~~Decisions~~, the Commission identifies, by reference to OCR INFORMATION REDACTED [redacted] (but provides no information on), examples of this conduct by reference to chats taking place on a particular date. Those example dates are set out in the table below. The equivalent footnote (footnote 34) of the STG Lads Settlement Decision, which would appear to contain examples of this conduct in the Sterling Lads chatroom, has been redacted. However, the STG Lads Ordinary Decision does provide references to examples of this conduct. Accordingly, the Proposed Class Representative reserves the right, following disclosure (including, but not limited to, disclosure of the confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision) to amend this Re-Amended Collective Proceedings Claim Form to particularise further examples of the exchange of information on open risk positions by members of the Sterling Lads chatroom.

[164B] STG Lads Ordinary Decision, recital 232.

Dates of example chats identified in the TWBS Decision[~~164A~~ 164C]	**Dates of example chats identified in the EE Decision**[~~164B~~ 164D]	**Dates of example chats identified in the STG Lads Settlement Decision**[164E] **and/or the STG Lads Ordinary Decision**[164F]
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	25 May 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	31 May 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	7 June 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	13 June 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	27 June 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	4 July 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	20 July 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	27 July 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	5 August 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	7 August 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	17 August 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	12 September 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	21 September 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	3 October 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	17 October 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	19 October 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	27 October 2011
OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	2 November 2011
OCR INFORMATION REDACTED		1 December 2011
OCR INFORMATION REDACTED		14 December 2011
OCR INFORMATION REDACTED		5 January 2012
OCR INFORMATION REDACTED		25 January 2012
OCR INFORMATION REDACTED		13 February 2012
OCR INFORMATION REDACTED		2 March 2012
OCR INFORMATION REDACTED		8 March 2012
OCR INFORMATION REDACTED		14 March 2012
OCR INFORMATION REDACTED		22 March 2012
OCR INFORMATION REDACTED		18 April 2012
OCR INFORMATION REDACTED		23 April 2012
OCR INFORMATION REDACTED		18 May 2012

[~~164A~~ 164C] TWBS Decision, footnote 27.

[~~164B~~ 164D] EE Decision, footnote 28.

[164E] STG Lads Settlement Decision, footnote 34. The contents of this footnote have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

[164F] STG Lads Ordinary Decision, footnote 216. This footnote states that "*some of the examples in this list also happened to take place within the proximity of a fix*".

Dates of example chats identified in the TWBS Decision[164A][164C]	Dates of example chats identified in the EE Decision[164B][164D]	Dates of example chats identified in the STG Lads Settlement Decision[164E] and/or the STG Lads Ordinary Decision[164F]
OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED		22 May 2012 18 June 2012 22 June 2012 27 June 2012 12 July 2012

Exchange of information on outstanding customers' orders

211. The exchange of information on outstanding customers' orders concerns a range of different types of customer order, such as stop-loss orders, take-profit orders, orders for the fix, and immediate orders. This is described in each of the Settlement Decisions as follows:[165]

> *Pursuant to the underlying understanding, the participating traders of the addressees were expected to share and shared with each other confidential information related to their respective customers' outstanding orders. This applied to:*
>
> - ***Customers Conditional orders** such as "stop-loss" and "take-profit" orders, which are triggered when a given price level is reached and opens the traders' risk exposure. In this case, the participating traders frequently revealed certain current or forward-looking commercially sensitive information on conditional orders such as the size or the direction of the orders or the type of customer to other participating traders on an extensive basis. This eased the identification of opportunities for coordination among the participating traders. The recurrent update of knowledge of customers' confidential conditional orders placed with participating traders increased the likelihood of the traders successfully coordinating their trading activities for their own benefit.*
>
> - ***WMR or ECB fix positions:** traders usually engaged in these exchanges in the hour preceding the relevant fix. In contrast to instances of sharing their own fix positions (based on their own*

165 TWBS Decision, recital 55; EE Decision, recital 55; STG Lads Settlement Decision, recital 56.

> *customers' orders executable at the fix or their own hedging needs) to explore trading opportunities as potential counterparties or as potential customers, these traders often shared certain commercially sensitive information on their fix positions (such as the size or direction of the orders) to identify occasions to coordinate trading at or around the fix. Shared current or forward-looking information on customers' orders executable at the fix remains relevant information until the relevant fix.*
>
> - ***Commercially sensitive information on customers' immediate orders*** *(such as the size or the direction of the orders, the type of customer).pursuant [sic] to the underlying understanding. In this case, the exchange of information results in the same consequences as explained regarding the exchange of certain commercially sensitive information on current or planned trading activity*[166] *…*

211A. In the Fourth Knight Report, Mr Knight explains how exchanging information on customer orders is valuable to traders, particularly if the customer's identity or sector is disclosed, as this can give an insight into market profile or increase a trader's confidence in future price movements.[166A]

211B. The STG Lads Ordinary Decision provides detail on the exchange of information on outstanding customers' orders, i.e. customers' conditional orders (such as 'stop-loss' orders), orders for the fix and immediate orders.[166B] The Commission found that the disclosure of this information reduced uncertainty, increased the information available to members of the Sterling Lads chatroom and was taken into account by the participating traders in devising their trading strategies and gave them an information advantage over other traders, so that they were in a better position to profit or avoid loss by adapting their trading strategies:[166C]

> *The disclosure of information related to customers' orders removed some of the uncertainties that are inherent to Forex trading activities. These exchanges increased the level of transparency for the chatroom's members about their trading activities and about the potential direction (up or down) of the involved exchange rates. These information exchanges were taken into account by the participating traders to devise their future trading strategy and resulted in an*

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166 Discussed in paragraph 212 below.

166A Fourth Knight Report, paragraph 47.

166B STG Lads Ordinary Decision, recitals 170 – 228.

166C STG Lads Ordinary Decision, recitals 171 - 172. Internal footnotes omitted. "[ ]" identifies text redacted from the published, non-confidential version of the decision presently available to the Proposed Class Representative.

> *asymmetry of information between the STG Lads chatroom participating traders and the non-participating traders, providing the former with a competitive advantage and increasing the likelihood that they would make a profit from it.*
>
> *Acquiring knowledge about how a market will move or the levels at which a market will show resistance and support could enable a trader to better position himself to profit or to avoid loss. In this way, the traders who received confidential information gained a competitive advantage. […]. For instance, the information that client buy orders have been placed with other banks, may comfort a trader in his expectation that the involved exchange rate will go up. He may buy the currency pair in question to take advantage of the price movement he expects, even though he is not assured that his expectations on exchange rates will materialise. In this scenario, the trader who receives the otherwise confidential information would end up trading differently to how he would have traded without the information.*

211C. In relation to the exchange of information on customers' conditional orders, "*the frequency, content and nature of the information exchanges*"[166D] enabled the participating traders to "*devise their future trading strategy with the benefit of that information… as a result of exploiting that level of insider information of competitors in their trading activities for their own benefit*".[166E] Traders participating in the Sterling Lads chatroom were therefore better informed than non-participating traders and could trade with a greater degree of confidence, such that they "*may thereby have taken advantage of this greater degree of confidence to adjust their trading behaviours*", thereby enabling them profitably to take advantage of expected price movements.[166F]

211D. In recitals 182 – 195 of the STG Lads Ordinary Decision, the Commission sets out examples of chats in which the employee of Credit Suisse (Mr Erratt) engaged with other members of the chatroom (employed by one or more of Barclays, RBS, UBS and HSBC) in improper exchanges of information on conditional offers, in a range of currency pairs, in the chatroom.[166G]

166D STG Lads Ordinary Decision, recital 175.

166E STG Lads Ordinary Decision, recital 176.

166F STG Lads Ordinary Decision, recitals 179 – 181.

166G These examples are limited to exchanges in which the trader employed by Credit Suisse (Mr Erratt) was trading on behalf of Credit Suisse: STG Lads Ordinary Decision, recital 182. They therefore do not cover the period from 25 May 2011 to 7 February 2012.

a. That trader (Mr Erratt) directly participated in exchanges with other members of the chatroom (employed by one or more of Barclays, RBS, UBS and HSBC) on 14 February 2012, 15 February 2012, 6 March 2012, 13 March 2012, 26 March 2012, 27 March 2012, 10 April 2012, 13 April 2012, 25 April 2012, 30 May 2012, 10 July 2012 and 11 July 2012.

b. In addition, that trader (Mr Erratt) was either present in the chatroom or logged on later the same day and so had access to exchanges between other members of the chatroom on 7 February 2012, 27 February 2012, 12 March 2012, 19 March 2012, 20 March 2012, 11 April 2012, 12 April 2012, 25 April 2012, 26 April 2012 and 16 May 2012.

211E. Whilst these Proposed Collective Proceedings do not concern a claim for damages for any loss to the Proposed Class Members arising from coordination of trading strategies relating to WMR or ECB fixes, the Commission found that the participants in the Sterling Lads chatroom exchanged information on their respective WMR or ECB fix positions.[166H]

211F. In the Sterling Lads Ordinary Decision, the Commission found that "*the objective of disclosure was to share commercially sensitive information that would not normally be exchanged with competing traders*" and that the participating traders "*often kept updating each other on the evolution of their positions heading to the fix*" even when (as they had the same risk exposure) they could not trade with each other.[166I] These exchanges provided the participating traders with an insight into the potential hedging conduct of the party providing the information, "*which enabled them to predict with a greater degree of confidence the direction in which the market may move at the time of the fix*" and thus "*boost their profits at the expense of other traders and counterparties who did not have access to the information*".[166J] These exchanges therefore increased market transparency and provided an advantage to the participating traders.

211G. In recitals 204 – 213 of the STG Lads Ordinary Decision, the Commission sets out examples of exchanges of information on fix positions that occurred in the Sterling Lads chatroom when the trader employed by Credit Suisse (Mr Erratt) was trading on

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166H STG Lads Ordinary Decision, recital 196.

166I STG Lads Ordinary Decision, recitals 197 - 199.

166J STG Lads Ordinary Decision, recitals 201 - 202.

behalf of Credit Suisse (i.e. from 7 February 2012 to 12 July 2012). These exchanges took place on 7 February 2012, 27 March 2012, 10 May 2012, 14 May 2012, 3 July 2012 and 5 July 2012. These exchanges gave the participating traders more information than they would otherwise have had about competitor positions and enabled them to trade before or at the time of the fix in the interdealer market (to manage their risk by hedging their positions): thus, for example, "*purchases of large GBP amounts during or before the fix could potentially prompt an increase in the currency price, depending on supply and demand at that time*", which would be at a price lower than the fix rate, at which they would then sell the currency on to their customers.[166K]

211H. In relation to the exchange of information on customers' immediate orders (such as the size or the direction of specific, non-aggregated orders or the type or name of customers) the Commission found that:[166L]

> *the sharing of current or forward-looking commercially sensitive information on customers' immediate orders in the STG Lads chatroom, given its nature and time sensitivity, provided the participating traders with privileged information that was not otherwise available and was relevant to the participating traders' decision-making as it informed their future trading strategies to their own advantage.*
>
> *In particular, the exchange of current or forward-looking commercially sensitive information related to customers' immediate orders (such as the size or the direction of specific, non-aggregated orders or the type or name of customers) removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the evolution of the involved exchange rates for the participating traders. […] For instance, if a trader is informed that a large client order has been placed with another bank, he or she may buy before this order is filled and then sell after, taking advantage of the market movement driven by the filling of the client order.*

211I. In the Sterling Lads Ordinary Decision, the Commission found that the participating traders regularly disclosed information on their clients' identities, which "*were mostly significant market participants, such as financial institutions whose trading activity was typically informative*", thereby increasing the level of transparency about which way (up or down) currency prices were likely to move, which participants could use to

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166K STG Lads Ordinary Decision, recital 206; see also recital 212.

166L STG Lads Ordinary Decision, recitals 214 - 215. Internal footnotes omitted. "[ ]" identifies text redacted from the published, non-confidential version of the decision presently available to the Proposed Class Representative.

adapt their trading strategies to benefit and profit from anticipated price changes.[166M] Accordingly, such exchanges:[166N]

> *removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the potential evolution of the involved exchange rate. The participating traders could have adapted their trading strategies to take advantage of the disclosed information and of the resulting increase of market transparency. This information exchange entailed an asymmetry of information between the participating and the non-participating traders, to the advantage of the former, increasing the likelihood that they would be the ones making a profit from it.*

211J. In recitals 222 – 228 of the STG Lads Ordinary Decision, the Commission sets out examples of exchanges of "*specific, non-aggregated current or forward-looking commercially sensitive information*"[166O] on customers' immediate orders that occurred in the Sterling Lads chatroom when the trader employed by Credit Suisse (Mr Erratt) was trading on behalf of Credit Suisse (i.e. from 7 February 2012 onwards).

a. Mr Erratt participated directly in exchanges with other members of the chatroom that took place on 11 April 2012, 13 April 2012, 25 April 2012, 10 May 2012 and 21 June 2012.

b. Mr Erratt was also logged in to the chatroom whilst other exchanges took place (and to which he had access), on 10 February 2012, 20 February 2012 and 10 May 2012.

211K. In the footnotes to each of the TWBS Decision and the EE Decision ~~Decisions~~, the Commission identifies, by reference to OCR INFORMATION REDACTED [redacted] (but provides no information on), examples of the exchanges of information regarding: (i) stop-loss orders; (ii) take-profit orders/orders for the fix; and (iii) immediate orders, by reference to chats that took place on a particular date. Those example dates are set out in the table below. The equivalent footnotes (footnotes 35, 36 and 37) of the STG Lads Settlement Decision, which would appear to contain examples of this conduct in the Sterling Lads chatroom, have been redacted from the published non-confidential version of this Decision. However, the STG Lads Ordinary Decision does provide references to examples of exchanges of information relating to

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166M STG Lads Ordinary Decision, recitals 220 – 221.

166N STG Lads Ordinary Decision, recital 227.

166O STG Lads Ordinary Decision, recital 222.

customers' conditional orders (such as stop-loss orders), orders for the fix and immediate orders in the Sterling Lads chatroom. Accordingly, the Proposed Class Representative reserves the right, following disclosure (including, but not limited to, disclosure of the confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision) to further amend this Re-Amended Collective Proceedings Claim Form to particularise examples of the exchange of information on stop-loss orders, orders for the fix and immediate orders by members of the Sterling Lads chatroom.

Information exchanged	Dates of example chats identified in the TWBS Decision	Dates of example chats identified in the EE Decision	Dates of example chats identified in the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision
Stop-loss orders [166A]166P	OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	25 May 2011 31 May 2011 15 June 2011 30 June 2011 4 July 2011 12 September 2011 19 September 2011 18 October 2011 1 November 2011 8 November 2011 17 November 2011 29 November 2011 20 December 2011 13 January 2012 26 January 2012 7 February 2012 14 February 2012 15 February 2012 27 February 2012 6 March 2012 12 March 2012 13 March 2012 19 March 2012 20 March 2012 26 March 2012 27 March 2012 10 April 2012 11 April 2012 12 April 2012 13 April 2012 25 April 2012 26 April 2012

[166A]166P TWBS Decision, footnote 28; EE Decision, footnote 29; STG Lads Settlement Decision, footnote 35; STG Lads Ordinary Decision, footnote 147. The contents of footnote 35 of the STG Lads Settlement Decision have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

Information exchanged	Dates of example chats identified in the TWBS Decision	Dates of example chats identified in the EE Decision	Dates of example chats identified in the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision
		OCR INFORMATION REDACTED	30 May 2012 16 May 2012 10 July 2012 11 July 2012
Take-profit orders/orders for the fix[166B166Q]	OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	25 May 2011 31 May 2011 7 June 2011 13 June 2011 27 June 2011 4 July 2011 20 July 2011 5 August 2011 7 August 2011 12 September 2011 15 September 2011 21 September 2011 3 October 2011 17 October 2011 19 October 2011 27 October 2011

166B166Q TWBS Decision, footnote 29; EE Decision, footnote 30; STG Lads Settlement Decision, footnote 36; STG Lads Ordinary Decision, footnote 148. The contents of footnote 36 of the STG Lads Settlement Decision have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

Information exchanged	Dates of example chats identified in the TWBS Decision	Dates of example chats identified in the EE Decision	Dates of example chats identified in the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision
	[redacted]	[redacted]	31 October 2011 2 November 2011 1 December 2011 14 December 2011 7 February 2012 27 March 2012 10 May 2012 14 May 2012 3 July 2012 5 July 2012

Information exchanged	Dates of example chats identified in the TWBS Decision	Dates of example chats identified in the EE Decision	Dates of example chats identified in the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision
		[redacted]	
Immediate orders~~[166C]~~[166S]	[redacted]	[redacted]	3 January 2012 13 January 2012 10 February 2012 20 February 2012 11 April 2012 13 April 2012 25 April 2012 10 May 2012 21 June 2012 10 May 2012.

