

PHILLIP EVANS V BARCLAYS BANK PLC AND OTHERS

PROPOSED CLASS DEFINITION

Mr Evans proposes to bring collective proceedings on behalf of two classes: Class A and Class B. The definition of the persons included within these classes is set out below.

There are certain words used in the class definition which have a particular meaning. Those words are underlined, and their definition is provided on the following pages. It is also possible to click on a term that is underlined to be taken to the corresponding definition.

CLASS A

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

- (a) Was entered into, directly or indirectly via an Intermediary:
 - i. With a Defendant, during that Defendant's Relevant Class A Period;
 - ii. In the European Economic Area; and
- (b) Involved a currency pair consisting of two G10 Currencies.

Class A does not include Excluded Persons and Excluded Transactions.

CLASS B

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

- (a) Was entered into, directly or indirectly via an Intermediary:
 - i. With a Relevant Financial Institution, between 18 December 2007 and 31 January 2013, and/or a Defendant during that Defendant's Relevant Class B Period;
 - ii. In the European Economic Area; and
- (b) Involved a currency pair consisting of two G10 Currencies.

Class B does not include Excluded Persons and Excluded Transactions.

DEFINITIONS

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.

A “**Defendant**” is any of the following: Barclays Bank Plc, Barclays Capital Inc., Barclays Plc, Barclays Execution Services Limited, Citibank N.A., Citigroup Inc., MUFG Bank, Ltd., Mitsubishi UFJ Financial Group, Inc., J.P. Morgan Europe Limited, J.P. Morgan Limited, JPMorgan Chase Bank, N.A., JPMorgan Chase & Co, NatWest Markets Plc, The Royal Bank of Scotland Group Plc and UBS AG.

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

“**Excluded Persons**” means the following persons, which shall be excluded from both Class A and Class B:

- (a) Relevant Financial Institutions.
- (b) Any person that has participated in the Bank of International Settlements’ Triennial Central Bank Survey of Foreign Exchange Turnover as a “*Reporting dealer*”.
- (c) The Defendants, including:
- i. Their subsidiaries, holding companies and any subsidiaries of those holding companies; and
 - ii. Any other entities: (i) which have a controlling interest in a Defendant; and/or (ii) in which a Defendant has such an interest.
- (d) Officers, directors and employees of any entity referred to in point (c).
- (e) Members and staff of the Competition Appeal Tribunal assigned to these proceedings.

- (f) Members and staff of any other court (such as an appellate court) that may from time to time hear any matter arising in these proceedings.
- (g) The Class Representative's and Defendants' legal representatives, as well as any experts or other professional advisers instructed by them in these proceedings, including the professional staff assisting them.

“Excluded Transactions” means the following transactions, which shall be excluded from both Class A and Class B:

- (a) Transactions entered into in a retail branch. Such transactions include, but are not limited to, transactions at a “travel money desk” or a “*bureau de change*”.
- (b) Online purchases of currency for Non-Commercial Purposes.
- (c) Transfers of funds denominated in different currencies across any two bank accounts for Non-Commercial Purposes.
- (d) Transactions involving an automated teller machine (or “**ATM**”).
- (e) Transactions involving a foreign currency using a credit card, debit card, prepaid card or other stored value card.
- (f) Transactions that the class member entered into as an Intermediary.
- (g) Transactions to execute an FX Spot Transaction and/or FX Outright Forward Transaction at a specific foreign exchange benchmark rate, such as the WM/Reuters Closing Spot Rates and the European Central Bank foreign exchange reference rates.
- (h) Transactions resulting from a class member leaving a limit order or a resting order (such as a “take profit” or “stop loss” order).
- (i) Any transaction which is the subject of ongoing litigation or a binding settlement which would otherwise fall within Class A or Class B (with the exception of any claims covered by other applications for a Collective Proceedings Order before the Competition Appeal Tribunal). For the avoidance of doubt, this includes, but is not limited to, transactions which are included in the following proceedings:
 - i. *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*, filed before the United States District Court, Southern District of New York under case number 1:13-cv-07789-LGS.
 - ii. The *Canadian FX National Class Action*, which comprises actions commenced in the Ontario Superior Court of Justice under Court File No. CV-15-536174 and the Superior Court of Quebec under Court File No. 200-06-000189-152.
 - iii. *J Wisbey & Associates Pty Ltd v UBS AG and others*, filed before the Federal Court of Australia under Case Number VID567/2019.

“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.

“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).

“**G10 Currencies**” means the British Pound (GBP), Euro (EUR), Japanese Yen (JPY), Swiss Franc (CHF), United States Dollar (USD), Canadian Dollar (CAD), New Zealand Dollar (NZD), Australian Dollar (AUD), Danish Krone (DKK), Norwegian Krone (NOK) and Swedish Krona (SEK).

“**Intermediary**” means any person entering into an FX Spot Transaction and/or an FX Outright Forward Transaction on behalf of a third party.

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.

“**Relevant Financial Institution**” means any entity forming part of a banking group identified in the List of Relevant Financial Institutions.

“**The Defendant’s Relevant Class A Period**” and “**The Defendant’s Relevant Class B Period**” comprises the periods set out in the table below:

| Defendant | Relevant Class A Period | Relevant Class B Period |
|---|---|--|
| Barclays Bank Plc Barclays Plc Barclays Execution Services Limited | 18 December 2007 – 1 August 2012 | 2 August 2012 – 31 January 2013 |
| Barclays Capital Inc. | 14 December 2009 – 31 July 2012 | 18 December 2007 – 13 December 2009 <u>and</u> 1 August 2012 – 31 January 2013 |
| Citibank N.A. Citigroup Inc. | 18 December 2007 – 31 January 2013 | None. |
| MUFG Bank, Ltd. Mitsubishi UFJ Financial Group, Inc | 8 September 2010 – 12 September 2011 | 18 December 2007 – 7 September 2010 <u>and</u> 13 September 2011 – 31 January 2013 |
| J.P. Morgan Europe Limited J.P. Morgan Limited JPMorgan Chase & Co. JPMorgan Chase Bank N.A. | 26 July 2010 – 31 January 2013 | 18 December 2007 – 25 July 2010 |
| NatWest Markets Plc The Royal Bank of Scotland Group Plc | 18 December 2007 – 19 April 2010 <u>and</u> 14 September 2010 – 8 November 2011 | 20 April 2010 – 13 September 2010 <u>and</u> 9 November 2011 – 31 January 2013 |
| UBS AG | 14 December 2009 – 31 January 2013 | 18 December 2007 – 13 December 2009 |

LIST OF RELEVANT FINANCIAL INSTITUTIONS

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

¹ Excluding Barclays Bank Plc, Barclays Capital Inc., Barclays Plc and Barclays Execution Services Limited.

² Excluding Citibank N.A. and Citigroup Inc.

³ Excluding J.P. Morgan Europe Limited, J.P. Morgan Limited, JPMorgan Chase & Co and JPMorgan Chase Bank, N.A.

⁴ Excluding MUFG Bank, Ltd and Mitsubishi UFJ Financial Group, Inc.

⁵ Excluding NatWest Markets Plc and the Royal Bank of Scotland Group Plc.

⁶ Excluding UBS AG.