

Form 17

Rule 8.05(1)(a)

Amended Statement of Claim

(Amended on 19 November 2021 pursuant to leave granted by the Honourable Justice
Beach on 16 November 2021)

No. VID 567 of 2019

Federal Court of Australia

District Registry: Victoria

Division: General

J WISBEY & ASSOCIATES PTY LTD (ACN 001 959 851)

Applicant

UBS AG (ABN 47 088 129 613) and others named in the Schedule

First Respondent

NOTE

References in this Amended Statement of Claim to provisions of the *Trade Practices Act 1974* (Cth) and the *Competition and Consumer Act 2010* (Cth) are to those provisions as in force during the Relevant Period as defined below.

DEFINITIONS

In this Statement of Claim:

Filed on behalf of (name & role of party)	The Applicant, J Wisbey & Associates Pty Ltd (ACN 001 959 851)
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Affected Currency Pairs means the Australian dollar (**AUD**), British pound (**GBP**), Euro (**EUR**), Japanese yen (**JPY**), New Zealand dollar (**NZD**) or the US dollar (**USD**) paired with another currency from any of the following: AUD, Brazilian real (**BRL**), GBP, Canadian dollar (**CAD**), Chinese yuan (**CNY**), Czech koruna (**CZK**), EUR, Hong Kong dollar (**HKD**), Hungarian forint (**HUF**), Indian rupee (**INR**), Indonesian rupiah (**IDR**), Israeli shekel (**ILS**), JPY, Malaysian ringgit (**MYR**), Mexican peso (**MXN**), NZD, Norwegian krone (**NOK**), Polish zloty (**PLN**), Romanian leu (**RON**), Russian ruble (**RUB**), Singapore dollar (**SGD**), South African rand (**ZAR**), South Korean won (**KRW**), Swedish krona (**SEK**), Swiss franc (**CHF**), Taiwan dollar (**TWD**), Thai baht (**THB**), Turkish lira (**TRY**).

Arranged in Australia means, in relation to an FX Instrument:

- (a) where the FX Instrument is entered into, whether orally, in writing, electronically or otherwise:
 - (i) by the customer or their employee or agent while the customer, employee or agent (as the case may be) is in Australia; and/or
 - (ii) by the Dealer or their employee or agent while the Dealer, employee or agent (as the case may be) is in Australia; and/or
- (b) where the FX Instrument is entered into upon the execution of a Resting Order:
 - (i) which order was placed, whether orally, in writing, electronically or otherwise by a customer or their employee or agent while the customer, employee or agent (as the case may be) is in Australia; and/or
 - (ii) which order was accepted, whether orally, in writing, electronically or otherwise by a Dealer or their employee or agent while the Dealer, employee or agent (as the case may be) is in Australia.

Australian FX Market has the meaning set out in paragraph 17.

CA has the meaning set out in paragraph 1(d)(ii).

CCA has the meaning set out in paragraph 1(d)(i)(C).

Coordinated Trading has the meaning set out in paragraph 23(a)(ii).

Concealment has the meaning set out in paragraph 23(b).

Customers has the meaning set out in paragraph 9.

Dealer means an individual or firm acting as a principal, rather than as an agent, in the purchase and sale of currencies, and the quoting of prices for the purchase and sale of currencies, to customers in the Dealer's capacity as an FX market maker.

ECB Fix is the benchmark exchange rate for about 32 FX currencies traded against the EUR, published daily by the European Central Bank, including Spot Rates for 32 currencies actively traded against the EUR, which is determined as at 2.15pm Central Europe Time (1.15pm London, United Kingdom, time) by capturing the data from currency bids and offers by market participants on or around that time.

Electronic Communication Network means an electronic system that facilitates the trade in Spot and Outright Forwards, including a “single-bank” electronic platform, a “multi-bank” electronic platform, a remittance provider electronic platform, an automated programming interface, a request for quote system and an electronic matching engine.

FX means foreign exchange, being the purchase or sale of a currency against the sale or purchase of another currency.

FX Instruments means Spots and Outright Forwards.

FX Chatroom Understanding has the meaning set out in paragraph 25.

FX Chatroom Understanding Provision has the meaning set out in paragraph 25.

FX Understanding has the meaning set out in paragraph 23.

FX Understanding Provision has the meaning set out in paragraph 23.

Global FX Market has the meaning set out in paragraph 12.

Global Trading Centres has the meaning set out in paragraph 9.

Minimum Transaction Volume means AUD 500,000, calculated by reference to:

- (a) where an individual transaction involves AUD, the AUD amount; and
- (b) where an individual transaction does not involve AUD, the higher of the AUD amount resulting from applying the exchange rate in the table below to each currency in the transaction.

Currency	Rate for exchange into AUD
BRL	0.5677
GBP	1.8338
CAD	1.0565
CNY	0.1668

Currency	Rate for exchange into AUD
CZK	0.0572
EUR	1.5467
HKD	0.1432
HUF	0.0051
INR	0.0198
IDR	0.0001
ILS	0.2853
JPY	0.0120
MYR	0.3399
MXN	0.0845
NZD	0.8059
NOK	0.1836
PLN	0.3595
RON	0.3453
RUB	0.0354
SGD	0.8210
ZAR	0.1251
SEK	0.1499
KRW	0.0010
CHF	1.0979

Currency	Rate for exchange into AUD
TWD	0.0357
THB	0.0326
TRY	0.6482
USD	1.1129

Other Banks has the meaning set out in paragraph 21.

Other Cartel Participants has the meaning set out in particular (iv) to paragraph 23.

Outright Forward means an agreement to exchange sums of currency at an agreed-on exchange rate (cash settlement) on a value date that will be in more than two bank business days' time, but does not include non-deliverable forwards or contracts for difference.

Overt Acts Spreadsheet has the meaning set out in particular (i) to paragraph 23.

Related Bodies Corporate has the meaning set out in paragraph 20.

Relevant Period has the meaning set out in paragraph 1(a).

Resting Order means an instruction from a customer to a Dealer to enter into an FX Instrument if specified conditions are met.

Shared Information has the meaning set out in paragraph 23(a).

Spot means an agreement to exchange sums of currency at an agreed-on exchange rate (cash settlement) on a value date that is within two bank business days' time.

Spot Rate means the exchange rate for a currency pair applicable at any single point in time.

Spread means the difference between the bid and ask price for a currency.

Stop Loss Order means an instruction from a customer to a Dealer to buy or sell a volume of currency if the currency is trading at a specific rate, and is ordinarily placed at a rate that will protect the customer from the market moving against their interest.

TPA has the meaning set out in paragraph 1(d)(i)(C).

WMR Fix means the benchmark exchange rate for various FX currencies published daily by WM/Reuters, which is determined as at 4.00pm London, United Kingdom, time by

capturing the data from currency bids and offers by market participants in the 30 seconds at either side of 4.00pm.

A. THE APPLICANT AND THE GROUP MEMBERS

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on its own behalf and on behalf of all persons who or which:

- (a) at any time during the period commencing on 1 January 2008 and concluding on 15 October 2013 (**Relevant Period**) were party to an FX Instrument or FX Instruments in relation to one or more of the Affected Currency Pairs which was or were Arranged in Australia;
- (b) by reason of the matters alleged in subparagraph 1(a) above, bought and/or sold currency during the Relevant Period to the total value equal to or more than the Minimum Transaction Volume;
- (c) suffered loss or damage by reason of the conduct of one or more of the Respondents as pleaded in this Amended Statement of Claim;
- (d) are not, and were not at any material time:
 - (i) any of:
 - (A) the Respondents;
 - (B) the Other Cartel Participants as defined in this Amended Statement of Claim;
 - (C) a related body corporate of any of the entities referred to in (A) or (B) within the meaning of s 4A of the *Trade Practices Act 1974* (Cth) (**TPA**) and the *Competition and Consumer Act 2010* (Cth) (**CCA**) (as applicable),

save where it was party to an FX Instrument or FX Instruments in accordance with subparagraphs 1(a) and (b) above in its capacity as a custodian, nominee, or trustee for a person who was not one of the entities referred to in (A), (B) or (C);
 - (ii) a director or officer or a close associate of any of the entities referred to in (i) within the meaning of s 9 of the *Corporations Act 2001* (Cth) (**CA**);

- (iii) a Justice, Registrar, District Registrar or Deputy District Registrar of the Federal Court of Australia or the High Court of Australia; or
- (iv) an officer or employee of Maurice Blackburn Lawyers, or a legal representative engaged by Maurice Blackburn Lawyers in this proceeding,

(Group Members).

2. The Applicant:

- (a) is and was at all material times a company incorporated pursuant to the CA and capable of suing in its own name;
- (b) at all material times carried on, and carries on, the business of, inter alia, importing medical, dental and surgical instruments and equipment for distribution in Australia, New Zealand and Pacific Island nations;
- (c) was, during the Relevant Period, party to FX Instruments in relation to several Affected Currency Pairs which were Arranged in Australia; and
- (d) by reason of the matters alleged in subparagraph 2(c) above, bought and/or sold currency during the Relevant Period to the total value equal to or more than the Minimum Transaction Volume.

Particulars

Examples of FX Instruments to which the Applicant was a party during the Relevant Period are set out below.

Date of Transaction	AUD Amount Sold	Exchange Rate	Foreign Currency Amount Bought	Value Date
12 May 2008	AUD 5,378.45	0.6053	EUR 3,255.35	14 May 2008
31 May 2010	AUD 1,393.65	0.6864	EUR 956.60	1 June 2010
24 September 2010	AUD 4,153.74	0.9487	USD 3,940.65	27 September 2010
14 December 2010	AUD 10,834.77	0.9928	USD 10,756.76	15 December 2010

5 2011	October	AUD 2,959.95	0.6167	GBP 1,825.40	6 2011	October
6 2013	January	AUD 5,263.74	1.0457	USD 5,504.29	7 2013	January
26 2013	March	AUD 2,655.83	1.0460	USD 2,778.00	27 2013	March
28 2013	August	AUD 6,781.09	0.5760	GBP 3,905.91	29 2013	August

Further particulars of the FX Instruments to which the Applicant was a party during the Relevant Period will be provided prior to trial.