~~166C~~166S TWBS Decision, footnote 30; EE Decision, footnote 31; STG Lads Settlement Decision, footnote 37; STG Lads Ordinary Decision, footnote 149. The contents of footnote 37 of the STG Lads Settlement Decision have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

Information exchanged	Dates of example chats identified in the TWBS Decision	Dates of example chats identified in the EE Decision	Dates of example chats identified in the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision
	OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED		

Exchange of information on other details of current or planned trading activities

212. The Commission explains, in the Settlement Decisions, that traders are constantly seeking to execute trades and to cover the risks associated with those trades. This requires traders at competing undertakings to communicate with each other and request quotes from individual traders for transactions relating to given amounts and currencies. Nevertheless, "*traders should manage their operations independently from competitors and should not coordinate their trading activities with one another.*"[167]

213. However, in the Settlement Decisions, the Commission identified that participants in the chatrooms disclosed commercially sensitive information on their current and

[167] TWBS Decision, recital 56; EE Decision, recital 56; STG Lads Settlement Decision, recital 57.

intended trading activity, which made it easier for participating traders to identify occasions to coordinate their activities:[168]

> *The exchange of information on current or planned trading activities covered by this Decision concerns the recurrent disclosure to other traders in mostly multilateral private chatrooms of certain commercially sensitive information on their current and intended trading activity pursuant to the underlying understanding, which made it easier for participating traders to identify occasions to coordinate their trading activities. Such information can remain relevant for competing undertakings during a window of between a few minutes and a few hours, or until new information supersedes it.*

213A. The STG Lads Ordinary Decision provides detail on these exchanges of information on the participants' current and intended trading activity in the Sterling Lads chatroom. It is also clear that these exchanges, which took place on an almost daily basis, concerned multiple aspects of current or planned trading activities and had a cumulative negative impact on competition and prices, from which the participating traders would benefit. In recitals 252 – 257 it is stated that:[168A]

> *The participating traders frequently revealed and exchanged certain current or forward-looking commercially sensitive information on multiple aspects of their current or planned trading activities such as the levels of customers' conditional orders or the clients' type or identity, or a combination of the topics described above (customer orders and/or open risk position).*
>
> *The cumulative disclosure of this type of information removed some of the uncertainties that are inherent to Forex trading and increased the level of market transparency. This information exchange entailed an asymmetry of information between the participating and the non-participating traders, to the advantage of the former, increasing the likelihood that they would make a profit from it…*
>
> *Revealing forward-looking information to competing traders combining various categories in a short period of time, cumulating information on different aspects of their current or planned trading activities such as the levels of customers' conditional orders, the clients' type or identity to competing traders, or the size of orders for the fix keeping updated other traders in the knowledge that they were not in the position to match, was unnecessary for the purpose of trading with each other.*

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168 TWBS Decision, recital 57; EE Decision, recital 57; STG Lads Settlement Decision, recital 58. Internal footnotes omitted.

168A Internal footnotes omitted.

> *Moreover, such disclosure entailed a risk… that the other participating traders would use the information against its provider. In this case, such risk exposure was compounded by the fact that the traders revealed such information recurrently and to several competing market making traders at several trading desks at once.*
>
> *In general, traders only need to know the terms of an envisaged transaction, such as the size, the trade direction and the currencies involved. However, the competing traders do not need to know whether the transaction responds to a conditional or an immediate order at all or details such as the level of conditional orders or the type or identity of customers. For orders at the fix, revealing the size of the order was only necessary once the trader revealing the information would have identified which other traders were in the opposite direction for the relevant currency pair and, therefore, willing to match the trade…*
>
> *There are chats which attest to a combination of several of the previously mentioned information exchanges. The participating traders engaged in multiple exchanges of commercially sensitive information relating to their current and intended trading activity. This type of exchanges happened nearly daily throughout the duration of the infringement.*

213B. In recitals 257 – 285 of the STG Lads Ordinary Decision, the Commission sets out in detail examples of exchanges of "*commercially sensitive information relating to their current and intended trading activity*"[168B] that occurred in the Sterling Lads chatroom when the trader employed by Credit Suisse (Mr Erratt) was trading on behalf of Credit Suisse (i.e. from 7 February 2012 onwards). These concerned multiple different G10 currency pairs.

a. Mr Erratt participated directly in exchanges with other members of the chatroom that took place on 9 February 2012, 14 February 2012, 15 February 2012, 16 February 2012, 24 February 2012, 27 February 2012, 2 March 2012, 6 March 2012, 9 March 2012, 14 March 2012, 26 March 2012, 27 March 2012, 13 April 2012, 18 April 2012, 19 April 2012, 23 April 2012, 26 April 2012, 9 May 2012, 15 May 2012, 16 May 2012, 22 May 2012, 30 May 2012, 5 June 2012, 13 June 2012, 2 July 2012 and 12 July 2012.

b. Mr Erratt was also logged in to the chatroom whilst other exchanges took place between other members of the chatroom (and to which he had access), on 10 February 2012, 22 February 2012, 2 March 2012, 9 March 2012, 15 March

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[168B] STG Lads Ordinary Decision, recital 257.

2012, 23 March 2012, 10 April 2012, 12 April 2012, 20 April 2012, 25 April 2012, 2 May 2015, 3 May 2012, 23 May 2012, 12 June 2012, 14 June 2012, 19 June 2012, 3 July 2012, 4 July 2012, 5 July 2012, 6 July 2012 and 9 July 2012.

213C. By participating in these exchanges, the participating traders were able to adapt their trading strategies so as to increase their profits or better hedge against losses:[168C]

> *By sharing commercially sensitive information about anticipated, recently executed or potentially executed trades, participating the* [sic: "the participating"] *traders gained a competitive advantage vis-à-vis other market participants as they were better able to anticipate market movements, potentially increasing their profits, or better hedging against losses. The participating traders could take this cumulative information into account in their future trading behaviour and end up trading in a manner differently to how they would have traded absent the information.*

213D. The participating traders were also "*at a competitive advantage vis-à-vis other traders*",[168D] could take into account "*valuable information*" in their future trading strategies,[168E] had "*valuable insights as [the information exchanged] allowed the other participating traders to adjust their price levels for that specific currency pair*"[168F] and had "*valuable cumulative insights into current trading patterns which were not available to other competitors, but informed their subsequent actions on the market*".[168G] The exchanges thereby "*reduced uncertainty for the participating traders in relation to the price levels they could offer for their upcoming trades*",[168H] including by enabling them to adapt their "*own bid to a less competitive level*"[168I] through having "*the benefit of knowledge that was not available to non-participating traders.*"[168J]

213E. The Commission also found that the Credit Suisse trader (Mr Erratt) further benefitted from being logged in to the chatroom and being able to have access to other parties'

168C STG Lads Ordinary Decision, recital 258.

168D STG Lads Ordinary Decision, recital 259. See, to like effect, recitals 266, 272, 274, 275, 276 and 281.

168E STG Lads Ordinary Decision, recital 261. See, to like effect, recital 273,

168F STG Lads Ordinary Decision, recital 262. See, to like effect, recitals 277 and 279.

168G STG Lads Ordinary Decision, recital 263. See, to like effect, recitals 264, 265, 269, 270, 271 and 278.

168H STG Lads Ordinary Decision, recital 267.

168I STG Lads Ordinary Decision, recital 276.

168J STG Lads Ordinary Decision, recital 280. See, to like effect, recitals 283 and 284.

discussions, as the *"multiple cumulative disclosures increased [his] level of confidence about the potential direction of the market price of the discussed currency pairs and thereby enabled him to make better informed decisions on his trading strategy"*.[168K]

213F. ~~213A.~~ In the footnotes to each of the TWBS Decision and the EE Decision ~~Decisions~~, the Commission identifies, by reference to OCR INFORMATION REDACTED [redacted] (but provides no information on), examples of this conduct by reference to chats that took place on a particular date. Those example dates are set out in the table below. The equivalent footnote (footnote 38) of the STG Lads Settlement Decision, which would appear to contain examples of this conduct in the Sterling Lads chatroom, has been redacted from the published non-confidential version of this Decision. However, the STG Lads Ordinary Decision does provide references to examples of such conduct. Accordingly, the Proposed Class Representative reserves the right, following disclosure (including, but not limited to, disclosure of the confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision) to further amend this Re-Amended Collective Proceedings Claim Form to particularise examples of the exchange of information on other details of current or planned trading activities by members of the Sterling Lads chatroom.

Dates of example chats identified in the TWBS Decision[~~168A~~168L]	**Dates of example chats identified in the EE Decision**[~~168B~~168M]	**Dates of example chats identified in the STG Lads Settlement Decision**[168N] **and/or the STG Lads Ordinary Decision**[168O]
OCR INFORMATION REDACTED [redacted]	OCR INFORMATION REDACTED [redacted]	25 May 2011 31 May 2011 20 July 2011 25 July 2011 8 August 2011 24 August 2011 12 September 2011

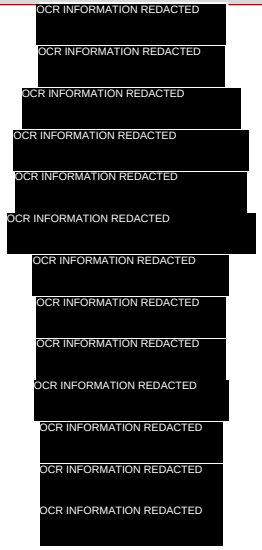
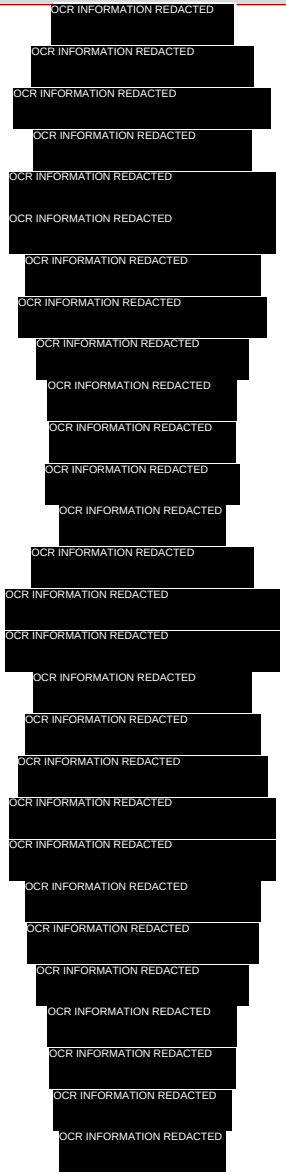
168K STG Lads Ordinary Decision, recital 285.

~~168A~~168L TWBS Decision, footnote 31.

~~168B~~168M EE Decision, footnote 32.

168N STG Lads Settlement Decision, footnote 38. The contents of footnote 38 of the STG Lads Settlement Decision have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

168O STG Lads Ordinary Decision, footnote 258.

Dates of example chats identified in the TWBS Decision~~168A~~168L	Dates of example chats identified in the EE Decision~~168B~~168M	Dates of example chats identified in the STG Lads Settlement Decision168N and/or the STG Lads Ordinary Decision168O
		21 September 2011 27 September 2011 18 October 2011 16 November 2011 21 November 2011 29 November 2011 3 January 2012 12 January 2012 26 January 2012 9 February 2012 10 February 2012 14 February 2012 15 February 2012 16 February 2012 22 February 2012 24 February 2012 27 February 2012 2 March 2012 6 March 2012 9 March 2012 14 March 2012 15 March 2012 23 March 2012 26 March 2012 27 March 2012 10 April 2012 12 April 2012 13 April 2012 18 April 2012 19 April 2012 20 April 2012 23 April 2012 25 April 2012 26 April 2012 2 May 2012 3 May 2012 9 May 2012 15 May 2012 16 May 2012

Dates of example chats identified in the TWBS Decision[168A][168L]	Dates of example chats identified in the EE Decision[168B][168M]	Dates of example chats identified in the STG Lads Settlement Decision[168N] and/or the STG Lads Ordinary Decision[168O]
		22 May 2012 23 May 2012 30 May 2012 5 June 2012 12 June 2012 13 June 2012 19 June 2012 14 June 2012 2 July 2012 3 July 2012 4 July 2012 5 July 2012 6 July 2012 9 July 2012 12 July 2012

Exchange of information on bid-ask spreads

214. Bid-ask spreads quoted by traders for a specific currency pair for certain trade sizes are "*an essential competition parameter in FX spot trading activity of G10 currencies*".[168P] The Decisions each ~~also~~ state that participating traders shared information relating to bid-ask spreads. This is described in the Settlement Decisions in the following terms:[169]

> *The exchange of information on bid-ask spreads concerned the instances in which the participating traders occasionally discussed existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes. The knowledge of existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes, where there is a specific live trade, may remain useful for the other traders for a window of up to a few hours depending on the market's volatility at the time, and could enable coordination of spreads to that client.*

168P STG Lads Ordinary Decision, recital 239.

169 TWBS Decision, recital 58; EE Decision, recital 58; STG Lads Settlement Decision, recital 59. Internal footnotes omitted.

214A. In the Fourth Knight Report, Mr Knight explains that the extracts of chats set out the Sterling Lads Ordinary Decision (for example at recital 249) provide insights into how participating traders were communicating and using sensitive information in their trades, and considers that sharing information about bid/ask spreads could have involved information relating to specific price requests by clients and may have influenced the level set for spreads offered in the future to clients by the participating traders.[169A]

214B. Exchanges of information in the Sterling Lads chatroom are described in recital 241 of the STG Lads Ordinary Decision in the following terms:[169B]

> *The exchange of information on bid-ask spreads concerned the instances in which the participating traders occasionally discussed existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes. The knowledge of existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes, where there is a specific live trade (for a given client), may remain, for a window of up to a few hours depending on the market's volatility at the time, useful for the other traders and could enable alignment of the spreads they quote to the market generally, or to any specific customer who may contact the sales desks of more than one of the participating banks.*

215. As explained in recital ~~59~~ 239 of the STG Lads Ordinary Decision[169C] ~~Decisions~~, bid-ask spreads are an essential competition parameter in FX spot trading activity, as they affect the overall price paid by a customer:

> *Bid-ask spreads quoted by traders refer to specific currency pairs for certain trade sizes. They are an essential competition parameter in FX spot trading activity. Spreads affect the overall price paid by customers for trading currencies~~)~~. ~~[sic]~~ The potential revenue earned by a trader is also affected by the spread. When quoting both bid and ask price to a client, the traders would generally apply a spread to a given market mid-point [*[170]*] (whether in even amounts from that mid-point or otherwise) as part of this calculation.*

169A Fourth Knight Report, paragraphs 53 – 56.

169B Internal footnote omitted.

169C Recital 59 of each of the TWBS Decision and the EE Decision and recital 60 of the STG Lads Settlement Decision each contain (other than a typographical error in those recitals) the same description of bid-ask spreads.

170 The mid-point is explained in footnote 224 of the STG Lads Ordinary Decision (and in footnote 33 of the TWBS Decision, ~~and~~ footnote 34 of the EE Decision and footnote 40 of the STG Lads Settlement Decision), as follows: "*For a certain currency pair, the mid-point is equal to the average (in fact, the point in the middle) of the bid price and the ask price. For example, in the*

215A. The STG Lads Ordinary Decision contains information on the exchange of information on bid-ask spreads in the Sterling Lads chatroom. This had the following effects:[170A]

> *The exchanges of bid-ask spreads contributed to remove the natural degree of uncertainty in the market regarding prices, informed the participating traders* [sic: "traders'"] *pricing behaviour and hence could have influenced the prices offered by the participating traders to customers. […], as shown by the exchanges detailed in recitals (245) to (251) (see, in particular, recital (249)). Those exchanges enabled the participating traders to obtain greater certainty on the prices they were quoting and informed their subsequent pricing behaviour. These information exchanges could also enable them to align their spreads for particular transactions and thereby their all-in price offered to a specific client who may have contacted more than one of the traders for a particular transaction. A customer who is not aware of such exchanges of non-publicly available information on spreads and may have contacted more than one of the participating traders to get a price on a specific trade would have received quotes influenced by the exchange among competitors. […].*

215B. In recitals 244 – 251 of the STG Lads Ordinary Decision, the Commission sets out in detail examples of exchanges of information concerning bid-ask spreads that occurred in the Sterling Lads chatroom when the trader employed by Credit Suisse (Mr Erratt) was trading on behalf of Credit Suisse (i.e. from 7 February 2012 onwards).

a. Mr Erratt participated directly in exchanges with other members of the chatroom that took place on 17 February 2012, 19 April 2012, 19 June 2012, 22 June 2012 and 2 July 2012.

b. Mr Erratt was also logged in to the chatroom whilst other exchanges between other members of the chatroom took place (and to which he had access), on 22 May 2012 and 19 June 2012.

215C. These exchanges increased the information available to participating traders and were made with the intention that participating traders would offer the widest possible spreads and align or influence their all-in prices offered to their customers. For

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EUR/USD currency pair, if the bid price is 1.1560 and the ask price is 1.1580, then the bid-ask spread is 0.0020 and the mid-point is 1.1570. In perfect markets with costless forex transactions, the bid-ask spread would be zero and both the bid price and the ask price (and hence the mid-point) would be the same."

