

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/11/2021 7:32:51 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID567/2019
File Title:	J WISBEY & ASSOCIATES PTY LTD v UBS AG & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 1/12/2021 4:28:07 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 19
Rule 9.32

Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

(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

To the Respondents

The Applicant applies for the relief set out in this amended application.

The Court will hear this amended application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Filed on behalf of (name & role of party)	The Applicant, J Wisbey & Associates Pty Ltd (ACN 001 959 851)		
Prepared by (name of person/lawyer)	Kimi Nishimura		
Law firm (if applicable)	Maurice Blackburn Lawyers		
Tel	(03) 9605 2785	Fax	(03) 9258 9610
Email	FX@mauriceblackburn.com.au		
Address for service (include state and postcode)	Level 21, 380 La Trobe Street Melbourne VIC 3000		



Time and date for hearing:

Place:

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Details of claim

On the grounds stated in the accompanying Amended Statement of Claim (and adopting the terms defined therein), the Applicant claims on its own behalf and on behalf of each of the Group Members:

- 1) A declaration that, during the Relevant Period, each of the Respondents was a party to:
 - (a) the FX Understanding;
 - (b) further or alternatively the FX Chatroom Understandings to which they were party as alleged in paragraph 25 of the Amended Statement of Claim.
- 2) Declarations that, at all material times prior to 24 July 2009, each of the Respondents contravened s 45(2)(a)(i) and s 45(2)(a)(ii) of the TPA by making or arriving at:
 - (a) the FX Understanding;
 - (b) further or alternatively the FX Chatroom Understandings to which they were party as alleged in paragraph 25 of the Amended Statement of Claim.
- 3) Declarations that at all material times prior to 24 July 2009, each of the Respondents contravened s 45(2)(b)(i) and s 45(2)(b)(ii) of the TPA by giving effect to:
 - (a) the FX Understanding;
 - (b) further or alternatively the FX Chatroom Understandings to which they were party as alleged in paragraph 25 of the Amended Statement of Claim.
- 4) Declarations that at all material times on or after 24 July 2009, each of the Respondents contravened s 44ZZRJ of the TPA and s 44ZZRJ of the CCA and s 45(2)(a)(ii) of the TPA and CCA by making or arriving at:
 - (a) the FX Understanding;
 - (b) further or alternatively the FX Chatroom Understandings to which they were party as alleged in paragraph 25 of the Amended Statement of Claim.



- 5) Declarations that at all material times on or after 24 July 2009, each of the Respondents contravened s 44ZZRK of the TPA and s 44ZZRK of the CCA and s 45(2)(b)(i) and s 45(2)(b)(ii) of the TPA and CCA by giving effect to:
- (a) the FX Understanding;
 - (b) further or alternatively the FX Chatroom Understandings to which they were party as alleged in paragraph 25 of the Amended Statement of Claim.
- 6) Injunctions pursuant to s 80(1) of the TPA and/or s 80(1) of the CCA:
- a. restraining each of the Respondents from further entering into, or giving any further effect to, the FX Understanding and the FX Chatroom Understandings;
 - b. compelling each of the Respondents to establish at their own expense a program which has the purpose of ensuring compliance by each of them, employees in their respective foreign exchange businesses and their related bodies corporate with applicable anti-price-fixing and other anti-cartel legislation (**compliance program**);
 - c. compelling each of the Respondents to publish at their own expense a notice to affected consumers advising them that:
 - i. they each engaged in illegal price-fixing in their respective foreign exchange business throughout the Relevant Period;
 - ii. they have each been found liable for price-fixing in this proceeding and ordered to pay damages for such conduct and of the terms of such orders; and
 - iii. they have each been ordered to establish the compliance program.
- 7) A declaration that, for the purposes of s 82 of the TPA and/or s 82 of the CCA, further or alternatively for the purposes of s 87(1) of the TPA and/or s 87(1) of the CCA, the Applicant and the Group Members have suffered loss or damage by the Respondents' contraventions of the TPA and the CCA alleged in the Amended Statement of Claim.
- 8) Orders that the Respondents pay the Applicant and the Group Members compensation for loss or damage pursuant to s 82 of the TPA and/or s 82 of the CCA, further or



alternatively pursuant to s 87(1) of the TPA and/or s 87(1) of the CCA.

