

IN THE COMPETITION APPEAL TRIBUNAL
BETWEEN:

Case Number: []

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) THE ROYAL BANK OF SCOTLAND
GROUP PLC
- (15) UBS AG

Proposed Defendants

EXHIBIT "PGE3"
TO THE WITNESS STATEMENT OF PHILLIP GWYN JAMES
EVANS

This is the Exhibit marked "PGE3" referred to in the First Witness Statement of PHILLIP GWYN JAMES EVANS dated this 10th day of December 2019.

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Proposed Defendants

COLLECTIVE PROCEEDINGS LITIGATION PLAN

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INTRODUCTION / EXECUTIVE SUMMARY

1. Mr Phillip Evans (the “**Proposed Class Representative**”) has applied (the “**Application**”) pursuant to section 47B of the Competition Act 1998 (the “**Act**”) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**CAT Rules**”) for a Collective Proceedings Order (“**CPO**”) authorising him to act as the class representative in respect of proposed opt-out, collective proceedings (the “**Proposed Collective Proceedings**”) against the Proposed Defendants.
2. This Litigation Plan has been prepared in order to explain how the Proposed Class Representative, along with his representatives, intends to ensure that the Proposed Collective Proceedings will be effectively and efficiently pursued in the interests of the classes of persons it is proposed to include in the Proposed Collective Proceedings.¹

Overview of the Proposed Collective Proceedings

3. The Proposed Collective Proceedings seek to combine “follow-on” claims for damages under section 47A of the Act. These claims concern the Proposed Defendants’ breaches of statutory duty, consisting of infringements of Article 101 of the Treaty on the Functioning of the European Union (“**TFEU**”) and Article 53 of the Agreement on the European Economic Area (“**EEA Agreement**”) by participating in two cartels relating to foreign exchange (hereafter “**Forex**” or “**FX**”) spot trading.
4. These infringements are established by the European Commission (the “**Commission**”) in two settlement decisions (the “**Decisions**”), adopted on 16 May 2019:
 - a. Commission Decision in Case AT.40135-FOREX (Three Way Banana Split) C(2019) 3631 final (the “**Three Way Banana Split Decision**” or “**TWBS Decision**”); and
 - b. Commission Decision in Case AT.40135-FOREX (Essex Express) C(2019) 3621 final (the “**Essex Express Decision**” or “**EE Decision**”).
5. The Decisions have not yet been published, and the only publicly available information regarding their content is provided in a press release (the “**Press Release**”) issued by the Commission on 16 May 2019.² However, as explained further in paragraph 118

¹ These classes are identified and explained further in paragraphs 13 - 16 below.

² “*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.

below, the Proposed Class Representative has obtained disclosure of the Decisions from the Commission.

6. By way of summary, the 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.*”³ The infringement is explained in essentially identical terms in Recital 1 of both Decisions as consisting of:⁴

... 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 G10⁵ designation).

7. The Proposed Defendants are addressees of one or both of the Decisions. They are often referred to in shorthand by reference to the banking groups of which they form part: Barclays, Citigroup, MUFG Bank,⁶ JP Morgan, RBS and UBS. Those banking groups were at all material times competitors in the provision of FX trading services to customers.
8. The total period covered by the infringements identified in the Decisions is 18 December 2007 – 31 January 2013, and comprises:
- a. 18 December 2007 – 31 January 2013 in respect of the Three Way Banana Split Decision; and
 - b. 14 December 2009 – 31 July 2012 in respect of the Essex Express Decision.
9. The Proposed Class Representative applies to the Tribunal for authorisation, by way of a CPO, to continue collective proceedings on behalf of two classes of claimants (the “**Proposed Classes**”, as to which see paragraphs 13 - 16 below). The Proposed Classes comprise persons that have suffered loss and damage as a result of entering

³ Article 1 of the Decisions.

⁴ There are a few minor differences in wording and use of punctuation in both versions of Recital 1 of the Decisions, but these differences do not change their substantive content.

⁵ These currencies shall be referred to in this Litigation Plan as the “**G10 Currencies**”.

⁶ MUFG Bank was formerly known as Bank of Tokyo-Mitsubishi (or “**BOTM**”).

into certain FX transactions, namely FX Spot Transactions⁷ and FX Outright Forward Transactions,⁸ on terms which were less advantageous to those persons than would otherwise have been the case had the Proposed Defendants not committed the infringements established by the Decisions (i.e. in the “**Counterfactual**”).

10. Specifically, the Proposed Class Representative contends that, as a result of the infringements identified in the Decisions, members of the Proposed Classes were charged wider “bid-ask spreads” (i.e. prices)⁹ for FX Spot Transactions and FX Outright Forward transactions involving a currency pair¹⁰ comprising two G10 Currencies (a “**G10 Currency Pair**”) than would have been the case in the Counterfactual. This is explained further in paragraphs 18 - 19 of the Collective Proceedings Claim Form.
11. The effect of widening the bid-ask spread is to: (i) reduce the bid price; and (ii) increase the ask (or “*offer*”) price, in respect of a particular currency pair. This has two implications:
 - a. A customer entering into a FX Spot Transaction or FX Outright Forward Transaction in respect of a particular currency pair would receive less when selling the base currency (i.e. they would receive a lower bid price); and
 - b. A customer entering into a FX Spot Transaction or FX Outright Forward Transaction in respect of that same currency pair would pay more when buying the base currency (i.e. they would pay a higher ask price).

⁷ An 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 Spot Transactions are included within the Proposed Collective Proceedings as the Decisions find cartels operating in the spot foreign exchange market. See paragraphs 78 - 80 of the Collective Proceedings Claim Form.

⁸ An 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). FX Outright Forward Transactions are included in the Proposed Collective Proceedings as the prices charged for FX Outright Forward Transactions are partially based on the pricing of FX Spot Transactions. Accordingly, the Proposed Class Representative contends that wider bid-ask spreads in respect of FX Spot Transactions would, in turn, have impacted on the pricing of FX Outright Forward Transactions. See paragraphs 81 – 83 of the Collective Proceedings Claim Form.

⁹ Bid-ask spreads are explained further at paragraph 9 of the Collective Proceedings Claim Form. By way of brief summary: (i) the “*bid*” price is the price (in the quote currency) at which the FX dealer offers to buy the base currency; and (ii) the “*ask*” or “*offer*” price is the price (in the quote currency) at which the FX dealer offers to sell the base currency.

¹⁰ FX transactions are often referred to as involving a currency pair as the transaction involves the exchange of one currency for another at a specified rate or price. Therefore, the two currencies involved in the transaction are known as a currency pair.

12. Accordingly, the Proposed Class Representative contends, as set out in paragraphs 18 - 19 of the Collective Proceedings Claim Form, that members of the Proposed Classes entering into FX Spot Transactions and/or FX Outright Forward Transactions: (i) paid more when purchasing G10 Currency Pairs; and/or (ii) received less when selling the G10 Currency Pairs, than would otherwise have been the case in the Counterfactual.

Overview of the Proposed Classes

13. The two Proposed Classes, whose claims it is proposed to combine in the Proposed Collective Proceedings, are 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 comprising 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 comprising of two G10 Currencies.

Class B does not include Excluded Persons and Excluded Transactions.

14. A full version of the Class Definition is attached to the Collective Proceedings Claim Form at Annex 3. It includes explanations of certain defined terms, such as "*Relevant Financial Institution*" and it sets out the Excluded Persons and Excluded Transactions.

15. A further explanation of the Proposed Classes, including the reasons for including two classes in the Proposed Collective Proceedings, is provided at paragraphs 75 - 77 of the Collective Proceedings Claim Form.
16. The expert report of Mr John Ramirez provides a preliminary estimate of the sizes of the Proposed Classes at section 4 of his report. It is estimated on a preliminary basis that:¹¹
 - a. Class A would consist of between 14,201 and 42,015 class members; and
 - b. Class B would consist of between 27,814 and 42,015 class members.
17. It is to be noted that these estimates are necessarily incomplete given the early stage of proceedings. The limitations of the class size estimates are set out at paragraphs 69 - 71 of Mr Ramirez's report.
18. The Proposed Class Representative and his advisors have carefully considered the demographics of the Proposed Classes, and identified that they will include the following types of persons or entities:¹²
 - a. **Financial institutions**, which 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. **Non-financial institutions**, which includes corporations (including SMEs); high net worth individuals; and non-financial government entities.
19. As explained further below, this Litigation Plan has been devised with careful consideration as to how best to serve the interests of the members of the Proposed Classes, having regard to their specific characteristics and circumstances.

Overview and function of the Litigation Plan

20. In support of the Application, Mr Evans has filed a witness statement dated 10 December 2019 explaining the basis upon which he is suitable to act as the Proposed

¹¹ See further paragraph 19(b) of Mr Ramirez's report.

¹² See further paragraph 33 of Mr Ramirez's report.

Class Representative. This witness statement addresses the considerations to which the Tribunal will have regard when determining whether it is “*just and reasonable*” for an applicant to act as a class representative in proposed collective proceedings.¹³

21. Among the matters the Tribunal will consider in determining whether it is “*just and reasonable*” for an applicant to act as a proposed class representative is whether they would “*fairly and adequately act in the interests of the class members*”.¹⁴ In determining whether a proposed class representative would act fairly and adequately in the interests of class members, the Tribunal will have regard to all the circumstances, including whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes the matters identified in the CAT’s Rules and Guide.¹⁵
22. Accordingly, the Proposed Class Representative has, with the assistance of his legal advisers and a specialist notice and claims administration provider (as to which see paragraphs 24 - 26 below), prepared this Collective Proceedings Litigation Plan (the “**Litigation Plan**”) in support of the Application.
23. As explained further in paragraphs 29 - 32 below, this Litigation Plan addresses the matters set out in Rule 78(3)(c) of the CAT Rules as elaborated in paragraph 6.30 of the Guide. In producing this document, the Proposed Class Representative has also had regard to the CAT Rules and the Guide more generally, including (but not limited to): paragraphs 3.1 – 3.15 and 5.86 – 5.91 of the Guide; section 6 of the Guide; and Rule 4 (the “**Governing Principles**”) of the CAT Rules.