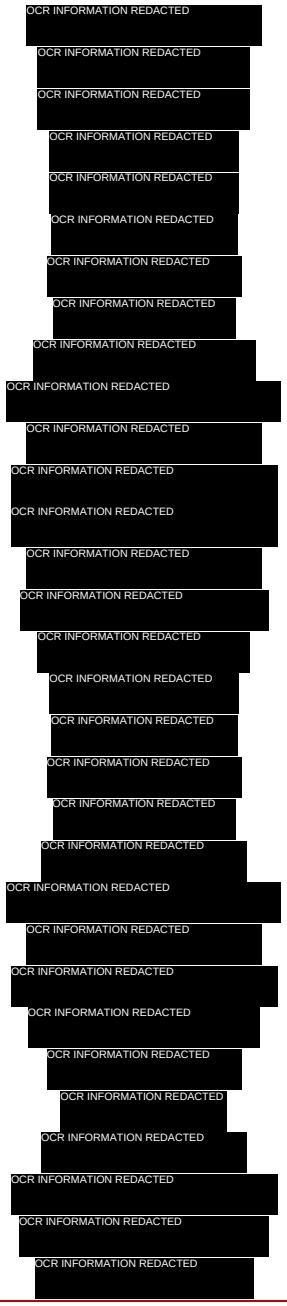
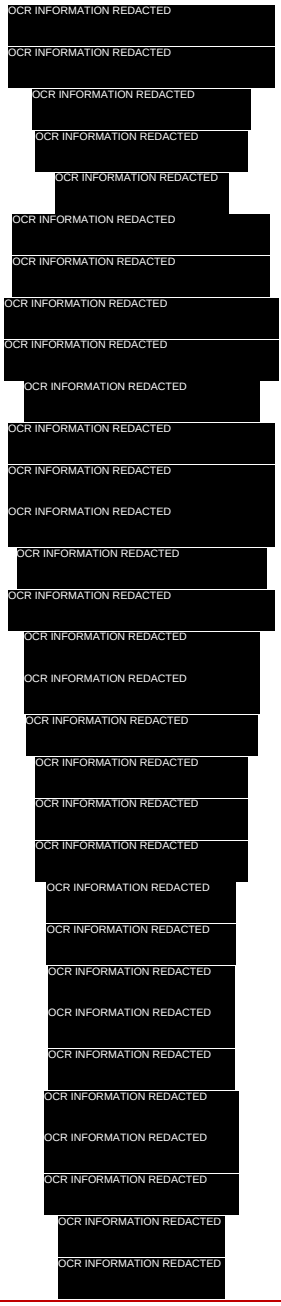
[170A] STG Lads Ordinary Decision, recital 243. Internal footnotes omitted. "[ ]" identifies text redacted from the published, non-confidential version of the decision presently available to the Proposed Class Representative.

example, by reference to an exchange that took place on 17 February 2012, the Commission considers that:[170B]

> *participating traders who were competitors in the market advised each other on strategies of pricing. This sharing of information on bid-ask spreads enabled the participating traders to obtain greater certainty on the prices they were quoting to customers and informed their subsequent pricing behaviour. This extract also shows that the intention of the participating traders with this exchange was to be able to offer the widest (most expensive) spread possible to the clients, given the market circumstances. The disclosure of information on bid-ask spreads in the chatroom informed their subsequent pricing behaviour and could enable the participating traders to align their spreads for the transaction in question and thereby their all-in price offered to a specific client for this transaction.*

215D. In the footnotes to each of the TWBS Decision and the EE Decision ~~Decisions~~, the Commission identifies, by reference to [the ID numbers of specific documents on its file] (but provides no information on), examples of the conduct referred to above by reference to chats that took place on a particular date. Those example dates are set out in the table below. The equivalent footnote (footnote 39) of the STG Lads Settlement Decision, which would appear to contain examples of this conduct in the Sterling Lads chatroom, has been redacted from the published non-confidential version of this Decision. However, the STG Lads Ordinary Decision does provide references to examples of such conduct. Accordingly, the Proposed Class Representative reserves the right, following disclosure (including, but not limited to, disclosure of the confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision) to further amend this Re-Amended Collective Proceedings Claim Form to particularise further examples of the exchange of information on bid-ask spreads by members of the Sterling Lads chatroom.

[170B] STG Lads Ordinary Decision, recital 245. See also recitals 247 - 250. For example, in recital 249, the Commission states that "*The disclosure of information on bid-ask spreads informed their subsequent pricing behaviour and hence could have influenced the prices offered by the participating traders to customers*".

Dates of example chats identified in the TWBS Decision[170A][170C]	Dates of example chats identified in the EE Decision[170B][170D]	Dates of example chats identified in the STG Lads Settlement Decision[170E] and/or the STG Lads Ordinary Decision[170F]
		1 June 2011 23 June 2011 29 June 2011 7 July 2011 11 July 2011 9 August 2011 15 August 2011 12 September 2011 21 October 2011 31 October 2011 16 November 2011 5 January 2012 11 January 2012 31 January 2012 17 February 2012 19 April 2012 22 May 2012 19 June 2012 22 June 2012 2 July 2012

[170A][170C] TWBS Decision, footnote 32.

[170B][170D] EE Decision, footnote 33.

[170E] STG Lads Settlement Decision, footnote 39. The contents of this footnote have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

[170F] STG Lads Ordinary Decision, footnote 226.

Dates of example chats identified in the TWBS Decision170A[170C]	Dates of example chats identified in the EE Decision170B[170D]	Dates of example chats identified in the STG Lads Settlement Decision[170E] and/or the STG Lads Ordinary Decision[170F]
OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED	OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED	

Occasional instances of coordination facilitated by the exchange of information[171]

216. Section 4.1.2.3. of each of the Decisions explains certain occasional instances of coordination facilitated by the exchange of information.[172] The coordination is summarised in recital 60 of each of the TWBS Decision and the EE Decision, recital 61 of the STG Lads Settlement Decision and recital 286 of the STG Lads Ordinary Decision ~~Decisions~~ as follows:

> *When engaging in fixing-related trading, traders should decide independently whether to decrease, offset or increase their open risk positions… in order to optimize their exposure to risk at the fix. However, in the present case, the underlying understanding implemented by the participating traders occasionally facilitated specific forms of coordination, which took place with a view to benefiting the participating traders' returns or to avoiding trading against each other's interest...*

217. The TWBS Decision and the EE Decision ~~Decisions~~ each identify two specific types of coordination, namely: (i) coordinated trading with a view to affecting a fix; and (ii)

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171 Section 4.1.2.3. of each of the TWBS Decision and the EE Decision. ~~Decisions.~~

172 It is to be noted that the extracts of the Settlement Decisions set out in paragraphs 203 – 215 above also identify coordination on the part of the undertakings involved.

"standing down". The STG Lads Settlement Decision and the STG Lads Ordinary Decision identify only one specific type of coordination, "standing down".

Coordinated trading with a view to affecting a fix

218. The coordinated trading with a view to affecting a fix, specifically the WMR or ECB fixes, is detailed in recital 61 of each of the TWBS Decision and the EE Decision ~~Decisions~~:

> *By occasionally coordinating with a view to influencing the WMR or ECB fixes, the Parties sought to gain an advantage over competitors that did not participate in the… chatrooms. It concerns certain instances where the participating traders had disclosed that their open risk positions at the fix were of a certain type and spotted the opportunity to potentially benefit from it. Instead of making an independent decision, they would sell or buy along with one of the traders to create a bulk position with the aim of increasing the impact this may have on the outcome of the relevant fix (ECB or WMR).*

"Standing down"

219. The occasional standing down practice detailed in each of the Decisions is said to concern "*instances in which traders refrained from trading as they otherwise had planned to undertake during a particular time window on account of another trader's announced position or trading activity.*"[173] It is explained in more detail in ~~the~~ each of the Settlement Decisions as follows:[174]

> *Standing down constituted another form of coordinated trading by which the participating traders showed an implicit understanding not to trade in ways that would damage each other's interest. This entailed some alignment of their trading activities. Having exchanged the requisite current or forward-looking commercially sensitive information regarding their open positions without any intention of exploring trading opportunities as a potential counterparty or as a potential customer, the participating traders were occasionally in a position to align their trading interests by means of 'standing down', in [sic] other words one or more of the traders refrained for a limited period of time from trading activity which was perceived to have the potential to negatively affect the trading interests of another participating trader. The suspension of trading activities by some participating traders during this time reduced the risk that a transaction*

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173 TWBS Decision, recital 62; EE Decision, recital 62; STG Lads Settlement Decision, recital 62.

174 TWBS Decision, recital 63; EE Decision, recital 63; STG Lads Settlement Decision, recital 63. The practice of "standing down" is also described by the Commission in more detail in the STG Lads Ordinary Decision, recitals 286 – 290.

by the participating trader would not achieve the desired outcome and avoided simultaneous trading in opposite directions.

219A. In the footnotes to each of the TWBS Decision and the EE Decision ~~Decisions~~, the Commission identifies, by reference to the ID numbers of specific documents on its file (but provides no information on), examples of: (i) coordinated trading with a view to affecting a fix; and (ii) "standing down", by reference to chats that took place on a particular date. Those example dates are set out in the table below. The equivalent footnote (footnote 41) of the STG Lads Settlement Decision, which would appear to contain examples of "standing down" in the Sterling Lads chatroom, has been redacted from the published non-confidential version of this Decision. However, the STG Lads Ordinary Decision does provide references to examples of such conduct. Accordingly, the Proposed Class Representative reserves the right, following disclosure (including, but not limited to, disclosure of the confidential versions of the STG Lads Settlement Decision and the STG Lads Ordinary Decision) to further amend this Re-Amended Collective Proceedings Claim Form to particularise examples of coordinated trading and/or "standing down" by members of the Sterling Lads chatroom.

Conduct	**Dates of example chats identified in the TWBS Decision**	**Dates of example chats identified in the EE Decision**	**Dates of example chats identified in the STG Lads Settlement Decision and/or the STG Lads Ordinary Decision**
Coordinated trading with a view to affecting a fix[174A]	OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED	OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED	
"Standing down"[174B]	OCR INFORMATION REDACTED OCR INFORMATION REDACTED	OCR INFORMATION REDACTED	26 May 2011 14 June 2011

174A TWBS Decision, footnote 34; EE Decision, footnote 35. The STG Lads Settlement Decision and the STG Lads Ordinary Decision identify only one form of coordination, "standing down": see paragraph 217 below.

174B TWBS Decision, footnote 35; EE Decision, footnote 36; STG Lads Settlement Decision, footnote 41; STG Lads Ordinary Decision, footnote 295. The contents of footnote 35 of the STG Lads Settlement Decision have been redacted from the published non-confidential version of the Decision presently available to the Proposed Class Representative.

	OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED OCR INFORMATION REDACTED	OCR INFORMATION REDACTED OCR INFORMATION REDACTED	31 October 2011

Legal assessment[175]

220. Section 5 of each of the Decisions contains the Commission's legal assessment of the conduct described above.

Agreements and/or concerted practices[176]

221. In section 5.1.1.2. of each of the Settlement Decisions the Commission finds that the "*complex conduct*"[176A] described in section 4 of each of the Settlement Decisions can be qualified as constituting agreements and/or concerted practices between competitors within the meaning of Article 101 TFEU and Article 53 EEA, in which "*the addressees have taken part and thereby knowingly substituted practical cooperation between them for the risks of competition.*"[177]

221A. The Commission's legal assessment in the STG Lads Ordinary Decision takes a different approach in analysing the infringement committed by Credit Suisse, analysing separately the exchanges of information (section 5.1.1.2(a)), the occasional instances of coordination (section 5.1.1.2(b)) and the underlying understanding (section 5.1.1.2(c)). It finds that:

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175 Section 5 of each of the Decisions.

176 Section 5.1.1. of each of the Decisions.

176A TWBS Decision, recital 80; EE Decision, recital 80; STG Lads Settlement Decision, recital 80.

177 TWBS Decision, recital 80; EE Decision, recital 80; STG Lads Settlement Decision, recital 80.

a. The extensive and recurrent exchanges of information "*[qualify] as agreements and/or concerted practices within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement*" (recital 341).

b. The occasional instances of coordination facilitated by the exchanges of information "*[constitute] concerted practices and/or agreements in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement*" (recital 343).

c. The "underlying understanding", "*consisting of tacit rules referred to as the underlying understanding, constitutes an agreement in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement*" (recital 349).

222. As to the underlying understanding, set out in section 4.1.2.1. of each of the Settlement Decisions, the Commission finds that participation in the chatrooms came with a set of implied rules, which the participating traders accepted and observed. In particular, it is noted that each member of the chatrooms was expected to disclose certain information to ensure that none of the participating traders could free ride on the information shared by the others, and traders apologised when they failed to do so. This is described in recital 81 of each of the Settlement Decisions:[177A]

> *Being a member of the… chatrooms came with a set of implied rules (the underlying understanding, as described above in Section 4.1.2.1) which the participating traders accepted and observed through their participation in the chatrooms, and by means of which they knowingly substituted practical cooperation between them for the risks of competition. The participating traders agreed not to use the information against traders who shared it. They tacitly understood that rules were necessary in a situation where the participating traders shared with each other, pursuant to the underlying understanding, certain current or forward-looking commercially sensitive information about their trading and that, in some cases, exposed them to market opportunism from the recipients of this information. As the evidence shows, the participating traders were also expected not to disclose certain information they had obtained in the private chatrooms to traders who did not participate in the chatrooms. To ensure that none of the participating traders could free ride on certain information shared by the others, each of them was expected to disclose certain information of the types described above and traders apologized when they failed to do so. The recurrent and extensive exchange of certain commercially sensitive information facilitated occasional coordination among the participating traders with a view to securing commercial*

[177A] Internal footnotes omitted. The text of recital 80 of the STG Lads Settlement Decision refers to a single "chatroom" but is otherwise identically worded.

> *benefit. Moreover, the extensive exchange of information helped in monitoring compliance with the underlying understanding.*

223. Accordingly, in recitals 82 and 83 of each of the Settlement Decisions, the Commission concludes that the chatrooms were based on an underlying understanding (stated to be "*an implied tacit agreement with rules, commitments and reciprocity, which, while not set out in detail, were understood by the participating traders*") that constitutes an agreement within the definition of Article 101 TFEU and Article 53 of the EEA Agreement, which manifested itself through an extensive exchange of certain current or forward-looking commercially sensitive information and the occasional coordination of trading activities:

> *All such facts show that the… chatrooms were based on the underlying understanding, an implied tacit agreement with rules, commitments and reciprocity, which, while not set out in detail, were understood by the participating traders. This tacit agreement manifested itself through an extensive exchange of certain current or forward-looking commercially sensitive information (as described in section 4.1.2.2), and the occasional coordination of trading activities (as described in section 4.1.2.3).*
>
> *Based on its assessment of the complex conduct described in Section 4, the Commission considers that the underlying understanding constitutes an agreement in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.*

223A. The Commission reached the same conclusion in respect of the *"underlying understanding*" in the STG Lads Ordinary Decision. Notwithstanding that the Commission in its discretion decided not to find that Credit Suisse had infringed Article 101 TFEU and Article 53 EEA by being a party to the "*underlying understanding*" that governed participation by all members - including Credit Suisse - of the Sterling Lads chatroom (see paragraph 203B above), it held, in recitals 344 - 346, that membership of the chatroom (by all members, including Credit Suisse) required compliance with a set of "*tacit rules*":[177B]

> *On the basis of the evidence on the Commission's file, membership in the STG Lads chatroom also entailed compliance with a set of tacit rules (together referred to as the underlying understanding…), commitments and reciprocity, which were understood by the participating undertakings and by means of which the participating*

[177B] Bullet points in the original; internal cross-references omitted.

traders knowingly substituted practical cooperation for the risks of competition.

The participating traders tacitly understood that rules were necessary in a situation where they shared with each other certain current or forward-looking commercially sensitive information about their own trading that, in some cases, exposed them to market opportunism from the recipients of this information… These tacit rules could be summarised as follows:

- *The participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day. To ensure that none of the participating traders could free ride on certain information shared by the others, each of them was expected to disclose information of the types described in Section 4.1.3.1 and traders apologized when they failed to do so…*

- *The information exchanged in the chatroom among the participating traders would not be disclosed by the recipient traders to other competing traders outside the private chatroom…*

- *The information exchanged could be used to the benefit of the participating traders including to identify occasions appropriate for coordination…*

- *The information exchanged would not be used against those participating traders who shared it…*

These extensive exchanges of information in the environment of a multilateral private chatroom helped the participating traders monitoring compliance with the underlying understanding because it made it easier to detect deviations from these tacit rules.