- 9) Interest pursuant to s 51A of the *Federal Court of Australia Act 1976*.
- 10) Costs.
- 11) Such further or other orders as the Court deems fit.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the Applicant and the Group Members are:

- 1) Whether, during the Relevant Period, the Global FX Market was a market within the meaning of s 4E of the TPA and s 4E of the CCA.
- 2) Whether, during the Relevant Period, the Australian FX Market was a market within the meaning of s 4E of the TPA and s 4E of the CCA.
- 3) Whether, during the Relevant Period, each of the Respondents:
 - (a) supplied; or
 - (b) were likely to have supplied; or
 - (c) but for the arrangements or understandings referred to in the Amended Statement of Claim, would have:
 - (i) supplied; or
 - (ii) been likely to have supplied,

FX Instruments in competition with one or more of the other Respondents and Other Cartel Participants and Other Banks, and if so, throughout which part or parts of the Relevant Period.

- 4) Whether, during the Relevant Period:
 - (a) the FX Understanding;
 - (b) one or more FX Chatroom Understandings (and if so which ones);

existed and, if so, throughout which part or parts of the Relevant Period and to which such understandings were each of the Respondents and Other Cartel Participants party.
- 5) Whether 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 the Respondents, in competition with each other and/or one or more



of the Other Cartel Participants, and, if so, with respect to which FX Instruments.

- 5A) Whether, 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, and, if so, with respect to which FX Instruments.
- 5B) Whether 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.
- 5C) Whether each of the FX Chatroom Understanding Provisions in each FX Chatroom Understanding 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 the Respondents, in competition with each other and/or one or more of the Other Cartel Participants, and, if so, with respect to which FX Instruments.
- 5D) Whether, throughout the Relevant Period the FX Chatroom Understanding Provisions in each FX Chatroom Understanding 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, and, if so, with respect to which FX Instruments.
- 5E) Whether throughout the Relevant Period the FX Understanding Provision in each FX Chatroom Understanding had, or would have or be likely to have the effect, of substantially lessening competition in the Global FX Market and the Australian FX Market.
- 6) Whether, during the Relevant Period, each of the Respondents gave effect to the FX Understanding Provision, and if so, which Respondents and how.
- 6A) Whether, during the Relevant Period, each of the Respondents gave effect to the FX Chatroom Understanding Provisions in the FX Chatroom Understandings to which they were party, and if so, which Respondents in respect of which FX Chatroom



Understandings, and how.

- 6B) What proportion of Spot and Outright Forward trades globally and Spot and Outright Forward trades in Australia did:
- (a) the Respondents and their Related Bodies Corporate; and
 - (b) the Other Cartel Participants;
- together account for during the Relevant Period.
- 7) Whether, by the making of the FX Understanding, or the giving effect to the FX Understanding Provision, during the Relevant Period:
- (a) Spreads were widened on trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment; and
 - (b) the mid-points of Spreads for trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment were higher or lower than they would otherwise have been,
- in the Global FX Market and/or the Australian FX Market, and, if so, throughout which part or parts of the Relevant Period and by how much.
- 7A) Whether, by the making of each FX Chatroom Understanding, or the giving effect to the FX Chatroom Understanding Provision in each FX Chatroom Understanding, during the Relevant Period:
- (a) Spreads were widened on trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment; and
 - (b) the mid-points of Spreads for trades of currencies that were the subject of Shared Information or Co-ordinated Trading, and Concealment were higher or lower than they would otherwise have been,
- in the Global FX Market and/or the Australian FX Market, and, if so, throughout which part or parts of the Relevant Period and by how much, and if this was referable to some but not all of the FX Chatroom Understandings, which ones.
- 8) If the contraventions of the TPA and the CCA alleged in the Amended Statement of Claim (or one or any combination of them) had the effect referred to at paragraph 7 or 7A above:
- (a) whether compensation is recoverable by the Applicant and the Group Members from the Respondents; and



(b) if the answer to question 8(a) is yes, the correct measure of damages for such compensation.

Representative action

The Applicant brings this amended application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are the persons defined in paragraph 1 of the Amended Statement of Claim.

Applicant’s address

The Applicant’s address for service is:

Place: Level 21, 380 La Trobe Street, Melbourne VIC 3000

Email: FX@mauriceblackburn.com.au

The Applicant’s address is c/- Maurice Blackburn Lawyers, Level 21, 380 La Trobe Street, Melbourne VIC 3000

Service on the Respondents

It is intended to serve this Amended application on the Respondents.

Date: 19 November 2021

A handwritten signature in blue ink, appearing to be 'Kimi Nishimura', enclosed in a blue oval.

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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