

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE FOREIGN EXCHANGE BENCHMARK
RATES ANTITRUST LITIGATION

No. 1:13-cv-07789-LGS

**DECLARATION OF CHRISTOPHER M. BURKE REGARDING MOTION FOR
ENTRY OF AN ORDER APPROVING CLAIMS ADMINISTRATOR'S
DETERMINATIONS REGARDING UNAUTHORIZED CLAIMS AND
DISPUTED CLAIMS**

I, Christopher M. Burke, hereby declare as follows pursuant to 28 U.S.C. §1746:

1. I am a partner with the law firm Korein Tillery P.C. (“Korein Tillery”), one of the Court-appointed Class Counsel in the above-captioned action (the “Action”). I am an attorney duly licensed by the States of New York, California, and Wisconsin and am admitted to practice in this Court. This Declaration is based on my personal knowledge and if called upon, I could and would competently testify thereto.

2. I submit this Declaration, together with the attached exhibit, regarding Plaintiffs’ Motion for Entry of an Order Approving Claims Administrator’s Determinations Regarding Unauthorized Claims and Disputed Claims (the “Motion”).

3. Pursuant to the Court’s October 11, 2023 Order, any objector’s response to the Motion was due by email to Class Counsel on or before October 27, 2023. ECF No. 2074.

4. On October 18, 2023, I received an email from disputing claimant Sean Waraich, claim number 10000935, attaching his response to the Motion.

5. Attached hereto as **Exhibit 1** is a true and correct copy of the Claimant Opposition Brief in Support of Option 2 Claim No. 10000935 and its accompanying exhibits.

6. On October 27, 2023, I received an email from disputing claimant Gregor L. McIntosh, claim number 10013447, attaching his response to the Motion.

7. Attached hereto as **Exhibit 2** is a true and correct copy of the Memorandum of Opposition by Gregor L. McIntosh (the “Claimant”) to a Motion by Plaintiffs for Entry of an Order Approving Claims Administrator’s Partial Rejection of Disputed Claim No. 10013447 and its accompanying exhibits.

8. As of the submission of this Declaration, I have not received any other emails from disputing claimants attaching any other responses to the Motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 27th day of October, 2023 in San Diego, California.

/s/ Christopher M. Burke
CHRISTOPHER M. BURKE

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/s/ Christopher M. Burke
CHRISTOPHER M. BURKE

EXHIBIT 1

October 18, 2023

Honorable Judge Lorna G. Schofield
U.S. District Court
Southern District of New York
Thurgood Marshall Courthouse

In re Foreign Exchange Benchmark Rates Antitrust Litigation
Case No. 1:13-cv-07789-LGS (S.D.N.Y.)

Claimant Opposition Brief in Support of Option 2 Claim No. 10000935

Request to be Granted Claim Assessment Notification Of Record

On April 25, 2022 Class Counsel and the Claims Administrator issued an approved Claim Assessment Notification, (CAN), for Option 2 claim no. 10000935 of assessment for restitution remittance, (attached as Exhibit A), that Claimant agreed to. Epiq Audit thereafter took opposition against Class Counsel and the Epiq Administrator Assessor's April 25, 2022 approved Claim Assessment Notification for claim no. 10000935 primarily on the grounds that Claimant's spot forex trades did not settle as institutional transactions, but retail, and subsequently rejected the option 2 submission. In contrast to this, the Claims Administrator continually reiterated that retail forex investors who entered into forex trades within the timeframe of the In re Foreign Exchange Benchmark Rates Antitrust Litigation guidelines were eligible to submit documented option 2 claims. It had been resolutely confirmed to Claimant in scheduled calls with Garden City Group, (now Epiq), Project Manager Cody Cervantes that retail Forex trade transaction participants are eligible to submit Option 2 claims to the In re Foreign Exchange Benchmark Rates Antitrust Litigation and are not excluded on the basis of being Retail. Claimant at no time received any notice of record thereafter from the Claims Administrator stating that retail participants had been outright removed from Option 2 claim submissions and no longer represented in the In re Foreign Exchange Benchmark Rates Antitrust Litigation, (a position the Epiq Auditor presently conveys; albeit it is a contention Class Counsel does not validate to be effective).

Contant, et al. v. Bank of America Corp., et al, 1:17-cv-03139-LGS (S.D.N.Y. 2020); judicially affirmed that retail spot forex transactions are eligible for restitution remittance in the In re Foreign Exchange Benchmark Rates Antitrust Litigation. In *Contant*, the generalization that the Defendant Banks were only counterparties to Institutional spot forex trades that settled on T+2 value date terms was deemed unsubstantiated to lawfully authorize claim assessment restitution to transaction record documented retail spot forex trades.

The claims audit has utilized switch and bait tactics in what is only applicable to Institutional Eligible Contract Participants, (ECPs), (as defined in the U.S. Commodity Exchange Act), and what is applicable to individual Retail investor participants in spot over-the-counter forex trade transactions. Claimant in claim no. 10000935 is an individual retail participant in each of the documented spot forex transactions; in this regards, Claimant has been mischaracterized before the Court, (as further indicated in the October 9, 2023 audit delegated dispute letter and subsequent motion filing).

In Retail FX trades, Value Dates are not payment delivered on T+2 settlement basis and individual retail forex investors do not go through onboarding that requires International Swaps and Derivatives Association, ("ISDA") agreements to be established of which does not apply to individual retail FX participants.