Third party assistance

24. The Proposed Class Representative has engaged Angeion Group (“**Angeion**”) to assist him in conducting aspects of the Proposed Collective Proceedings. Angeion is a class action notice and administration company, with extensive experience of administering class and collective actions in the United States. Collectively, Angeion’s management team has overseen more than 2,000 class action settlements and distributed over \$10 billion to class members.
25. The Angeion team working on the Proposed Collective Proceedings is led by Steven Weisbrot, Partner and Chief Innovation Officer at Angeion. Mr Weisbrot has

¹³ These considerations are set out in Rule 78 of the CAT Rules and further elaborated in paragraphs 6.29 – 6.36 of the Tribunal’s *Guide to Proceedings 2015* (the “**Guide**”).

¹⁴ Rule 78(2)(a) of the CAT Rules.

¹⁵ See, in particular, Rule 78(3)(c) of the CAT Rules and paragraph 6.30 of the Guide. These requirements are discussed further in paragraphs 29 - 32 below.

considerable experience in the field of class action notice plans. He has authored numerous articles in legal publications on topics including class action notice programmes, using digital media to notify class members, class action claims administration, and proper claim form design. He has also lectured extensively on class action notice and claims procedures.

26. Angeion have produced a *Notice and Administration Plan* (the “**Angeion Plan**”) which is attached to this Litigation Plan at Annex 1. This Litigation Plan will refer to the Angeion Plan and its attachments, where relevant, and the detailed proposals contained in the Angeion Plan should be read as forming part of this Litigation Plan.
27. Furthermore, in order to assist with the management of the public relations aspects of the Proposed Collective Proceedings, the Proposed Class Representative has engaged Byfield Consultancy (“**Byfield**”), a market leading legal public relations firm specialising in litigation. Byfield will assist with a variety of matters relating to the Proposed Collective Proceedings, including:
 - a. Generating press interest and earned media¹⁶ which can be used as a means of providing notice to, and communicating with, members of the Proposed Classes; and
 - b. Promotion and publicity of the Proposed Collective Proceedings, the Claim Website (as to which, see paragraphs 50 - 54 below), and formal Notices required pursuant to the CAT’s Rules.
 - c. Use of social media platforms to direct members of the Proposed Classes to the Claim Website: see paragraphs 5.21 – 5.23 of the Angeion Plan.
28. The public relations strategy will be developed and implemented alongside the work that Angeion have been instructed to undertake in order to notify the members of the Proposed Classes of the progress of the Proposed Collective Proceedings and ensure information regarding the proceedings is communicated to them.

Content of the Litigation Plan

29. The matters which should be included in the Litigation Plan are detailed in Rule 78(3)(c) of the CAT Rules and paragraph 6.30 of the Guide.

¹⁶ This is a term used to refer to publicity that is generated free of charge in relation to the promotion of a particular issue in the media. Earned media can include articles in the press (print and online), word of mouth, blogs, etc.

30. Rule 78(3)(c) provides that this Litigation Plan must satisfactorily include:
- a. A method for bringing the Proposed Collective Proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings;
 - b. A procedure for governance and consultation which takes into account the size and nature of the class(es); and
 - c. Any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide.
31. Further, paragraph 6.30 of the Guide states that the Litigation Plan must explain how the Proposed Class Representative and its lawyers intend to ensure that the Proposed Collective Proceedings will be effectively and efficiently pursued in the interests of the Proposed Classes, referring to the issues likely to arise in the particular case. It identifies 11 matters that may appropriately be set out in the Litigation Plan, and states further that a costs budget should be appended.
32. This Litigation Plan is structured by reference to the requirements of Rule 78(3) of the CAT Rules and paragraph 6.30 of the Guide. For ease of reading, the points identified in the CAT Rules and Guide have been grouped under common headings, and will be addressed as follows:¹⁷
- a. **Method of bringing proceedings and communication with the classes:** this section addresses:
 - i. The method for bringing the Proposed Collective Proceedings on behalf of the members of the Proposed Classes (Rule 78(3)(c)(i) of the CAT Rules);
 - ii. The method for notifying members of the Proposed Classes of the progress of the Proposed Collective Proceedings (Rule 78(3)(c)(i) of the CAT Rules), which includes:
 1. The proposed methods for communicating with and reporting to the members of the Proposed Classes going forward (paragraph 6.30 of the Guide, second bullet point);

¹⁷ It should be noted that this Litigation Plan does not address the ninth bullet point in paragraph 6.30 of the Guide, as it is not proposed that only part of the claims should be covered by a CPO.

2. Publication of the Proposed Collective Proceedings to members of the Proposed Classes (paragraph 6.30 of the Guide, first bullet point); and
 3. Dealing with enquiries from members of the Proposed Classes (paragraph 6.30 of the Guide, third bullet point).
- b. **Governance and consultation:** this section explains the procedure for governance and consultation which takes into account the size and nature of the Proposed Classes, in accordance with Rule 78(3)(c)(ii) of the CAT Rules.
- c. **Evidence & Witnesses:** this section addresses:
- i. The degree of disclosure likely to be required in the Proposed Collective Proceedings (paragraph 6.30 of the Guide, fourth bullet point);
 - ii. Whether disclosure from individual members of the Proposed Classes is likely, and if so, the intended process for collection of relevant documents from class members (paragraph 6.30 of the Guide, fifth bullet point);
 - iii. How exchange of documents will be managed, including any issues of e-disclosure (paragraph 6.30 of the Guide, sixth bullet point);
 - iv. How any necessary witnesses will be identified and what steps will be taken to establish their evidence (paragraph 6.30 of the Guide, seventh bullet point); and
 - v. Whether experts will be needed, and if so, what kind and how appropriate experts will be identified and retained (paragraph 6.30 of the Guide, eighth bullet point).
- d. **Litigation timetable:** this section provides a proposed timetable for the litigation pursuant to the eleventh bullet point of paragraph 6.30 of the Guide.
- e. **Damages & Costs:** this section addresses:
- i. Distribution of any aggregate award of damages (paragraph 6.30 of the Guide, tenth bullet point);
 - ii. The estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the Proposed Class Representative shall provide (Rule 78(3)(c)(iii) of the CAT Rules). This covers details as to the funding arrangements entered into by the Proposed Class Representative (including ATE insurance); and

- iii. The costs budget, which is attached to this Litigation Plan at Annex 2.
- f. **Conclusion:** this summarises the bases upon which the Proposed Class Representative considers that this Plan, together with the Angeion Plan, satisfies the requirements of Rule 78(3)(c) of the CAT Rules, and demonstrates that he will act fairly and adequately in the interests of the members of the Proposed Classes.

Annexes to the Litigation Plan

- 33. Attached to this Litigation Plan are the following documents:
 - a. **Annex 1:** the Angeion Plan and attachments.
 - b. **Annex 2:** a costs budget (as required under Rule 78(3)(c)(iii) of the Rules and paragraph 6.30 of the Guide); and
 - c. **Annex 3:** the proposed timetable (as required under paragraph 6.30 of the Guide)
- 34. The Tribunal is also referred to the Proposed Class Representative's litigation funding agreement and ATE policy, redacted copies of which are exhibited to Mr Evans' First Witness Statement at Exhibit PGE4. A summary of the funding arrangements is provided at paragraphs 75 – 79 of that witness statement.
- 35. The litigation funding agreement and ATE policy are confidential agreements. Accordingly, the Proposed Class Representative seeks confidentiality protection for them under Rule 101 of the CAT Rules. In particular, the terms of the funding agreement are confidential to the funder vis-à-vis the public (and in particular in relation to other competing litigation funders) as they reveal the general terms and conditions upon which the funder does business. This is, commercially and competitively, sensitive information.
- 36. The Proposed Class Representative is willing to agree to the terms of an appropriate confidentiality order and confidentiality ring with the Proposed Defendants, with a view to making an application to the Tribunal, by consent, for the creation of a confidentiality ring pursuant to Rule 53(1) and 53(2)(h).¹⁸

¹⁸ The Proposed Class Representative understands that a confidentiality ring has been established in the O'Higgins Application which has been used, *inter alia*, for the purposes of providing disclosure of certain funding documents. See paragraphs 3 and 4 of the Tribunal's Order in Case 1329/7/7/19. Available online at: https://www.catribunal.org.uk/sites/default/files/2019-11/1329_O%27Higgins_Directions_order_061119.pdf.

37. Notwithstanding this position, the Proposed Class Representative understands that members of the Proposed Classes will have an interest in understanding the funding terms and conditions. Accordingly, the Proposed Class Representative will, in due course, make public a non-confidential version of the litigation funding agreement (with redactions as appropriate to cover information that is commercially sensitive).

METHOD OF BRINGING THE PROPOSED COLLECTIVE PROCEEDINGS AND COMMUNICATION WITH THE PROPOSED CLASSES

Method of bringing the Proposed Collective Proceedings

38. Pursuant to section 47B of the Act, the Proposed Class Representative seeks to combine “follow-on” claims for damages, based on the Decisions, that fall under section 47A of the Act.
39. The proposed method for bringing the Proposed Collective Proceedings is on a collective, “opt-out” basis. Specifically:
- a. The reasons that the Proposed Collective Proceedings are suitable to be brought on a collective basis are set out in paragraphs 145 - 148 of the Collective Proceedings Claim Form; and
 - b. The reasons that the Proposed Collective Proceedings should be brought on an “opt-out” basis is detailed in paragraphs 170 – 171 of the Collective Proceedings Claim Form.
40. In short, the Proposed Class Representative considers that all issues in the Proposed Collective Proceedings would be common to each of the Proposed Classes, and the use of collective proceedings represent the most efficient and economically viable means for members of the Proposed Classes to obtain compensation for the losses suffered as a result of the infringements identified in the Decisions. In particular, “opt-out” collective proceedings are especially appropriate here as: (i) the number of potential members of the Proposed Classes is substantial, and ranges between 14,201 – 42,015 members of Class A and 27,814 - 42,015 members of Class B; and (ii) the aggregate claim value will be substantial, making collective proceedings economically viable relative to the costs of bringing a claim.
41. Accordingly, all persons falling 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 unless they opt-out: see paragraph 52(c)(ii) below.