223B. The Commission concluded, in recital 349 of the STG Lads Ordinary Decision, that:

On this basis, the Commission considers that the conduct described in Section 4.1.3.3, consisting of tacit rules referred to as the underlying understanding, constitutes an agreement in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

224. As to the exchange of information and occasional coordination, described in sections 4.1.2.2. and 4.1.2.3. of each of the Settlement Decisions, the Commission concludes

that such conduct constitutes an agreement and/or concerted practice within the meaning of Article 101 TFEU and Article 53 EEA Agreement:[178]

> *As described in section 4.1.2.2, the participating traders were recurrently in direct contact, making regularly available to each other in mostly multilateral private chatrooms… certain current or forward-looking commercially sensitive information on their commercial circumstances and plans pursuant to the underlying understanding, whereby the undertakings knowingly substituted practical co-operation between them for the risks of competition. This exchange of information, with a view to reducing competitive uncertainty, which was pursuant to the underlying understanding, so facilitated occasional coordination among the traders.*
>
> *Based on its assessment of the complex conduct described in Section 4, the Commission considers that the instances of exchange of information and occasional coordination described in sections 4.1.2.2 and 4.1.2.3 qualify as agreements and/or concerted practices in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.*

224A. In the STG Lads Ordinary Decision, the Commission makes separate findings on the existence of an agreement or concerted practices in respect of (i) the extensive and recurrent exchanges of confidential and competitively sensitive current or forward-looking information and (ii) the occasional instances of coordination facilitated by the exchanges of information in the Sterling Lads chatroom.[178A]

224B. In relation to the exchange of information in the Sterling Lads chatroom, the Commission made the following findings in recitals 337 – 341 of the STG Lads Ordinary Decision:

> *As described in Section 4.1.3.1, the participating traders were in direct, extensive and recurrent contact, making regularly available to each other in a multilateral private chatroom, the STG Lads chatroom, certain current or forward-looking commercially sensitive information on their commercial conduct and plans. These exchanges of information were related to outstanding customer orders (see Section 4.1.3.1(a)), the open risk positions of the participating traders (see Section 4.1.3.1(b)), bid-ask spreads quoted for specified currency*

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178 TWBS Decision, recitals 84 and 85; EE Decision, recitals 84 and 85; STG Lads Settlement Decision, recitals 84 and 85.

178A For the avoidance of doubt, the Proposed Class Representative's claim in these Proposed Collective Proceedings is not based upon occasional instances of explicit coordination between the Proposed Defendants in the form of either coordination at the fix or "standing down".

pairs for certain trade sizes (see Section 4.1.3.1(c)) and other current or planned trading activities (see Section 4.1.3.1(d)).

Evidence shows that the participating traders acting on behalf of their banks, including Credit Suisse, actively participated in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information. On other occasions, the participating traders were present in the chatroom at the time the exchanges happened or logged in later on that day and, therefore, had access to these exchanges.

Through these extensive and recurrent exchanges of sensitive current or forward-looking information, engaged in by their respective traders, the undertakings concerned revealed their joint intention to cooperate regarding their FX spot trading activity of G10 currencies and knowingly substituted practical cooperation between them for the risks of competition.

In particular, the exchanges of information between the undertakings contributed to creating mutually consistent expectations and to removing uncertainty between them as regards the timing, extent and details of the intended conducts to be adopted on the market. It also comforted the participating traders in making their subsequent decisions informed by that knowledge.

On the basis of the above, the Commission considers that the conduct described in Section 4.1.3.1, consisting of extensive and recurrent exchanges of information between the undertakings concerned, qualifies as agreements and/or concerted practices within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

Restriction and/or distortion of competition[179]

225. In section 5.1.2.2. of each of the Settlement Decisions, the Commission found that the conduct of the Proposed Defendants~~'~~ ~~conduct~~ constituted a restriction of competition by object. It reached the same conclusion in section 5.1.2.2 of the STG Lads Ordinary Decision, reaching (in respect of Credit Suisse) separate findings to this effect in respect of each of the exchange of information (recitals 394 – 405), the occasional instances of coordination (recitals 406 – 410) and the "underlying understanding" (recitals 411 – 417), notwithstanding that the Commission decided not to hold Credit Suisse liable for either the occasional coordination (recital 410) or being a party to the "underlying understanding" (recitals 417 and 546 – 547). ~~recital~~

[179] Section 5.1.2. of each of the TWBS Decision and the EE Decision. ~~Decisions.~~

225A. Recital 88 of the each of Settlement Decisions summarises the conduct found in those Decisions as follows:[179A]

> *Pursuant to the underlying understanding, the participating traders engaged in recurrent and extensive exchange of information through which they revealed to each other certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct, which enabled participating traders trading on behalf of competing undertakings to engage in occasional coordination of their trading activities by either occasionally suspending the trading activity of some traders in order not to interfere with another participating trader (standing down) or by occasionally coordinating trading with a view to influencing the WMR or ECB fixes.*

226. Of particular relevance to the Proposed Collective Proceedings is the Commission's analysis of information sharing in relation to bid-ask spreads, which is detailed in the Settlement Decisions as follows:[180]

> *Traders also competed specifically on prices quoted for specified currency pairs for certain trade sizes in relation to FX spot trading. It follows that the information exchanges pursuant to the underlying understanding, whereby the participating traders provided current or forward-looking information to one another on the level of spread quotes or communicated spread strategy for a given client in a specific situation where there was a specific live potential trade, may have facilitated occasional tacit coordination of those traders' spreads behaviour, thereby tightening or widening the spread quote in that specific situation.*

226A. The sharing of information in the Sterling Lads chatroom on bid-ask spreads quoted for specified currency pairs for certain trade sizes and for certain client types is also addressed in recital 394(c) of the STG Lads Ordinary Decision, with the Commission finding that this conduct could have had significant detriment to clients:

> *As a result of the exchanges on bid-ask spreads, the participating traders could reduce the risk inherent in trading currencies to their benefit, so that with the knowledge acquired from the exchanges with their competitors they could safely offer to their clients the upper range in the market price levels. Even a minor spread difference for large volume transactions, such as the ones the participating undertakings*

[179A] Recital 88 of the STG Lads Settlement Decision omits, in the last sentence, the words "*or by occasionally coordinating trading with a view to influencing the WMR or ECB fixes*".

[180] TWBS Decision, recital 89; EE Decision, recital 89; STG Lads Settlement Decision, recital 90. The final sentence of recital 90 of the STG Lads Settlement Decision is worded slightly differently, but has the same substantive meaning: "*This resulted in occasional coordinated trading at and around the WMR or ECB fixes in the form of 'standing down'…*".

> *dealt with, could have resulted in large benefits for them to the detriment of their clients.*

226B. Further, in recital 399(a) of the STG Lads Ordinary Decision, in considering the objective of the information exchange in the Sterling Lads chatroom, the Commission found that the sharing of information on bid-ask spreads would have resulted in customers (and other counterparties) receiving worse, less competitive pricing:

> *The exchanges of information on bid-ask spreads in the chatroom… also provided the participating traders with greater certainty on the prices they were quoting and informed their subsequent trading behaviour concerning spreads. Those exchanges were capable of enabling the participating traders to align their spreads for particular transactions and, thereby, their all-in price offered to a specific client for a particular transaction. Any potential counterparty who was not aware of such exchanges of non-publicly available information on spreads and who might have contacted more than one of the participating traders to get a price on a specific trade, might have received less competitive prices from them.*

227. Recitals 90 - 92 of each of the TWBS Decision and the EE Decision (and recitals 90 and 91 of the STG Lads Settlement Decision[180A]) ~~Decisions~~ address the coordination pursuant to the underlying understanding, which was facilitated by the exchange of information, in the following terms:

> *Traders generally have differing trading interests triggered by new customer orders, which did not favour constant coordination. However, in this case the participating traders engaged in occasional coordination pursuant to the underlying understanding and facilitated by extensive exchange of certain current or forward-looking commercially sensitive information about their trading, in which their interests could be favoured by occasionally coordinating their actions or by refraining from action in order to help a member of the chatrooms with higher stakes at play (as set out in the following recitals). This resulted in occasional coordinated trading at and around the WMR or ECB fixes and 'standing down'…*
>
> *The participating traders occasionally resorted to coordinated trading at and around the relevant WMR and ECB fixes seeking to influence to their own benefit the level of the fixes and to benefit their trading revenues around the fixes. Therefore, the occasional coordinated trading carried out by the participating traders with a view to affecting*

[180A] These recitals are, respectively, in substantially identical terms to recitals 90 and 92 of the TWBS Decision and the EE Decision, but there is no equivalent to recital 91 of those decisions (since no coordination at the fix was found by the Commission). The only difference is in the final sentence of recital 90 of the STG Lads Settlement Decision, which reads "*This resulted in occasional coordinated trading at and around the WMR or ECB fixes in the form of 'standing down'…*".

> *the relevant fix constituted an implicit agreement and/or concerted practice by the participating undertakings because it sought to influence the fix, which in turn potentially affected the undertakings' revenues. Hence, this conduct aimed at affecting prices to their own benefit.*
>
> *Standing down constituted another form of coordinated trading by which the participating traders showed an implicit understanding not to trade in ways that would damage each other's interest. This entailed some alignment of their trading activities. Having exchanged the requisite current or forward-looking commercially sensitive information regarding their open positions without any intention of exploring trading opportunities as a potential counterparty or as a potential customer, the participating traders were occasionally in a position to align their trading interests by means of 'standing down', in other words, one or more of the traders refrained for a limited period of time from trading activity which was perceived to have the potential to negatively affect the trading interests of another participating trader. The suspension of trading activities by some participating traders during this time reduced the risk that a transaction by the participating trader would not achieve the desired outcome and avoided simultaneous trading in opposite directions.*

228. The Commission therefore states, in the Settlement Decisions, that the "*underlying understanding implemented through recurrent and extensive information sharing and the occasional coordinated trading considered as a whole had the object of restricting and/or distorting competition.*"[181] The impact of the conduct identified in each of the Settlement Decisions ~~Decision~~ is further explained in recital 94 of each of the TWBS Decision and the EE Decision, and recital 93 of the STG Lads Settlement Decision ~~Decisions~~ in the following terms:[181A]

> *The extensive exchange of certain current or forward-looking commercially sensitive information among the participating traders about their trading enabled the participating traders (see sections 4.1.2.2 and 4.1.2.3):*
>
> - *to make market decisions informed by those information exchanges pursuant to the underlying understanding;*
> - *to identify opportunities for coordination in the market amongst the participating traders;*

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181 TWBS Decision, recital 93; EE Decision, recital 93; STG Lads Settlement Decision, recital 92.

181A The third bullet point in recital 93 of the STG Lads Settlement Decision omits, at its end, the words "*or coordination of trading with a view to influencing the WMR or ECB fixes*", but is otherwise identical to recital 94 of both the TWBS Decision and the EE Decision.

- *occasionally, to adjust their behaviour in the market and coordinate their trading activity, consisting in the suspension of trading activity of some traders not to interfere with another member of the chatroom (standing down) or coordination of trading with a view to influencing the WMR or ECB fixes; and*

- *to monitor the traders' compliance with the underlying understanding.*

229. It follows, as stated in recital 95 of each of the TWBS Decision and the EE Decision ~~Decisions~~, and recital 94 of the STG Lads Settlement Decision, that the agreement and the agreements and/or concerted practices described in section 5.1.1.2 of each Settlement Decision (see paragraphs 221 - ~~224~~ 224B above) "*were capable of altering the terms in which the participating traders competed on the market compared to how they would have competed in their absence.*"

230. Accordingly, the Commission ~~concludes~~ concluded in the Settlement Decisions that "*the agreement and the agreements and/or concerted practices described in Section 4 were capable of affecting the basic parameters on which the participating undertakings should be competing autonomously and accordingly have the object of distorting and/or restricting competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.*"[182]

230A. As explained in paragraph 225 above, in the STG Lads Ordinary Decision, the Commission addressed the question of a restriction and/or distortion of competition separately in respect of the exchange of information, occasional coordination and the "underlying understanding". In each case, the Commission considered the content, objectives and the economic and legal context of the particular conduct.[182A]

230B. As regards the extensive and recurrent exchanges of information in the Sterling Lads chatroom "*through which [the Parties] revealed to each other certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct*",[182B] the Commission found:

a. In relation to the content of the extensive and recurrent exchanges of information, that:

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182 TWBS Decision, recital 96; EE Decision, recital 96; STG Lads Settlement Decision, recital 95.

182A STG Lads Ordinary Decision, recital 393.

182B STG Lads Ordinary Decision, recital 394.

> *This constant and extensive flow of information shared within the chatroom allowed the participating undertakings to have a full picture of what their competitors were doing and also what they were not doing while actually trading in the market. This flow of information contributed to creating mutually consistent expectations and to reducing uncertainty between the participating undertakings as regards the timing, extent and details of the intended conducts to be adopted on the market and about the potential direction (up or down) of the involved exchange rates.*[182C]

b. In relation to the objective of the extensive and recurrent exchanges of information, that:

> *In conclusion, the continuous exchanges of commercially sensitive information provided the participating undertakings with the opportunity to subtract themselves from competition on the merits with regard to key parameters of competition (price and risk management). This constant flow of information exchanges within the chatroom also entailed an asymmetry of information between the participating undertakings and their non-participating competitors to the advantage of the former, since only the participating traders were continuously aware of their trading behaviours, trading exposures and immediate plans and this knowledge provided them more comfort when adopting their market behaviour.*[182D]

c. In relation to the economic and legal context of the extensive and recurrent exchanges of information, that:

> *FX spot trading activity is very dynamic. FX rates are primarily driven by trader's order flows… Traders' positions are also moving constantly. The nature of market making and the very large volumes transacted in a very liquid market forces market makers to adapt their positions quickly throughout the day. Precisely because of this context, the timing and the frequency of the exchanges, as well as their extent and detail are relevant factors to be taken into account in the assessment of the conduct since they directly contribute to increasing the transparency and reducing the uncertainty that is inherent to a competitive scenario.*[182E]

230C. The Commission therefore concluded, in recitals 404 and 405 of the STG Lads Ordinary Decision that the extensive and recurrent exchanges of information in the

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[182C] STG Lads Ordinary Decision, recital 396.

[182D] STG Lads Ordinary Decision, recital 401.

[182E] STG Lads Ordinary Decision, recital 402.

Sterling Lads chatroom had the object of restricting, preventing or distorting competition:[182F]

> *Taking into account the content, objectives and economic and legal context of the exchanges of information described above, the Commission considers that this conduct was objectively capable of restricting competition on the market for FX spot trading of G10 currencies because it informed the participating undertakings' subsequent trading decisions and resulted in an asymmetry of information between the STG Lads chatroom participants and their non-participating competitors therefore significantly reducing normal market uncertainties to the participating undertakings' advantage compared to their non-participating competitors. In a context where sensitive information was continuously reported and updated in the chatroom in an extensive fashion, the fact that other participating traders would not disclose the one or the other types of orders or positions was also revealing for the participating traders with a given position or pending order of the fact that there was no risk of mutual interference or possibility of mutual assistance in that regard.*
>
> *Therefore, an overall assessment of the content of the conduct, in the light of the aims objectively pursued and the economic and legal context in which the conduct took place…, reveals a sufficient degree of harm to competition to conclude that the exchanges of commercially sensitive, current or forward-looking information qualify as restrictive of competition by object in the sense of Article 101 of the Treaty and Article 53 EEA in relation to FX spot trading of G10 currencies.*

230D. As regards the "underlying understanding" between the participants in the Sterling Lads chatroom, in the STG Lads Ordinary Decision, the Commission found that:

a. In relation to the content of the underlying understanding, that:[182G]

> *The mutual commitments and expectations implicit in the underlying understanding can be inferred from the transcripts of the conversations held in the chatroom during the relevant period as complemented by the admissions of the settling parties in their settlement submissions. The underlying understanding enabled the participating undertakings to rely on a continuous pattern of recurrent exchanges of current or forward-looking commercially sensitive information (see Section 4.1.3.1). These exchanges of information increased market transparency enabling the participating undertakings to get an insight into each other's market conduct and potential rates movements and to make their subsequent decisions informed by that knowledge. It also allowed them the possibility to engage in occasional coordinated behaviour*

182F Internal footnote omitted.

182G STG Lads Ordinary Decision, recital 413.

relating to trading activities in the form of standing down (see Section 4.1.3.2), which the parties could not have adopted without the constant update of information.

b. In relation to the objective of the underlying understanding, that:[182H]

…by means of the underlying understanding, the participating undertakings reduced the normal market uncertainties of the FX spot trading of G10 currencies and were comforted in their daily pricing and expert risk management decisions by the knowledge of their competitors' trading behaviours, trading exposures and immediate plans. The underlying understanding made it possible to create a climate of mutual certainty and confidence as to the future conduct of the participating undertakings. Therefore, by engaging in the exchanges of information, the participating undertakings had the expectation of standing a better chance to become aware of situations where the risk of mutual interference arose and to act upon them by coordinating the standing down of some of the participating undertakings.

c. In relation to the economic and legal context of the underlying understanding, that:[182I]

In this context [a dynamic market in which market makers adapt their positions throughout the day[182J]] *the participating undertakings tacitly agreed that, rather than competing on the merits, they would be better off by recurrently and reciprocally disclosing to each other commercially sensitive information relating to different aspects of FX spot trading of G10 currencies in full trust. The underlying understanding implied for the participating undertakings the rational "ex ante" expectation of removing the market uncertainties to their mutual benefit and of standing a better chance to become aware of situations where the risk of mutual interference arose and to act upon them by coordinating their conduct.*

230E. The Commission therefore concluded, in recital 417 of the STG Lads Ordinary Decision, that the "underlying understanding" "*reveals a sufficient degree of harm to competition to conclude that the underlying understanding can be qualified as a restriction of competition by object*". However, although the Commission found that Credit Suisse was a party to the "underlying understanding" and that this was an agreement that restricted competition by object, it "*exceptionally*" decided, in its

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[182H] STG Lads Ordinary Decision, recital 414.