The Claimant conducted all documented spot forex transactions on a Metatrader 4, (MT4), platform that was connected to the forex marketplace by Integral, (see link: <https://www.integral.com/mt4-connectivity/>). Integral was the interconnected venue to the MT4 platform of which, International Capital Markets Pty Ltd, (ICM), was the forex merchant dealer, not the actual connectivity venue to the Defendant Bank counterparties for forex transactions, but rather an Introducing Broker, (IB), to the forex marketplace. In reference to this fact of record, it was clearly instructed and stated in the Option 2 submission guidelines that the Venue was to be input as 'Integral', not MT4, (the platform), or ICM, (the FX merchant IB), of which had also been confirmed by the Garden City Group, (now Epiq), Project Managers to the Claimant.

"The IC Markets MetaTrader 4 servers are currently located in the Equinix NY4 data centre in New York and is co-located with their ECN provider partner Integral as well as their liquidity providers including accredited banks and dark pool liquidity venues." - stated in ICM product disclosures and marketing publications.

The statement, "*The audit documentation also proved that ICM was the counterparty to all transactions*", (*Dispute Letter, Doc. 2074; pg. 3*), is erroneous and inaccurate for the following reasons:

- Claim audit record solely bases this assertion on a revised amended ICM Product Disclosure Statement effective issued from March 2021, that pertains to ICM's standard Dealer Desk model platform. Claimant did not conduct any spot forex transactions on or after March 2021, (of which would not be transaction date eligible to be submitted to the Option 2 claim), and at no time participated in any forex transactions on the cited dealer desk platform that did not have the same counterparties the claimant entered spot forex transactions with.
- The May 2013 ECN Counterparties disclosure statement, (Exhibit B), proves that the Claimant's spot forex transactions were done with Defendant Banks.

*It can be noted back from 2013/2014+ the main homepage of ICM, (forex merchant dealer), prominently featured each of the Defendant Banks, (with official bank entity logos), as Liquidity Provider Counterparties to the electronic communication network, (ECN), straight-through processing MT4 forex platform. ICM affirms they are not a counterparty to Claimant's forex trades by Exhibit B.

Audit cited Claimant's FX data pertaining to JPY quote currency pairs for correction, and because each JPY quote currency trade was entered in the same method as all other currency forex trades, Claimant had requested if there was an example of the audit notation to amend any discrepancy with a JPY entry, (of which was never provided), and as of October 9, 2023, the audit asserts there is a GPB/JPY transaction that has a value date that does not institutional close settle to then conclude as a result of this, the Claimant's value date entry for the forex trade is false. However, for a retail spot forex transaction, the value date is true and accurate as each of the Claimant's value dates is entered consistent with the documented Master Forex Transaction Record, (submitted to claim no. 10000935), that has an open and close timestamp of each of the Claimant's spot forex transactions. Furthermore, the FX trade record is verifiable proof that there is not one single false or fabricated trade value date in claim no. 10000935. Such connotation is a mistruth, and it can be found was at no time ever stated in any audit notice to Claimant.

The Plan of Distribution section VIII Calculating Settlement Transaction Volume A(1)(b) states: "For FX spot transactions, the notional value of the transaction needs no conversion before the application of the Relative Damage Factors."

Auditor¹ has also contended that claimant's JPY trade inputs did not adhere to submission guidelines on the basis that they were not converted to USD notational values, however, claims management previously stated such conversion calculations were to be done by the claims damage assessors in accordance to the In re Foreign Exchange Benchmark Rates Antitrust Litigation Plan of Distribution, (cited above), of which the Claimant has abided by.

Conclusion

The April 25, 2022 Claim Assessment Notification was issued to claim no. 10000935 for being in complete compliance with retail Option 2 submission guidelines. For the foregoing reasons, claimant objector therefore requests that the administrator approved April 25, 2022 Claim Assessment Notification remain effective for the stated maximum eligible restitution amount.

Respectfully submitted,

Sean Waraich - Claimant



2516 Commonwealth St, #201
Houston, TX 77006
Ph: 832 229-1652

¹ The Claim Auditor's assertions for the 'Contra Amount' that was cited in the June 9, 2022 rejection notice had been disproven by June 13, 2022 petition statement, (in tandem with the cited Exhibit 2).

Certificate of Service

I hereby certify a true and correct copy of the Claimant Opposition Brief and Exhibits was Court filed via e-mail on 10-18-2023 to Class Counsel and Claims Administrator in accordance to the 10-9-2023 dispute letter instructions notice.



Sean Waraich

Exhibit A



FOREIGN EXCHANGE ANTITRUST LITIGATION

Claim Assessment Notification

Option 2 Determination

You filed a claim under Option 2 (Documented Claim Option). This Claim Assessment Notification provides you with information about the Claims Administrator's calculations and estimates. We have reviewed your dispute and updated your claim assessment. Unless you respond in 20 days we will consider your dispute resolved. Please note also that the Claims Administrator's auditing process is ongoing. The Claims Administrator will notify you if your claim is selected for audit. You are therefore advised to keep documentation related to your transactions because having documentation will be important to substantiating your claim if it is selected for audit.

The Claims Administrator has calculated the Eligible Transaction Volume (ETV), Settlement Transaction Volume (STV) and Eligible Participation Amount (EPA) for your claim based on the data you submitted. [\[1\]](#) The Claims Administrator has also calculated the ETV, STV and EPA for your claim based on the data [\[2\]](#) provided by the settling defendant banks ("Option 1 Values"). A summary of the totals for your claim under Option 1 and Option 2 and your payment resolution category.

Claim Number: 10000935

Your Transaction Volumes Under Option 1 and Option 2

	Option 2	Option 1
Eligible Transaction Volume (ETV)	8,214,956,378	
Settlement Transaction Volume (STV)	8,214,956,378	
Eligible Participation Amount (EPA)	64,213,668,439	

Please note that ETV, STV and EPA do not represent payment amounts. Rather these are metrics representing your eligible trading volumes being converted into eligible participation units calculated pursuant to the Plan of Distribution.