42. 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 the Proposed Classes. The likely procedure for opting-in to the Proposed Collective Proceedings is set out in paragraphs 7.6 – 7.8 of the Angeion Plan. Furthermore, it is anticipated that class members seeking to opt-in will be asked to provide their FX transaction records for the periods covered by the Proposed Collective Proceedings, so their transactions can be included in the claim.
43. The likely process to be followed in this regard is detailed in Section 5.3 of the expert report of Mr Ramirez. Specifically:
 - 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 Proposed Collective Proceedings; 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 Proposed Collective Proceedings. This would not be possible for transactions concluded with Relevant Financial Institutions, as the Proposed Class Representative would not have access to these records.

Notifying members of the Proposed Classes of the progress of the Proposed Collective Proceedings

44. The Proposed Class Representative considers that a key part of his role will be to ensure that all communications and reports to members of the Proposed Classes will be effective, clear, and undertaken in an efficient and proportionate manner.
45. He is also aware of the necessity to ensure that all communications reach the greatest number of members of the Proposed Classes, and take account of their particular characteristics (for example, by utilising methods of communication that are most likely to reach them). As noted in paragraphs 13 - 19 above, the Proposed Classes

comprise a diverse range of persons and entities. This requires the use of a range of targeted communication methods in order to ensure that the greatest number of members of the Proposed Classes are aware of the ongoing developments in the Proposed Collective Proceedings.

46. Accordingly, the Proposed Class Representative has, along with Angeion and his legal team, given detailed consideration to the most appropriate approaches to be adopted in communicating with members of the Proposed Classes at different stages in the Proposed Collective Proceedings. These are set out below and are detailed further in the Angeion Plan.

The methods proposed for communicating with and reporting to the members of the Proposed Classes: overview

47. The Angeion Plan explains in detail, in particular in Section 4, how it is proposed to communicate with members of the Proposed Classes regarding the Proposed Collective Proceedings.
48. In summary, Angeion has devised a number of methods of communication which are intended to ensure that notices and other communications reach as many members of the Proposed Classes as possible. In devising their Plan, Angeion have given particular consideration to:
- a. The objective(s) of a particular communication;
 - b. The composition and demographics of the Proposed Classes;
 - c. The media consumption habits of relevant decision-makers of potential members of the Proposed Classes (or, in the case of high net worth individuals, these individuals and their advisers); and
 - d. The additional methods required to target persons who will need to opt-in to the Proposed Collective Proceedings (see paragraph 42 above), such as the need to take account of the fact that such persons may operate in different languages.
49. As explained further in the Angeion Plan, a variety of communication methods will be used, which include:
- a. Establishing a website (the “**Claim Website**”) at www.fxclaimuk.com. As explained further in paragraphs 50 - 54 below, the Claim Website will be one of the principal methods of communication with the Proposed Classes, and will be continually updated throughout the Proposed Collective Proceedings with a

variety of information. The Claim Website will also allow persons to register their interest in receiving updates and further information about the Proposed Collective Proceedings.¹⁹

- b. Directly contacting by post or email potential class members identified from publicly available databases, such as the HMRC trade information database, the Investment Management Association and Angeion's proprietary list of financial institution contacts.²⁰
- c. A public relations campaign led by Byfield, designed to generate substantial news coverage of the Proposed Collective Proceedings by targeting relevant national and international media.²¹
- d. Advertisements in selected print media publications.²²
- e. Paid online advertising and website banners on targeted websites (including digital media publications) and through programmatic display advertising, which is explained further at paragraph 6.18 of the Angeion Plan.²³
- f. Sponsored search listings and search engine optimisation.²⁴
- g. Social media channels such as LinkedIn and Twitter which will be used to direct class members to the Claim Website.²⁵
- h. Email notices to persons (including members of the Proposed Classes) who have registered to receive updates via the Claim Website.²⁶

The Claim Website

- 50. As explained above, one of the key methods of communication with members of the Proposed Classes will be the Claim Website. Further details on the design of the Claim Website are provided at Section 5C of the Angeion Plan.
- 51. The Proposed Class Representative is conscious of the need to ensure that there is a clearly marked official website for members of the Proposed Classes to access and to minimise the risk of misinformation being promulgated, particularly by persons who

¹⁹ See paragraphs 5.10 – 5.16, 6.25 – 6.28 and 8.12 - 8.13 of the Angeion Plan.

²⁰ See paragraphs 5.4 – 5.6 of the Angeion Plan.

²¹ See paragraphs 5.17 – 5.23, 6.10 – 6.13 and 8.6 – 8.7 of the Angeion Plan.

²² See paragraphs 4.16 – 4.18, 6.24 and 8.11 of the Angeion Plan.

²³ See paragraphs 6.16 – 6.21 and 8.10 of the Angeion Plan.

²⁴ See paragraphs 4.5 and 6.22 – 6.23 of the Angeion Plan.

²⁵ See paragraphs 5.21 – 5.23 and 8.8 of the Angeion Plan.

²⁶ See paragraphs 6.6 – 6.9 and 8.5 of the Angeion Plan.

may appear to be associated with the Proposed Collective Proceedings. Accordingly, as part of establishing the Claim Website, the Proposed Class Representative has acquired a number of domain names which are similar in appearance to the official website address (including www.fxclaim.com, www.fxclaim.co.uk, www.fxclaim.uk, www.fxclaimuk.co.uk, www.fxclaimuk.uk).²⁷ These steps have been taken to prevent the risk of non-official third parties obtaining domain names and setting up fraudulent and/or “ghost” websites.

52. It is intended that the Claim Website will be a detailed and easy-to-use resource for members of the Proposed Classes, and other persons, to access information relating to the Proposed Collective Proceedings. It is intended that the Claim Website will contain at least the following information:

- a. **Details of the Proposed Collective Proceedings**, which will include:
 - i. A summary of the Proposed Collective Proceedings, together with details of each of the Proposed Classes. The Proposed Class Representative has given detailed consideration as to the best way to enable persons to identify whether they form part of the Proposed Classes. In this regard:
 1. The version of the class definition on the Claim Website will contain certain interactive features which are designed to make it more accessible to users. For example, when a user clicks on a particular defined term, they will automatically be shown a definition of that term.
 2. Following the grant of any CPO, the Claim Website will be updated to include an interactive section whereby a person will be invited to answer a number of questions in order to identify whether they would form part of one or both of the Proposed Classes.
 - ii. Information regarding the Proposed Class Representative, his background and suitability to manage the Proposed Collective Proceedings.
 - iii. Details of the Consultative Panel and their involvement in the Proposed Collective Proceedings.
 - iv. Details of the Proposed Class Representative’s legal representatives.

²⁷ The Proposed Class Representative has registered 32 domain names in total. When a user navigates to those domains, they will be automatically redirected to the Claim Website.

- v. FAQs, which will be updated in the light of material developments in the Proposed Collective Proceedings, and to reflect any formal requirement to communicate with members of the Proposed Classes as directed by the Tribunal or required by the CAT Rules.
 - vi. An outline timetable for the Proposed Collective Proceedings. This will be updated to reflect key dates in the Proposed Collective Proceedings as these materialise.
 - vii. A video describing the Proposed Collective Proceedings. This will be updated and/or supplemented by further videos at appropriate stages in the proceedings to explain and reflect ongoing developments. For example, if the Proposed Collective Proceedings were to result in an award of aggregate damages, it may be appropriate to produce a different video outlining the process for distributing any aggregate award of damages (as to which, see paragraphs 136 - 146 below).
 - viii. Prior to the hearing of the Application, the website will explain the rights of: any person with an interest (including a class member) to:
 - 1. Object to the CPO Application or the authorisation of the proposed class representative; and/or
 - 2. Make an application to the Tribunal for permission to make written and/or oral submissions at the hearing of the CPO Application.
- b. **Claim documentation**, such as:²⁸
- i. Copies of the Application / Collective Proceedings Claim Form.
 - ii. A link to the Tribunal's website and a summary of the Proposed Collective Proceedings.
 - iii. Copies of the CPO Application and Hearing Notice and any further notices that are required by the CAT Rules or as directed by the Tribunal.²⁹
 - iv. Links to any other documents the Tribunal directs should be made available.

²⁸ The Proposed Class Representative will consider, in respect of each document, whether there are confidentiality concerns which may make it inappropriate for the document to be made available online. As such, this list of documents should be considered provisional only.

²⁹ See further paragraphs 56 – 60 below.

c. **Methods of opting in or opting out of the Proposed Collective Proceedings**, as follows:

- i. An opt-in form will be made available on the Claim Website and by post on request, and will require the class member's name, postal address and e-mail address and the name of the individual authorised to opt the class member into the Class(es). In addition, the class member will be asked to provide their FX transactions for the periods covered by the Proposed Collective Proceedings. The procedure for doing so is outlined at paragraphs 7.6 – 7.9 of the Angeion Plan.
- ii. Members of the Proposed Classes wishing to opt-out of the Proposed Collective Proceedings will be required to send a letter, the contents of which are specified at paragraph 7.3 of the Angeion Plan, to the Proposed Class Representative's nominated postal address. Guidance will be available on the Claim Website to assist with this process.
- iii. Short videos will be posted on the Claim Website following the grant of a CPO which describe the process for opting in and opting out of the Proposed Collective Proceedings.

d. **Methods of further communication with the Proposed Class Representative**, which will include:

- i. Functionality for members of the Proposed Classes to register their details so they can be directly provided with email updates on the Proposed Collective Proceedings, which will include sending copies of any relevant notice(s). This will also provide the Proposed Class Representative with another means by which to communicate with the members of the Proposed Classes on any relevant issue.
- ii. Functionality for members of the Proposed Classes and other persons to send comments or questions, by email and online form, which may then form the basis of further updates to the FAQs.
- iii. Details of a freephone telephone number, linking to an Interactive Voice Recording function.