[182I] STG Lads Ordinary Decision, recital 416.

[182J] STG Lads Ordinary Decision, recital 415.

discretion, not to hold Credit Suisse liable for its participation in the underlying understanding: see recitals 417 and 546 of the STG Lads Ordinary Decision.

Single and continuous infringement[183]

231. In section 5.1.3.2. of each of the Settlement Decisions, and section 5.1.3.1 of the STG Lads Ordinary Decision, the Commission sets out its determination of a single, complex and continuous infringement. The crux of that finding is encapsulated in recital 101 of each of the TWBS Decision and the EE Decision, and in recital 100 of the STG Lads Settlement Decision ~~Decisions~~:[184]

> *The cartel arrangements in this case present the characteristics of a single, complex and continuous infringement. The participating traders maintained a consistent pattern of nearly daily communications where they had extensive and recurrent information exchanges pursuant to the underlying understanding and occasionally engaged in coordination of their trading activities including standing down, pursuant to an underlying understanding that being a member of the private chatrooms entailed such behaviour and each member could rely on the fact that the other members would act the same way. They were under the assumption that, by behaving recurrently in such way, they were increasing the knowledge with which they operated on the market and the probabilities to seize opportunities to their benefit. The traders' perception that this recurrent conduct was overall beneficial to them outweighed the fact that on a given transaction a number of traders had to be ready to serve the interests of only one of them, for instance by standing down, to increase the chances of that participating trader to seize an opportunity to obtain a better deal. Therefore, (a) the conduct documented in the chatrooms formed part of a single overall plan pursuing an anticompetitive common objective during the whole duration of the infringement, (b) the Parties intended*

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183 Section 5.1.3 of each of the TWBS Decision and the EE Decision. ~~Decisions.~~

184 The final sentence of recital 101 of the EE Decision is worded differently, but remains substantively identical. It states: "*Therefore, the conduct documented in the chatrooms responded to a single overall plan pursuing an anticompetitive common objective during the whole duration of the infringement: (a) the conduct documented in the chatrooms formed part of a single overall plan pursuing an anticompetitive common objective during the whole duration of the infringement, (b) the Parties intended to contribute to the common objective and were aware of the full scope of the infringement.*" The difference between the final sentence of recital 101 in the TWBS Decision (and recital 100 of the STG Lads Settlement Decision) and of recital 101 in the EE Decision~~s~~ is that, in the latter Decision, the phrase "*the conduct documented in the chatrooms responded to a single overall plan pursuing an anticompetitive common objective during the whole duration of the infringement*" is included, but in any event this same expression is also reflected in point (a) of both versions of recital 101 and in recital 100 of the STG Lads Settlement Decision. In addition, recital 100 of the STG Lads Settlement Decision refers to a single "*chatroom*" and not to "*chatrooms*", there being only one chatroom used by the participating traders in that case.

> *to contribute to the common objective and were aware of the full scope of the infringement...*

231A. In recitals 486 and 487 of the STG Lads Ordinary Decision, the Commission concluded, in relation to the Sterling Lads chatroom, that (i) the exchanges of commercially sensitive, current or forward-looking information, (ii) the occasional instances of coordination and (iii) the underlying understanding (each of which were individually restrictions of competition by object)[184A] were, together, also a single, complex and continuous infringement, with a "*common, overall plan in pursuit of a single anti-competitive aim during the whole duration of the infringement*":

> *These three infringements present the characteristics of a single, complex and continuous infringement. The participating undertakings aimed to reduce normal market uncertainty in the FX spot trading of G10 currencies which enabled them to be comforted in their pricing and risk management decisions and not compete autonomously. Being a member of the private chatroom entailed such behaviour and each member could rely on the fact that the other members would act the same way and would comply with the terms of an underlying understanding. They were under the assumption that, by behaving recurrently in such way, they were increasing the knowledge with which they operated on the market and the probabilities to seize opportunities to their benefit.*
>
> *Therefore, all three elements of the infringement described in this Decision, i.e. (i) the extensive and recurrent exchanges of information, (ii) the occasional instances of coordination and (iii) the underlying understanding, form together a single and continuous infringement joined by a common, overall plan in pursuit of a single anticompetitive aim during the whole duration of the infringement. Moreover, the modus operandi of the chatroom, including the type of content and frequency of the exchanges of information remained steady; and the individuals and undertakings participating in the chatroom showed a high degree of continuity.*

232. Recital 102 of each of the TWBS Decision and the EE Decision, and recital 101 of the STG Lads Settlement Decision, ~~Decisions~~ explain that the Parties that participated in each chatroom shared the same anti-competitive objective, namely to restrict and/or distort competition in the FX spot trading of G10 currencies:[185]

184A STG Lads Ordinary Decision, recital 485.

185 In respect of the EE Decision, recital 103 notes that "*[c]oncerning the relationship between the two chatrooms Essex Express 'n Jimmy and Grumpy Semi Old Men, the two chatrooms co-existed simultaneously during the whole duration of Grumpy Semi Old Men and followed the same pattern*."

> *The Commission considers that, taken together, the above-described agreement and the agreements and/or concerted practices, as referred to in Section 5.1.1.2 above, had a common anticompetitive objective. Evidence reveals that the same participating traders were engaged in an interrelated string of actions - in the same framework, using the same means - which were inextricably linked by their common overall objective of restricting and/or distorting competition in the FX spot trading of G10 currencies (although not all 55 combinations of the G10 currencies might necessarily have been discussed or actually implicated in the relevant conduct). The recurrent exchange of information among the closed group of traders pursuant to the underlying understanding allowed them to set the conditions to identify opportunities to coordinate their trading activities if and when they arose.*

233. Under the heading "*[m]odus operandi*", the Commission explains in the Settlement Decisions that: (i) membership of the chatrooms entailed the acceptance of a set of rules that remained unchanged during the whole duration of the infringement; and (ii) the participating traders joined in almost daily communications:[186]

> *During the whole duration of the chatrooms the participating traders joined it following individual invitations on the basis of personal relationships with other members of the chatrooms. The membership of the chatrooms entailed the acceptance of a set of rules that remained unchanged during the whole duration of the infringement (see section 4.1.2.1).*
>
> *All throughout the duration of the chatrooms, the participating traders joined in almost daily communications. As part of these communications, they engaged in extensive, recurrent and reciprocal exchanges of information, relating to different aspects of FX spot trading of G10 currencies (although not all 55 combinations of the G10 currencies might necessarily have been discussed or actually implicated in the relevant conduct).*

233A. In the STG Lads Ordinary Decision, the Commission made similar findings regarding the *modus operandi* of the Sterling Lads chatroom: the type of content and the frequency of the exchanges of information remained steady throughout the duration of the infringement, with consistent and repeated use of the same multilateral chatroom in almost daily communications.[186A]

234. The Commission also notes that there is continuity of the individuals and undertakings participating in each of the chatrooms, and that the frequency and quality of the

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186 TWBS Decision, recitals 103 – 104; EE Decision, recitals 104 – 105; STG Lads Settlement Decision, recitals 102 – 103.

186A STG Lads Ordinary Decision, recitals 491 – 494.

exchanges in the chatrooms remained steady throughout the duration of each of the infringements:[187]

> *As the evidence shows and described [sic] in Section 4, the frequency and quality of these exchanges remained steady throughout the duration of the infringement.*
>
> *The participation of the traders covered parallel or adjacent periods, without there being any interruption of the infringement from its inception to its end.*
>
> *Therefore the Commission considers that the various arrangements between the undertakings concerned, which the Commission has found have occurred in this case (see Sections 4 and 5.1.1.2), constitute a complex, single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, in relation to FX spot trading of G10 currencies.*

235. The TWBS Decision states that "*[w]ith their participation in the chatrooms, the participating traders intended to contribute and effectively contributed to their common objective. For the time of their respective participation, each of them was aware of the full scope of the infringement, since the conduct took place via multilateral chatrooms.*"[188] As a result, the Commission concludes that each of the addressees of the TWBS Decision can be held liable for the entire single and continuous infringement for their respective periods of participation in the infringement.[189]

236. The particular structure of the chatrooms identified in the EE Decision (see paragraph 199 above) resulted in the Commission adopting a different approach. It is noted that:

a. In the period during which the Essex Express 'n Jimmy and Grumpy Semi Old Men chatrooms existed in parallel, Barclays and RBS participated in both of them at the same time. However, in this same period, UBS ([redacted]) only participated in Essex Express 'n Jimmy, and BOTM ([redacted]) participated only in Grumpy Semi Old Men. [redacted] (UBS) and [redacted] (BOTM) were not aware of the simultaneous existence of the other chatroom.[190]

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187 TWBS Decision, recitals 105 – 107; EE Decision, recitals 106 – 108; STG Lads Settlement Decision, recitals 104 – 106. See also STG Lads Ordinary Decision, recitals 495 – 498.

188 TWBS Decision, recital 108.

189 TWBS Decision, recital 109.

190 EE Decision, recital 109.

b. The Commission found that the short duration of Grumpy Semi Old Men (4 months and 4 days) shows that running both chatrooms in parallel soon became redundant for the traders from Barclays [OCR INFORMATION REDACTED]) and RBS ([OCR INFORMATION REDACTED]). It is noted that "[OCR INFORMATION REDACTED] *[REDACTED] and* [OCR INFORMATION REDACTED] *[REDACTED] used both chatrooms interchangeably. They used the two chatrooms simultaneously instead of a single one because* [OCR INFORMATION REDACTED] *[REDACTED] (BOTM) and* [OCR INFORMATION REDACTED] *[REDACTED] (UBS) did not know each other and traded at different hours, but they used both chatrooms in pursuit of the same objective."*[191]

c. The traders from BOTM ([OCR INFORMATION REDACTED]) and UBS ([OCR INFORMATION REDACTED]) intended to contribute and contributed to the objective shared with Barclays and RBS, irrespective of the chatroom in which they participated. However, the key difference was that they were not aware of the simultaneous existence of the Essex Express 'n Jimmy and Grumpy Semi Old Men chatrooms, as is explained in recital 111 of the EE Decision:

> *This was also the case for* [OCR INFORMATION REDACTED] *[REDACTED] (BOTM) and* [OCR INFORMATION REDACTED] *[REDACTED] (UBS), each of whom intended to contribute and contributed to the objective shared with* [OCR INFORMATION REDACTED] [OCR INFORMATION REDACTED] *[REDACTED] (Barclays) and* [OCR INFORMATION REDACTED] *[REDACTED] (RBS), irrespective of the chatroom in which they participated. The only difference was that* [OCR INFORMATION REDACTED] *[REDACTED] and* [OCR INFORMATION REDACTED] *[REDACTED] were temporarily not aware of each other's parallel participation. The evidence shows that* [OCR INFORMATION REDACTED] [OCR INFORMATION REDACTED] *[REDACTED] and* [OCR INFORMATION REDACTED] *[REDACTED] became aware, respectively, of the existence of the Essex Express 'n Jimmy and Grumpy Semi Old Men chatroom on 12 January 2011, just before the two chatrooms were merged. As such they only learned of the other chatroom's existence on that day. As soon as* [OCR INFORMATION REDACTED] [OCR INFORMATION REDACTED] *[REDACTED] inquired on* [OCR INFORMATION REDACTED] *[REDACTED] and* [OCR INFORMATION REDACTED] *[REDACTED] activities before he started his day, on 12 January 2011, the participants of the two chatrooms merged them.*

d. From 12 January 2011, there was only one chatroom in which participating traders from BOTM, UBS, Barclays and RBS were active.[192]

237. Accordingly, in the EE Decision, the Commission concluded as follows:[193]

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191 EE Decision, recital 110.

192 EE Decision, recital 112.

193 EE Decision, recital 113.

> *In light of the above, the Commission considers that, for the period of their participation in the infringement, Barclays and RBS are liable for the whole single and continuous infringement. During the period before 12 January 2011, UBS and BOTM were not aware of the chatroom in which they were not involved.*

237A. In the STG Lads Ordinary Decision, the Commission found that there was also continuity of the individuals and undertakings participating in the Sterling Lads chatroom, with a "*stable group of individuals acting on behalf of the same group of banks*", with individuals having parallel or adjacent periods of participation, without interruption. By February 2012, when Credit Suisse joined, "*all participating undertakings had at least one stable participating trader in the chatroom trading on their behalf: [non-addressee* [Barclays [Christopher Ashton]*], [non-addressee* [UBS] [identity of employee not known]*] and [non-addressee* [HSBC [Frank Cahill]]*] since 25 May 2011 and [non-addressee* [RBS [Paul Nash]]*] since 5 August of the same year*".[193A]

237B. Further, in the STG Lads Ordinary Decision, the Commission found that the participants in the Sterling Lads chatroom had a common intention to contribute to the common anti-competitive objective and were aware of it. Therefore, "*Credit Suisse intended to contribute to an overall plan pursuing the common objective of restricting and/or distorting competition in the FX spot trading of G10 currencies and was aware of the full scope of the infringement, with the exception of the occasional instances of coordination that occurred prior to Credit Suisse's period of participation in the infringement.*"[193B]

237C. The Commission stated the following in respect of the Sterling Lads chatroom identified in the STG Lads Settlement Decision:[193C]

> *With their participation in the chatroom, the participating traders intended to contribute and effectively contributed to their common objective. For the time of their respective participation, each of them was aware of the full scope of the infringement, since the conduct took place via a multilateral chatroom.*

193A STG Lads Ordinary Decision, recitals 495 - 497. For the Proposed Class Representative's understanding of the identities of the individual traders involved, see paragraph 201F above; as stated therein, the Proposed Class Representative has not been able to identify for which periods the individual traders employed by UBS participated in the Sterling Lads chatroom from 25 May 2011 to 12 July 2012.

193B STG Lads Ordinary Decision, recitals 500 – 506.

193C STG Lads Settlement Decision, recitals 107 – 108.

> *In light of the above, the Commission considers that, for their respective periods of participation in the infringement (see Section 6.2), the Addressees can be held liable for the entire single and continuous infringement.*

237D. In the Sterling Lads Ordinary Decision, the Commission found that Credit Suisse had infringed Article 101 TFEU and Article 53 EEA by participating in the recurrent and extensive exchanges of current and forward-looking information, which constituted concerted practices and/or agreements within a wider complex, single and continuous infringement comprised of the underlying understanding, the exchange of information and occasional standing down. Although Credit Suisse was a party to the underlying understanding, the Commission, in its exceptional discretion, decided not to find Credit Suisse liable for this[193D] or for instances of occasional coordination.[193E] In finding Credit Suisse liable for the exchanges of information in the Sterling Lads chatroom, the Commission determined, at recitals 539 – 543 of the STG Lads Ordinary Decision, that:

> *The Commission considers that the arrangements within the STG Lads chatroom as described in Section 4.1.3 of this Decision, that is (i) the extensive and recurrent exchanges of information, (iii) the occasional coordination facilitated by the exchanges of information and (iii) the underlying understanding, constitute separate agreements and/or concerted practices each of which are restrictive of competition by object. They constitute a single, complex and continuous infringement by object of Article 101 of the Treaty and Article 53 of the EEA Agreement, covering the entire EEA, in relation to FX spot trading of G10 currencies.*
>
> *With regard to the exchanges of information, evidence shows that Credit Suisse directly participated in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information described in Section 4.1.3.1. In other occasions, Credit Suisse was present in the chatroom at the time the exchanges happened or logged in later on that day, and therefore had access to these exchanges. This flow of information contributed to create mutually consistent expectations and to remove uncertainty between the participating traders as regards the timing, extent and details of the intended conducts to be adopted on the market.*
>
> *Moroever* [sic]*, these exchanges of information allowed the participating undertakings to make their daily risk management*

193D STG Lads Ordinary Decision, recitals 417 and 547; see paragraphs 203B and 225 above.

193E STG Lads Ordinary Decision, recitals 410 and 544 - 545.

> *decisions comforted by the knowledge of their competitors' trading behaviour, trading exposures and immediate plans.*
>
> *Therefore, Credit Suisse intended to contribute an overall plan pursuing the common objective of restricting and/or distorting competition in the FX spot trading of G10 currencies and was aware of the extensive and recurrent exchanges of information.*
>
> *Consequently, the Commission holds Credit Suisse liable for its participation in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information that took place in the STG Lads chatroom as part of the single and continuous infringement. As noted above…, this element of the single and continuous infringement also constitutes, by itself, concerted practices and/or agreements within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.*

Effect on trade between Member States and between the EEA contracting parties[194]

238. The Commission found that the conduct identified in each of the Decisions affected trade between Member States and between the contracting parties to the EEA Agreement. It stated, in particular, that the FX spot trading activities undertaken by the individual participating traders were at least EEA-wide in scope, and that the conduct identified in each of the Decisions covered the entire EEA:[195]

> *In this case, the Commission finds that the participating traders' FX spot trading activities in G10 currencies were at least EEA-wide in scope.*
>
> *FX spot trading services are routinely used by multinational undertakings such as banks, corporations, hedge funds, pension funds and investment banking firms within the EEA. The infringement covered the entire EEA and related to trade within the EEA and was therefore capable of having an appreciable effect upon trade between EU Member States and between contracting parties to the EEA Agreement.*
>
> *Therefore, for the purposes of the application of Articles 101 of the Treaty and Article 53 of the EEA Agreement, the agreement and the agreements and/or concerted practices referred to in Section 5.1.1.2 covered the entire EEA.*

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194 Section 5.1.4. of each of the Settlement Decisions and of the STG Lads Ordinary Decision.