3. As at the date of the commencement of this proceeding, there are more than seven Group Members.

B. THE RESPONDENTS

4. The First Respondent, UBS AG (**UBS**):
- (a) is and was at all material times a company registered pursuant to the laws of Switzerland;
 - (b) is and was at all material times a foreign corporation within the meaning of the TPA and CCA and capable of being sued;
 - (c) is and was at all material times registered as a foreign company pursuant to Part 5B.2 of the CA;
 - (d) is and was at all material times carrying on a global business as, inter alia, a Dealer in FX Instruments, including in Australia and/or to customers in Australia; and

Particulars

UBS enters into, and has at all material times entered into, FX Instruments through:

- (i) sales desks and/or trading desks in various international locations, including Zurich, Switzerland; Stamford, United States of America; London, United Kingdom; and the Republic of Singapore;
- (ii) Electronic Communication Networks; and/or
- (iii) brokers, including voice brokers.

During the Relevant Period, UBS, alternatively UBS and its related bodies corporate, accounted for approximately 9% of Spot and Outright Forward trades globally and approximately 10% of Spot and Outright Forward trades in Australia.

Further particulars will be provided upon the completion of discovery.

- (e) was during the Relevant Period carrying on business in Australia within the meaning of s 5 of the TPA and s 5 of the CCA.

Particulars

During the Relevant Period, UBS:

- (i) provided financial services to institutional and retail customers in Australia, including FX services;
- (ii) had a registered office in Sydney, Australia, which was open to the public during certain business hours;
- (iii) had employees in Australia;
- (iv) held an Australian Financial Services Licence which authorised it to carry on a financial services business to provide financial product advice, deal in financial products and make a market for financial products, including in relation to FX contracts;
- (v) was a foreign authorised deposit taking institution under the *Banking Act 1959* (Cth);
- (vi) was a member of the Financial Ombudsman Service; and
- (vii) held a number of Bank State Branch numbers in its name.

Further particulars will be provided upon the completion of discovery.

5. The Second Respondent, Barclays Bank Plc (**Barclays**):

- (a) is and was at all material times a company registered pursuant to the laws of the United Kingdom;
- (b) is and was at all material times a foreign corporation within the meaning of the TPA and the CCA and capable of being sued;
- (c) was during the Relevant Period registered as a foreign company pursuant to Part 5B.2 of the CA;
- (d) is and was at all material times carrying on a global business as, inter alia, a Dealer in FX Instruments, including in Australia and/or to customers in Australia; and

Particulars

Barclays enters into, and has at all material times entered into, FX Instruments through:

- (i) sales desks and/or trading desks in various international locations, including London, United Kingdom; New York, United States of America; the Republic of Singapore; and Tokyo, Japan;
- (ii) Electronic Communication Networks; and/or

(iii) brokers, including voice brokers.

During the Relevant Period, Barclays, alternatively Barclays and its related bodies corporate, accounted for approximately 11% of Spot and Outright Forward trades globally and approximately 10% of Spot and Outright Forward trades in Australia.

Further particulars will be provided following the completion of discovery.

(e) was during the Relevant Period carrying on business in Australia within the meaning of s 5 of the TPA and s 5 of the CCA.

Particulars

During the Relevant Period, Barclays:

- (i) provided financial services in Australia through its 'Investment Bank' division, including FX services;
- (ii) had a registered office in Sydney, Australia, which was open to the public during certain business hours;
- (iii) had employees in Australia;
- (iv) held an Australian Financial Services License which authorised it to carry on a financial services business to provide financial product advice, deal in financial products and make a market for financial products, including in relation to FX contracts; and
- (v) was a foreign authorised deposit taking institution under the *Banking Act 1959* (Cth).

On about 9 December 2016, Barclays, through its local agent, filed with the Australian Securities and Investments Commission a Form 407 entitled "Notification of Cessation, Winding Up or Dissolution of a Foreign Company or Registered Australian Body", which stated that Barclays had "ceased to carry on business in Australia".

Further particulars will be provided upon the completion of discovery.

6. The Third Respondent, Citibank N.A. (**Citibank**):

- (a) is and was at all material times a company registered pursuant to the laws of the United States of America;
- (b) is and was at all material times a foreign corporation within the meaning of the TPA and the CCA and capable of being sued;
- (c) is and was during the Relevant Period registered as a foreign company pursuant to Part 5B.2 of the CA;
- (d) is and was at all material times carrying on a global business as, inter alia, a Dealer in FX Instruments, including in Australia and/or to customers in Australia; and

Particulars

Citibank enters into, and has at all material times entered into, FX Instruments through:

- (i) sales desks and/or trading desks in various international locations, including London, United Kingdom; Tokyo, Japan; the Republic of Singapore; and (until about December 2011) Sydney, Australia;
- (ii) Electronic Communication Networks; and/or
- (iii) brokers, including voice brokers.

During the Relevant Period, Citibank, alternatively Citibank and its related bodies corporate, accounted for approximately 11% of Spot and Outright Forward trades globally and approximately 10% of Spot and Outright Forward trades in Australia.

Further particulars will be provided upon the completion of discovery.

- (e) was during the Relevant Period carrying on business in Australia within the meaning of s 5 of the TPA and s 5 of the CCA.

Particulars

During the Relevant Period, Citibank:

- (i) provided financial services in Australia, including FX services;
- (ii) had a registered office in Sydney, Australia, which was open to the public during certain business hours;
- (iii) had a Spot FX trading desk in Sydney, Australia (until about December 2011);
- (iv) had an exemption from holding an Australian Financial Services License pursuant to Australian Securities and Exchanges Commission Class Order 03/1101;
- (v) was a foreign authorised deposit taking institution under the *Banking Act 1959* (Cth);
- (vi) held a bank account or bank accounts in Australia;

Further particulars will be provided upon the completion of discovery.

7. The Fourth Respondent, JPMorgan Chase Bank N.A. (**JPMorgan**):

- (a) is and was at all material times a company registered pursuant to the laws of the United States of America;
- (b) is and was at all material times a foreign corporation within the meaning of the TPA and the CCA and capable of being sued;
- (c) is and was during the Relevant Period registered as a foreign company pursuant to Part 5B.2 of the CA;

- (d) is and was at all material times carrying on a global business as, inter alia, a Dealer in FX Instruments, including in Australia and/or to customers in Australia; and

Particulars

JPMorgan enters into, and has at all material times entered into, FX Instruments through:

- (i) sales desks and/or trading desks in various international locations, including London, United Kingdom; New York, United States of America; Tokyo, Japan; and Sydney, Australia;
- (ii) Electronic Communication Networks; and/or
- (iii) brokers, including voice brokers.

During the Relevant Period, JPMorgan, alternatively JPMorgan and its related bodies corporate, accounted for approximately 6% of Spot and Outright Forward trades globally and approximately 6% of Spot and Outright Forward trades in Australia.

Further particulars will be provided upon the completion of discovery.

- (e) was during the Relevant Period carrying on business in Australia within the meaning of s 5 of the TPA and s 5 of the CCA.

Particulars

During the Relevant Period, JPMorgan:

- (i) provided financial services in Australia, including FX services;
- (ii) had a registered office in Sydney, Australia, which was open to the public during certain business hours;
- (iii) held an Australian Financial Services Licence which authorised it to carry on a financial services business to provide financial product advice, deal in financial products and make a market for financial products, including in relation to FX contracts;
- (iv) was a foreign authorised deposit taking institution under the *Banking Act 1959* (Cth); and
- (v) held at least one Bank State Branch number in its name.

In about 2013, "JPMorgan" became a member of the Australian Foreign Exchange Committee, which is, and was at all material times, a representative forum for the FX market in Australia, operating under the sponsorship of the Reserve Bank of Australia.

Further particulars will be provided upon the completion of discovery.

8. The Fifth Respondent, NatWest Markets Plc, formerly known as The Royal Bank of Scotland Plc (**RBS**):

- (a) is and was at all material times a company registered pursuant to the laws of the United Kingdom;
- (b) is and was at all material times a foreign corporation within the meaning of the TPA and the CCA and capable of being sued;
- (c) was during the Relevant Period registered as a foreign company pursuant to Part 5B.2 of the CA;
- (d) is and was at all material times carrying on a global business as, inter alia, a Dealer in FX Instruments, including in Australia and/or to customers in Australia; and

Particulars

RBS enters into, and has at all material times entered into, FX Instruments through:

- (i) sales desks and/or trading desks in various international locations, including London, United Kingdom; Connecticut, United States of America; Hong Kong, the People's Republic of China; the Republic of Singapore; and (between about 2008 and about 2012) Tokyo, Japan;
- (ii) Electronic Communication Networks; and/or
- (iii) brokers, including voice brokers.

During the Relevant Period, RBS, alternatively RBS and its related bodies corporate, accounted for approximately 5% of Spot and Outright Forward trades globally and approximately 4% of Spot and Outright Forward trades in Australia.

Further particulars will be provided upon the completion of discovery.

- (e) was during the Relevant Period carrying on business in Australia within the meaning of s 5 of the TPA and s 5 of the CCA.

Particulars

During the Relevant Period, RBS:

- (i) provided financial services in Australia, including FX services;
- (ii) had a registered office in Sydney, Australia, which was open to the public during certain business hours;
- (iii) held an Australian Financial Services License which authorised it to carry on a financial services business to provide financial product advice, deal in financial products and make a market for financial products, including in relation to FX contracts;
- (iv) was a foreign authorised deposit taking institution under the *Banking Act 1959* (Cth); and
- (v) held at least two Bank State Branch numbers in its name.

On about 20 September 2017, RBS, through its local agent, filed with the Australian Securities and Investments Commission a Form 407 entitled "Notification of Cessation, Winding Up or Dissolution of a Foreign Company or Registered Australian Body", which stated that RBS had "ceased to carry on business in Australia".

Further particulars will be provided upon the completion of discovery.

C. THE GLOBAL FX MARKET

9. During the Relevant Period, there was demand for FX Instruments from persons and entities (collectively, **customers**) in various locations (collectively, **Global Trading Centres**) throughout:

- (a) Europe;
- (b) North America;
- (c) South America;
- (d) Asia;
- (e) Africa;
- (f) Australia; and
- (g) New Zealand.

Particulars

The Global Trading Centres included London in the United Kingdom, New York in the United States of America, São Paulo in the Federative Republic of Brazil, the Republic of Singapore, Johannesburg in South Africa, Sydney in Australia and Auckland in New Zealand.

Customers demanding FX Instruments in the Global Trading Centres included Dealers, financial institutions, investment or equity funds, mutual funds, hedge funds, pension funds or other investment vehicles, corporations, government institutions, non-profit organisations and individuals.

Further particulars will be provided upon the completion of discovery.