53. Given that the Proposed Collective Proceedings are at an early stage, it has not been possible (nor, indeed, would it be appropriate given that a CPO has not yet been made) to provide all of the information outlined above on the Claim Website at this

stage. The Proposed Class Representative intends to update the Claim Website on an ongoing basis, and anticipates that significant further updates will follow at key milestones in the claim such as: (i) after the first CMC where the Tribunal will issue further directions for the CPO Application Hearing; (ii) once the CPO has been granted (if the Tribunal so directs); and (iii) in the event of any judgment or settlement.

54. It is intended that significant efforts will be made to promote the Claim Website so that it is brought to the attention of as many members of the Proposed Classes as possible. Further details of this are provided in paragraphs 5.13, 5.17 – 5.23 and 6.22 – 6.23 of the Angeion Plan. Efforts in this regard will include the following steps:
- a. Referencing the Claim Website in all press releases and other media communications.
 - b. Utilising social media platforms including LinkedIn and Twitter throughout the Proposed Collective Proceedings to direct class members to the Claim Website.
 - c. Encouraging visitors to the website to share videos and other content on the Claim Website via their social media channels.
 - d. Arranging the purchase of sponsored search listings and search engine optimisation to increase “hits” for the Claim Website.

Publication of the Proposed Collective Proceedings to members of the Proposed Classes

55. As detailed in the Angeion Plan, the methods of publication and communication with members of the Proposed Classes will be tailored to each stage of the proceedings. This section of the Litigation Plan addresses:
- a. The methods by which the Proposed Class Representative intends to publicise the Proposed Collective Proceedings further once they have been filed with the Tribunal; and
 - b. The means by which the Proposed Class Representative intends to comply with the formal notice requirements set out in the CAT Rules and Guide, at various stages in the Proposed Collective Proceedings.

Publicising the Proposed Collective Proceedings once they have been filed with the Tribunal

56. Once the Proposed Collective Proceedings have been filed with the Tribunal, in addition to providing the information identified above on the Claim Website, the Proposed Class Representative intends to publicise the Proposed Collective Proceedings in the following ways:
- a. As set out at paragraphs 5.17 – 5.20 of the Angeion Plan, a concise press release will be issued by Byfield publicising the Application and encouraging class members to register their interest. This press release will be distributed to national and trade journalists both in the United Kingdom and in the foreign jurisdictions (translated as necessary) that are most relevant to members of the Proposed Classes that may need to opt-in to proceedings.
 - b. A second press release will be issued after the filing of the Proposed Collective Proceedings with the Tribunal, which will provide further explanation of the Proposed Collective Proceedings, introducing the Proposed Class Representative and explaining the litigation process: see paragraph 5.18 of the Angeion Plan.
 - c. Byfield will also target members of the Proposed Classes via social media channels, including Twitter and LinkedIn, to direct them to the Claim Website: see paragraph 5.22 of the Angeion Plan.
 - d. Angeion will send notices by post and/or email to a mailing list of potential members of the Proposed Classes, which has been compiled using various publicly available data sources. These sources include a number of industry associations which are likely to have among their members companies which may have entered into FX transactions during the relevant period and therefore may be members of the Proposed Classes. These include databases produced by HMRC, Investing.com, the Investment Management Association and the Association of Investment Companies: see paragraph 5.5 of the Angeion Plan.
 - e. Angeion and the legal representatives of the Proposed Class Representative will also work with three identified global class action firms which specialise in providing class action research and claims filing services exclusively for institutional investors in order to bring the Proposed Collective Proceedings to the attention of their clients: see paragraphs 5.8 of the Angeion Plan.
57. The overall objective of the approach outlined above will be to ensure that as many members of the Proposed Classes are aware of the Proposed Collective Proceedings, and the Proposed Class Representative, as early as possible.

Complying with the formal notice requirements relevant to the Proposed Collective Proceedings

58. By way of summary, the CAT Rules and Guide impose a number of different formal notice requirements. In particular, they require the Proposed Class Representative to provide notice to members of the Proposed Classes at the following stages of the Proposed Collective Proceedings:³⁰
- a. When the Tribunal makes a CPO: Rule 81 (the “**CPO Notice**”);
 - b. If the Proposed Class Representative intends to withdraw from the role: Rule 87(2) (the “**Rule 87(2) Notice**”);
 - c. When the Tribunal issues a judgment or order in the proceedings: Rule 91(2) (the “**Rule 91 Notice**”);
 - d. When the Tribunal intends to have a hearing to determine how to quantify individual represented persons’ claims from an aggregate award of damages: Rule 92(3) (the “**Rule 92 Notice**”); and
 - e. At any other point where the Tribunal requires the Proposed Class Representative to give notice to members of the Proposed Classes at other stages of the Proposed Collective Proceedings: Rule 88(2)(d) (a “**Rule 88 Notice**”).
59. Furthermore:
- a. If an application is made for a collective settlement approval order, the Proposed Class Representative will, at that stage, address the Tribunal on the notice requirements pursuant to Rules 94(4)(f) and 94(13); and
 - b. If a collective settlement order is made under Rule 96 then, at that stage, the Proposed Class Representative shall address the Tribunal on how he will fulfil the notice requirements in Rules 96(15), 96(16) and 97(10).
60. The Proposed Class Representative has also considered previous orders of the Tribunal made in other applications for CPOs, which have imposed requirements relating to publicity prior to the hearing of a CPO application, namely:

³⁰ As summarised at paragraph 6.55 of the Guide.

- a. The Tribunal's Order of 15 July 2015 in Case 1257/7/7/16 *Dorothy Gibson v Pride Mobility Products Limited* ("**Pride**"), in which the Tribunal ordered that the proposed class representative should publicise:
 - i. The fact of the CPO Application;
 - ii. The deadline for objections to the CPO Application and/or the proposed class representative; and
 - iii. The CPO Application hearing date.

- b. The Tribunal's Order of 21 November 2016 in Case 1266/7/7/16 *Walter Hugh Merricks CBE v Mastercard Incorporated and others* ("**Merricks**"), in which the Tribunal ordered that the proposed class representative should publicise:
 - i. The CPO Application in accordance with its litigation plan, save that it was amended to reflect the directions of the Tribunal to:
 - 1. Make known the categories of persons that are excluded from the proposed class;
 - 2. Make known that copies of the following may be provided on request: a non-confidential version of the witness statement of the proposed class representative and exhibits thereto, including a non-confidential version of the litigation funding agreement;
 - 3. Make known the total level of funding available to the proposed class representative and that this includes adverse costs cover in the amount of £10 million;
 - ii. The right of persons with an interest to object to the CPO application or the authorisation of the proposed class representative; and
 - iii. The right for members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.

- c. The Tribunal's Order of 9 April 2019 in Cases 1304/7/7/19 and 1305/7/7/19 *Justin Gutmann v First MTR South Western Trains Limited and others* ("**Gutmann**"), in which the Tribunal ordered the proposed class representative should publicise:
 - i. The CPO Application in accordance with the proposal in his litigation plan, save that it was amended to reflect the directions of the Tribunal to:

1. Make known the categories of persons that are excluded from the definition of the proposed class;
 2. Make known that copies of the non-confidential version of certain funding documents would be provided on request;
- ii. The right of persons with an interest to object to the CPO Application or the authorisation of the proposed class representative; and
 - iii. The right of members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.
61. Accordingly, the Proposed Class Representative has prepared, in consultation with his representatives, a plan for publicising the CPO Application and the associated hearing(s) which takes account of the Tribunal's previous Orders. This is addressed at paragraphs 66– 70 below.
62. In this regard, the Proposed Class Representative is also aware that the Tribunal's Order of 12 December 2018 in Cases 1282/7/7/18 and 1289/7/7/18 *UK Trucks Claim Limited v Fiat Chrysler Automobiles N.V. and Others; Road Haulage Association Limited v Man SE and others* (the "**Trucks CPO Applications**") refers to a "Joint Publicity Notice" at paragraph 10, and paragraph 11 directs that "[s]ubject to the approval of the Tribunal of the Joint Publicity Notice, UKTC and RHA publicise the CPO Applications by 1 February 2019." The Proposed Class Representative has located copies of this joint notice online.³¹
63. As explained further in paragraphs 124 - 129 of the Collective Proceedings Claim Form, 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 "**O'Higgins Application**"). 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. The Proposed Class Representative therefore understands that, in line with the Tribunal's Order in the *Trucks CPO Applications*, it may be necessary to agree a joint notice with those acting in the O'Higgins Application. The legal representatives of the Proposed

³¹ <http://uktrucksclaim.co.uk/wp-content/uploads/2019/02/UKTC-Joint-Notice.pdf>. A materially similar version appears on the RHA's website at: [https://cdn2.hubspot.net/hubfs/3387682/documents/Truck Cartel Flyer CAT PRINT.pdf](https://cdn2.hubspot.net/hubfs/3387682/documents/Truck_Cartel_Flyer_CAT_PRINT.pdf).

Class Representative will seek to discuss this with the representatives of Michael O'Higgins FX Class Representative Limited once the Proposed Collective Proceedings have been issued. Nevertheless, the Proposed Class Representative has produced a notice covering the Proposed Collective Proceedings only, in case it transpires that for any reason a joint notice is impracticable or inappropriate. A draft of this notice (the "**Draft CPO Application and Hearing Notice**") is attached to the Angeion Plan at Appendix 5.

64. In addition, the Proposed Class Representative has prepared a two further draft notices, which are attached to the Angeion Plan, namely:
 - a. A Draft CPO Notice; and
 - b. A Draft CPO Print Publication Notice.
65. The remainder of this section sets out the steps that the Proposed Class Representative intends to take in order to comply with the formal notice requirements summarised above.