195 TWBS Decision, recitals 113 – 115; EE Decision, recitals 117 – 119; STG Lads Settlement Decision, recitals 112 – 114; STG Lads Ordinary Decision, recitals 551 - 553.

Non-applicability of Article 101(3) TFEU and Article 53(3) EEA Agreement[196]

239. The Commission found that the conduct identified in each of the Settlement Decisions and in the STG Lads Ordinary Decision did not satisfy the conditions of Article 101(3) TFEU and Article 53(3) EEA Agreement, noting in particular that the conduct identified in those ~~the~~ Decisions are among the most detrimental restrictions of competition:[197]

> *There is no indication that the agreements and/or concerted practices, as referred to in section 5.1.1.2 above, entailed any efficiency benefits or otherwise promoted technical or economic progress or benefitted consumers. Complex infringements amounting to secretly organised coordination between competitors, like the one which is the subject of this Decision are, by definition, among the most detrimental restrictions of competition.*
>
> *Accordingly, the Commission considers that the conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are not met in this case.*

Conclusion regarding the application of Article 101 TFEU and Article 53 of the EEA Agreement

240. In each of the Settlement Decisions, the Commission details its conclusions as follows:[198]

> *The Commission concludes that by exchanging sensitive business information and by occasionally coordinating their trading activities pursuant to an underlying understanding (see section 4.1.2), the Parties have engaged in the agreements and/or concerted practices referred to in Section 5.1.1.2 which taken together constitute a single and continuous infringement by object of Article 101 of the Treaty and Article 53 EEA in relation to FX spot trading of G10 currencies.*

240A. In the STG Lads Ordinary Decision, the Commission details its conclusions as follows:[198A]

> *The Commission concludes that the arrangements within the STG Lads chatroom described in Section 4.1.3, that is (i) the extensive and recurrent exchanges of information, (ii) the occasional coordination*

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196 Section 5.1.5. of each of the Settlement Decisions.

197 TWBS Decision, recitals 117 – 118; EE Decision, recitals 118 – 119; STG Lads Settlement Decision, recitals 116 – 117; STG Lads Ordinary Decision, recitals 555 - 556.

198 TWBS Decision, recital 119; EE Decision, recital 123; STG Lads Settlement Decision, recital 118. The STG Lads Settlement Decision uses the term "Addressees" instead of "Parties", reflecting that one undertaking that participated in the Sterling Lads chatroom, Credit Suisse, was not an addressee of that Decision, but of the STG Lads Ordinary Decision.

198A STG Lads Ordinary Decision, recitals 557 – 558.

> *facilitated by the exchanges of information and (iii) the underlying understanding, constitute separate agreements and/or concerted practices each of which are restrictive of competition by object and also constitute a single and continuous infringement by object of Article 101 of the Treaty and Article 53 of the EEA Agreement, covering the entire EEA, in relation to FX spot trading of G10 currencies for the reasons explained in Section 5.1.3.2.*
>
> *The Commission holds Credit Suisse liable for its participation in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information that took place in the STG Lads chatroom and constitute concerted practices and/or agreements (within a wider single and continuous infringement), within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.*

240B. The Commission found that the Infringements of Article 101 TFEU and Article 53 EEA Agreement were committed intentionally and that the Proposed Defendants' anti-competitive conduct required deliberate actions by them. Recital 152 of each of the TWBS Decision and the EE Decision, recital 147 of the STG Lads Settlement Decision and recital 579 of the STG Lads Ordinary Decision state as follows:[198B]

> *In the present case, the Commission considers that, based on the facts described in this Decision, the infringement has been committed intentionally. The anticompetitive conduct required deliberate actions by the Parties concerned, who actively, privately, extensively and recurrently exchanged certain current or forward looking commercially sensitive information with direct competitors, thereby facilitating the actual coordination of their trading activities when the opportunity arose.*

Breach of statutory duty

241. Pursuant to the matters set out above, and further detailed in each of the Decisions, the Proposed Defendants have each and all acted in breach of statutory duty.

Particulars of breach

242. The Settlement Decisions have become final and are binding on the Tribunal in their determination that each of the Proposed Defendants that is an addressee of one or more of the Settlement Decisions committed one or more infringements of Article 101

[198B] Recital 147 of the STG Lads Settlement Decision uses the term "Addressees" instead of "Parties concerned", reflecting that one undertaking that participated in the Sterling Lads chatroom, Credit Suisse, was not an addressee of that Decision, but of the STG Lads Ordinary Decision. Recital 579 of the STG Lads Settlement Decision replaces "the Parties concerned" with "Credit Suisse".

TFEU and Article 53 EEA Agreement relating to FX spot trading of G10 Currencies: see paragraphs 172, 174 and 174A above. The STG Lads Ordinary Decision (which is addressed to Credit Suisse) has not yet become final; whether it will become final depends upon the withdrawal or determination of the appeal brought by Credit Suisse and any subsequent appeal that may be made to the Court of Justice of the European Union: see paragraphs 172 and 174A above.

242A. By way of summary, each of the infringements identified in the Decisions consisted of (save as regards the STG Lads Ordinary Decision, which found that Credit Suisse participated in extensive and recurrent exchanges of current or forward-looking commercially sensitive information within) a single, complex and continuous infringement that comprised an underlying understanding reached among certain individual traders, employed by the Proposed Defendants, and implemented by them to exchange (via private chatrooms) on an extensive and recurrent basis, certain current or forward-looking commercially sensitive information about certain of their trading activities and to occasionally coordinate their trading activities with respect to FX spot trading of the G10 Currencies.

243. The infringements established by the TWBS Decision and EE Decision, and together by the STG Lads Settlement Decision and the STG Lads Ordinary Decision (which concern the same single, complex and continuous infringement in which Barclays, UBS, RBS, HSBC and Credit Suisse participated),[198C] each constitute a separate single and continuous infringement of Article 101 TFEU and Article 53 EEA Agreement covering the whole of the EEA.

244. In the Decisions (which are binding notwithstanding the United Kingdom's withdrawal from the European Union and the expiry of the transition period under the Withdrawal Agreement: see paragraphs 174 and 174A above), the Commission found the ~~The~~ period of each Proposed Defendant's participation in the Infringements to be ~~is~~ as follows:

a. Barclays Plc, Barclays Execution Services Limited and Barclays Bank Plc participated:

[198C] STG Lads Settlement Decision, recitals 1 – 6; STG Lads Ordinary Decision, recitals 1 – 5.

i. In the infringement established by the TWBS Decision from 18 December 2007 until 8 July 2011 and from 19 December 2011 until 1 August 2012; ~~and~~

ii. In the infringement established by the EE Decision from 14 December 2009 until 31 July 2012; and~~.~~

iii. In the infringement established by the STG Lads Settlement Decision from 25 May 2011 until 12 July 2012.

b. Barclays Capital Inc. participated in the infringement established by the EE Decision ~~between~~ from 14 December 2009 until 31 July 2012.

c. Citibank, N.A. and Citigroup Inc. participated in the infringement established by the TWBS Decision from 18 December 2007 until 31 January 2013.

d. MUFG Bank, Ltd. and Mitsubishi UFJ Financial Group, Inc. participated in the infringement established by the EE Decision from 8 September 2010 until 12 September 2011.

e. JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Europe Limited and J.P. Morgan Limited participated in the infringement established by the TWBS Decision from 26 July 2010 until 31 January 2013.

f. NatWest Group plc (formerly The Royal Bank of Scotland Group Plc) and NatWest Markets Plc participated:

i. In the infringement established by the TWBS Decision from 18 December 2007 until 19 April 2010; ~~and~~

ii. In the infringement established by the EE Decision from 14 September 2010 until 8 November 2011~~.~~; and

iii. In the infringement established by the STG Lads Settlement Decision from 5 August 2011 until 12 July 2012.

g. UBS AG participated:

i. In the infringement established by the TWBS Decision from 10 October 2011 until 31 January 2013; ~~and~~

ii. In the infringement established by the EE Decision from 14 December 2009 until 31 July 2012;~~.~~

iii. In the infringement established by the STG Lads Settlement Decision from 25 May 2011 until 12 July 2012.

h. HSBC Holdings plc and HSBC Bank plc participated in the infringement established by the STG Lads Settlement Decision from 25 May 2011 until 26 June 2012.

i. UBS Group AG (as successor to Credit Suisse Group AG), Credit Suisse AG and Credit Suisse Securities (Europe) Limited participated in the infringement established by the STG Lads Ordinary Decision from 7 February 2012 until 12 July 2012.

245. For the avoidance of doubt:

a. Insofar as the Infringements caused loss to be suffered in England and Wales, they constitute a breach (alternatively, breaches) of EU law that was at all material times directly effective in England and Wales, namely Article 101 TFEU and Article 53 EEA Agreement and which, following IP Completion Day, remain directly applicable in these proceedings pursuant to the combined effect of the transitional and saving provisions on the application of s.58A of the Act contained in paragraphs 7(3), 7(4), 14(2) and 15 of Schedule 4 to The Competition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/93), as amended by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1343). The said Articles are characterised as statutory duties in England and Wales.

b. Insofar as the Infringements caused loss to be suffered in Scotland, they constitute a breach (alternatively, breaches) of EU law that was at all material times directly effective in Scotland, namely Article 101 TFEU and Article 53 EEA Agreement which remain directly applicable in these proceedings following IP Completion Day as pleaded in paragraph 245.a above. The said Articles are characterised as statutory duties in Scotland.

c. Insofar as the Infringements caused loss to be suffered in Northern Ireland, they constitute a breach (alternatively, breaches) of EU law that was at all material times directly effective in Northern Ireland, namely Article 101 TFEU and Article 53 EEA Agreement which remain directly applicable in these proceedings following IP Completion Day as pleaded in paragraph 245.a

above. The said Articles are characterised as statutory duties in Northern Ireland.

d. The Proposed Class Representative avers that the Proposed Defendants' breaches of EU law are those identified in the Decisions, including the extent of the duration of their participation therein.

Joint and several liability

246. The Proposed Defendants are jointly and/or severally liable for the aforesaid breaches of statutory duty and for all loss and damage suffered by members of the Proposed Classes which was caused and/or materially contributed to by the Infringements, to the extent of the total period that each Proposed Defendant participated in one or more ~~both~~ of the Infringements, as particularised in paragraph 244 above, save that in the case of Credit Suisse's participation in the infringement established by the STG Lads Ordinary Decision, its liability is limited, on a joint and/or several basis, to the extensive and recurrent exchanges of current and forward-looking information between the undertakings that participated in the Sterling Lads chatroom.

Causation and loss

247. The Proposed Defendants' breach(es) of statutory duty, consisting of their participation in the Infringements, has caused or materially contributed to loss and damage suffered by members of the Proposed Classes. The said breach(es) caused direct harm to the members of Class A (see paragraphs 249 - 251 below) and indirect harm to the members of Class B (see paragraphs 252 – 252C below). The said loss and damage was suffered by members of the Proposed Classes throughout the period covered by the Infringements, being 18 December 2007 – 31 January 2013.[199]

248. The Proposed Class Representative will say the members of the Proposed Classes are entitled to the difference between the prices which they, in fact, paid or received when entering into the FX Spot Transactions and/or FX Outright Forward Transactions for all G10 Currency Pairs and the prices ~~price~~ which they would have paid or received in the absence of the Infringements, in each case irrespective of the

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[199] For the avoidance of doubt, the Proposed Class Representative's case is that the Proposed Defendants are jointly and/or severally liable for the said loss and damage, to the extent of the total period that each Proposed Defendant participated in one or more ~~both~~ of the Infringements. Paragraph 246 is repeated.

method of trading (voice trading and/or trading on an electronic platform) used by members of the Proposed Classes.

Particulars of causation

Loss and damage caused to the members of Class A (direct harm)

249. The effect of the Infringements was, at all material times, to enable the Proposed Defendants to use the information unlawfully exchanged by their employees that participated in the TWBS, EE and/or Sterling Lads chatrooms for their own benefit and profit by unlawfully widening ~~widen~~ the bid-ask spreads applied by them to FX Spot Transactions involving all G10 Currency Pairs[199A] beyond the bid-ask spreads that would have prevailed in the absence the Infringements. In particular, as explained further in section 5 of the First Rime Report and section 3.1 of the Fourth Rime Report, and as further addressed in the Second and Third Rime Reports, the exchange of current and forward-looking commercially sensitive information on bid-ask spreads applicable to certain currency pairs and for certain trade sizes (which is valuable information for FX Dealers[199B]) facilitated explicit and/or tacit coordination in the setting of bid-ask spreads by the Proposed Defendants on the bid-ask spreads charged by the Proposed Defendants to members of Class A. This caused or materially contributed to bid-ask spreads being wider than would have been the case if the Proposed Defendants had competed to offer the best bid-ask spreads to their customers, as would have been the case absent the Infringements.[200]

249A. The Commission established that, during the period or periods in which they unlawfully participated in one or more of the chatrooms and thereby infringed Article 101 TFEU and Article 53 EEA (as to which periods, see paragraph 244 above), the

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199A Professor Rime considers that the unlawful exchanges of information would have caused widened bid-ask spreads for all G10 Currency Pairs, even if information was exchanged only in relation to some currency pairs: First Rime Report, section 5.3.3 and Fourth Rime Report, paragraph 113.

199B Fourth Rime Report, paragraphs 41 - 42.

200 The Settlement Decisions provide limited particulars of the instances when the Proposed Defendants engaged in the unlawful exchange of commercially sensitive information regarding bid-ask spreads. Whilst the STG Lads Ordinary Decision provides more detailed particulars of an illustrative number of such exchanges, this is by no means comprehensive or exhaustive. This information is within the exclusive knowledge of the Proposed Defendants. For the avoidance of doubt, the Proposed Class Representative will say that the effect of the Infringements was that the average bid-ask spreads applicable to transactions involving G10 Currencies were wider than would otherwise be the case absent the Infringements, and the members of the Proposed Classes suffered loss and damage, as further particularised in the paragraphs that follow.

Proposed Defendants discussed and exchanged information on a bilateral and/or multilateral basis on their existing or intended bid-ask spreads.[200A] It also found that FX traders compete on prices quoted for specified G10 currency pairs for certain trade sizes and that[200B] bid-ask spreads are an "*essential competition parameter in FX spot trading activity. Spreads affect the overall price paid by customers for trading currencies… The potential revenue earned by a trader is also affected by the spread*".[200C]

249B. The Commission found, at recital 245 of the STG Lads Ordinary Decision, that the sharing of information on bid-ask spreads in the Sterling Lads chatroom led to both the widening and the coordination of the participants' spreads applicable to FX Transactions involving G10 Currency Pairs:

> *This sharing of information on bid-ask spreads enabled the participating traders to obtain greater certainty on the prices they were quoting to customers and informed their subsequent pricing behaviour. This extract also shows that the intention of the participating traders with this exchange was to be able to offer the widest (most expensive) spread possible to the clients, given the market circumstances. The disclosure of information on bid-ask spreads in the chatroom informed their subsequent pricing behaviour and could enable the participating traders to align their spreads for the transaction in question and thereby their all-in price offered to a specific client for this transaction.*

249C. In the STG Lads Ordinary Decision, the Commission also found, at recital 394(c), that sharing information on bid-ask spreads increased the profits of the participants in the Sterling Lads chatroom:[200D]

> *Information on bid-ask spreads quoted for specified currency pairs for certain trade sizes and for certain client types (see recitals (239) to (251)). As a result of the exchanges on bid-ask spreads, the*

200A See paragraphs 215 – 215D above, which identify the dates of examples of such exchanges in each of the chatrooms.

200B TWBS Decision, recital 89; EE Decision, recital 89; STG Lads Settlement Decision, recital 89.

200C TWBS Decision, recital 59; EE Decision, recital 59. See also, in substantially the same wording, STG Lads Settlement Decision, recital 60 and STG Lads Ordinary Decision, recital 239.

200D The Court of Appeal also observed that the unlawful exchanges of information gave the cartelists that participated in the Sterling Lads chatroom the ability to exploit confidential information for their own benefit and, "*by offering the most expensive spread to clients*" to make large profits and "*create 'large' benefits*", at the "*expense*" of and to the "*detriment*" of counterparties, i.e. competitors and counterparties, such that there was a sufficient degree of harm to competition for the conduct to qualify as a restriction of competition by object: [2023] EWCA Civ 876, at [25] – [31].