10. During the Relevant Period, Dealers in Global Trading Centres supplied, and/or offered to supply, FX Instruments to customers in the same or different Global Trading Centres, including in Australia, through *inter alia*:

- (a) FX sales desks and/or trading desks located in the same or different Global Trading Centres as a customer, including in Australia; and

Particulars

According to the methodology used by the Bank of International Settlements to quantify and measure global FX trading activity on a triennial basis, a “sales desk” is the desk where any given FX Instrument is entered into, and a “trading desk” is the desk where the FX Instrument is executed.

During the Relevant Period, FX sales and/or trading desks operated on a 24-hour basis across the Global Trading Centres. Trading in FX Instruments commenced at 7.00am on a Monday in New Zealand, continued through Australia and Asia, shifted to Europe, continued to New York, United States of America and then re-opened in New Zealand as the trading day in New York, United States of America closed.

Further particulars will be provided upon the completion of discovery.

- (b) Electronic Communication Networks that connected customers and Dealers in the same or different Global Trading Centres, including Electronic Communication Networks accessible in Australia.

Particulars

Electronic Communication Networks included “single-bank” and “multi-bank” electronic platforms which enabled a customer to electronically view prices for, and transact in, an FX Instrument with a Dealer in the same or different location as the customer in one or more of the Global Trading Centres.

“Single-bank” electronic platforms enabled a customer to electronically view prices for an FX Instrument offered by a Dealer trading in FX Instruments.

“Multi-bank” electronic platforms enabled a customer to electronically view competing prices for an FX Instrument offered by more than one Dealer trading in FX Instruments.

“Multi-bank” electronic platforms included Reuters, Bloomberg, Electronic Broking Services, KCG Hotspot, Currenex and FXall, among others.

During the Relevant Period, Electronic Communication Networks were accessible, and accessed, by Dealers located in Global Trading Centres, including in Australia, and customers located in Global Trading Centres, including in Australia, in connection with trading and/or transacting in FX Instruments.

Further particulars will be provided upon the completion of discovery.

- 11. During the Relevant Period:
 - (a) all currency the subject of any FX Instrument anywhere in any of the Global Trading Centres was fungible;
 - (b) a Spot with respect to a currency pair of a specific volume was substitutable, anywhere in any of the Global Trading Centres, for any other Spot with respect to the same currency pair of the same volume;

- (c) an Outright Forward with respect to a currency pair of a specific volume was substitutable, anywhere in any of the Global Trading Centres, for any other Outright Forward with respect to the same currency pair of the same volume;
 - (d) a Dealer entering into an FX Instrument with a customer anywhere in any of the Global Trading Centres with respect to any given currency pair of a specific volume provided the same, or effectively the same, service to that customer as any other Dealer in any of the Global Trading Centres entering into the same type of FX Instrument with respect to the same currency pair of the same volume;
 - (e) price was the sole, or the primary, determinant of choice of Dealer for customers seeking to enter into an FX Instrument with respect to any currency pair of a given volume anywhere in any of the Global Trading Centres; and
 - (f) Dealers competed on price in relation to FX Instruments supplied and/or offered to be supplied to customers in different Global Trading Centres, including in Australia.
12. By reason of the matters alleged in paragraphs 9 to 11 above, during the Relevant Period, there was a global market for the supply of FX Instruments by Dealers to customers (**Global FX Market**).
13. The Global FX Market was a market within the meaning of s 4E of the TPA and s 4E of the CCA.

Particulars

The Global FX Market included the supply and acquisition of FX Instruments in Australia and/or from and to Australia.

During the Relevant Period:

- (i) the Respondents and the Other Cartel Participants together were responsible for between approximately 44% and 55% of global FX trade;
- (ii) global FX trade averaged approximately US\$5 trillion per day;
- (iii) trade in FX Instruments accounted for approximately 50% of global FX turnover;
- (iv) the Australian dollar was approximately the fifth most traded currency by volume globally;
- (v) the turnover in FX Instruments in Australia averaged about US\$57 billion per day;

- (vi) Dealers trading out of sales desks based in Australia entered into FX Instruments with customers in Australia and customers outside Australia;
- (vii) Dealers trading out of sales desks based outside Australia entered into FX Instruments with customers in Australia;
- (viii) Trading in FX Instruments occurred on an “over the counter” (OTC) basis rather than on centralised exchanges;
- (ix) Trading in FX Instruments was not regulated, supervised or the subject of disclosure obligations applicable in more centralised markets such as securities exchanges;
- (x) As a result of the matters in (viii) and (ix) information relating to other market participants’ present and proposed trading activity and customer orders was difficult to obtain, and highly valuable to Dealers in FX Instruments;
- (xi) There were barriers to entry into the FX Market as a Dealer in that the need for trading desks operating globally, 24 hours a day and the need to utilise sophisticated and expensive electronic systems (including Electronic Communication Networks) meant that there were significant economies of scale, and the value of the information described in (x) meant that increasing scale brought increasingly profitable trading.

D. THE AUSTRALIAN FX MARKET

14. During the Relevant Period, there was demand:
- (a) for FX Instruments from customers located in Australia to acquire FX Instruments from Dealers located in Australia or elsewhere; and
 - (b) from customers in and outside Australia for FX Instruments supplied or offered to be supplied by Dealers located in Australia.
15. During the Relevant Period:
- (a) Dealers supplied and/or offered to supply FX Instruments to customers in Australia through, *inter alia*:
 - (i) FX sales and/or trading desks in Australia and/or outside Australia; and
 - (ii) Electronic Communication Networks that were accessible in Australia.
 - (b) Dealers in Australia supplied and/or offered to supply FX Instruments to customers in and outside Australia through, *inter alia*:
 - (i) FX sales and/or trading desks located in Australia; and

- (ii) Electronic Communication Networks that connected Dealers located in Australia to customers located in and/or outside Australia.

16. During the Relevant Period:

- (a) all currency the subject of any FX Instrument supplied or offered to be supplied by a Dealer in Australia or by a Dealer to a customer in Australia was fungible;
- (b) a Spot with respect to a currency pair of a specific volume supplied or offered to be supplied by a Dealer in Australia or by a Dealer to a customer in Australia was substitutable for any other Spot with respect to the same currency pair of the same volume supplied or offered to be supplied by another Dealer in Australia or by another Dealer to a customer in Australia;
- (c) an Outright Forward with respect to a currency pair of a specific volume supplied or offered to be supplied by a Dealer in Australia or by a Dealer to a customer in Australia was substitutable for any other Outright Forward with respect to the same currency pair of the same volume supplied or offered to be supplied by another Dealer in Australia or by another Dealer to a customer in Australia;
- (d) a Dealer supplying or offering to supply an FX Instrument to a customer in Australia with respect to any given currency pair of a specific volume provided the same, or effectively the same, service to that customer as any other Dealer supplying or offering to supply the same type of FX Instrument in respect of the same currency pair of the same volume;
- (e) a Dealer in Australia supplying or offering to supply an FX Instrument to a customer in or outside Australia with respect to any given currency pair of a specific volume provided the same, or effectively the same, service to that customer as any other Dealer in Australia supplying or offering to supply the same type of FX Instrument in respect of the same currency pair of the same volume;
- (f) price was the sole, or the primary, determinant of choice of Dealer for:
 - (i) customers in Australia seeking to enter into an FX Instrument with respect to any currency pair of a given volume; and

- (ii) customers in and outside Australia entering into an FX Instrument with respect to any currency pair of a given volume with a Dealer in Australia; and
 - (g) Dealers:
 - (i) in Australia competed on price with respect to FX Instruments supplied or offered to be supplied to customers in and outside Australia; and
 - (ii) competed on price with respect to FX Instruments supplied or offered to be supplied to customers in Australia.
17. By reason of the matters alleged in paragraphs 14 to 16 above, during the Relevant Period, there was a market in Australia for the supply of FX Instruments by Dealers to customers (**Australian FX Market**).
18. The Australian FX Market was a market within the meaning of s 4E of the TPA and s 4E of the CCA.

Particulars

The Australian FX Market included the supply and acquisition of FX Instruments in Australia and/or from and to Australia.

The Applicant refers to and repeats particulars (iv)-(xi) subjoined to paragraph 13 above.

Further particulars will be provided upon the completion of discovery.

E. COMPETITION IN RELATION TO FX INSTRUMENTS

19. During the Relevant Period, each of the Respondents supplied, offered to supply and/or were willing and able to supply FX Instruments to customers in one or more of the Global Trading Centres, including in Australia.
20. During the Relevant Period, each of the Respondents had related bodies corporate who also supplied and offered to supply FX Instruments to customers in one or more of the Global Trading Centres (collectively **Related Bodies Corporate**).

Particulars

- (i) The following entities are the Related Bodies Corporate of each of the Respondents:
 - A. in the case of UBS, its related bodies corporate included UBS Securities LLC;
 - B. in the case of Barclays, its related bodies corporate included Barclays PLC, Barclays Capital Inc, Barclays Execution Services Limited (formerly Barclays Services Limited and

Barclays Capital Services Limited), Barclays Capital Services Limited and ABSA Bank Limited;

- C. in the case of Citibank, its related bodies corporate included Citigroup Inc, Citicorp LLC (formerly Citicorp) and Citicorp Global Markets Inc;
- D. in the case of JPMorgan, its related bodies corporate included JPMorgan Chase & Co., J.P. Morgan Europe Limited, J.P. Morgan Securities Plc, J.P Morgan PLC, J.P. Morgan Markets Limited, J.P. Morgan Limited, and J.P. Morgan Securities Ltd.;
- E. in the case of RBS, its related bodies corporate includes NatWest Markets Group Plc (formerly the Royal Bank of Scotland Group Plc) and NatWest Markets Securities Inc. (formerly the RBS Securities Inc. and Greenwich Capital Markets, Inc.).

- (ii) With its present state of knowledge, the Applicant does not know the identities of other Related Bodies Corporate of the Respondents, but if, following the completion of discovery, the Applicant says that any further entities are also Related Bodies Corporate of any of the Respondents, the Applicant will provide further particulars at that time.