Notice of the CPO Application and Hearing(s)

66. The Proposed Class Representative anticipates that the Tribunal may apply the requirements in its Orders in *Pride*, *Merricks* and *Gutmann* to the Proposed Collective Proceedings. Accordingly, the Proposed Class Representative sets out in detail, at paragraphs 5.1 to 5.24 of the Angeion Plan, the steps that will be taken in order to give notice of the CPO Application and associated hearing(s).
67. In summary, the Proposed Class Representative intends (subject to the observations in the next paragraph) to issue a CPO Application and Hearing Notice to members of the Proposed Classes which takes account of the Tribunal's previous orders and contains the necessary details explaining how to object to the CPO Application and/or to the authorisation of the Proposed Class Representative.
68. As noted above, the Proposed Class Representative anticipates that that the Tribunal may direct him and Michael O'Higgins FX Class Representative Limited to produce a joint publicity notice in accordance with the approach adopted in the *Trucks CPO Applications*. Accordingly, the legal representatives of the Proposed Class Representative will contact the representatives of Michael O'Higgins FX Class Representative Limited once these Proposed Collective Proceedings have been issued in order to discuss a joint publicity notice. In the event that a joint publicity notice is agreed between the parties and approved by the Tribunal, any reference to

the CPO Application and Hearing Notice in this Litigation Plan should be read as referring instead to that joint publicity notice.³²

69. The Proposed Class Representative intends to use a number of methods to disseminate the CPO Application and Hearing Notice in order to provide sufficient notice to the members of the Proposed Classes of their rights and also to encourage them to visit the Claim Website and register to receive future updates on the Proposed Collective Proceedings.
70. Once the dates have been fixed for the CPO Application hearing and the directions leading up to that hearing have been issued by the Tribunal, the Proposed Class Representative will:
 - a. Publish on the Claim Website, and on its legal adviser's website, the CPO Application and Hearing Notice (in the form annexed to the Angeion Plan), summarising the fact of the CPO Application, the date for objections to the CPO Application and/or the Proposed Class Representative and the CPO Application hearing date together with a link to the CAT's website and summary of the Proposed Collective Proceedings;
 - b. Instruct Byfield to issue a press release to all mainstream national and international media outlets referring to and providing the CPO Application and Hearing Notice;
 - c. Send copies of the CPO Application and Hearing Notice by post and/or email to the mailing list of potential members of the Proposed Classes described at paragraph 56(d) above (excluding any person that has indicated that they do not wish to receive such notifications);
 - d. Send copies of the CPO Application and Hearing Notice to the identified global class action specialist firms referred to at paragraph 56(e) above; and
 - e. Arrange for sponsored search listings on Google to direct potential members of the Proposed Classes to the Claim Website.

CPO Notice under Rule 81

71. In accordance with Rule 75(5)(c) of the CAT Rules, the Proposed Class Representative has produced a draft CPO Notice, which is contained at Appendix 5

³² In any event, Angeion have produced a draft of a CPO Application and Hearing Notice to cover the Proposed Collective Proceedings only, in the event that a joint publicity notice proves impracticable or inappropriate. See paragraph 63 above.

of the Angeion Plan. This has been drafted in accordance with the guidance in Rule 81 of the CAT Rules, as further elaborated at paragraphs 6.58 and 6.59 of the Guide. Accordingly, the CPO Notice:

- a. Incorporates the CPO by directing readers to the Claim Website and/or the Tribunal's website in order to view a copy;
 - b. Identifies each of the Proposed Defendants;
 - c. Contains a summary, in plain and easily understood language, of the Collective Proceedings Claim Form and the common issues;
 - d. Includes a statement explaining that any judgment on the common issues for the members of the Proposed Classes will bind represented persons in the classes; and
 - e. Sets out, in a straightforward manner, (i) how members of the Proposed Classes may opt in or opt out of the Proposed Collective Proceedings; (ii) the deadlines which apply; and (iii) an explanation of the consequences of opting in or out, with reference to the relevant provisions of the CPO.
72. The Proposed Class Representative will further amend the CPO Notice, and the CPO, to include any further information as the Tribunal directs.
73. The Proposed Class Representative has prepared two different types of draft CPO Notice, which are attached at Appendix 5, as follows:
- a. The Draft CPO Notice; and
 - b. The Draft CPO Print Publication Notice.
74. The CPO Notice will be issued and publicised in a number of different ways in order to ensure that it is received by as many members of the Proposed Classes as possible. The Proposed Class Representative has considered the guidance in paragraph 6.63 of the Guide and has prepared a detailed proposal for how the CPO Notice will be published, which is contained in paragraphs 6.2 to 6.28 of the Angeion Plan.
75. By way of summary, the CPO Notice will be issued and publicised to the members of the Proposed Classes by the following methods:
- a. The Claim Website will be updated to include the CPO Notice on the front page of the website. Moreover, all sections of the Claim Website, including the FAQs, will be updated to explain the CPO, with particular reference being made to: (i)

the deadlines established in the CPO; and (ii) how the members of the Proposed Classes can exercise their legal rights (e.g. to opt in or opt out of the claim), and the consequences of doing or not doing so;

- b. A short informative video will be made available on the Claim Website explaining the Proposed Collective Proceedings, the CPO, and what (if any) steps members of the Proposed Classes will need to take;
- c. All members of the Proposed Classes that have registered on the Claim Website to receive updates will receive an email and/or text message notification of the CPO, which contains a link to the CPO Notice;
- d. Byfield will implement an extensive, international public relations campaign to publicise the CPO and CPO Notice. They will contact all UK and international media outlets that have previously reported on the claim and provide them with a briefing on the CPO and any relevant notices. Furthermore, they will also coordinate media interviews with the Proposed Class Representative to further publicise the proceedings.
- e. Class members will be engaged via social media platforms including LinkedIn and Twitter and directed to the Claim Website. Angeion will implement a programmatic display advertising campaign designed to target websites that class members (and their relevant decision-makers) are most likely to visit. The intention is to generate approximately 1.4 million “hits” across desktop, mobile, tablet and other connected devices.
- f. Advertisements and display banners will be placed on the *Financial Times* website and the *Bloomberg Business Week* website.
- g. Advertisements will also be printed in selected newspapers and journals such as *the Economist*, *the Financial Times*, *City A.M.*, *Bloomberg Business Week*, *The Telegraph* and *Euromoney*. The Draft CPO Print Publication Notice has been prepared for this purpose.
- h. Copies of the CPO Notice will be sent by post and/or email to the mailing list of potential class members described at paragraph 56(d) above (excluding any person that has indicated that they do not wish to receive such notifications);
- i. Copies of the CPO Notice will also be sent to the identified global class action specialist firms referred to at paragraph 56(e) above.

- j. Sponsored search listings and search engine optimisation on Google will be arranged to increase “hits” for the Claim Website.

Rule 87, 88, 91 and 92 Notices

76. As explained at paragraph 4.9 of the Angeion Plan, the Proposed Class Representative intends to publish any Rule 87, 88, 91 and 92 Notices by the same methods and in accordance with the same principles as set out above.
77. In relation to each of these Notices, the Proposed Class Representative will have in mind at all times the guidance in paragraph 6.63 of the Guide, with a view to adopting a method of notification that: (i) ensures the greatest proportion of members of the Proposed Classes receive the notice; while having regard to (ii) the practicability and expense of giving notice, as well as the relative importance of that particular notice.

Notification and publicity during the Recovery Stage

78. As explained at paragraph 8.1 of the Angeion Plan, the ultimate size and scope of the Notice Plan following any award of damages or settlement (at the “**Recovery Stage**”) will depend on the size and scope of any aggregate damages obtained for the Classes.
79. The Proposed Class Representative envisages that it will be necessary to prepare a notice informing class members of their ability to claim and explaining the process for doing so (a “**Recovery Notice**”).
80. By way of summary, it is envisaged that the Recovery Notice will be issued and publicised to the members of the Proposed Classes by the following methods:
 - a. The Claim Website will be updated to include the Recovery Notice on the front page of the website. Moreover, all sections of the Claim Website, including the FAQs, will be updated to explain how class members can make their application for a payment from the damages award, with particular reference being made to: (i) the process for making a claim; (ii) the deadlines for doing so; and (iii) the information that will be required.
 - b. A short informative video will be made available on the Claim Website explaining the steps that class members will need to take in order to claim their share of any damages.

- c. All members of the classes that have registered on the Claim Website to receive updates or have opted in will receive an email and/or text message notification, which contains a link to the Recovery Notice.
- d. Byfield will implement an extensive public relations campaign to publicise the Recovery Notice. They will contact all UK media outlets that have previously reported on the claim and provide them with a briefing on the process for claiming damages.
- e. Class members will be engaged via social media platforms including LinkedIn and Twitter and directed to the Claim Website. Programmatic display advertising will be used again to target websites that class members (and their relevant decision-makers) are most likely to visit.
- f. Advertisements and display banners will be placed on the *Financial Times* website.
- g. Advertisements will also be printed in selected newspapers and journals such as *the Economist*, *the Financial Times*, *City A.M.* and *The Telegraph*.
- h. Copies of the Recovery Notice will be sent by post and/or email to the mailing list of potential class members described at paragraph 56(d) above;
- i. Copies of the Recovery Notice will also be sent to the identified class action specialist firms referred to at paragraph 56(e) above.
- j. Sponsored search listings and search engine optimisation on Google will be arranged to increase “hits” for the Claim Website.

Dealing with inquiries from members of the Proposed Classes

- 81. The Proposed Class Representative understands that members of the Proposed Classes are likely to have queries regarding the Proposed Collective Proceedings, and he intends to operate openly and to communicate as clearly and as effectively as possible with them (as explained at paragraph 58 of the Proposed Class Representative’s witness statement).
- 82. With these objectives in mind, the Proposed Class Representative has considered the most efficient and proportionate way to deal with individual enquiries, having particular regard to the size of the class and the need to appropriately manage the costs of the Proposed Collective Proceedings.