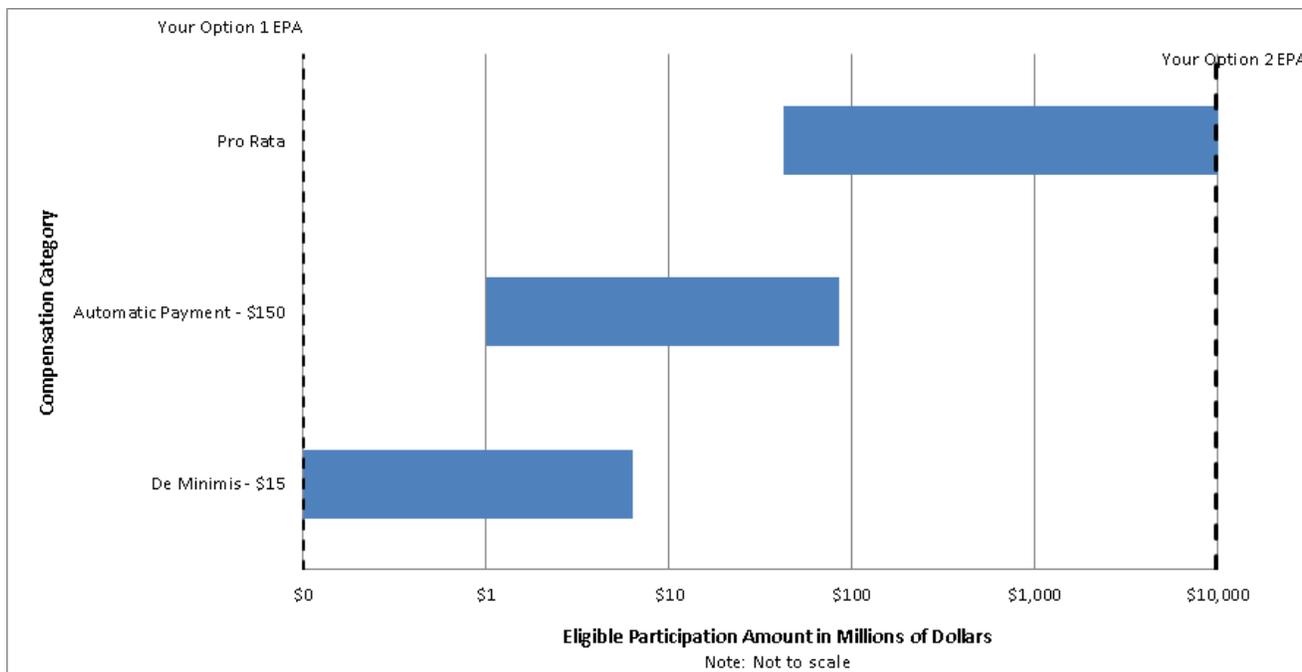
[\[1\]](#) ETV is the Estimated Transaction Volume, which represents the notional amount of all eligible trades. STV is the Settlement Transaction Volume which, represents the notional amount of trades multiplied by the applicable conversion ratio(s). EPA is the Eligible Participation Amount, which represents the outcome of the Plan of Distribution's five factors and heuristic processes calculated on a trade-by-trade basis. Information on how these amounts were calculated is available in the Plan of Distribution at <http://www.fxantitrustsettlement.com/courtdocs>.

[\[2\]](#) If you would like to review the data used to calculate your claim, please send a request to FXDataRequest@FXantitrustsettlement.com. In your request, please reference your claim number.



FOREIGN EXCHANGE ANTITRUST LITIGATION

Your estimated claim resolution category under Option 2 vs Option 1 is:



Based on claims processed to date, your payment amount is currently estimated to be between \$75,000 and \$500,000. Please note that this is an estimate, and it is possible that your payment will fall outside this band. The exact amount will not be known until all claims have been fully processed.

Acknowledgement:

You will automatically receive the higher of the Option 1 and Option 2 EPA values reported in this notice. No further action from you is required at this time.

We do not know when payments will be made, as claims processing has not completed. Please check the Settlement Website for updates.



FOREIGN EXCHANGE ANTITRUST LITIGATION

Option 2 Transaction Volume Summary

SUMMARY OF DATA SUBMITTED BY CLAIMANT ON WHICH CLAIMS ADMINISTRATOR'S DETERMINATION WAS BASED

Eligible Transaction Volume (ETV) Based on Option 2 Claim Submission
(Trades of U.S. Domiciled Claimants or Trades of Non-U.S. domiciled Claimants with Trade Location Information)

Time Period	Spot	Forwards	Swaps	OTC Options	Other FX Products	Total
Pre-2008						
2008-2013	7,641,966,105					7,641,966,105
Post-2013	572,990,273					572,990,273
Total	8,214,956,378					8,214,956,378

Eligible Transaction Volume (ETV) Based on Option 2 Claim Submission
(ECN Trades - U.S. Domiciled)

Time Period	Spot	Forwards	Swaps	OTC Options	Other FX Products	Total
Total						

Eligible Transaction Volume (ETV) Based on Option 2 Claim Submission
(ECN Trades - Non-U.S. Domiciled)

Time Period	Spot	Forwards	Swaps	OTC Options	Other FX Products	Total
Total						



FOREIGN EXCHANGE ANTITRUST LITIGATION

**Eligible Transaction Volume (ETV) Based on Option 2 Claim Submission
(Trades of Non-U.S. Domiciled Claimants with no Trade Location Information)**

Time Period	Spot	Forwards	Swaps	OTC Options	Other FX Products	Total
Pre-2008						
2008-2013						
Post-2013						
Total						

**Eligible Transaction Volume (ETV) For FX Exchange Traded Instruments Based on Option 2 Claim Submission
(FX Exchange Trades - U.S. Domiciled)**

Time Period	Futures	Options on Futures	Other FX Products	Total
Pre-2008				
2008-2013				
Post-2013				
Total				

**Eligible Transaction Volume (ETV) For FX Exchange Traded Instruments Based on Option 2 Claim Submission
(FX Exchange Trades - Non-U.S. Domiciled)**

Time Period	Futures	Options on Futures	Other FX Products	Total
Pre-2008				
2008-2013				
Post-2013				
Total				

Exhibit B



ECN Counterparties

May 2013

1. Straight-Through Processing (STP) - Introduction

IC Markets is an agent, (not a market maker), to STP FX transactions with ECN liquidity provider counterparties to Qualified Eligible Person clients. This is in accordance to ASIC regulations in conjunction with other agency compliance policies.