21. During the Relevant Period, entities other than the Respondents and Related Bodies Corporate also supplied and offered to supply FX Instruments to customers in one or more of the Global Trading Centres, including in Australia, and these included:

- (a) BNP Paribas North America Inc. (formerly BNP Paribas USA, Inc.);
- (b) BNP Paribas Securities Corp;
- (c) BNP Paribas S.A;
- (d) Deutsche Bank AG;
- (e) Credit Suisse AG;
- (f) Bank of America Corporation;
- (g) Bank of America N.A.;
- (h) The Goldman Sachs Group, Inc.;
- (i) Goldman Sachs & Co. LLC;
- (j) HSBC Holdings PLC;
- (k) HSBC Bank PLC;
- (l) HSBC Bank USA, N.A.;
- (m) Standard Chartered Bank;

- (n) Morgan Stanley;
- (o) Morgan Stanley Bank N.A.;
- (p) Morgan Stanley & Co. International PLC;
- (q) Nomura International PLC;
- (r) Société Générale S.A.;
- (s) Toronto Dominion Bank;
- (t) Westpac Banking Corporation;
- (u) Australia and New Zealand Banking Group Limited;
- (v) Commonwealth Bank of Australia;
- (w) Macquarie Bank Limited;
- (x) The Royal Bank of Canada;
- (y) National Australia Bank Limited;
- (z) Merrill Lynch, Pierce, Fenner & Smith Inc.;
- (aa) State Street Bank and Trust Company;
- (bb) Mitsubishi UFJ Financial Group, Inc.;
- (cc) MUFG Bank, Ltd. (formerly Bank of Tokyo – Mitsubishi Ltd),

(Other Banks).

22. By reason of the matters alleged in paragraphs 4(d), 5(d), 6(d), 7(d), 8(d), 11, 16, 19, 20 and 21 above:

- (a) at all material times prior to 24 July 2009, each of the Respondents:
 - (i) supplied; or
 - (ii) were likely to have supplied; or
 - (iii) but for the arrangements or understandings alleged in this Statement of Claim, would have:
 - A. supplied; or
 - B. been likely to have supplied,

FX Instruments in competition with one or more of the other Respondents and Other Cartel Participants, and one or more of the Other Banks, in the Global FX Market and/or the Australian FX Market; and

- (b) at all material times on or after 24 July 2009, each of the Respondents:
 - (i) supplied; or
 - (ii) were likely to have supplied; or
 - (iii) but for the arrangements or understandings alleged in this Amended Statement of Claim, would have:
 - A. supplied; or
 - B. been likely to have supplied,

FX Instruments:

- (iv) in competition with one or more, of the other Respondents and Other Cartel Participants, and/or one or more of the Other Banks;
- (v) alternatively to the matters alleged in subparagraph 22(b)(iv) above, in competition with each, alternatively one or more, of the other Respondents and Other Cartel Participants, and/or one or more of the Other Banks, in the Global FX Market and/or the Australian FX Market.

F. RELEVANT ARRANGEMENTS OR UNDERSTANDINGS

F.1 The FX Understanding

23. By no later than 1 January 2008, alternatively during the Relevant Period, the Respondents arrived at an arrangement or understanding with each other and certain other entities (**Other Cartel Participants**) containing a provision that each of them would:
- (a) co-operate with the others in relation to trading in FX Instruments by:
 - (i) sharing non-public information concerning current or potential future trading (**Shared Information**), such information to be used to their respective benefit in trading and in order to identify occasions to coordinate trading; and
 - (ii) co-ordinating their trading, or the prices at which trades were offered or occurred (**Coordinated Trading**);

- (b) keep confidential the existence of the understanding and any conduct giving effect to it (**Concealment**),

(the **FX Understanding**, and the provision being the **FX Understanding Provision**).

Particulars

- (i) The best particulars the Applicant can presently give of the arrangement or understanding comprising the FX Understanding is that it is to be inferred from the conduct of the Respondents and the Other Cartel Participants described in the Microsoft Excel Spreadsheet which accompanies this Amended Statement of Claim, entitled 210517 Schedule A - Overt Acts Spreadsheet.xlsx (**the Overt Acts Spreadsheet**), and which comprises Schedule A to this Amended Statement of Claim, which conduct was in furtherance of the FX Understanding. Further particulars will be provided following the completion of discovery.

The Applicant relies against each Respondent on the conduct of that Respondent as described in the Overt Acts Spreadsheet, together with the conduct of other Respondents and Other Cartel Participants (regardless of whether it was conduct to which the Respondent was party).

- (ii) Without limiting the Overt Acts Spreadsheet, the Shared Information comprised information on open risk positions, customer order type (including Stop Loss Orders and other Resting Orders, WMR Fix orders and ECB Fix orders), customer order attributes (including as to size, direction, identity and customer type), planned trading activities and customer Spreads;
- (iii) Without limiting the Overt Acts Spreadsheet, the Coordinated Trading included agreeing to engage in trading designed to fix, control or maintain the result of the WMR Fix or the ECB Fix; “standing-down” or failing to offer to transact as they would otherwise have done, when it would be disadvantageous to another Respondent or Other Cartel Participant if they were to do so; fixing prices or spreads; co-ordinating trading in order to cause Resting Orders to be executed earlier than they would otherwise have been, and co-ordinating trading in advance of substantial customer orders to move the price of the relevant currency to their advantage. The trading techniques to effect the Coordinated Trading included:
- i. “front-running”, which refers to trading based upon non-public information regarding an impending trade, such as trading in front of or before the customer’s trade;
 - ii. “banging the close”, which occurs when traders break up large customer orders into small trades and concentrate the trades in the moments before and during a fix calculation window in order to move the published rates up or down;
 - iii. “painting the screen”, which involves placing artificial or false orders with other traders in order to create the illusion of trading activity in a given direction so as to

move rates prior to the fix calculation window, and then reversing those trades after the relevant fix has been calculated;

- iv. “building the ammo”, which refers to amassing a large position in a currency and then unloading the “ammo” just before or during the fix to move prices; and/or
- v. “clearing the decks” or “taking out the filth”, which refer to netting off orders with third parties outside the chat room, thereby reducing the volume of orders held by third parties that might otherwise be transacted at the fix in the opposite direction.

(iv) With its present state of knowledge, the Applicant says that the Other Cartel Participants are the Related Bodies Corporate and the following Other Banks:

- A. BNP Paribas North America Inc. (Formerly BNP Paribas USA, Inc.);
- B. BNP Paribas Securities Corp;
- C. BNP Paribas S.A;
- D. Bank of America Corporation; and
- E. Bank of America, N.A.

If, following the completion of discovery, the Applicant says that any further Other Banks are also Other Cartel Participants, the Applicant will provide further particulars and supplement the Overt Acts Spreadsheet at that time.

(v) Where, in the Overt Acts spreadsheet, a person is identified with one of the Respondents or Other Cartel Participants, the Applicant says that that person was an employee or agent of that Respondent or Other Cartel Participant, acting at the time within the scope of their actual or apparent authority, or alternatively acting with the consent or agreement of an employee or agent of that Respondent or Other Cartel Participant, where the giving of that consent or agreement was within the scope of the actual or apparent authority of that employee or agent, and in this regard:

- A. the Applicant relies on the admissions referred to in particular (vii) below in respect of the party making the admissions and its Related Bodies Corporate; and
- B. the Applicant relies on the failure of each of the Respondents to bring an end to the conduct attributed to it in the Overt Acts Spreadsheet, or to cause, at all or alternatively consistently, the individual persons who engaged in that conduct to be dismissed or disciplined for engaging in the conduct, prior to the end of the Relevant Period; and
- C. Further particulars will be provided after the completion of discovery.

(vi) Further, in relation to Concealment, the Applicant relies on:

- A. the routine use of code words when communicating in chat rooms, so as to disguise their activities in case of investigation;

- B. the fact that, during the Relevant Period, entry into the chat rooms used to engage in communications in relation to FX Instruments was strictly controlled and restricted;
- C. the fact that, during the Relevant Period, the existence of the matters in the Overt Acts Spreadsheet referred to in particular (i) remained undetected, or substantially undetected, by the whole world including the Applicant and the Group Members;
- D. in respect of Barclays, the admissions made by it in the New York State Department of Financial Services Consent Order in the matter of Barclays dated 19 May 2015 that FX traders, including at Barclays, used code words when communicating in multi-bank chat rooms, in order to conceal certain aspects of their communications and avoid detection,

and the Applicant will provide further particulars following the completion of discovery;

(vii) Further, the Applicant relies on the following admissions:

- A. in the case of UBS, in respect of the period between about October 2011 and at least January 2013, in the Plea Agreement entered into by the United States of America on 20 May 2015 that UBS through one of its FX traders conspired with other financial services firms acting as dealers in an FX spot market by agreeing to restrain competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere by, among other things (A) coordinating the trading of the EUR/USD currency pair in connection with the WMR Fix and ECB Fix; and (B) refraining from certain trading behaviour, by withholding bids and offers, when one conspirator held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position.

B. in the case of Barclays, the admissions made:

- I. by Barclays Plc (a Related Body Corporate of Barclays) in respect of the period between about December 2007 and about January 2013, in the Plea Agreement entered into by the United States of America and Barclays on about 20 May 2015, that (A) their FX traders entered into and engaged in a conspiracy with other dealers in the FX Spot market to fix, stabilize, maintain, increase or decrease the price, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX Spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere; and (B) they and their “co-conspirators” “carried out the conspiracy to eliminate competition in the purchase and sale of the EUR/USD currency pair by various means and methods, including in certain instances, by: (i) coordinating the trading of the EUR/USD currency pair in connection with European Central Bank and World Markets/Reuters benchmark currency fixes which occurred at 2.15 PM

(CET) and 4:00 PM (GMT) each day; and (ii) refraining from certain trading behaviour, by withholding bids and offers, when one conspirator held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position”;

II. by Barclays in the New York State Department of Financial Services Consent Order in the matter of Barclays dated 19 May 2015 that (A) [f]rom approximately 2008 through 2012, certain FX traders at Barclays communicated with FX traders at other banks to coordinate attempts to manipulate prices in certain FX currency pairs and certain FX benchmark rates, including the WM/R and ECB fixes. The majority of these communications took place in multi-bank online chat rooms; (B) during at least 2008 through 2012, Barclays conspired with other banks in order to coordinate trading, attempt to manipulate exchange rates, or coordinate bid/ask spreads charged;

C. in the case of Citibank, the admissions made:

I. by Citicorp (a Related Body Corporate of Citibank) in respect of the period between about December 2007 and about January 2013, in the Plea Agreement entered into by the United States of America and Citicorp on about 20 May 2015, that (A) their FX traders entered into and engaged in a conspiracy with other dealers in the FX Spot market to fix, stabilize, maintain, increase or decrease the price, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX Spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere; and (B) they and their “co-conspirators” “carried out the conspiracy to eliminate competition in the purchase and sale of the EUR/USD currency pair by various means and methods, including in certain instances, by: (i) coordinating the trading of the EUR/USD currency pair in connection with European Central Bank and World Markets/Reuters benchmark currency fixes which occurred at 2.15 PM (CET) and 4:00 PM (GMT) each day; and (ii) refraining from certain trading behaviour, by withholding bids and offers, when one conspirator held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position”;