83. Furthermore, the Proposed Class Representative considers that the methods of dealing with enquiries might vary depending on the requirements of each stage of the Proposed Collective Proceedings. As such, it is proposed that enquiries will be dealt with as follows:

a. Prior to any award of damages:

- i. The FAQs on the Claim Website will contain information about the Proposed Collective Proceedings and the different stages involved which will be updated as necessary;
- ii. Persons who have registered on the Claim Website will be notified of any updates;
- iii. The Claim Website will have functionality so that persons can submit questions or make comments by both email and by online form. These will be monitored and used to inform FAQ updates throughout the Proposed Collective Proceedings; and
- iv. An Interactive Voice Recording (“**IVR**”) phone line will provide information about the Proposed Collective Proceedings to interested persons. Users of the IVR will be able to briefly describe their query before being directed to a pre-recorded answer.

b. Following judgment/settlement and an award of damages:

- i. The Claim Website (including FAQs) will be updated to explain the consequences of any judgment or settlement and how class members can obtain their share of any damages;
- ii. Short videos will be posted to the Claim Website describing the process for filing an online claim and next steps;
- iii. A freephone number will route class members to an IVR recorded message, which will explain the consequences of any judgment or settlement and how class members can obtain their damages;
- iv. Additionally, class members will be able to access live operators who will answer any questions about the claims process; and
- v. Class members will be provided with a dedicated email address to make enquiries in relation to recovery of damages.

84. These methods for dealing with enquiries and comments from members of the Proposed Classes are considered to be the most suitable, efficient and proportionate approaches, having regard to the size of the Proposed Classes. These proposals also ensure that the Proposed Class Representative can conduct these proceedings within the proposed budget (as to which, see paragraph 148 below), while ensuring that members of the Proposed Classes remain fully informed in relation to all important developments.

GOVERNANCE & CONSULTATION

85. Rule 78(3)(c) of the CAT Rules specifies that the litigation plan should include a “*procedure for governance and consultation which takes into account the size and nature of the class*”. As explained in paragraph 16 above, number of potential members of the Proposed Classes is substantial and ranges between: (i) 14,201 – 42,015 members of Class A; and (ii) 27,814 - 42,015 members of Class B. They comprise a range of persons and entities from high net worth individuals to hedge funds to SMEs.
86. As such, the Proposed Class Representative considers that it would be impracticable to consult individually and directly with all members of the Proposed Classes. However, as explained in paragraphs 81 – 84 above, members of the Proposed Classes will be able to contact the Proposed Class Representative in a variety of ways. In particular:
- a. The Claim Website will have functionality so that persons can submit questions or make comments by both email and by online form. These will be monitored and used to inform FAQ updates throughout the Proposed Collective Proceedings;
 - b. An Interactive Voice Recording (“**IVR**”) phone line will provide information about the Proposed Collective Proceedings to interested persons. Users of the IVR will be able to briefly describe their query before being directed to a pre-recorded answer.
 - c. After any judgment or settlement, class members will be able to access live operators who will assist them with questions about the Claims Process.
87. The Proposed Class Representative considers that these methods of communication, along with the variety of ways in which he proposes to publicise the Proposed

Collective Proceedings and any material developments, demonstrate his commitment to operating as openly, transparently and responsively as possible vis-à-vis the members of the Proposed Classes.

Consultative Panel

88. Further, the Proposed Class Representative has considered other ways in which he would be assisted in acting at all times in the best interests of the Proposed Classes.
89. In particular, the Proposed Class Representative has sought to ensure that he has access to a wide range of knowledge, experience and expertise in relation to the matters which he will need to consider when taking decisions in the Proposed Collective Proceedings. He has therefore convened a consultative panel of experts (the “**Consultative Panel**”). Full details of the Consultative Panel and its role are provided at paragraph 58 - 63 of the Proposed Class Representative’s witness statement, and a copy of the terms of reference are exhibited at PGE2.
90. By way of summary, the Consultative Panel is comprised of the following members:
 - a. The Lead Panel Member is Lord Carlile of Berriew CBE QC. Lord Carlile is a crossbench member of the House of Lords who was a part time judge for 28 years in the High Court and is a former member of the Competition Appeal Tribunal.
 - b. 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.
 - c. As explained further at paragraph 60 of Mr Evans’ First Witness Statement, Mr Phelim Keogan was also a member of the Consultative Panel and contributed specialist knowledge in the field of FX trading. Due to professional commitments, Mr Keogan stepped down from the panel on 22 November 2019, and Mr Evans intends to appoint a further panel member with a similar professional background and expertise shortly.

91. As will be evident from the above, the Consultative Panel has been carefully assembled in order to ensure that it contains expertise across the areas material to the Proposed Collective Proceedings. This will ensure that the Proposed Class Representative will have access to a range of expert and experienced views when conducting the Proposed Collective Proceedings.
92. The Proposed Class Representative has emphasised in his witness statement at paragraph 58 - 63 that he is keen to make active use of the Consultative Panel in order to discuss and test his decisions to ensure that they are always made in the best interests of the Proposed Classes. However, all decisions will be taken by the Proposed Class Representative, and will be his responsibility alone.

Class records

93. Rule 83(1) of the CAT Rules states that after a CPO has been made, the class representative shall establish a register on which it shall record "*the names of those class members who, in accordance with rule 82, opt in to or opt out of the proposed collective proceedings.*" Further, Rule 83(2) of the CAT Rules specifies that the class representative shall, on request, make such register available for inspection by the Tribunal or any defendant, and by such other person as the Tribunal made direct.
94. The Proposed Class Representative intends to establish class records for the Proposed Classes by keeping an electronic database of persons submitting opt-out and opt-in requests. This register will be managed by Angeion: see paragraph 7.9 of the Angeion Plan. Each request will be assigned a unique number for tracking. Reports on each list will be made available, as required by the Tribunal. This information will be stored securely, in compliance with all applicable data protection and privacy laws and consistent with industry standards.

EVIDENCE & WITNESSES

The degree of disclosure likely to be required in the Proposed Collective Proceedings

95. The provisions governing disclosure which are likely to be relevant to the Proposed Collective Proceedings are Rules 60-65 and 89 of the CAT Rules. In particular, Rule 89(1) states that, in addition to the Tribunal's general powers under the Rules to order disclosure, it may order, on any terms it thinks fit, disclosure to be given:

- a. By any party to the Proposed Collective Proceedings to any other party;
 - b. By the class representative to any or all represented persons; and
 - c. By any represented person to any other represented person (including a person within a different sub-class), the class representative or the defendant.
96. This section details the degree of disclosure likely to be required in the Proposed Collective Proceedings, taking the following types of disclosure in turn:
- a. Disclosure by the Proposed Defendants;
 - b. Disclosure by the Proposed Class Representative; and
 - c. Disclosure by any non-party to the Proposed Collective Proceedings.

Disclosure by the Proposed Defendants

97. The Proposed Class Representative is aware that the Tribunal generally discourages requests for disclosure as part of an application for a CPO, save where it appears that specific and limited disclosure is necessary in order to determine whether the claims are suitable to be brought in collective proceedings. This is explained at paragraph 6.28 of the Guide as follows:

The Tribunal does not encourage requests for disclosure as part of the application for a CPO. However, where it appears that specific and limited disclosure or the supply of information (cf Rule 53(2)(d)) is necessary in order to determine whether the claims are suitable to be brought in collective proceedings (see Rule 79(1)), the Tribunal may direct that such disclosure or information be supplied prior to the approval hearing.

98. In order to obviate the need for disclosure from the Proposed Defendants, and to set out his claims in the Collective Proceedings Claim Form in as much detail as possible, the Proposed Class Representative has applied for and obtained disclosure of the non-confidential versions of the Decisions from the Commission itself: see paragraph 118 below.
99. Nevertheless, the Proposed Class Representative also intends to seek disclosure of the confidential versions of the Decisions from the Proposed Defendants once it has issued these proceedings. In this regard, it is understood that the respondents to the CPO application made by Michael O'Higgins FX Class Representative Limited (see paragraph 63 above) will disclose redacted copies of the confidential versions of the

Decisions into a confidentiality ring.³³ As the respondents in that application are also Proposed Defendants in the present Proposed Collective Proceedings, and in view of the overlaps between the Proposed Collective Proceedings and the O'Higgins Application, the Proposed Class Representative will be seeking the same treatment.

100. Otherwise, the Proposed Class Representative does not intend to seek any further disclosure from the Proposed Defendants prior to the grant of the CPO.

Disclosure by the Proposed Defendants after a CPO is granted

101. In the event that the Tribunal grants a CPO in respect of the Proposed Collective Proceedings, the Proposed Class Representative will seek disclosure of all documents in the Commission's case file(s) for the Decisions.
102. As with the matters discussed in paragraph 99 above, it may well be that the Proposed Defendants would require the establishment of a confidentiality ring.
103. Aside from this disclosure, the present intention of the Proposed Class Representative (given the significant asymmetry of information that exists between the parties) will be to request that the Tribunal decide pursuant to Rule 60(2)(a) of the CAT Rules that a disclosure report and a completed Electronic Disclosure Request should be filed at the earliest opportunity. It is anticipated that disclosure by the Proposed Defendants is likely to be a substantial exercise.
104. It is difficult at this stage for the Proposed Class Representative to identify specific categories of documents that will need to be disclosed and/or the custodians of such documents. However, the Proposed Class Representative will be seeking disclosure of two categories of documents in particular:
- a. Data concerning the Proposed Defendants' FX transactions. As explained further in the report of Mr Ramirez, such data is necessary in order to quantify the losses suffered by members of the Proposed Classes. The Proposed Class Representative will further particularise the exact data required at the appropriate stage in the Proposed Collective Proceedings; and
 - b. Given that the infringements identified by the Decisions predominantly occurred in online professional chatrooms, the Proposed Class Representative

³³ See paragraphs 5-6 of the Tribunal's Order of 6 November 2019 in Case 1329/7/7/19. Available online at: https://www.catribunal.org.uk/sites/default/files/2019-11/1329_O%27Higgins_Directions_order_061119.pdf.

will be seeking the transcripts of those chatrooms to the extent they are not disclosed as part of the Commission's file(s).