Credit risk is the risk that a counterparty to IC Markets fails to perform its obligations which results in financial loss for IC Markets. IC Markets management of credit risk is intended to protect the company and clients from any sudden changes in the liquidity, credit quality or solvency of our banks. Thus, we have in place internal risk management procedures to manage overexposed short positions.

IC Markets primarily takes on market risk to facilitate instant execution of client trades; therefore, IC Markets market risk limits are generally conservative.

This policy covers how IC Markets deals with:

- market risk;
- credit risk; and
- selecting and assessing counterparties.

2. Market Risk Mitigation, Monitoring and Reporting

IC Markets does not take proprietary positions based on an expectation of market movements and as a result does not customarily hedge against client transactions. In adverse market conditions, IC Markets may have a net position with a hedging counterparty in any of the markets on which it offers products to reduce market risk exposure in residual un-hedged entries.

IC Markets has in place internal market risk procedures for setting limits, for every financial market in which our clients trade, as well as certain groups of markets which we consider to be correlated. These rules limit the net exposure arising from client activities and hedging consistent with our risk appetite.

Our risk management systems allow us to continually monitor our exposure against these limits in real time. If our exposure exceeds the limits as a result of clients' activities, we will carry out sufficient hedging to bring the exposure back within the defined limit.

Changes to market risk policy require review by the Board of Directors.

3. Credit Risk Mitigation and Reporting

We have internal counterparty credit risk procedures for assessing credit risk and setting credit risk limits. These procedures are reviewed annually and presented to the Board for approval should any changes be proposed.

We review the credit quality of our major counterparties on an on-going basis, with a formal risk review for each counterparty performed at a minimum on an annual basis and more frequently if there is a significant change in market conditions or relevant news.

Our exposures to each counterparty are monitored on a daily basis and reported to our Risk Manager. It is our policy to reduce the risk of counterparty failure through diversification and by setting each counterparty a risk-assessed exposure limit.

4. Criteria for selecting a liquidity provider counterparty

We assess a potential counterparty against a list of qualifying criteria that address whether they are of adequate financial standing. We do not accept a potential counterparty unless they meet the minimum qualification criteria, which require the counterparty to:

- have adequate financial and compliance resources;
- have an adequate financial license and creditworthiness;
- maintain proper reporting records and regulatory oversight; and
- have a good reputation within the financial services industry.

Addition of new counterparties or changes to existing counterparty limits require approval by the Board of Directors.

5. Current Liquidity Providers

Currently our Electronic Communication Network venue cooperates with the following counterparties:

- Royal Bank of Scotland plc;
- BNP Paribas, S.A.;
- Citibank, N.A.;
- UBS Group AG;
- JPMorgan Chase Bank, N.A.;
- HSBC Bank plc;
- Bank of America Corporation;
- Goldman Sachs; and
- Morgan Stanley

These counterparties are defined as Tier 1 liquidity providers for foreign exchange transactions and supply exchange rates for all currency pairs on the ECN platform.

IC Markets accesses an ECN STP network to execute trade orders on a no dealing desk basis as entered transactions revert to our Tier 1 liquidity providers. IC Markets does not have a dealing desk that creates its own prices.

If you require any additional information, please feel free to contact us at support@icmarkets.com

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FOREIGN EXCHANGE
BENCHMARK RATES
ANTITRUST LITIGATION

No. 1:13-cv-07789-LGS

**MEMORANDUM OF OPPOSITION BY GREGOR L. MCINTOSH (THE
"CLAIMANT") TO A MOTION BY PLAINTIFFS FOR ENTRY OF AN ORDER
APPROVING CLAIMS ADMINISTRATOR'S PARTIAL REJECTION OF
DISPUTED CLAIM NO. 10013447**

By this Memorandum, Claimant opposes Plaintiffs' request that the Court approve Claims Administrator's partial rejection of claim no. 10013447 (the "Disputed Claim"), and respectfully asks that the Court order that the Disputed Claim be accepted in its entirety.

Unless otherwise defined herein, all capitalised terms have the meanings ascribed to them in (i) the Third Consolidated Amended Class Action Complaint, (ii) the Settlement Agreements, (iii) the Plan of Distribution, all as approved by the Court, and (iv) Plaintiffs' Motion of October 23, 2023 (the "Motion") to which this Memorandum of opposition relates, including the attachments to the Motion.

Submitted herewith, in support of Claimant's opposition to Plaintiffs' Motion, are :

- Copy of an e-mail sent by Claimant to Claims Administrator on July 11, 2022 (Exhibit 1).
- Copy of an e-mail exchange between Claimant and Claims Administrator on October 16, 2023 (Exhibit 2).
- An extract from trade data submitted by Claimant to Claims Administrator, including only the trades subject of the Disputed Claim, with added information and Claimant computations relating to the contentious Trades (Exhibit 3).

Contents of the exhibits to the Memorandum in support of the Motion and which relate exclusively to the Disputed Claim are incorporated herein by reference.