II. by Citibank in the Consent Agreement between the South African Competition Commission and Citibank in the Competition Tribunal of South Africa dated 31 January 2017, that between September 2007 and October 2013, Citibank, Barclays, JPMorgan and others entered into an agreement and/or engaged in a concerted practice to directly or indirectly fix prices in

relation to bids, offers and bid-offer Spreads in respect of Spot trades, through, inter alia, coordination/alignment of the bids, offers and bid-offer Spreads that they quoted to customers who bought and sold certain foreign currency pairs involving the ZAR;

- D. in the case of JPMorgan, the admissions made by JPMorgan Chase & Co (a Related Body Corporate of JPMorgan) in respect of the period between about December 2007 and about January 2013, in the Plea Agreement entered into by the United States of America and JPMorgan Chase & Co on about 20 May 2015 that (A) their FX traders entered into and engaged in a conspiracy with other dealers in the FX Spot market to fix, stabilize, maintain, increase or decrease the price, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX Spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere; and (B) they and their “co-conspirators” “carried out the conspiracy to eliminate competition in the purchase and sale of the EUR/USD currency pair by various means and methods, including in certain instances, by: (i) coordinating the trading of the EUR/USD currency pair in connection with European Central Bank and World Markets/Reuters benchmark currency fixes which occurred at 2.15 PM (CET) and 4:00 PM (GMT) each day; and (ii) refraining from certain trading behaviour, by withholding bids and offers, when one conspirator held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position”;
- E. in the case of RBS, the admissions made by it in respect of the period between about December 2007 and about January 2013, in the Plea Agreement entered into by the United States of America and RBS on about 20 May 2015, that (A) its FX traders entered into and engaged in a conspiracy with other dealers in the FX Spot market to fix, stabilize, maintain, increase or decrease the price, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX Spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere; and (B) they and their “co-conspirators” “carried out the conspiracy to eliminate competition in the purchase and sale of the EUR/USD currency pair by various means and methods, including in certain instances, by: (i) coordinating the trading of the EUR/USD currency pair in connection with European Central Bank and World Markets/Reuters benchmark currency fixes which occurred at 2.15 PM (CET) and 4:00 PM (GMT) each day; and (ii) refraining from certain trading behaviour, by withholding bids and offers, when one conspirator held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position”.
- (viii) The Applicant relies upon s 44ZZRC of the CCA on and from the commencement of that section and says that: (A) to the extent that the

persons who participated in the chat rooms particularised in the Overt Acts Spreadsheet were acting for, or on behalf of a Related Body Corporate of a Respondent, the Respondent and each other Related Body Corporate of that Respondent is a party to the FX Understanding; and (B) each Related Body Corporate of each Respondent was also a party to the FX Understanding.

- (ix) Alternatively to (viii), to the extent that s 44ZZRC does not render each of the Related Bodies Corporate of the Respondents to be parties to the FX Understanding, the Related Bodies Corporate are Other Cartel Participants.

24. During the Relevant Period, each of the Respondents gave effect to the FX Understanding Provision, by:

- (a) from time to time, sharing non-public information concerning current or potential future trading in FX Instruments with one or more of the other Respondents and Other Cartel Participants;
- (b) from time to time, co-ordinating trading in FX Instruments and/or the prices at which trades occurred with one or more of the other Respondents and other Cartel Participants;

Particulars

- (i) The Applicant refers to and repeats the particulars to paragraph 23, and the Overt Acts Spreadsheet.
- (ii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence;
- (c) keeping the FX Understanding, and the conduct in (a) and (b) above, confidential, and engaging in the conduct described in (vi)(A) and (B) of the particulars to paragraph 23.

F.2 The FX Chatroom Understandings

25. Further, or alternatively to paragraph 23, during the Relevant Period, each of the Respondents who was a participant in one of the chatrooms in the Overt Acts Spreadsheet arrived at an arrangement or understanding with each other Respondent and Other Cartel Participant who participated in that chatroom, containing a provision that each of them would:

- (a) co-operate with the others in relation to trading in FX Instruments by:
 - (i) sharing non-public information concerning current or potential future trading (that is, Shared Information) such information to be used to

their respective benefit in trading and in order to identify occasions to coordinate trading; and

- (ii) co-ordinating their trading, or the prices at which trades were offered or occurred;
- (b) keep confidential the existence of the understanding and any conduct giving effect to it

(each being an **FX Chatroom Understanding**, and each such provision being a **FX Chatroom Understanding Provision**).

Particulars

- (i) The best particulars the Applicant can presently give of the arrangement or understanding comprising each FX Chatroom Understanding are that it is to be inferred from the matters in **the Overt Acts Spreadsheet** relating to the relevant chatroom, which conduct was in furtherance of the respective FX Chatroom Understanding. The name of each chatroom, its participants (including the Other Cartel Participants who participated in it), and the dates in which it operated are particularised in the Overt Acts Spreadsheet, Columns F – H (de-duplicated). Further particulars will be provided following discovery.

In respect of each FX Chatroom Understanding, the Applicant relies, against each Respondent on the conduct of that Respondent as described in the Overt Acts Spreadsheet in respect of that chatroom, together with the conduct of other Respondents and Other Cartel Participants in respect of that chatroom (regardless of whether it was conduct to which the Respondent was party).

- (ii) The chatrooms in which the Respondents and Other Cartel Participants (to the extent that the Applicant is presently able to identify them) participated, and each of which gave rise to an FX Chatroom Understanding, are as follows:
 - A. UBS: see the Overt Acts Spreadsheet, Column H, filtered for “UBS” and de-duplicated, and Schedule B, Part 1 to this Amended Statement of Claim.
 - B. Barclays: see Column H, filtered for “Barclays” and de-duplicated, and Schedule B, Part 2 to this Amended Statement of Claim.
 - C. Citibank: see Column H, filtered for “Citibank” and de-duplicated, and Schedule B, Part 3 to this Amended Statement of Claim.
 - D. JPMorgan: see Column H, filtered for “JPMorgan” and de-duplicated, and Schedule B, Part 4 to this Amended Statement of Claim.
 - E. RBS: see Column H, filtered for “RBS” and de-duplicated, and Schedule B, Part 5 to this Amended Statement of Claim.

If, following the completion of discovery, the Applicant says that any further Other Banks are also Other Cartel Participants in any FX

Chatroom Understanding, the Applicant will provide further particulars and supplement the Overt Acts Spreadsheet at that time.

- (iii) Without limiting the Overt Acts Spreadsheet, the Shared Information comprised information on open risk positions, customer order type (including Stop Loss Orders and other Resting Orders, WMR Fix orders and ECB Fix orders), customer order attributes (including as to size, direction, identity and customer type), planned trading activities and customer Spreads;
- (iv) Without limiting the Overt Acts Spreadsheet, the Coordinated Trading included agreeing to engage in trading designed to fix, control or maintain the result of the WMR Fix or the ECB Fix; “standing-down” or failing to offer to transact as they would otherwise have done, when it would be disadvantageous to another Respondent or Other Cartel Participant if they were to do so; fixing prices or spreads; co-ordinating trading in order to cause resting orders to be executed earlier than they would otherwise have been, and co-ordinating trading in advance of substantial customer orders to move the price of the relevant currency to their advantage. The trading techniques to effect the Co-ordinated Trading included:
 - i. “front-running”, which refers to trading based upon non-public information regarding an impending trade, such as trading in front of or before the customer’s trade;
 - ii. “banging the close”, which occurs when traders break up large customer orders into small trades and concentrate the trades in the moments before and during a fix calculation window in order to move the published rates up or down;
 - iii. “painting the screen”, which involves placing artificial or false orders with other traders in order to create the illusion of trading activity in a given direction so as to move rates prior to the fix calculation window, and then reversing those trades after the relevant fix has been calculated;
 - iv. “building the ammo”, which refers to amassing a large position in a currency and then unloading the “ammo” just before or during the fix to move prices; and/or
 - v. “clearing the decks” or “taking out the filth”, which refer to netting off orders with third parties outside the chat room, thereby reducing the volume of orders held by third parties that might otherwise be transacted at the fix in the opposite direction.
- (v) Where, in the Overt Acts spreadsheet, a person is identified with one of the Respondents or Other Cartel Participants, the Applicant says that that person is an employee or agent of that Respondent or Other Cartel Participant, acting at the time within the scope of their actual or apparent authority, or alternatively acting with the consent or agreement of an employee or agent of that Respondent or Other Cartel Participant, where the giving of that consent or agreement was within the scope of the actual or apparent authority of that employee or agent, and:

- A. the Applicant relies on the admissions referred to in particular (vii) below by each of the Respondents (or their Related Bodies Corporate); and
 - B. the Applicant relies on the failure of each of the Respondents to bring to an end the conduct of the Respondents described in the Overt Acts Spreadsheet, or to cause, at all or alternatively consistently, the individual persons who engaged in that conduct to be dismissed or disciplined for engaging in the conduct, prior to the end of the Relevant Period; and
 - C. Further particulars will be provided following the completion of discovery.
- (vi) Further, in relation to Concealment, the Applicant relies on:
- A. the routine use of code words when communicating in chat rooms, so as to disguise their activities in case of investigation;
 - B. the fact that, during the Relevant Period, entry into the chat rooms used to engage in communications in relation to FX Instruments was strictly controlled and restricted;
 - C. the fact that, during the Relevant Period, the existence of the matters in the Overt Acts Spreadsheet referred to in particular (i) remained undetected, or substantially undetected, by the whole world including the Applicant and the Group Members;
 - D. in respect of Barclays, the admissions made by it in the New York State Department of Financial Services Consent Order in the matter of Barclays dated 19 May 2015 that FX traders, including at Barclays, used code words when communicating in multi-bank chat rooms, in order to conceal certain aspects of their communications and avoid detection;
- (vii) Further, the Applicant relies on the following admissions:
- A. in the case of UBS and all chatrooms in which it was a participant, the admissions particularised in particulars (vii)(A) to paragraph 23;
 - B. in the case of Barclays and all chatrooms in which it was a participant, the admissions particularised in particulars (vii)(B) to paragraph 23;
 - C. in the case of Citibank and all chatrooms in which it was a participant, the admissions particularised in particulars (vii)(C) to paragraph 23;
 - D. in the case of JPMorgan and all chatrooms in which it was a participant, the admissions particularised in particulars (vii)(D) to paragraph 23;
 - E. in the case of RBS and all chatrooms in which it was a participant, the admissions particularised in particulars (vii)(E) to paragraph 23.
- (viii) The Applicant relies upon s 44ZZRC of the CCA, and says that on and from the commencement of that section (A) to the extent that the persons who participated in each chat room particularised in the Overt Acts Spreadsheet were acting for, or on behalf of a Related Body

Corporate of a Respondent, the Respondent and each other Related Body Corporate of that Respondent is a party to the FX Chatroom Understanding arising in relation to that chat room; and (B) each Related Body Corporate of each such Respondent was also a party to that FX Chatroom Understanding.