105. Aside from this, and in general terms only, the Proposed Class Representative considers that further disclosure is likely to relate to the following issues:
- a. The nature and scope of the infringements identified in the Decisions, to the extent that such information cannot be obtained from disclosure of the Commission's file;
 - b. The means or methods by which bid-ask spreads applicable to FX Spot Transactions and FX Outright Forward transactions are set by the Proposed Defendants, including via any electronic trading platforms;
 - c. Any "spread matrices" issued by the Proposed Defendants;
 - d. The methods of trading used by the Proposed Defendants in respect of FX Spot Transactions and FX Outright Forward Transactions;
 - e. The locations in which the Proposed Defendants maintain FX trading desks and/or undertake FX trading activities; and
 - f. Information relevant to the quantification of the value of commerce and any overcharge on FX Spot Transactions and/or FX Outright Forward Transactions.

Disclosure by the Proposed Class Representative

106. It is not anticipated that the Proposed Class Representative will be required to make or will be capable of making any relevant disclosure to the Proposed Defendants, given that: (i) he is not a member of the Proposed Classes; and (ii) he has no direct knowledge of the issues in these Proposed Collective Proceedings.
107. However, it is recognised that the Proposed Defendants may have an interest in obtaining information relating to the funding arrangements entered into by the Proposed Class Representative (as to which, see paragraphs 34 - 37 above).

Disclosure by a non-party to the Proposed Collective Proceedings to the Proposed Class Representative

108. Rule 63 of the CAT Rules provides that the Tribunal may make a disclosure order against third parties who are not a party to the Proposed Collective Proceedings only where:

- a. The documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings (Rule 63(3)(a)); and
 - b. Disclosure is necessary in order to dispose fairly of the claim or to save costs.
109. Save in the case of data from Electronic Broking Services, which is discussed further in paragraph 113 below, the Proposed Class Representative does not presently intend to make any other applications for disclosure by third parties as envisaged by Rule 63 of the CAT Rules, although he will continue to keep this under review. Nevertheless, the Proposed Class Representative will be seeking by other means disclosure of relevant material from third parties for use in the Proposed Collective Proceedings, namely:
- a. FX trading data from third party electronic platforms; and
 - b. Documents concerning other extant proceedings relating to infringements of competition law concerning FX trading

FX trading data from third party electronic platforms

110. As explained further in the expert report of Mr Ramirez at paragraphs 99(b) – (c) and 100, the Proposed Class Representative intends to make use of trading data from third-party platforms in order to assist with calculating the loss suffered by members of the Proposed Classes. This includes:
- a. Data on quotes and transactions from the inter-dealer platforms Electronic Broking Services (“**EBS**”) and Thomson Reuters Matching (“**Reuters**”);³⁴
 - b. Data from multi-bank platforms,³⁵ such as Cboe FX; and
 - c. Data from CLS Bank International, which is a platform set up by a group of major FX market participants for settling FX transactions.
111. As to the availability of this data:

³⁴ Inter-dealer trading involves FX trading between FX dealers in order to, for example, obtain currency (known as “inventory”) to service their customer trades and for speculation purposes. It is explained further in paragraphs 161 – 166 of the expert report of Mr Knight. As Mr Knight explains at paragraph 163 the majority of inter-dealer trading takes place on EBS and Reuters.

³⁵ Multi-bank platforms are platforms whereby a customer can trade with multiple FX dealers at the same time. This is explained further in paragraphs 179 - 180 of the expert report of Mr Knight.

- a. Mr Ramirez has contacted Reuters, Cboe FX and CLS Bank and confirmed that data would be available for the purposes of the Proposed Collective Proceedings. Samples of that data are included at paragraphs 103, 137 and 138 respectively, of his report.
 - b. Mr Ramirez continues to investigate other potential sources of FX trading data, such as data that may be available from the multi-bank platforms FXall, FX Connect, 360T and Currenex.³⁶
112. A fee would be payable to obtain data from Reuters, Cboe FX and CLS Bank. Accordingly, if the Tribunal were to grant a CPO in respect of the Proposed Collective Proceedings, the Proposed Class Representative would seek to purchase data from these and any other relevant sources that may be identified during the course of these proceedings.
113. EBS has indicated that they would not provide data for purchase for the purposes of litigation. However, it is to be noted that EBS data was available to the parties in the US Class Action proceedings concerning FX trading, as is noted in the report of Mr Ramirez at paragraph 103. Accordingly, if the Tribunal were to grant a CPO in respect of the Proposed Collective Proceedings, and EBS continued to refuse to provide FX trading data, the Proposed Class Representative will, if necessary, make an application to the Tribunal for a disclosure order pursuant to Rule 63 of the CAT Rules.

Documents concerning other extant proceedings

114. Aside from the O'Higgins Application (see paragraph 63 above), the Proposed Class Representative is aware of other claims that have been made in respect of infringements of competition law concerning FX trading. They are:
- a. *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.
 - b. 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.

³⁶ See paragraph 137 of the expert report of Mr Ramirez.

- c. *J Wiseby & Associates Pty Ltd v UBS AG & Ors*, a class action commenced in the Federal Court of Australia on 27 May 2019 under Case Number VID567/2019.
 - d. A claim issued before the English High Court (Commercial Court) under CL-2018-000840 *Allianz Global Investors GmbH and others v Barclays Bank PLC and others*.
115. It is likely that the issues raised in those proceedings may be relevant to the Proposed Collective Proceedings, in particular relating to the loss and damage caused by the infringements established in the Decisions.
116. As such, the Proposed Class Representative has (via his legal representatives) already obtained access to the following documents relating to these proceedings:
- a. Publicly available Court documents and orders made in each of the Australian, United States and Canadian FX proceedings.
 - b. The statements of case (namely, the Amended Particulars of Claim, the Defences and the Reply) in the *Allianz* proceedings.
117. The legal representatives of the Proposed Class Representative will continue to monitor the progress of these proceedings, and any other proceedings that may be issued in the future and will seek access to relevant documents (such as further pleadings, witness statements, expert reports and submissions) in due course. This may entail application(s) to the relevant court (or the Tribunal) for an order requiring disclosure.

Disclosure of the Decisions from the Commission

118. It will not be necessary for the Proposed Class Representative to seek disclosure of the non-confidential versions of the Decisions from the Proposed Defendants, as he has obtained copies of these from the Commission pursuant to the Access to Documents Regulation.³⁷ Copies of the Decisions were provided to the legal representatives of the Proposed Class Representative on 1 October 2019. Further details of the steps taken to obtain the Decisions are set out in paragraph 15 of the witness statement of Anthony John Maton.

³⁷ This is Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2011 regarding public access to European Parliament, Council and Commission documents. [2011] OJ L 145, p.3.

Disclosure from individual members of the Proposed Classes

119. In general, it is not anticipated that members of the Proposed Classes would be required to provide disclosure, for two reasons:
- a. As noted in paragraph 21 of the Collective Proceedings Claim Form, the members of the Proposed Classes have no direct knowledge of the issues raised in these Proposed Collective Proceedings; and
 - b. As explained in paragraphs 153 - 166 of the Collective Proceedings Claim Form, the Proposed Class Representative seeks an aggregate award of damages, which would not be calculated by reference to the particular situation of any individual member of the Proposed Classes.
120. However, as noted in paragraph 42 above, it is anticipated 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 Proposed Collective Proceedings, so their transactions can be included in the claim. The Proposed Defendants may request disclosure of that data.
121. Furthermore, as explained below, it is possible that members of the Proposed Classes will disclose their individual FX trading data for the purposes of distributing any aggregate award of damages. However, that data would not be disclosed to the Proposed Defendants, who would not be involved in the process of distribution of any aggregate award of damages.

Exchange of documents and issues of e-disclosure

122. It follows from the above that, save for the possible disclosure of transaction data provided by class members opting-in to the Proposed Collective Proceedings, disclosure to the Proposed Defendants by either: (i) the Proposed Class Representative; and/or (ii) members of the Proposed Classes, is considered unlikely. Therefore, it is not anticipated that there will be any substantial “exchange” of documents in these Proposed Collective Proceedings. Instead, the Proposed Class Representative considers that the vast majority of disclosure will be provided by the Proposed Defendants.
123. Therefore, the Proposed Class Representative will invite the Proposed Defendants to make any proposals necessary for the management of disclosure, including issues of e-disclosure, at the earliest possible stage in proceedings. Where necessary and appropriate, the Proposed Class Representative will respectfully invite the Tribunal to

use its active case management powers under Rule 4 of the CAT Rules in relation to disclosure in order to ensure that the Proposed Defendants fully co-operate with the Proposed Class Representative. This would be in accordance with the CAT's statement at paragraph 5.87 of the Guide that "*the Tribunal will expect the parties to pay close attention to the requirement of co-operation in Rule 4(7) and to the need to devise a sensible and practicable approach to the conduct of proceedings*".

124. In order to facilitate the disclosure process, the Proposed Class Representative has engaged FRP Advisory to, amongst other things, host and process electronic documents provided by the Proposed Defendants. FRP Advisory will be able to engage with Proposed Defendants where necessary on e-disclosure.

Identification of witnesses and steps that will be taken to establish their evidence

125. As is discussed further below in the "Expert Evidence" section below, the Proposed Collective Proceedings raise a number of complex issues which will need to be determined at trial. It is anticipated that the Proposed Defendants may seek to adduce evidence of fact from multiple witnesses relating, for example, to the nature and scope of the infringements established in the Decisions and/or their impact on the relevant markets.
126. The Proposed Class Representative anticipates at this early stage of proceedings that the vast majority of evidence presented on his behalf in the Proposed Collective Proceedings will be expert evidence. In line with the observations at paragraph 21 of the Collective Proceedings Claim Form, it is considered unlikely that any individual members of the Proposed Classes would be witnesses in the Proposed Collective Proceedings.