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PRELIMINARY STATEMENT

Claimant contests Claims Administrator's unsupported administrative determination, and Plaintiffs' baseless assertion that ten of the many but largest trades by Claimant in FX futures on the Chicago Mercantile Exchange ("CME"), having a Conversation Ratio of **1.0** as stipulated in the Plan of Distribution, be treated as analogous to and administratively processed in the Settlement as FX swaps with the lower Conversion Ratio of **0.001**.

The ten eligible trades in FX futures which Claims Administrator has subjectively and inappropriately treated as FX swaps result for those trades in in-existent or negligible Eligible Participation amounts ("EPAs"), which are neither compliant nor consistent with the provisions of the Plan of Distribution.

An order by the Court approving Claims Administrator's partial rejection of the Disputed Claim, for the unsubstantiated reasons alleged by Plaintiffs in the Motion, would unfairly deprive Claimant of EPAs representing close to 50% of all EPAs resulting from trades in FX futures submitted by Claimant to Claims Administrator, supported by all necessary trade data and the broker statements required for any Option 2 claim.

BACKGROUND

Claims Administrator issued three separate Claim Assessments relating to the Disputed Claim, the first two of which omitted to take into account all trades in FX futures executed through Citigroup and Morgan Stanley (the "Brokers") and the third of which included the missing trades in FX futures, ten of which (the "Trades") were falsely deemed by Claims Administrator to be analogous to

FX swaps and processed as such in the third and latest, hereby contested Claim Assessment.

The ten Trades had for purpose to maintain existing currency market exposures while both (i) deferring the delivery of the underlying currencies on settlement of the nearby expiring FX future and (ii) seeking, through short term fluctuations in the EUR:USD spot rate, to minimise negative carry or maximise positive carry resulting from the Trades in FX futures with different expiration dates. Claimant, for that reason, systematically declined Brokers' suggestions that the equally sized and offsetting Trades in FX futures with different expirations be executed by way of exchange traded "*calendar spreads*" having different CME product codes to those of the underlying FX future. Buy and sell side Trades of equal size during a single trading session, for different maturities, were therefore not executed simultaneously, nor necessarily within minutes of each other, Brokers having on each occasion been instructed by telephone to "*work the orders at best*" to achieve the hoped for effects. Claimant informed Claims Administrator of this in an e-mail dated July 11, 2022 (see Exhibit 1 to this Memorandum - paragraph highlighted in yellow).

Brokers' statements in Claimant's possession and submitted to Claims Administrator do not include trade timestamps, and Claims Administrator has confirmed that neither of the Brokers (Defendants Citigroup and Morgan Stanley) has supplied or been asked by Claims Administrator to provide it with data, including trade timestamps if any, relating to the Trades (see Exhibit 2 to this Memorandum - paragraph highlighted in yellow).

Claimant has meanwhile reached out to his last known contact and account relationship officer at Morgan Stanley, where Claimant's account was closed in 2013, in an effort to seek Brokers' confirmation, by way of trade timestamps or otherwise, that Trades were not executed simultaneously, whether by way of calendar spread trades or in some other form. Claimant, at the time of this writing, hasn't received any call-backs from his attempts to contact the person concerned.

Plaintiffs allege that the Trades were “*rolls*” mirroring over-the-counter FX swap transactions, involving no net delta risk from exposure to fluctuations in currency rates; that they should fall under §VIII.A.7 of the Plan of Distribution relating to “*Other FX products*” and that, according to the provisions of that Section, claim values of the Trades should be determined by applying the Conversion Ratio applicable to FX swaps under §IX.D of the Plan of Distribution.

Claimant contests all of Plaintiffs’ allegations as set out in the preceding paragraph. and the resulting treatment of Trades as FX swaps instead of as outright trades in FX futures executed at different times.

§VIII.A.5.(b) of the Plan of Distribution provides that, because FX futures are mechanically similar to FX forwards, the Conversion Ratio will be

1.0.

§VIII.A.3 of the Plan of Distribution provides, in the first bulleted subset, that the process employed by Claims Administrator to flag FX spot and FX forward trades that might, in combination, constitute an FX swap trade, will involve reviewing trade records “*within time slices*” to identify trades with different value dates that fit the two sided criteria of an FX swap.

§VIII.A.7 of the Plan of Distribution provides that *Other FX products* will be decomposed, where possible [using unspecified methodology], into the individual FX instruments dealt with elsewhere in §VIII.A of the Plan of Distribution.

ARGUMENT

Any parallel between an FX swap traded over-the-counter (“OTC”) and Trades in FX futures on the CME can be drawn only if and when the two sides or legs of contractually agreed or otherwise related trades are committed to or executed simultaneously and with the same counterparty, such that the spot FX rate underpinning the pricing of the two legs of the trade can be shown to be identical.

The difference between the spot FX rate serving as basis for both the nearby leg of an FX swap and the forward FX rate at which the swap is settled at maturity will always reflect the cost or benefit of carry resulting from the differential in interest rates agreed to by the contracting parties.

In the case of exchange traded FX futures, on CME or elsewhere, and unlike with FX swaps traded OTC where the counterparties agree on all of the terms of the swap, including interest rates, the net interest rate differential which determines fair value (the "FV") of an FX future, and thus the amount of positive or negative carry of the FX future, is derived from interbank benchmark interest rates set on a daily basis for the relevant duration and currency pair. FV of an FX future, because of arbitrage plays by some FX market participants, at all times equals or very closely approximates, in terms of pips or ticks, the spot rate plus or minus positive or negative carry for the period between trade and settlement dates of the FX future.