- (ix) Alternatively to (viii), to the extent that s 44ZZRC does not render each of the Related Bodies Corporate of the Respondents to be parties to the FX Chatroom Understanding, the Related Bodies Corporate are Other Cartel Participants.

26. During the Relevant Period, each of the Respondents gave effect to the FX Chatroom Understanding Provisions to which they were party, by:
- (a) from time to time in that chatroom, sharing non-public information concerning current or potential future trading in FX Instruments with one or more of the other Respondents and Other Cartel Participants;
 - (b) from time to time in that chatroom, co-ordinating trading in FX Instruments and/or the prices at which trades occurred with one or more of the other Respondents and Other Cartel Participants;
 - (c) keeping the respective FX Chatroom Understanding, and the conduct in (a) and (b) above, confidential, and engaging in the conduct described in (vi)(A) and (B) of the particulars to paragraph 25.

Particulars

- (i) The Applicant refers to and repeats the particulars to paragraph 25, and the Overt Acts Spreadsheet.
- (ii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence.

G. RELEVANT CONTRAVENTIONS BY THE RESPONDENTS

G.1 FX Understanding: price fixing

G.1.1 Price fixing conduct prior to 24 July 2009: TPA Contraventions

27. At all material times prior to 24 July 2009, the FX Understanding Provision had the purpose or effect, or was likely to have the effect, of fixing, controlling or maintaining or providing for the fixing, controlling or maintaining, of the FX rates applicable with respect to FX Instruments supplied, or likely to be supplied, by each of the Respondents, in competition with each other and/or one or more of the Other Cartel Participants, within the meaning of s 45A of the TPA.

Particulars

- (i) The matters alleged may be inferred from *inter alia* the matters alleged in paragraphs 4(d), 5(d), 6(d), 7(d), 8(d), 11, 13, 16, 18, 19, 20, 21 and 22 above and the particulars subjoined thereto, the particulars subjoined to paragraphs 23 and 24 above, and the acts, matters and circumstances set out in the Overt Acts Spreadsheet.
 - (ii) The Applicant relies on s 45(4) of the TPA (as in force prior to the commencement of s 44ZZRD(8) of the TPA on 24 July 2009) in relation to each of the provisions of the FX Understanding and any FX Chatroom Understanding, and says that taken together, this means each of them is taken to have or be likely to have the effect of substantially lessening competition.
 - (iii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence.
28. By reason of the matters alleged in paragraph 27 above, the FX Understanding Provision is deemed by s 45A of the TPA, as applicable to conduct up to 24 July 2009, to have had the purpose or effect, or to have been likely to have the effect, of substantially lessening competition within the meaning of s 45(2) of the TPA.
29. By reason of the matters alleged in paragraphs 27 to 28 above, by making or arriving at the FX Understanding, at all material times prior to 24 July 2009 each of the Respondents contravened s 45(2)(a)(ii) of the TPA.
30. Further and in the alternative, by reason of the matters alleged in paragraphs 27 to 28 above, by giving effect to the FX Understanding Provision at all material times prior to 24 July 2009 each of the Respondents contravened s 45(2)(b)(ii) of the TPA.

G.1.2 Price fixing conduct on or after 24 July 2009: TPA and CCA contraventions

31. At all material times on or after 24 July 2009, the FX Understanding Provision had the purpose or effect, or was likely to have the effect, directly or indirectly, of fixing, controlling or maintaining or providing for the fixing, controlling or maintaining, of the rates applicable with respect to FX Instruments supplied, or likely to be supplied, by each of the Respondents, in competition with each other and/or one or more of the Other Cartel Participants, within the meaning of s 44ZZRD of the TPA and/or s 44ZZRD of the CCA, as applicable.

Particulars

- (i) The matters alleged may be inferred from *inter alia* the matters alleged in paragraphs 4(d), 5(d), 6(d), 7(d), 8(d), 11, 13, 16, 18, 19, 20, 21 and 22 above and the particulars subjoined thereto, the particulars subjoined to paragraphs 23 and 24 above, and the acts, matters and circumstances set out in the Overt Acts Spreadsheet.

- (ii) The Applicant relies on s 44ZZRD(8) of the TPA (as in force from 24 July 2009) and the CCA in relation to each of the provisions of the FX Understanding and any FX Chatroom Understanding, and says that taken together, this means each of them is taken to have the purpose, or to have or be likely to have the effect of substantially lessening competition.
 - (iii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence.
32. By reason of the matters alleged in paragraph 31 above, at all material times on or after 24 July 2009, by making or arriving at the FX Understanding each of the Respondents contravened s 44ZZRJ of the TPA and/or s 44ZZRJ of the CCA, as applicable.
33. Further, by reason of the matters alleged in paragraph 31 above, at all material times on or after 24 July 2009, by giving effect to the FX Understanding Provision each of the Respondents contravened s 44ZZRK of the TPA and/or s 44ZZRK of the CCA, as applicable.

G.2 FX Understanding: restricting supply

34. Further or alternatively, throughout the Relevant Period the FX Understanding Provision had the purpose, directly or indirectly, of restricting the supply or likely supply of FX Instruments, or alternatively, the supply of offers to trade in FX instruments, to persons or a class or classes of persons, namely those customers or potential customers of one or more of the Respondents or Other Cartel Participants which customers' trading position was on the opposite side of a currency pair trading position of one or more of the Respondents or Other Cartel Participants (such as where a Respondent was long USD and short AUD, the class of persons who at that time wished to sell AUD and buy USD from a Dealer).

Particulars

- (i) The Applicant relies on the conduct in the Overt Acts Spreadsheet, and in particular, on the following items: CIT.001.031.3122, CIT.001.041.3316, NWM.900.002.1397, BAR.001.002.0918, CIT.001.045.3052, BAR.001.001.5883, BAR.001.001.6845, BAR.001.002.8006, BAR.001.001.7762, JPMC-CIVIL-0000084422, JPMC-CIVIL-0000125711, BAR.101.001.0948, CIT.001.020.5096, CIT.001.020.7263, JWA.200.001.0349, and JPMC-CIVIL-0000064779.
- (ii) The Applicant further relies on the admissions referred to in particular (vii) to paragraph 23 above in particular as they relate to refraining from certain trading behaviour, by withholding bids and offers, when one cartel member held an open risk position, so that the price of the

currency traded would not move in a direction adverse to the conspirator with an open risk position, namely:

- (A) in respect of UBS, that part of Particular (vii)(A) following “(B)”;
 - (B) in respect of Barclays, that part of Particular (vii)(B)(I) following “(ii)”;
 - (C) in respect of Citibank, that part of Particular (vii)(C)(I) following “(ii)”;
 - (D) in respect of JPMorgan, that part of Particular (vii)(D) following “(ii)”;
 - (E) in respect of RBS, that part of Particular (vii)(E) following “(ii)”;
- (iii) The Applicant says that the purpose referred to above was a substantial purpose of the FX Understanding and relies on s4F of the TPA and CCA.
 - (iv) Further particulars will be provided upon the completion of discovery.
35. By reason of the matters in paragraph 34 above, the FX Understanding Provision was an exclusionary provision within the meaning of s 4D of the TPA and CCA.
36. By reason of the matters in paragraphs 34 and 35 above, by making or arriving at the FX Understanding the Respondents breached s 45(2)(a)(i) of the TPA and the CCA.
37. By reason of the matters in paragraphs 34 and 35 above, by giving effect to the FX Understanding Provision the respondents breached s 45(2)(b)(i) of the TPA and the CCA.

G.3 FX Understanding: substantially lessening competition

38. The FX Understanding Provision had the purpose, or would have or be likely to have the effect, of substantially lessening competition in the Global FX Market and the Australian FX Market.

Particulars

- (i) The effects or likely effects were that competition between the Respondents and Other Cartel Participants would be reduced insofar as their trades were co-ordinated, and by the reduction in rivalry consequent upon disclosing Shared Information, and keeping the FX Understanding confidential. The purpose is to be inferred from the likely effects, and further from the express or implied statements of purpose recorded in the Overt Acts Spreadsheet. The Applicant further relies on the admissions referred to in particular (vii) to paragraph 23 above.
- (ii) Further particulars will be provided upon the completion of discovery and the service of the Applicant’s expert evidence.

39. By reason of the matters in paragraphs 23 and 38, throughout the Relevant Period by making or arriving at the FX Understanding each of the Respondents contravened s 45(2)(a)(ii) of the TPA or the CCA as applicable from time to time.
40. By reason of the matters in paragraphs 23, 24 and 28, throughout the Relevant Period by giving effect to the FX Understanding Provision each of the Respondents contravened s 45(2)(b)(ii) of the TPA or the CCA as applicable from time to time.

G.4 FX Chatroom Understandings: price-fixing

G.4.1 Price fixing conduct prior to 24 July 2009: TPA Contraventions

41. At all material times prior to 24 July 2009, each FX Chatroom Understanding Provision which commenced prior to 24 July 2009 had the purpose or effect, or was likely to have the effect, of fixing, controlling or maintaining or providing for the fixing, controlling or maintaining, of the FX rates applicable with respect to FX Instruments supplied, or likely to be supplied, by each of the Respondents and any of the Other Cartel Participants in competition with each other, within the meaning of s 45A of the TPA.

Particulars

- (i) The matters alleged may be inferred from *inter alia* the matters alleged in paragraphs 4(d), 5(d), 6(d), 7(d), 8(d), 11, 13, 16, 18, 19, 20, 21 and 22 above and the particulars subjoined thereto, the particulars subjoined to paragraphs 25 and 26 above, and the acts, matters and circumstances set out in the Overt Acts Spreadsheet.
 - (ii) The Applicant relies on s 45(4) of the TPA (as in force prior to the commencement of s 44ZZRD(8) of the TPA on 24 July 2009) in relation to each provision of any FX Chatroom Understanding to which any of the parties to the FX Chatroom Understanding was also party, and says that taken together, this means each of them is taken to have or be likely to have the effect of substantially lessening competition.
 - (iii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence.
42. By reason of the matters alleged in paragraph 41 above each FX Chatroom Understanding Provision which commenced prior to 24 July 2009, is deemed by s 45A of the TPA, as applicable to conduct up to 24 July 2009, to have had the purpose or effect, or to have been likely to have the effect, of substantially lessening competition within the meaning of s 45(2) of the TPA.
43. By reason of the matters alleged in paragraphs 41 to 42 above, by making or arriving at each FX Chatroom Understanding which commenced prior to 24 July 2009, each

of the Respondents contravened s 45(2)(a)(ii) of the TPA in respect of each FX Chatroom Understanding to which they were party.