Expert evidence

127. The Proposed Collective Proceedings raise a number of highly specialist and technical issues relating to, for example: (i) the nature of FX trading; (ii) the structure of FX market(s); (iii) the impact of the infringements established in the Decisions on the relevant markets; and (iv) the quantification of loss.
128. As such, the Proposed Class Representative has already instructed the following experts and will seek the Tribunal's permission to call them as experts in the Proposed Collective Proceedings:

- a. Mr Richard Knight, an expert in FX markets with over 25 years of experience obtained via employment with major banks in various roles in FX sales between 1988 and 2013. Mr Knight will assist the Tribunal with expert evidence relating to, *inter alia*, the structure and operation of FX markets and the relevant FX instruments.
 - b. Professor Dagfinn Rime, Professor of Finance at the BI Norwegian Business School. Professor Rime is an expert in FX market microstructure, and will assist the Tribunal with expert evidence explaining, *inter alia*, the impact of the infringements identified in the Decisions on the FX transactions covered by the Proposed Classes.
 - c. Mr John Ramirez, Managing Director of Econ One Research, Inc., an economic consulting firm headquartered in Los Angeles, California. Mr Ramirez is an expert competition economist and will assist the Tribunal with expert evidence covering, *inter alia*, the quantification of damages suffered by members of the Proposed Classes. In particular, Mr Ramirez's report in support of the CPO Application explains how it is proposed that damages be suitably calculated for the Classes on an aggregate basis. Mr Ramirez's report also considers how pass on could be assessed and calculated on an aggregate basis in the event that it is raised as a defence by the Proposed Defendants.
129. The Proposed Class Representative has also engaged Mr Frank Ilett and Mr Bruno Augustin of Haberman Ilett. Mr Ilett and Mr Augustin are expert forensic accountants, who will assist the Tribunal in providing evidence relating to any matters of forensic accounting that arise in the course of the Proposed Collective Proceedings. It is envisaged that Mr Ilett and Mr Augustin will also provide evidence in relation to the interest that should be applied to any damages awarded in favour of members of the Proposed Classes.
130. To the extent that the Proposed Defendants raise any arguments that members of the Proposed Classes passed on damages, the Proposed Class Representative may instruct further experts, including, if appropriate, experts in the investment funds sector.
131. While each of the experts will provide evidence to the Tribunal on particular issues raised in the Proposed Collective Proceedings, it is intended that these experts will assist the Tribunal overall in: (i) identifying and resolving the common issues arising in the Proposed Collective Proceedings; (ii) the quantification of the loss and damage suffered by members of the Proposed Classes; (iii) the interest that should be applied

to that loss and damage; and (iv) the calculation of the amounts to be paid to each member of the Proposed Classes from any aggregate damages that is awarded or agreed by way of a settlement.

132. Mr Knight, Professor Rime and Mr Ramirez have produced expert reports which have been attached to the Collective Proceedings Claim Form.
133. If the Proposed Class Representative considers that any additional expert evidence is required in order to assist the Tribunal, he will make such a proposal after the CPO has been granted and the pleadings are closed. That is presently considered to be unlikely.
134. It is anticipated that the Proposed Defendants will instruct experts, in particular an expert economist. It is anticipated that the Proposed Defendants might not need to instruct an expert in relation to the structure and operation of FX markets, as they already have substantial knowledge of these matters in the course of their business. However, they may seek to rely on an expert in FX market microstructure.

LITIGATION TIMETABLE

135. A proposed timetable for the litigation is included at Annex 3. Given the early stage of the Proposed Collective Proceedings, the proposed timetable is capable of providing a range of estimates only at this stage and does not reflect any input from the Proposed Defendants. Nevertheless, the proposed timetable takes account of the dates fixed by the Tribunal in respect of the O'Higgins Application, insofar as these might be relevant to the Proposed Collective Proceedings.

DAMAGES & COSTS

Distribution of an aggregate award of damages

136. As noted at paragraph 114 above, there are class action proceedings before both the Canadian and US courts in relation to FX trading. In considering the appropriate distribution of any aggregate award of damages, the Proposed Class Representative has reviewed the Distribution Plans adopted in both Canada (the "**Canadian Distribution Plan**") and the United States (the "**US Distribution Plan**"). Whilst the classes of Claimant in those proceedings differ in certain respects from the Proposed

Classes in the Proposed Collective Proceedings, the US and Canadian Distribution Plans are nonetheless informative.

137. There are two classes of Claimant in the US proceedings: (i) the “direct settlement” class who entered into FX transactions directly with a Defendant; and (ii) the “exchange-only” class who entered into FX transactions otherwise during the relevant period.
138. In summary, pursuant to the US Distribution Plan:
- a. Class members are required to submit a claim form setting out their FX trading history.
 - b. The administrator then calculates the gross volume of the Claimant’s FX trades (the “**Transaction Volume**”). Members of the direct settlement class can choose whether this is done on an “estimated” basis, using transaction data supplied by the Defendants, or on a “documented claim” basis, whereby Claimants submit specified documents in order to prove the volume of their FX trades. In the case of the exchange-only class members, the calculation is done on the “documented claim” basis.
 - c. Adjustments are made to the Transaction Volume to reflect (i) the sensitivity of the FX instrument to the spot rate; (ii) the relative liquidity of the currency pairs traded by the Claimant; (iii) the size of the Claimant’s Transaction Volume; and (iv) the time period during which the trades took place. As a result of these adjustments, each Claimant is given an “Eligible Participation Amount”.
 - d. Claimants entitled to a payment of \$15 or less are offered a payment of \$15. Similarly, Claimants entitled to a payment of between \$16 and \$150 are offered a payment of \$150. All other Claimants receive a share of the settlement fund proportionate to their Eligible Participation Amount.
139. In the Canadian proceedings, the Claimants are split into two different classes: (i) Claimants who entered into FX instruments directly with a financial institution (including but not limited to the Defendants) (the “**Direct Class**”); and (ii) Claimants who entered into FX instruments indirectly through an intermediary and/or through an investment vehicle (the “**Indirect Class**”).
140. Pursuant to the Canadian Distribution Plan:
- a. Direct Claimants are required to submit FX trading history information to enable the administrator to calculate their gross transaction volumes.

- b. Similar adjustments to those in the US Distribution Plan are then made in order to arrive at an “Eligible Participation Amount”.
 - c. 80% of the settlement fund is divided between the Direct Claimants in proportion to their Eligible Participation Amounts, save that no payment is made to Direct Claimants who would receive less than \$20.
 - d. Indirect Claimants are required to submit information regarding their investment holdings. The Administrator will then determine whether those holdings are included in its list of investment vehicles that entered into FX transactions.
 - e. 20% of the settlement fund is divided between the Indirect Claimants with fixed sums payable based on the size of the Claimants’ investments.
141. In order to enable the Tribunal to issue directions in accordance with Rule 92 of the CAT Rules, the Proposed Class Representative will put forward to the Tribunal at the appropriate time a proposed method for the distribution of any aggregate award of damages. This may be informed by the approach taken in the US and/or Canadian Distribution Plans, as summarised above.
142. It must be emphasised that the appropriate method of distribution will be affected by the quantum of any award of damages or settlement sum. Nevertheless, the Proposed Class Representative has summarised below, on an indicative basis only, some of the principles that might be adopted in approaching the issue of distribution in the Proposed Collective Proceedings.
143. The Proposed Class Representative intends that the award of damages or settlement sum will be divided between all members of the Proposed Classes (including class members who have opted in) using the same data used to calculate loss (employing appropriate estimates where necessary) with class members’ shares adjusted in order to achieve the following outcomes (where this is feasible):
- a. A Class member’s share of the damages or settlement fund should reflect the volume of relevant FX transactions entered into by that class member.
 - b. A Class member’s share of the damages should be adjusted in light of factors which affected the loss suffered by that class member as a result of the

infringements of Article 101 TFEU and Article 53 EEA, including, for example, the relative liquidity of the currency pairs traded by the class member.³⁸

c. All Class members should receive at least a minimum payment.

144. Class members will be invited to submit claim forms providing the information necessary in order to ascertain their share of the damages or settlement sum on the basis of the calculation outlined above. It is likely that that information will include, amongst other things, information as to (i) their volume of relevant FX transactions; and (ii) the currency pairs traded by the class member.
145. The Proposed Class Representative is keen to minimise the burden on class members in this regard. Insofar as it is practicable for class members' share of the damages or settlement sum to be ascertained on the basis of transaction data provided by the Defendants (whether on an estimated basis or otherwise), the Proposed Class Representative intends to make that option available to class members.
146. At the appropriate time in the proceedings, the Proposed Class Representative will also provide to the Tribunal a detailed methodology and process from Angeion addressing how individual class members will claim their share of any award of damages and how their claims will be processed, verified and paid out.

Costs, fees and disbursements

147. Rule 78(3)(c) of the CAT Rules requires that the Litigation Plan should include "*any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide.*" In this regard, it is anticipated that this aspect of the Litigation Plan will be updated in response to any further Orders from the Tribunal.
148. Nevertheless, the Proposed Class Representative has produced a costs budget for the Proposed Collective Proceedings, which is attached to this Litigation Plan at Annex 2.

³⁸ The time period of the infringements identified in the Decisions is considerably shorter than the time periods covered in the US and Canadian Proceedings. Accordingly, the Proposed Class Representative does not at present consider that it will be necessary to adjust class members' shares of any aggregated damages or settlement sum to reflect the time periods during which their trades took place.

149. As explained at paragraphs 75 – 79 of the Proposed Class Representative’s witness statement, the arrangements entered into relating to the funding of the Proposed Collective Proceedings are as follows:
- 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, which has agreed to provide funding of up to £18,654,088 (including total pre-CPO funding commitment of £4,294,366).
 - b. The Funder has agreed to indemnify the Proposed Class Representative in respect of any costs orders the Proposed Class Representative becomes liable to pay up to the final determination of the Proposed Class Representative’s CPO application; and
 - c. The Proposed Class Representative has obtained after-the-event (ATE) insurance from Quantum Legal Costs Cover Limited as managing underwriting agent for Hamilton Insurance DAC, which will cover any adverse costs orders in favour of the Proposed Defendants in respect of recoverable costs incurred after the Proposed Class Representative’s CPO application is finally determined, to the sum of £10 million.
150. 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.

CONCLUSIONS

151. The Proposed Class Representative considers that the matters set out in this Litigation Plan meet all of the requirements in the CAT’s Rules and Guide, and demonstrates that he will fairly and adequately act in the best interests of the members of the Proposed Classes.