> *participating traders could reduce the risk inherent in trading currencies to their benefit, so that with the knowledge acquired from the exchanges with their competitors they could safely offer to their clients the upper range in the market price levels. Even a minor spread difference for large volume transactions, such as the ones the participating undertakings dealt with, could have resulted in large benefits for them to the detriment of their clients.*

249D. The exchanges of information of their bid-ask spreads as part of the Infringements enabled the Proposed Defendants to offer wider bid-ask spreads to their end-customers, to their benefit and profit and thereby causing loss and damage to their customers, i.e. the Proposed Members of Class A.[200E] The Proposed Defendants did not tighten (decrease) their spreads, as widening them enabled each Proposed Defendant to increase its profit for each trade, whilst the potential gains from narrowing its spreads (from increasing the volume of trades, by undercutting rivals and thereby attracting customers to it) were uncertain, given most customers' lack of price-sensitivity and an overall relatively low price elasticity of demand for FX transaction.[200F]

249E. In recital 473(b) of the STG Lads Ordinary Decision, the Commission found that the exchanges of information on bid-ask spreads in the Sterling Lads chatroom enabled the participating traders to offer "*the widest (most expensive for the client) spread possible to clients*" and thereby obtain "*large benefits for the participating traders to the detriment of their clients*":

> *(b) Through the exchanges revealing their quoted or intended bid-ask spreads … the participating traders who were competitors in the market advised each other on strategies of pricing to quote to their clients. They disclosed the actual spread they quoted for specific currency pairs, trade sizes and client types, which may also affect the overall price paid by customers for trading currencies. In these exchanges, a participating trader consulted his competitors in the chatroom on the most convenient spread for a specific trade before offering a quote to his clients.*

200E See Fourth Rime Report, paragraphs 38 – 39 and 43 - 5252; see also paragraph 250A below.

200F Fourth Rime Report, section 3.1.3 (paragraphs 46 - 52). See also the Proposed Class Representative's "Further Submissions on Mr Evans' Theory of Harm" (6 August 2021), paragraphs 43 – 46 and STG Lads Ordinary Decision, recital 245: "*the intention of the participating traders with this exchange* [of bid-ask spreads] *was to be able to offer the widest (most expensive) spread possible to the clients, given the market circumstances*". Professor Rime considers that the Proposed Defendants would have widened their bid-ask spreads (Fourth Rime Report, paragraphs 46 – 51) and would also have profited from their information advantage over other FX dealers by making their spreads wider (Fourth Rime Report, paragraphs 31 and 107 - 110).

The exchanges of information on bid-ask spreads in the chatroom increased transparency and reduced market uncertainties for the participating traders regarding prices. These exchanges enabled the participating traders to obtain greater certainty on the spreads they were quoting and might have informed their subsequent trading behaviour concerning spreads. The information exchanges may also have allowed them to align their spreads for particular transactions and thereby their all-in price offered to a specific client for a particular transaction. A customer who is not aware of such exchanges of non-publicly available information on spreads may have contacted more than one of the parties' sales desks to get a price on a specific trade and may have received less competitive prices from them due to the exchanges of information on bid-ask spreads between the participating traders…

Moreover, contrary to Credit Suisse's claims, there is evidence showing that the intention of the participating undertakings with the exchanges on bid-ask spreads was to be able to offer the widest (most expensive for the client) spread possible to the clients, within the constraints they jointly perceived were imposed by the wider market. In an extract of 17 February 2012 not contested by Credit Suisse, [employee of Credit Suisse [i.e. Mr Erratt] *asks what current spreads the other traders are offering for a volume of 50 million (presumably, EUR/USD). [Employee of non-addressee] answers "5 unfortunately", and then adds "6 if you are lucky", thereby showing that the intent of the exchanges was to enable the traders to identify, and offer, the widest spread possible given the market conditions at that time.*

As a result of the exchanges of information …, the traders' uncertainty was reduced and they could 'safely' offer to their clients the upper end of wider spreads. Even a minor spread difference for large volume transactions, as the ones the participating traders dealt with, might have resulted in large benefits for the participating traders to the detriment of their clients.

250. The effect of a widened bid-ask spread was ~~is~~ twofold:

a. The bid price offered by the Proposed Defendants decreased ~~decreases~~, meaning that a Proposed Defendant paid ~~an FX Dealer pays~~ less to purchase, and a customer received ~~receives~~ less when selling, a particular G10 currency; and

b. The ask price increased ~~increases~~, meaning that a Proposed Defendant received ~~an FX Dealer receives~~ more when selling, and the customer paid ~~pays~~ more when buying, a particular G10 currency.

250A. The Proposed Defendants' exchanges of information on their bid-ask spreads in the chatrooms reduced uncertainty as to the spreads being charged by other undertakings that participated in the chatrooms and the market conditions under

which they were pricing.[200G] These exchanges facilitated tacit collusion between participating traders by giving them an insight into each other's spreads; such tacit coordination was sustainable, as (i) the Proposed Defendants had a sufficient degree of market power, (ii) there was sufficient transparency on the action of the participating traders to sustain coordination and (iii) there were sufficient deterrents to prevent deviation from the coordinated position.[200H] This coordination, in turn, resulted in the Proposed Defendants charging wider bid-ask spreads to the Proposed Members of Class A.

251. A further effect of the Infringements was, at all material times, to unlawfully widen the bid-ask spreads that the Proposed Defendants applied to FX Outright Forward Transactions involving G10 Currency Pairs beyond the bid-ask spreads that would have prevailed in the absence of the Infringements.[200I] As explained in section 4.3.2 of the First Knight Report, and further in paragraph 58 of the First Rime Report and paragraph 112 of the Fourth Rime Report, the price of a given FX Outright Forward Transaction is partially based on the prevailing price of an equivalent FX Spot Transaction. Accordingly, the unlawful widening of bid-ask spreads applicable to FX Spot Transactions pleaded to in paragraph 249 above would, in turn, have caused or materially contributed to the unlawful widening of bid-ask spreads applicable to FX Outright Forward Transactions.

Loss and damage caused to the members of Class B (indirect harm)

252. The Infringements committed by some or all of the Proposed Defendants additionally caused indirect harm to members of Class B. Members of Class B entered into FX Spot Transactions and FX Outright Forward Transactions with persons who, so far as the Proposed Class Representative is aware, were not parties to the Infringements and/or did not implement the same.[201] The effect of the Infringements was, at all material times, to cause or materially contribute to the unlawful widening of the bid-ask spreads applicable to those same transactions beyond the bid-ask spreads that

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200G First Rime Report, section 5.1; Second Rime Report, paragraph 115; Fourth Rime Report, paragraphs 31 and 44 - 45.

200H Second Rime Report, section 4.1. See also the Proposed Class Representative's "Further Submissions on Mr Evans' Theory of Harm" (6 August 2021), paragraphs 36 – 42 and Fourth Rime Report, paragraphs 53 – 62 (regarding market power).

200I See "Further Submissions on Mr Evans' Theory of Harm", paragraphs 68 – 69.

201 For the avoidance of doubt, this sentence also refers to the Proposed Defendants during their respective Relevant Class B Period, as defined in paragraph 98 above.

would have prevailed in the absence of the Infringements. This effect shall be referred to hereafter as the **"Umbrella Effect"**. In particular, and as explained further in section 5.2 of the First Rime Report, the Umbrella Effect arose in two ways: (a) less competitive market conditions in the FX market, caused by the Infringements and/or (b) increased adverse selection risks in the inter-dealer market.

252A. ~~a.~~ As regards less competitive market conditions in the FX market,[201A], the ~~The~~ Infringements significantly distorted, reduced or eliminated the competition between the Proposed Defendants (which coordinated widened bid-ask spreads) and other FX Dealers that were not party to the Infringements and/or did not implement the same, in relation to bid-ask spreads applicable to FX Spot Transactions and/or FX Outright Forward Transactions. Tacit coordination between the Proposed Defendants, who collectively had significant share of the FX market and thus had market power, reduced competition in the FX market as a whole. This, in turn, enabled those FX Dealers which did not participate in the Infringements to also charge wider bid-ask spreads than would have been the case absent the Infringements, since this enabled them to maximise their profits. ~~and/or~~

252B. ~~b.~~ As regards increased adverse selection risks,[201B] the ~~The~~ overall effect of the Infringements was to increase the adverse selection risks prevailing in the inter-dealer market, as a result of an asymmetry of information between the Proposed Defendants (which participated in the Infringements and repeatedly and extensively exchanged confidential and non-public commercially sensitive current and forward-looking information that was relevant to the setting of prices, including, in particular, information on their customer immediate orders,[201C] customer conditional orders,[201D] open risk positions[201E] and current and planned trading activities[201F]) and other FX traders (which did not do so and so did not have access to such information).[201G] This

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201A Fourth Rime Report, paragraph 63. See also "Further Submissions on Mr Evans' Theory of Harm", paragraphs 51 – 53.

201B First Rime Report, section 4.3 and Fourth Rime Report, paragraphs 54 - 106. See also "Further Submissions on Mr Evans' Theory of Harm", paragraphs 54 – 67.

201C See paragraphs 211 – 211K above. See also Fourth Rime Report, paragraphs 85 - 94.

201D See paragraphs 211 – 211K above. See also Fourth Rime Report, paragraphs 77 - 84.

201E See paragraphs 210 -- 210E above. See also Fourth Rime Report, paragraphs 67 - 73.

201F See paragraphs 212 – 213F above. See also Fourth Rime Report, paragraphs 95 - 102.

201G Whilst Professor Rime considers that these categories of information are the most likely to have given rise to adverse selection risks, it is possible that, in their specific and full context,

information asymmetry, in turn, gave rise to increased adverse selection risks for FX Dealers which did not participate in the Infringements, which in turn resulted in those FX Dealers adjusting their prices in the inter-dealer market, which had the effect of:

a. ~~i.~~ Increasing the ask price at which they would offer to sell G10 Currencies on the inter-dealer market; and

b. ~~ii.~~ Reducing the sell price at which they would offer to buy G10 Currencies on the inter-dealer market.

Consequently, this affected the prices that other FX Dealers would pay to acquire and sell currency in the inter-dealer market, meaning that they: (i) would pay more to acquire currency; and (ii) receive less when selling currency. ~~Those costs were passed on to members of Class B in the form of wider bid-ask spreads.~~ The wider bid-ask spreads on the inter-dealer market resulted in wider bid-ask spreads being charged on FX Dealers' trades with customers. This is because their prices to customers are typically set at a mark-up to the inter-dealer prices. Accordingly, the effect of wider bid-ask spreads on the inter-dealer market was to increase the costs at which FX Dealers could buy and sell currency to service customer trades, and those costs were passed on to their customers by charging wider bid-ask spreads on the dealer-to-consumer market.[201H]

252C. In the STG Lads Ordinary Decision, at recitals 399 – 401, the Commission identified the information asymmetry between the Proposed Defendants that were members of the Sterling Lads chatroom and competing FX dealers, to the advantage of the former, which would have adverse effects on competition. At recital 401, the Commission stated the following:

> *In conclusion, the continuous exchanges of commercially sensitive information provided the participating undertakings with the opportunity to subtract themselves from competition on the merits with regard to key parameters of competition (price and risk management). This constant flow of information exchanges within the chatroom also entailed an asymmetry of information between the participating undertakings and their non-participating competitors to the advantage of the former, since only the participating traders were continuously*

"chats" containing exchanges of other types of information (such as information on customers' benchmark orders and on bid-ask spreads) could, when fully analysed, also have provided the participating traders with an information advantage and thus have done so: see Fourth Rime Report, paragraphs 103 - 106.

201H See First Rime Report, paragraphs 189 – 191.

aware of their trading behaviours, trading exposures and immediate plans and this knowledge provided them more comfort when adopting their market behaviour.

Harm was caused to members of the Proposed Classes irrespective of the method of trading used

253. For the avoidance of doubt, the Proposed Class Representative will say that the effects of the Infringements pleaded to in paragraphs 249 - ~~252~~ 252C above occurred irrespective of the method by which FX trading took place. As explained further in section 5.3 of the First Rime Report and section 3.3.1 of the Fourth Rime Report, while the Infringements concern FX voice trading, the pricing of FX transactions concluded via voice trading is linked to the pricing set on other methods of trading, such as electronic trading platforms.[201l]

Right to further amend particulars on causation

254. It is to be noted that these particulars are the best particulars that can be provided at this early stage of the proceedings, having regard to the following:

a. The Proposed Class Representative's limited knowledge of the matters covered by these Proposed Collective Proceedings. Paragraph 21 above is repeated.~~; and~~

b. The Settlement Decisions contain very limited information on, and a very ~~The paucity of information available in the Decisions, and in particular the~~ limited description of, the Infringements in sections 4 and 5 of each of ~~in~~ the Decisions. Paragraphs 177 – 177B above are ~~is~~ repeated;~~.~~

c. The STG Lads Ordinary Decision, whilst containing information on and a description of the Infringements in sections 4 and 5 thereof that is more extensive than that contained in the STG Lads Settlement Decision, is nevertheless based on selected and illustrative examples of the participants' conduct in the Sterling Lads chatroom, and is also focused on the conduct of Credit Suisse, and is therefore neither comprehensive nor complete. Paragraphs 177A – 177B above are repeated.

201l See "Further Submissions on Mr Evans' Theory of Harm", paragraphs 70 – 72 and Fourth Rime Report, paragraph 111.

255. Accordingly, the Proposed Class Representative reserves his right to plead further to the issue of causation following disclosure and exchange of both factual and expert evidence. It is noted that the Proposed Defendants (and possibly also third parties) will have in their possession substantial volumes of data and other information that will enable the Proposed Class Representative's experts to undertake regression analyses to calculate the loss and damage caused by the Infringements on the members of both Class A and Class B,[201J] such that the "*disclosure exercise is intrinsically likely to generate relevant material*",[201K] that would, together with witness evidence, enable the experts to populate their models and undertake their regression analyses.

Loss and damage caused to the Proposed Class Members is reasonably foreseeable

256. For the avoidance of doubt, the Proposed Class Representative will say that: (i) the losses claimed are of a reasonably foreseeable type; and (ii) the relevant domestic law principles for recovery of damages must be read consistently with the EU law principles of equivalence and effectiveness, which remain applicable to the claims in these Proposed Collective Proceedings as retained general principles of EU law pursuant to ss.4 and 6(7) of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), in particular as they apply to claims for compensation for breach(es) of Article 101 TFEU and Article 53 EEA, and also with the statutory objectives behind the collective action regime introduced by the Consumer Rights Act 2015 to provide effective redress to those harmed by anti-competitive conduct.

Particulars of loss and damage

257. Without prejudice to the foregoing and to the Proposed Class Representative's right to provide further particulars of loss and damage following disclosure, expert reports and factual evidence, the following indicative figures have been prepared at this current early stage of proceedings.[202] Paragraph 22 above is repeated.

201J [2023] EWCA Civ 876, at [108] – [111], per Green LJ.

201K [2023] EWCA Civ 876, at [111], per Green LJ.

202 For the avoidance of doubt, the Proposed Class Representative's position is that it is not possible, at this early stage of proceedings, to provide full particulars of the quantum of loss and damage claimed on behalf of the Proposed Classes. This can only be provided and fully quantified following disclosure, expert reports and factual evidence. Accordingly, these figures are provided on an indicative basis only.

258. Mr Ramirez has provided an indication of the size of the claims for each of Class A and Class B in section 7.1 of the First Ramirez Report. Section 4 of the Fourth Ramirez Report contains an updated indication of the size of those claims, calculated using the same approach as in the First Ramirez Report, including the Infringements found by the Commission in the STG Lads Settlement Decision and the STG Lads Ordinary Decision. As explained further below, this estimate is formulated by applying an overcharge of 18% to the estimated total half-spreads paid by members of the Proposed Classes, and adding interest. The 18% overcharge is a median overcharge drawn from a survey of cartel overcharges, and as such these estimates provide an indication of the size of the claim if the overcharge to the Proposed Classes was consistent with those observed in the surveys.

259. The calculations set out in the First Ramirez Report and in the Fourth Ramirez Report involve three steps. The first step involves calculating the total half-spreads paid by members of Class A and Class B on their FX Spot Transactions and/or FX Outright Forward Transactions. ~~spot and forward transactions.~~ This entails:

a. Estimating a half-spread from bid-ask spread data obtained from OANDA.[203] Specifically, Mr Ramirez calculates a single weighted average half-spread across the G10 Currency Pairs which are included in the Volume of Commerce (**"VoC"**) estimates in section 5.4 of the First Ramirez Report ~~his report~~;[204]

b. Multiplying the weighted average half-spread by the estimated VoC for Class A and Class B for each month of the period covered by the Proposed Collective Proceedings, in order to identify the total half-spreads paid by members of Class A and Class B respectively.

260. The estimated VoC is calculated by using publicly available data (namely, the data submitted to the BIS Triennial Survey by the Bank of England) to estimate the value (expressed in terms of the amount of currency traded) of FX Spot Transactions and

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203 OANDA is a well-known provider of two services: (i) solutions for individual investors, including a retail-oriented trading platform; and (ii) solutions for business, which includes access to comprehensive, historical, market-wide exchange rate data. OANDA data is frequently cited in the academic literature. See the First Ramirez Report, paragraph 158.