44. Further and in the alternative, by reason of the matters alleged in paragraphs 41 to 42 above, by giving effect to each FX Chatroom Understanding Provision in each FX Chatroom Understanding to which they were party which commenced prior to 24 July 2009, each of the Respondents contravened s 45(2)(b)(ii) of the TPA.

G.4.2 Price fixing conduct on or after 24 July 2009: TPA and CCA contraventions

45. At all material times on or after 24 July 2009, each FX Chatroom Understanding Provision which continued after 24 July 2009 had the purpose or effect, or was likely to have the effect, directly or indirectly, of fixing, controlling or maintaining or providing for the fixing, controlling or maintaining, of the rates applicable with respect to FX Instruments supplied, or likely to be supplied, by each of the Respondents and any of the Other Cartel Participants, in competition with each other, within the meaning of s 44ZZRD of the TPA and/or s 44ZZRD of the CCA, as applicable.

Particulars

- (i) The matters alleged may be inferred from *inter alia* the matters alleged in paragraphs 4(d), 5(d), 6(d), 7(d), 8(d), 11, 13, 16, 18, 19, 20, 21 and 22 above and the particulars subjoined thereto, and the particulars subjoined to paragraphs 25, and 26 above, and the acts, matters and circumstances set out in the Overt Acts Spreadsheet.
 - (ii) The Applicant relies on s 44ZZRD(8) of the TPA (as in force from 24 July 2009) and the CCA in relation to each provision of any FX Chatroom Understanding to which any of the parties to the FX Chatroom Understanding was also party, and says that taken together, this means each of them is taken to have the purpose, or to have or be likely to have the effect of substantially lessening competition.
 - (iii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence.
46. By reason of the matters alleged in paragraph 45 above, at all material times on or after 24 July 2009, by making or arriving at each FX Chatroom Understanding which continued after 24 July 2009 to which they were party, each of the Respondents contravened s 44ZZRJ of the TPA and/or s 44ZZRJ of the CCA, as applicable in respect of each FX Chatroom Understanding to which they were party.
47. Further, by reason of the matters alleged in paragraph 45 above, at all material times on or after 24 July 2009, by giving effect to each FX Chatroom Understanding Provision in each FX Chatroom Understanding to which they were party which

continued after 24 July 2009, each of the Respondents contravened s 44ZZRK of the TPA and/or s 44ZZRK of the CCA, as applicable.

G.5 FX Chatroom Understandings: restricting supply

48. Further or alternatively, throughout the Relevant Period, each FX Chatroom Understanding Provision had the purpose, directly or indirectly, of restricting the supply or likely supply of FX Instruments, or alternatively, the supply of offers to trade in FX instruments, to persons or a class or classes of persons, namely those customers or potential customers of one or more of the Respondents or Other Cartel Participants who were party to that FX Chatroom Understanding, which customers' trading position was on the opposite side of a currency pair trading position of one or more of those Respondents or Other Cartel Participants (such as where a Respondent was long USD and short AUD, the class of persons who at that time wished to sell AUD and buy USD from a Dealer).

Particulars

- (i) The Applicant relies on the conduct in the Overt Acts Spreadsheet, and in particular, on the following items: CIT.001.031.3122, CIT.001.041.3316, NWM.900.002.1397, BAR.001.002.0918, CIT.001.045.3052, BAR.001.001.5883, BAR.001.001.6845, BAR.001.002.8006, BAR.001.001.7762, JPMC-CIVIL-0000084422, JPMC-CIVIL-0000125711, BAR.101.001.0948, CIT.001.020.5096, CIT.001.020.7263, JWA.200.001.0349, and JPMC-CIVIL-0000064779, in respect of the chatrooms identified in that row of the Overt Acts Spreadsheet (and the participants of such chatrooms).
- (ii) The Applicant further relies on the admissions referred to in particular (vii) to paragraph 23 above as repeated in particular (vii) to paragraph 25 above in particular as they relate to refraining from certain trading behaviour, by withholding bids and offers, when one cartel member held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position, namely:
 - (A) in respect of UBS, that part of Particular (vii)(A) following "(B)";
 - (B) in respect of Barclays, that part of Particular (vii)(B)(I) following "(ii)";
 - (C) in respect of Citibank, that part of Particular (vii)(C)(I) following "(ii)";
 - (D) in respect of JPMorgan, that part of Particular (vii)(D) following "(ii)";
 - (E) in respect of RBS, that part of Particular (vii)(E) following "(ii)";
- (iii) The Applicant says that the purpose referred to above was a substantial purpose of each FX Chatroom Understanding and relies on s4F of the TPA and CCA.

- (iv) Further particulars will be provided upon the completion of discovery.
49. By reason of the matters in paragraph 48 above, each FX Chatroom Understanding Provision was an exclusionary provision within the meaning of s 4D of the TPA and CCA.
50. By reason of the matters in paragraphs 48 and 49 above, by making or arriving at each FX Chatroom Understanding to which they were party the Respondents breached s 45(2)(a)(i) of the TPA and the CCA.
51. By reason of the matters in paragraphs 48 and 49 above, by giving effect to each FX Chatroom Understanding Provision in each FX Chatroom Understanding to which they were party the Respondents breached s 45(2)(b)(i) of the TPA and the CCA.

G.6 FX Chatroom Understandings: substantially lessening competition

52. Each FX Chatroom Understanding would have or be likely to have the effect, of substantially lessening competition in the Global FX Market and the Australian FX Market.

Particulars

- (i) The effects or likely effects were that competition between the Respondents and Other Cartel Participants who were party to that FX Chatroom Understanding, would be reduced insofar as their trades were co-ordinated, and by the reduction in rivalry consequent upon disclosing Shared Information, and keeping that FX Chatroom Understanding confidential. The Applicant further relies on the admissions referred to in Particular (vii) to paragraph 25 above.
- (ii) The Applicant relies on s 45(4) of the TPA (as in force prior to 24 July 2009) and the CCA in relation to each provision of any FX Chatroom Understanding to which any of the parties to the FX Chatroom Understanding was also party, and says that taken together, this means each of them is taken to have or be likely to have the effect of substantially lessening competition.
- (iii) Further particulars will be provided upon the completion of discovery and the service of the Applicant's expert evidence.
53. By reason of the matters in paragraphs 25 and 52, throughout the Relevant Period by making or arriving at each FX Chatroom Understanding to which they were party each of the Respondents contravened s 45(2)(a)(ii) of the TPA or the CCA as applicable from time to time.
54. By reason of the matters in paragraphs 25, 26 and 42, throughout the Relevant Period by giving effect to each FX Chatroom Understanding Provision in each FX

Chatroom Understanding to which they were party each of the Respondents contravened s 45(2)(b)(ii) of the TPA or the CCA as applicable from time to time.

H. LOSS OR DAMAGE

55. During the Relevant Period:

- (a) the Respondents and the Related Bodies Corporate together accounted for approximately 44% of Spot and Outright Forward trades globally and approximately 42% of Spot and Outright Forward trades in Australia; and
- (b) the Other Cartel Participants together accounted for a further approximately 6% of Spot and Outright Forward trades globally and a further approximately 6% of Spot and Outright Forward trades in Australia.

Particulars

Insofar as the Applicant can say prior to the completion of discovery, it refers to the particulars to paragraphs 4(d), 5(d), 6(d), 7(d), and 8(d).

56. During the Relevant Period, each of the Respondents gave effect to the FX Understanding Provision or the FX Chatroom Understanding Provisions to which they were party in a manner that was persistent, and directly concerned trading in the AUD, GBP, EUR, JPY, NZD, USD and many Affected Currency Pairs.

Particulars

The Applicant relies on the frequency, duration and subject matter of the conduct set out in the Overt Acts Spreadsheet, and, in respect of the admitting parties and their related bodies corporate, the admissions particularised in particulars (vii)(A) to (vii)(E) to paragraph 23. Further particulars may be provided upon the completion of discovery and the service of the Applicant's expert evidence.

H1. FX Understanding

57. By making the FX Understanding and giving effect to the FX Understanding Provision, the Respondents:

- (a) caused Spreads to be widened on trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment; and
- (b) caused the mid-points of Spreads for trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment to be higher or lower than they would otherwise have been;

in the Global FX Market and/or the Australian FX Market throughout the Relevant Period.

Particulars

- (i) The mechanisms by which Spreads widened and mid-points moved were that the Respondents made and implemented understandings as to prices or transactions, and co-ordinated their trading including by standing down and engaging in the other conduct described in the paragraph (iii) of the particulars to paragraph 23 above, and they responded to and took advantage of price or supply and demand signals that were conveyed by the shared information. The Applicant also relies on the mechanisms described in paragraph 58 below.
- (ii) Particulars of the increases and differences will be provided after service of the Applicant's expert evidence.

58. In the circumstances set out in paragraphs 55 and 56, by making the FX Understanding and giving effect to the FX Understanding Provision the Respondents caused:

- (a) increased volatility;
- (b) increased adverse selection risk;
- (c) decreased competition;

in relation to currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment in the Global FX Market and/or the Australian FX Market in the Relevant Period.

Particulars

- (i) The increased volatility arose in that as pleaded in paragraph 57 above, making and giving effect to the FX Understanding caused Spreads, mid-points and therefore prices to depart from what they would have been otherwise. Those movements led to an increase in volatility. Volatility increases risk for traders and they respond to higher volatility by widening Spreads if providing liquidity, and by requiring higher prices if selling and lower prices if buying.
- (ii) In FX markets, information asymmetry (that is, where some participants are better informed than others) gives rise to adverse selection risk. This is the risk that a person may trade with a better-informed counterparty, such that the transaction is more likely to prove to be disadvantageous than otherwise. Making and giving effect to the FX Understanding created and maintained an information advantage for the Respondents and Other Cartel Participants as compared to non-cartel participants, and so increased adverse selection risk for non-cartel participants. Increased adverse selection risk tended to cause non-cartel participants to increase Spreads and to require higher prices if selling and lower prices if buying.
- (iii) The exchange of information on Spreads reduced competition between the Respondents and Other Cartel Participants, and between

cartel participants and other persons trading in FX Instruments (as the cartel participants were less of a constraint on other persons trading in FX instruments). This caused the Global FX Market and the Australian FX Market to become less competitive, in that there was less pressure on non-cartel participants to quote competitive Spreads.