Any interval in time between the closing-out of an existing position in a nearby expiring FX future and opening of a similarly sized position in the same FX future but with a further out settlement date exposes the trader to FX market risk in the meanwhile. Only trades in FX futures executed by way of certain CME exchange traded calendar spread products would allow a nearby expiring FX future to be "*rolled*" over to a later contract expiry without exposing the trader to FX market currency exchange rate risks. Calendar spread trades, of which there were none in Claimant's case, would have shown differently from outright trades in FX futures in Brokers' statements.

In its administrative determination that the Trades were akin to FX swaps and should be processed as such, Claims Administrator has relied on the stated and questionable process involving the review of trade records within "*time slices*" which, in Claimant's case and in the absence of trade timestamps for each of the Trades, cannot have been smaller than the day (FX futures trading session) during which each Trade was executed through the CME.

Claims Administrator, in its processing of the Trades, and Plaintiffs', in the

Motion, seem oblivious to the fact that currency exchange rates can change rapidly, sometimes very significantly, in the space of minutes or even seconds.

Trade related data submitted to Claims Administrator, and computations by Claimant based on the data and international benchmark interest rates on Trade dates, show beyond doubt that the alleged FX swap trades did not involve simultaneously executed transactions in the nearby expiring and further out settlement date FX futures. Deviations between trade rates and FV of the later expiring FX future are of a size which cannot be explained otherwise than by non-simultaneous Trades in the two FX futures (see Exhibit 3 to this Memorandum).

Claims Administrator and Plaintiffs have ignored the realities behind the Trades and, not surprisingly, failed to demonstrate that the Trades in FX futures were in any way the equivalent of or analogous to FX swaps.

CONCLUSION

Claimant respectfully requests that the Court deny Plaintiffs' Motion to the extent that it seeks the Court's approval of rejection of the partially Disputed Claim; and order that the Disputed Claim be accepted in its entirety.

Dated: October 27, 2023



Gregor L. McIntosh

gregor.mcintosh@bluewin.ch

De: gregor.mcintosh@bluewin.ch
Envoyé: lundi, 11 juillet 2022 15:27
À: 'FXDataRequest@fxantitrustsettlement.com'
Cc: 'Info@FXAntitrustSettlement.com'
Objet: RE: Claims 1451079 and 10013447 - For the urgent attention of Claims Administrators (AH) and (MK)

Dear Andy,

It was good to talk Thursday even though our discussion didn't yield anything conclusive. Thank you for having forwarded meanwhile what you see as justification for the reclassification of trades in FX Futures on the CME as FX Swaps for the purposes of calculating the EPAs resulting from my claims.

First, I confirm, as is apparent from the e-mail chain below, that I did **not** receive the e-mail notification of May 2nd, 2022, the reason for this being that my e-mail address, while the spelling is correct, was set in uppercase letters instead of lower case as is the norm, at least in Switzerland and most of Europe. This was, to my knowledge, the second time this has happened. I have no way of knowing whether I didn't receive other e-mail notifications of the same or a different type but, as I said on our call, did not receive e-mail notifications relating to any of the first, second or third claim assessments posted to the portal.

Turning to the heart of the matter at hand and the reasons for our disagreement regarding Epiq's treatment of the ten trades in FX exchange traded futures incorrectly classified and processed as if they constituted FX swaps:

1. I was already familiar with the two bulleted subsets to section VIII(A)(3)(c) of the plan of distribution. Those subsets and the whole of section VIII(A)(3) apply only to FX swaps, defined in the plan of distribution as "*an agreement to buy and sell one currency against another currency with defined rates of exchange and on two defined dates, traded OTC*". This is consistent with how FX swaps are commonly understood and characterised, i.e. as "*agreements between two counterparties, acting OTC, and comprising two separate but contractually linked legs to be settled on different dates as stipulated in the swap agreement*".
2. The bulleted subsets to paragraph (3)(c) of section VIII(A) serve only to point to situations where it might not be clear, from the FX swap trade records of either a Settling Defendant or Claimant, whether two FX transactions constitute standalone trades or may be part of a single combined FX swap trade, conducted OTC, and where it might be appropriate for the Claims Administrator to rely on processes designed to identify trades that may effectively be constituent of an FX Swap as defined.
3. Nothing in the above, in paragraph (3) of section VIII(A), or indeed in section VIII(A) as a whole, even remotely suggests that the criteria applicable to FX swaps should or could for any reason, by analogy or otherwise based on considerations of a subjective nature, be extended to the treatment of FX futures as separately provided for in section VIII(A)(5) of the plan of distribution.
4. FX futures, in contrast to swaps, are standardised, one-leg only exchange traded contracts calling for receipt or delivery of one currency against another, at a future date and without any contractually associated or compensating FX spot transaction. The sale or purchase of an FX futures contract is never devoid of the risks that could arise due to unpredictable events affecting FX markets in general and trading conditions within or from one day to another.
5. You rightly point out in your e-mail that FX futures are mechanically similar to forwards, thus should be treated similarly to FX forwards throughout the Plan of Distribution, including having the same conversion ratio, i.e. of 1.0. This is consistent with the fact that the delta ratio of a futures contract of any type, including FX futures and forwards alike, cannot be anything other than 1.0.
6. The above applies to trades in the same or a different FX futures contract, whether conducted within the same, a close-by or further out trading session.

7. Moreover, as touched upon in our call Thursday and although not directly relevant to the stated and court approved treatment of FX futures under the terms of the plan of distribution:
- Price differentials between the exchange traded rates of a nearby FX futures contract and those of contracts involving the same currency but of longer duration often differ(ed) quite widely from the contango or backwardation to be expected based on the differences in interest rates offered in the respective currencies over the term period concerned; and were notoriously volatile in the weeks and days leading up to the final hours of trading of the nearby contract.
 - Banks or brokers in house and perhaps at times shared knowledge of the intentions of holders of significant positions in a soon to expire futures contract likely explain part of this phenomenon; and this of itself supports the fact that delta risk remains at 1.0 up until the final minute of trading in an expiring future.
 - None of my trades in FX futures were conducted on a spread limited basis, or as what some banks or brokers refer to as "spread trades". To the contrary, all of the trades on the CME via Citi/Morgan Stanley, except of course when a currency position was closed out in totality, were executed following instructions to separately buy or sell futures, on a best-efforts basis and with a view to minimizing, but sometimes unsuccessfully, the differentials in rates between two or more trades in futures of different duration involving the same currencies.