204 As explained in paragraph 91(c) of the First Ramirez Report, the data used to calculate a preliminary estimate of VoC does not include turnover data for all G10 Currency Pairs. Therefore, in calculating the weighted average half-spread, Mr Ramirez uses data relating only to those G10 Currency Pairs included in the estimates of VoC.

FX Outright Forward Transactions by UK-domiciled members of the Proposed Classes that fall within the class definition.[205] ~~This VoC is presently estimated at:~~[206]

~~*Summary of estimated VoC across Class A and Class B (figures in GBP millions)*~~

~~Instrument~~	~~Class A~~	~~Class B~~	~~Total~~
~~FX Spot Transactions~~	~~33,788,874~~	~~61,099,126~~	~~94,888,000~~
~~FX Outright Forward Transactions~~	~~7,231,312~~	~~13,680,738~~	~~20,912,050~~
~~**Total**~~	~~**41,020,186**~~	~~**74,779,864**~~	~~**115,800,050**~~

260A. The Fourth Ramirez Report provides an updated preliminary estimate of the VoC, calculated using the same approach as in the First Ramirez Report, to include the Infringements found by the Commission in the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.[206A]

Summary of estimated VoC across Class A and Class B in respect of the Infringements (figures in GBP millions)

Instrument	**Class A**	**Class B**	**Total**
FX Spot Transactions	38,212,873	56,675,127	94,888,000
FX Outright Forward Transactions	7,993,951	12,918,099	20,912,050
Total	**46,206,825**	**69,593,226**	**115,800,050**

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205 The process for estimating VoC for the Proposed Classes is detailed in section 5.4 of the First Ramirez Report.

206 ~~Ramirez Report, Table 7.~~ It is to be noted that the VoC estimates are likely to be an underestimate for two main reasons. First, they are limited to transactions whereby both the ~~class~~ members of the Proposed Classes and the Proposed Defendant or Relevant Financial Institution are located in the UK, and therefore do not include VoC for transactions with a Proposed Defendant or Relevant Financial Institution located outside of the UK. Second, as noted in footnote 204 ~~200~~ above, the BIS Triennial Survey data does not include turnover data for all G10 Currency Pairs. As explained in paragraph 91(c) of the First Ramirez Report, the turnover data available for G10 Currency Pairs accounts for at least 87.7% of total spot transaction turnover and 76.3% of outright forward turnover in the UK, and as such the estimates are likely to encompass the majority of turnover attributable to G10 Currency Pairs. To be conservative, Mr Ramirez has not attempted at this stage to estimate the turnover related to the G10 Currency Pairs not expressly identified in the BIS Triennial Survey data.

206A Fourth Ramirez Report, section 4.2.2.

261. The second step entails applying an overcharge of 18% to the total half-spreads calculated in the previous step.[207] The overcharge used in these calculations is a median overcharge derived by Oxera from a survey of 114 cartels.[208] This provides an indicative estimate of the claim, exclusive of interest~~, as follows~~.[209]

~~*Summary of indicative estimate of damages for Class A and Class B, exclusive of interest (figures in GBP millions)*~~

~~Instrument~~	~~Class A~~	~~Class B~~	~~Total~~
~~FX Spot Transactions~~	~~621~~	~~1,086~~	~~1,707~~
~~FX Outright Forward Transactions~~	~~157~~	~~291~~	~~448~~
~~**Total**~~	~~**778**~~	~~**1,377**~~	~~**2,155**~~

261A. The Fourth Ramirez Report provides an updated preliminary estimate of damages for Class A and Class B, calculated using the same approach as in the First Ramirez Report, to include the Infringements found by the Commission in the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.[209A]

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207 It is to be noted that the first and second steps in Mr Ramirez's calculations of the indicative size of the claims are different to his proposed methodology for calculating the overcharge incurred by the Proposed Classes. As explained in paragraph 96 of the First Ramirez Report (and summarised in paragraphs 155 - 165 above), the proposed methodology for calculating the harm suffered by members of Class A and Class B entails estimating the extent to which half-spreads paid by members of the Proposed Classes were widened in percentage terms. This percentage will constitute the overcharge and, in turn, will be applied to the VoC for each of the Proposed Classes in order to calculate damages, exclusive of interest. However, for the purpose of preliminary claim estimates, Mr Ramirez will not be able to estimate the percentage overcharge. Accordingly, he first estimates the amount of half-spreads paid by members of the Proposed Classes and applies a median overcharge to those total half-spreads.

208 Oxera et al., "Quantifying Antitrust Damages: Towards non-binding guidance for courts", December 2009, pp.90-91.

~~209 Ramirez Report, Table 7.~~

209A Fourth Ramirez Report, section 4.2.3.

Updated summary of indicative estimate of damages for Class A and Class B, exclusive of interest (figures in GBP millions)

Instrument	Class A	Class B	Total
FX Spot Transactions	705	1,001	1,707
FX Outright Forward Transactions	173	275	448
Total	**879**	**1,276**	**2,155**

262. The third step entails adding interest to the estimates. Mr Ramirez provides estimates of simple and compound interest based on a rate of 2 percent above the prevailing Bank of England base rate. ~~This results in a total indicative estimate of the claim as follows:~~[210]

~~*Summary of total indicative estimate of damages for Class A and Class B, inclusive of interest (figures in GBP millions)*~~

	~~Class A~~	~~Class B~~	~~Total~~
~~***Based on simple interest***~~			
~~**Total**~~	~~947~~	~~1,686~~	~~2,633~~
~~***Based on compound interest***~~			
~~**Total**~~	~~966~~	~~1,721~~	~~2,687~~

262A. The Fourth Ramirez Report provides an updated preliminary estimate of damages for Class A and Class B, inclusive of interest (calculated to 3 November 2023), calculated using the same approach as in the First Ramirez Report, to include the Infringements found by the Commission in the Sterling Lads Settlement Decision and the Sterling Lads Ordinary Decision.[210A]

~~[210] Ramirez Report, Table 7.~~

[210A] Fourth Ramirez Report, section 4.2.3.

Updated summary of total indicative estimate of damages for Class A and Class B, inclusive of interest if (figures in GBP millions)

	Class A	Class B	Total
Based on simple interest			
Total	1,188	1,740	2,928
Based on compound interest			
Total	1,245	1,829	3,074

Interest

263. Compound interest, by way of damages, is claimed on the losses. The members of the Proposed Classes are entitled to full compensation for the loss and damage caused to them by the Proposed Defendants' breaches of statutory duty. In particular:

a. Those members of the Proposed Classes who effectively borrowed money and/or increased their borrowings in order to pay, and/or as a result of paying, the wider bid-ask spreads (whether through equity, debt, sale and leaseback of property assets or otherwise) would have needed to borrow less and/or raise less ~~equity~~ capital than they did in order to finance their capital expenditure and operations and have suffered interest losses and/or financing costs as a result.

b. Those members of the Proposed Classes who would have reinvested the sums incurred as a result of the wider bid-ask spreads in their businesses, thereby generating further profits, or otherwise invested the relevant sums, have suffered a loss of return on investment.

c. Both groups set out above were kept out of and denied the use of their money, on a compound basis, either to decrease their borrowings or financing or to increase their investments.

d. For the avoidance of doubt, some members of the Proposed Classes may have fallen into both categories above (either sequentially or concurrently), although it is averred that all members of the Proposed Classes will fall at least into one or other of the categories above.

264. The nature of the Proposed Collective Proceedings and the substantial numbers of the members of the Proposed Classes involved means that it is not possible or

proportionate to particularise the detail of each such loss on an individual basis. Instead, the Proposed Class Representative will adduce evidence (both expert and factual) in respect of such losses on an aggregate average basis, i.e. compound interest will be treated as any other head of loss in the Proposed Collective Proceedings (as per *Sempra Metals Ltd v Commissioners of Inland Revenue* [2008] 1 AC 561, paragraph 94). The Proposed Class Representative reserves the right further to particularise his pleaded case accordingly.

265. Alternatively, simple interest is claimed pursuant to section 35A of the Senior Courts Act 1981 and Rule 105 of the CAT Rules, on such sums and at such a rate and for such period as the Tribunal thinks fit.

266. An award of interest on a simple and compound basis on the indicative figures is set out in summary at paragraphs ~~262~~ 261A and 262A above.

Observations on the question as to in which part of the United Kingdom the proceedings are to be treated as taking place under Rule 18 (Rule 75(3)(j))

267. The Tribunal has jurisdiction over the Proposed Defendants as follows:

a. Ten ~~Seven~~ of the Proposed Defendants are companies incorporated in the United Kingdom;[211]

b. Six ~~Five~~ of the Proposed Defendants have registered establishments in the United Kingdom;[212] and

c. As to Barclays Capital Inc., Citigroup Inc., ~~and~~ JPMorgan Chase & Co and UBS Group AG (as successor to Credit Suisse Group AG), these Proposed Defendants are each necessary and proper parties to the claims pursued against all other Proposed Defendants[213] and the Tribunal is the proper place in which to bring the claim.[214]

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211 Barclays Bank Plc, Barclays Plc, Barclays Execution Services Limited, J.P. Morgan Europe Limited, J.P. Morgan Limited, NatWest Markets Plc, ~~and~~ NatWest Group plc (formerly The Royal Bank of Scotland Group Plc), Credit Suisse Securities (Europe) Limited, HSBC Holdings plc and HSBC Bank plc .

212 Citibank, N.A., MUFG Bank, Ltd, Mitsubishi UFJ Financial Group, Inc., JP Morgan Chase Bank, N.A, ~~and~~ UBS AG and Credit Suisse AG.

213 In accordance with CPR Practice Direction 6B, paragraph 3.1(3), which applies in the Tribunal by virtue of Rule 31(2) of the CAT Rules.

214 See Rule 31(3) of the CAT Rules.

268. Under Rule 18, the Tribunal may at any time determine whether any proceedings, or part of any proceedings before it are to be treated, for all or any purpose, as proceedings in England and Wales, in Scotland or in Northern Ireland. ~~In the circumstances of the Proposed Collective Proceedings, England and Wales is the part of the United Kingdom that is most closely connected with the subject matter and the parties to the Proposed Collective Proceedings, and the proceedings should accordingly be treated as proceedings taking place in England and Wales. This is for the following reasons:~~

a. ~~The majority of the parties are habitually resident or have their head offices or principal places of business in England and Wales,[215] specifically:~~

   i. ~~The Proposed Class Representative is habitually resident in England and Wales, as is most of his legal and expert team;[216] and~~

   ii. ~~12 out of the 15 Proposed Defendants are either incorporated in the UK or have a UK registered establishment within the jurisdiction.[217] All except for two of those Proposed Defendants have registered addresses in England and Wales.[218]~~

b. ~~The majority of UK domiciled class members are likely to be domiciled in England and Wales.[219] As explained in the Knight Report at section 3.2, a large amount of FX trading in the UK is concentrated in London;~~

c. ~~At least some of the conduct covered by the Proposed Collective Proceedings took place in England and Wales as it involved individual traders working in London[220] In particular, as explained in the Press Release, "*one chatroom was called Essex Express 'n the Jimmy because all traders but "James" lived in Essex and met on a train to London*";~~

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215 As per Rule 18(3)(b) of the CAT Rules.

~~216 As per Rule 18(3)(c) of the CAT Rules.~~

~~217 See paragraphs 32 - 63 above.~~

~~218 As per Rule 18(3)(a) of the CAT Rules.~~

~~219 As per Rule 18(3)(a) and (b) of the CAT Rules.~~

~~220 As per Rule 18(3)(c) and (d) of the CAT Rules.~~

d. ~~With the exception of Barclays Capital Inc., Citigroup Inc. and JPMorgan Chase & Co,[221] t~~The Proposed Defendants have instructed firms of solicitors which are based in London; and

e. ~~Pursuant to paragraph 1 of the Tribunal's Order of 6 November 2019, the O'Higgins Application is treated as proceedings in England and Wales.[222] Given the overlaps between the two proceedings, as summarised in paragraphs 124 – 129 above, it is appropriate that the same approach be adopted to the present CPO Application.~~

268A. Pursuant to paragraph 1 of the Tribunal's Order made on 18 March 2020, it has been determined that the Proposed Collective Proceedings shall be treated as proceedings in England and Wales.

~~269. Alternatively, the Tribunal has the power to (and should) treat these proceedings as proceedings taking place (concurrently or sequentially) in England and Wales, and in Scotland and in Northern Ireland and determine each of those parts of the Proposed Collective Proceedings in one location, namely, London.~~

Relief sought

270. In accordance with Rule 75(3)(i), the relief sought is summarised below.

271. First, the Proposed Class Representative seeks an aggregate award of damages for each of the Proposed Classes pursuant to section 47C(2) of the Act, for the reasons set out in paragraphs 153 - 166 above.

272. It is not possible, at this early stage of proceedings, to provide full particulars of the quantum of loss and damage claimed on behalf of the Proposed Classes. This can only be provided and fully quantified following disclosure, expert reports and factual evidence. Nevertheless, an indicative estimate of the size of the claim, and an explanation of how that estimate is calculated in respect of losses caused to the Class Members by the Infringements that the Commission found to have been committed

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~~[221] See paragraphs 37.b, 42.b and 55.b above. The Proposed Class Representative will apply, pursuant to Rule 31(2) of the CAT Rules, for permission to serve the Collective Proceedings Claim Form (and associated documents) out of the jurisdiction in the United States of America.~~

~~[222] Available online at: https://www.catribunal.org.uk/sites/default/files/2019-11/1329_O%27Higgins_Directions_order_061119.pdf.~~

by the Proposed Defendants, is set out in ~~in~~ summary form in paragraphs 258 – 262A above. To summarise:

a. The amount claimed in damages, excluding any interest, is presently estimated at £2,155,000,000, comprising:

i. ~~£778,000,000~~ £879,000,000 in respect of Class A; and

ii. ~~£1,377,000,000~~ £1,276,000,000 in respect of Class B.

273. Second, there is a further claim for damages in the form of interest, on either a compound, alternatively a simple, basis, as pleaded in paragraphs 263 - 266 above, in each case calculated to 3 November 2023. That further claim is presently estimated as follows:

a. ~~£532,000,000~~ £919,000,000 in respect of compound interest, comprising:

i. ~~£188,000,000~~ £366,000,000 in respect of Class A; and

ii. ~~£344,000,000~~ £553,000,000 in respect of Class B.

b. Alternatively, ~~£478,000,000~~ £773,000,000 in respect of simple interest, comprising:

i. ~~£170,000,000~~ £309,000,000 in respect of Class A; and

ii. ~~£308,000,000~~£464,000,000 in respect of Class B.

274. Third, and accordingly, the overall claim for damages is presently estimated as:

a. ~~£2,687,000,000~~ £3,074,000,000, inclusive of compound interest, comprising:

i. ~~£966,000,000~~ £1,245,000,000 in respect of Class A; and

ii. ~~£1,721,000,000~~ £1,829,000,000 in respect of Class B.

b. Alternatively, ~~£2,633,000,000~~ £2,928,000,000, inclusive of simple interest, comprising:

i. ~~£947,000,000~~ £1,188,000,000 in respect of Class A: and

ii. ~~£1,686,000,000~~ £1,740,000,000 in respect of Class B.

275. Fourth, the Proposed Class Representative seeks costs, and such further or other relief as the Tribunal may think fit.

276. Fifth, the Proposed Class Representative confirms that the Proposed Collective Proceedings do not include an application for an injunction.

277. Accordingly, and by way of summary, the relief sought is:

a. An aggregate award of damages for each of the Classes, pursuant to section 47C(2) of the Act;

b. Interest;

c. Costs; and

d. Such further and other relief as the Tribunal may think fit.

~~AIDAN ROBERTSON QC~~

~~VICTORIA WAKEFIELD QC~~

~~JOANNE BOX~~

~~AARON KHAN~~

~~Brick Court Chambers~~

~~STATEMENT OF TRUTH~~

~~I believe that the facts stated in this Collective Proceedings Claim Form are true.~~

~~Signed:~~

~~Name: Phillip Evans~~

~~Date: 10 December 2019~~

~~AIDAN ROBERTSON QC~~

~~VICTORIA WAKEFIELD QC~~

~~JOANNE BOX~~

~~AARON KHAN~~

~~**Brick Court Chambers**~~

STATEMENT OF TRUTH

~~I believe that the facts stated in this Amended Collective Proceedings Claim Form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.~~

~~Signed:~~

~~Name: Phillip Evans~~

~~Date: 17 April 2020~~

STATEMENT OF TRUTH

I believe that the facts stated in this Re-Amended Collective Proceedings Claim Form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

Name: Phillip Evans

Date: 9 February 2024

AIDAN ROBERTSON KC

VICTORIA WAKEFIELD KC

PROFESSOR DAVID BAILEY

CONFIDENTIAL INFORMATION REDACTED

SOPHIE BIRD

Brick Court Chambers

MATTHEW O'REGAN

St John's Chambers