- (iv) Further particulars may be provided upon the service of the Applicant's expert evidence.

59. The:

- (a) increased volatility;
- (b) increased adverse selection risk;
- (c) decreased competition;

referred to in paragraph 58, in turn also caused:

- (d) Spreads to be increased on Affected Currency Pairs in the Global FX Market and/or the Australian FX Market; and
- (e) the mid-points of Spreads for trades in Affected Currency Pairs in the Global FX Market and/or the Australian FX Market to be different to what they would otherwise have been;

throughout the Relevant Period.

Particulars

- (i) The Applicant relies on the particulars to paragraph 58. Those effects were not confined to the currencies that were the subject of shared information or co-ordinated trading, and concealment, but extended to all Affected Currency Pairs.
- (ii) Further, the fact that currencies could be traded directly (eg, selling AUD to buy GBP) or indirectly (selling AUD to buy USD; then selling USD to buy GBP) means that by the process of arbitrage any change in the mid-point of Spreads for a dealing in the currencies involved in a direct trade tended also to affect the mid-point of spreads in at least one of two currency pairs which might be used to trade the first currency pair indirectly. The converse also applies.
- (iii) Further particulars will be provided upon the service of the Applicant's expert evidence.

60. The effect on Spreads and mid-points alleged in paragraphs 57 and 59 was passed on to down-stream sellers and buyers of FX Instruments, including the Applicant and most Group Members.

Particulars

- (i) Down-stream dealers in FX offered to buy and sell currencies to their own customers by reference to bid/ask prices derived directly or indirectly from the bid/ask prices of Dealers, but with a wider spread. Commonly, a downstream dealer's computer system would take in prices from one or more Dealers, select the highest bid and lowest ask prices among those Dealer prices for any relevant currency pair and set the downstream sell price by adding a markup to the Dealer's ask and set the downstream buy price by subtracting a markup from the Dealer's bid price.
 - (ii) Alternatively, down-stream prices were calculated by down-stream dealers first identifying the Dealer's mid-quote and then adding (for the ask) or subtracting (for the bid) a markup.
61. The effect on Spreads and mid-points alleged in paragraphs 57 and 59 was reflected in the price of Outright Forward contracts, the price of which is based on spot prices adjusted for interest rate differentials between the two currencies being traded.

H2. FX Chatroom Understandings

62. By making each FX Chatroom Understanding to which they were party, and giving effect to each such FX Chatroom Understanding Provision, the Respondents:
- (a) caused Spreads to be widened on trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment; and
 - (b) caused the mid-points of Spreads for trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment to be higher or lower than they would otherwise have been;
- in the Global FX Market and/or the Australian FX Market throughout the Relevant Period.

Particulars

- (i) The mechanisms by which Spreads widened and mid-points moved were that the Respondents made and implemented understandings as to prices or transactions, and co-ordinated their trading including by standing down and engaging in the other conduct described in the paragraph (iv) of the particulars to paragraph 25 above, and they responded to and took advantage of price or supply and demand signals that were conveyed by the shared information. The Applicant also relies on the mechanisms described in paragraph 63 below.
- (ii) Particulars of the increases and differences will be provided after service of the Applicant's expert evidence.

63. In the circumstances set out in paragraphs 55 and 56, by making each FX Chatroom Understanding to which they were party, and giving effect to each such FX Chatroom Understanding Provision, the Respondents caused:

- (a) increased volatility;
- (b) increased adverse selection risk;
- (c) decreased competition;

in relation to currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment in the Global FX Market and/or the Australian FX Market in the Relevant Period.

Particulars

- (i) The increased volatility arises in that, as pleaded in paragraph 62 above, making and giving effect to the FX Chatroom Understandings caused Spreads, mid-points and therefore prices to depart from what they would have been otherwise. Those movements led to an increase in volatility. Volatility increases risk for traders and they respond to higher volatility by widening Spreads if providing liquidity, and by requiring higher prices if selling and lower prices if buying.
- (ii) In FX markets, information asymmetry (that is, where some participants are better informed than others) gives rise to adverse selection risk. This is the risk that a person may trade with a better-informed counterparty, such that the transaction is more likely to prove to be disadvantageous than otherwise. Making and giving effect to the FX Chatroom Understandings created and maintained an information advantage for the Respondents and Other Cartel Participants as compared to non-cartel participants, and so increased adverse selection risk for non-cartel participants. Increased adverse selection risk tends to cause non-cartel participants to increase Spreads and to require higher prices if selling and lower prices if buying.
- (iii) The exchange of information on Spreads reduced competition between the Respondents and Other Cartel Participants, and between cartel participants and other persons trading in FX Instruments (as the cartel participants were less of a constraint on other persons trading in FX instruments). This caused the Global FX Market and/or the Australian FX Market to become less competitive, in that there was less pressure on non-cartel participants to quote competitive Spreads.
- (iv) In relation to each particular FX Chatroom Understanding, these effects were reinforced and compounded by the effects of the other FX Chatroom Understandings.
- (v) Further particulars will be provided upon the service of the Applicant's expert evidence.

64. The:

- (a) increased volatility;
- (b) increased adverse selection risk;
- (c) decreased competition;

referred to in paragraph 63, arising from contraventions as they relate to the FX Chatroom Understandings, in turn also caused:

- (d) Spreads to be increased on Affected Currency Pairs in the Global FX Market and/or the Australian FX Market; and
- (e) the mid-points of Spreads for trades on Affected Currency Pairs in the Global FX Market and/or the Australian FX Market to be different to what they would otherwise have been;

throughout the Relevant Period.

Particulars

- (i) The Applicant relies on the particulars to paragraph 63. Those effects were not confined to the currencies that were the subject of shared information or co-ordinated trading, and concealment, but extended to all Affected Currency Pairs.
- (ii) Further, the fact that currencies could be traded directly (eg, selling AUD to buy GBP) or indirectly (selling AUD to buy USD; then selling USD to buy GBP) means that by the process of arbitrage any change in the mid-point of spreads for a dealing in the currencies involved in a direct trade tended also to affect the mid-point of spreads in at least one of two currency pairs which might be used to trade the first currency pair indirectly. The converse also applies.
- (iv) Further particulars will be provided upon the service of the Applicant's expert evidence.

65. The effect on Spreads and mid-points alleged in paragraphs 62 and 64 was passed on to down-stream sellers and buyers of FX instruments, including the Applicant and most Group Members.

Particulars

- (i) Down-stream dealers in FX offered to buy and sell currencies to their own customers by reference to bid/ask prices derived directly or indirectly from the bid/ask prices of Dealers, but with a wider spread. Commonly, a downstream dealer's computer system would take in prices from one or more Dealers, select the highest bid and lowest ask prices among those Dealer prices for any relevant currency pair and set the downstream sell price by adding a markup to the Dealer's ask

and set the downstream buy price by subtracting a markup from the Dealer's bid price.

- (ii) Alternatively, down-stream prices were calculated by down-stream dealers first identifying the Dealer's mid-quote and then adding (for the ask) or subtracting (for the bid) a markup.

66. The effect on Spreads and mid-points alleged in paragraphs 62 and 64 was reflected in the price of Outright Forward contracts, the price of which is based on spot prices adjusted for interest rate differentials between the two currencies being traded.

H3. Damage suffered

67. In the circumstances pleaded in paragraphs 55 and 56, the matters alleged in 57, 58, 59, 60 and 61, further or alternatively 62, 63, 64, 65 and 66, caused the transactions the subject of the FX Instruments entered into by the Applicant and the Group Members to be:

- (a) at higher prices than they otherwise would have been, in the cases where the Applicants and Group Members were buyers; and
- (b) at lower prices than they otherwise would have been, in the cases where the Applicants and Group Members were sellers.

Particulars

Particulars of the differences will be provided after service of the Applicant's expert evidence.

68. By reason of the matters alleged in paragraph 67 above, the Applicant and the Group Members have suffered loss or damage within the meaning of:

- (a) s 82 of the TPA and/or s 82 of the CCA; and/or
- (b) s 87(1) of the TPA and/or s 87(1) of the CCA;

in relation to the FX Instruments they entered into during the Relevant Period.

Particulars

- (i) Examples of the FX Instruments entered into by the Applicant during the Relevant Period are set out in the particulars to subparagraph 2(d) above. Further particulars will be provided prior to trial.
- (ii) Particulars of the loss or damage sustained by the Applicant in respect of the FX Instruments it entered into during the Relevant Period will be provided following the service of the Applicant's expert evidence.
- (iii) Particulars in relation to Group Members' losses will be obtained and provided following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if, and when, it is

necessary for a determination to be made of the individual claims of those Group Members.

69. Further, and in the alternative to the matters alleged in paragraph 68 above, by reason of the Respondents' contraventions of the TPA and/or the CCA alleged in this Amended Statement of Claim, the Applicant and the Group Members, or some of them, suffered loss or damage within the meaning of s 82 of the TPA and/or s 82 of the CCA, further or alternatively s 87(1) of the TPA and/or s 87(1) of the CCA, in the form of the loss of opportunity to commence a proceeding against the Respondents to recover the loss or damage alleged in paragraph 68 above at an earlier date.

Particulars

- (i) Particulars of the loss of opportunity sustained by the Applicant will be provided following the service of the Applicant's expert evidence.
- (ii) Particulars in relation to Group Members' losses of opportunity will be obtained and provided following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

I. COMMON QUESTIONS OF LAW OR FACT

70. The questions of law or fact common between the claims of the Applicant and the Group Members are set out in the Amended Originating Application that this Amended Statement of Claim accompanies.

And the Applicant claims on behalf of itself and the Group Members for the relief set out in the Amended Originating Application.

Date: 19 November 2021



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Signed by Kimi Nishimura
Lawyer for the Applicant

This amended pleading was prepared by J C Sheahan, W A D Edwards and M W Guo of counsel.

Certificate of lawyer

I, Kimi Nishimura, certify to the Court that, in relation to the Statement of Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 19 November 2021



Signed by Kimi Nishimura
Lawyer for the Applicant

Schedule

No. VID 567 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Respondents

Second Respondent: Barclays Bank Plc (01026167)
Third Respondent: Citibank N.A. (ABN 34 072 814 058)
Fourth Respondent: JPMorgan Chase Bank N.A. (ABN 43 074 112 011)
Fifth Respondent: NatWest Markets Plc (SC090312)

Date: 19 November 2021