I can only suggest in these circumstances that Epiq reconsider its position, reprocess the ten trades with the required conversion ratio of 1.0, and recalculate the EPAs of the trades concerned using the relative damage factors applicable to the rectified STVs in accordance with the plan of distribution.

Should Epiq remain unwilling to do so, please put me in touch with class counsel so that I can review the situation with them. My claim may be insignificant in the overall context of the FX settlement but that is not sufficient reason for it to receive treatment that isn't in strict conformity with the plan of distribution, or which might constitute unequal treatment compared to other claims including trades in FX futures.

I note also in passing that Epiq's raw date file comprising the falsely purported FX swap trades misstates by three months or so the trade dates of two of the ten transactions of which I dispute the treatment as swaps for the reasons outlined herein. If Citi/Morgan Stanley submitted trade data in respect of my accounts which isn't in the same formats as the statements I uploaded in support of my claim, would you please provide me with copies of the relevant data files.

You indicated in our call that I couldn't for some reason file a dispute resolution notice. Why is that, when other claimants are given the option of doing so? Is it because I wasn't sent a claim deficiency notice even though Epiq evidently disagreed with the legitimate classification of the ten disputed transactions as trades as FX futures?

Finally, please confirm my understanding that the circa \$7.5k (or was it \$5.7k?) payout you referred to as being part of the third distribution awaiting court approval will be in addition to the circa \$4.7k included in the second distribution, in both cases after deducting the 40% holdback; and that the participation I expect from a fourth and final distribution will come on top of those two. Would you be kind enough to remind me of the exact amounts of the first two distributions?

Many thanks and kind regards.

Greg McIntosh

De : FXDataRequest@fxantitrustsettlement.com <FXDataRequest@fxantitrustsettlement.com>
Envoyé : jeudi, 7 juillet 2022 22:49
À : 'gregor.mcintosh@bluewin.ch' <gregor.mcintosh@bluewin.ch>
Cc : Info@FXAntitrustSettlement.com
Objet : RE: Claims 1451079 and 10013447 - For the urgent attention of Claims Administrators (AH) and (MK)

Dear Greg,

Thank you for joining the call. The below portion from the bulleted paragraph under VIII(A)(3)(c) of the Plan of Distribution describes the process of re-classifying certain trades as swaps:

VIII(A)(3)(c):

In the FX swap trade records of both Settling Defendants and Claimants, FX swaps may be represented by two standalone constituent trades (*e.g.*, one FX spot trade and one FX forward trade) rather than as a single combined FX swap trade. Therefore, the Claims Administrator will implement a process to flag FX spot and FX forward trades that appear as standalone trades but are actually part of a single combined FX swap trade. The process will review trade records within time slices to identify trades with different value dates that fit the criteria of two sides of an FX swap to identify FX swaps.

EXHIBIT 2

gregor.mcintosh@bluewin.ch

De: Info@FXAntitrustSettlement.com
Envoyé: lundi, 16 octobre 2023 23:44
À: gregor.mcintosh@bluewin.ch
Objet: RE: Claim no: 10013447 - In re Foreign Exchange Benchmark Rates Antitrust Litigation - Dispute Letter from Class Counsel

Greg,

Thank you for your email. Below please find answers to your questions.

1. Correct. Being "double spaced" means that each line should be separated from the next with a line which is void of text. In other words, a blank line should appear in between each line of text.
2. We are looking into this inquiry and will provide you with an answer as soon as possible.
3. We are unable to provide because your claim does not have any eligible transactions in the Defendant data. In other words, your claim has no Option 1 volume.

We tracked your mailed package with the letter and Order, and it appears that it was successfully delivered today.

The Final Claims Motion was filed on Friday, October 13, 2023 at the end of the day. Weekends are outside of the Claims Administrator's working hours. Today, we are sending the Motion and accompanying documents to Claimants who filed disputes.

Kind regards,

Foreign Exchange Antitrust Litigation
Claims Administrator (MK)
<http://www.fxantitrustsettlement.com>
Info@fxantitrustsettlement.com

From: gregor.mcintosh@bluewin.ch <gregor.mcintosh@bluewin.ch>
Sent: Sunday, October 15, 2023 5:39 AM
To: Info@FXAntitrustSettlement.com
Cc: FXDataRequest@fxantitrustsettlement.com
Subject: RE: Claim no: 10013447 - In re Foreign Exchange Benchmark Rates Antitrust Litigation - Dispute Letter from Class Counsel

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe. Report phishing by using the "Phish Alert Report" button above.

For the attention of Claims Administrator (MK)

Dear Morgan,

Thank you for forwarding the letter from Class Counsel with its attachment.

I disagree for a number of reasons with Class Counsel's determination on behalf of Plaintiffs that the Court should overrule my objections to how Claims Administration has treated the ten trades in FX futures to which the dispute relates. I have the following questions, requests and comments, on which feedback from Claims Administration is essential before I decide on whether or not to actually submit an opposition brief :

1. Can you please clarify what is meant by 10 pages "*double spaced*" as that term is used in Class Counsel's letter of October 12th, 2023. Does it mean that each line in the opposition brief should be separated from the next with a line which is void of text, or does it mean something else?
2. Any opposition brief I may decide to submit for the Court's consideration in the dispute will likely include at least one exhibit demonstrating why the ten FX trades concerned were not, under any reading or defensible analysis, constituents of what could be considered to be or construed as having been analogous to FX swaps. Will the exhibit(s), not more than one to three pages I expect, fall within the ten page limitation?
3. Please provide me, by e-mail, with extracts from the FX trade data submitted to Claims Administration by Defendants Citigroup and Morgan Stanley, and / or separately by the Chicago Mercantile Exchange (CME) in relation to trades in FX futures on that exchange, as part of the FX Settlement discovery process. I need this information only to the extent that it identifies and relates to the ten trades in FX futures of which the treatment as FX swaps in the third claim assessment is disputed.

For the record, I have so far received neither of :

- o The FedEx Overnight courier you refer to in your e-mail below. I guess this may be because of the different time zones and that the envelope may therefore be delivered tomorrow, and, if it just contains a hard copy of what you sent me via e-mail, shouldn't add anything to my current thoughts on this matter.
- o Plaintiffs' Final Claims Motion, with attachments and exhibits, which Class Counsel say in their letter would be filed with the Court last Friday, October 13th. I will need to see the contents of the motion, insofar as they relate to my claim and dispute, well ahead of the October 27 deadline for submission of opposition briefs.

In view of the tight deadline, please kindly ensure I receive all of the above mentioned information and documents no later than this Tuesday, October 17th, 2023.

Thank you for your continued collaboration and assistance.

With kind regards.

Greg McIntosh

De : Info@FXAntitrustSettlement.com <Info@FXAntitrustSettlement.com>

Envoyé : jeudi, 12 octobre 2023 22:31

À : 'gregor.mcintosh@bluewin.ch' <gregor.mcintosh@bluewin.ch>

Objet : In re Foreign Exchange Benchmark Rates Antitrust Litigation - Dispute Letter from Class Counsel

Dear Gregor,

Attached please find a letter from Class Counsel regarding your dispute for claim number 10013447 that is being submitted to the Court for review. This letter has also been mailed to you via FedEx Overnight, and you should receive it tomorrow.

Kind regards,

Foreign Exchange Antitrust Litigation

Claims Administrator (MK)

<http://www.fxantitrustsettlement.com>

Info@fxantitrustsettlement.com

EXHIBIT 3

Extracts from trade data submitted to and verified by Claims Administrator															Data added by Claimant in support of opposition to partial rejection of Disputed Claim										
Claimant name	Claim no.	Broker/FCM	Exchange name	Transaction type	Trade date	Trade timestamp	Time zone	CME product code	Trade rate	Number of contracts	Base currency	Quoted currency	Buy/sell (contract)	Base amount	Contra amount	Contract expiry date	No. of days between trade & contract expiry dates	Difference between nearby and further out expiring FX future trade rates	3 mth USD LIBOR (1) % p.a.	3 mth EUR LIBOR (1) % p.a.	3 mth interest rate differential % p.a.	Fair value rate (FV) of FX future at trade date (2)	EUR/USD FX future bid/ask spread (1 Pip max.)	Net FX rate delta effect to Claimant Pip's % of FV	
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2011-12-13	Not available	U.S. (EST)	CME Globex 6E	1.32030	400	EUR	USD	BUY	50,000,000.00	66,015,000.00	2011-12-19	97	0.00170	0.54625%	1.35543%	0.81018%	1.32318	-0.0001	-10.8	
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2011-12-13	Not available	U.S. (EST)	CME Globex 6E	1.32200	400	EUR	USD	SELL	50,000,000.00	66,100,000.00	2012-03-19									
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-03-13	Not available	U.S. (EST)	CME Globex 6E	1.31990	400	EUR	USD	BUY	50,000,000.00	65,745,000.00	2012-03-19	97	0.00065	0.47365%	0.78400%	-0.31035%	1.31380	-0.0001	18.5	
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-03-13	Not available	U.S. (EST)	CME Globex 6E	1.31555	400	EUR	USD	SELL	50,000,000.00	65,777,500.00	2012-06-18									
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-06-05	Not available	U.S. (EST)	CME Globex 6E	1.24930	256	EUR	USD	BUY	32,000,000.00	39,977,600.00	2012-06-18	104	0.00115	0.46785%	0.58657%	-0.11872%	1.24887	-0.0001	16.8	
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-06-05	Not available	U.S. (EST)	CME Globex 6E	1.25045	256	EUR	USD	SELL	32,000,000.00	40,014,400.00	2012-09-17									
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-06-06	Not available	U.S. (EST)	CME Globex 6E	1.24460	144	EUR	USD	BUY	18,000,000.00	22,402,800.00	2012-06-18	103	0.00115	0.46785%	0.58471%	-0.11686%	1.24418	-0.0001	16.7	
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-06-06	Not available	U.S. (EST)	CME Globex 6E	1.24575	144	EUR	USD	SELL	18,000,000.00	22,423,500.00	2012-09-17									
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-12-13	Not available	U.S. (EST)	CME Globex 6E	1.30920	450	EUR	USD	BUY	56,250,000.00	73,586,250.00	2012-12-17	95	0.00115	0.30800%	0.42214%	0.18586%	1.30884	-0.0001	6.1	
Gregor L. McIntosh	10013447	Morgan Stanley / Citigroup	CME / Globex	FX future	2012-12-13	Not available	U.S. (EST)	CME Globex 6E	1.30935	450	EUR	USD	SELL	56,250,000.00	73,650,937.50	2013-03-18									

(1) Source: www.global-rates.com (historical interbank interest rates).
 (2) Fair value equals the trade rate of the nearby expiring FX future plus or minus the net differential in daily 3 month interbank benchmark interest rates (negative or positive carry) for the number of days between the trade and settlement dates of the later expiring FX future.