

SETTLEMENT DISTRIBUTION SCHEME

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## 1. OVERVIEW AND SUMMARY

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- A. On 1 May 2025, the parties to the Federal Court of Australia (the **Court**) proceedings VID567/2019 (the **Proceeding**) executed a Deed of Settlement (the **Deed**).
- B. The Deed sets out the terms of a proposed settlement of the Proceeding subject to Court approval. The Deed provides for the Respondents to pay a total resolution sum of \$59,000,000, inclusive of costs, interest and any applicable taxes (the **Settlement Sum**).
- C. On [insert date], the Court approved the settlement of the Proceeding on the terms set out in the Deed and the Settlement Distribution Scheme.
- D. The Settlement Distribution Scheme establishes a procedure for distributing the Settlement Sum to be paid by the Respondents pursuant to the Deed and is operative from the date of the Approval Orders.
- E. The Settlement Distribution Scheme has the following key stages:

Stage	Clause	Description
<b>Determination of Eligibility</b>	Clause 5	The Scheme Administrator will determine whether a Registered Group Member meets the Eligibility Criteria, using the Registration Data and any additional information (including transaction data) provided by group members upon which to assess their claim. The Scheme Administrator will send a Notice of Ineligibility to each Registered Group Member that does not meet the Eligibility Criteria.
<b>Fast Track Resolution</b>	Clause 7	The Scheme Administrator will identify Eligible Group Members who might be eligible for a Fast Track Resolution, being those for whom it may be uneconomical to perform a loss assessment based on their Estimated Recovery Amount. Relevant Eligible Group Members will receive a Notice of Fast Track Resolution and will be offered the option to accept or reject a Fast Track Resolution within a certain timeline. If they accept the Fast Track Resolution, the Scheme Administrator will pay the payment as soon as possible. If they reject the Fast Track Resolution, their claim will be assessed in accordance with clause 8.
<b>Calculation of Estimated Trades, Assessed Trading Volume and Estimated Distribution Amounts</b>	Clause 8	Upon receiving any further information or data from Eligible Group Members, the Scheme Administrator will analyse the Claim Data (including any transaction data) and determine the Estimated Trades and Assessed Trading Volume of each Eligible Group Member according to the Confidential Loss Assessment Methodology. Based on the Assessed Trading Volume, the Scheme

		Administrator will determine the Estimated Distribution Amount for each Eligible Group Member. The Scheme Administrator will notify each person of their Estimated Trades, Assessed Trading Volume and Estimated Distribution Amount.
<b>Reviews</b>	Clause 9	A Review may be sought by a Registered Group Member who disputes the determination that they are not an Eligible Group Member, or by an Eligible Group Member who disputes the accuracy of the calculation of their Assessed Trading Volume.
<b>Collection of Bank Account Details</b>	Clause 10	Eligible Group Members will be required to provide their bank details if they wish to receive payment of a Distribution. Eligible Group Members that do not provide their bank details by the required time will become Non-Responsive Group Members, and their payment will be forfeited and redistributed to all other Eligible Group Members.
<b>Calculation of Distribution Amounts</b>	Clause 11	Once any Reviews are complete, the Scheme Administrator will calculate each Eligible Group Member's Distribution Amount, based on the quantum of the Distribution Settlement Sum. The calculations will be final and binding.
<b>Payment of Distribution Amounts</b>	Clause 12	The Scheme Administrator will pay Eligible Group Member's Distribution Amounts into their nominated bank account. The Scheme Administrator will provide Remittance Notices to those that receive a payment.
<b>Residual Settlement Sum</b>	Clause 13	After all Distribution Amounts are paid, the Scheme Administrator will calculate the quantum of the Residual Settlement Sum and determine how that sum is to be distributed.
<b>Completion of Scheme</b>	Clause 14	Once all payments are made, the Scheme Administrator will attend to finalisation of the Scheme.

## 2. DEFINITIONS AND INTERPRETATIONS

### Definitions

2.1. In the Scheme, the following terms have the meanings defined below, unless the context otherwise requires:

Term	Meaning
<b>Act</b>	<i>Federal Court of Australia Act 1976 (Cth).</i>
<b>Administration Costs</b>	the costs and disbursements incurred by the Scheme Administrator and approved by the Court in implementing, facilitating and giving effect to the Scheme and/or the settlement distribution generally and

Term	Meaning
	including any taxes, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of the Scheme.
<b><i>Affected Currency Pairs</i></b>	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).
<b><i>Applicant</i></b>	J Wisbey & Associates Pty Ltd (ACN 001 959 851).
<b><i>Applicant's Costs and Disbursements</i></b>	a sum approved by the Court as reasonably incurred by the Applicant in the course of acting as representative applicant, on its own behalf and on behalf of all Group Members in the Proceeding representing the Applicant's court-approved legal costs and disbursements on a solicitor and own client basis (calculated in accordance with the Applicant's retainer(s)), including any uplift, incurred in connection with the Proceeding (including in connection with obtaining the Approval Orders).
<b><i>Applicant Reimbursement Payment</i></b>	a payment as approved by the Court by way of reimbursement to the Applicant as an allowance including for its costs and disbursements incurred as the lead applicant in the Proceeding.
<b><i>Approval Orders</i></b>	orders of the Court to the following effect: <ul style="list-style-type: none"> <li>a) the settlement be approved pursuant to section 33V of the Act;</li> <li>b) the Settlement Distribution Scheme be approved;</li> <li>c) if the Court deems appropriate, the Court authorises the Applicant <i>nunc pro tunc</i> on behalf of the Group Members to enter into and give effect to this Deed and the transactions contemplated by this Deed for and on behalf of Group Members;</li> <li>d) the persons affected and bound by the orders are the Applicant, Group Members that have not opted out and the Respondents;</li> <li>e) Maurice Blackburn be appointed Scheme Administrator;</li> <li>f) deductions to be made from the Settlement Distribution Fund including in relation to the Applicant's Costs and Disbursements, Administration Costs and the Applicant Reimbursement Payment; and</li> <li>g) such further or other orders as may be agreed or the Court may deem appropriate in connection with the approval of the settlement.</li> </ul>
<b><i>Arranged in Australia</i></b>	in relation to an FX Instrument:

Term	Meaning
	<p>a) where the FX Instrument is entered into, whether orally, in writing, electronically or otherwise:</p> <ol style="list-style-type: none"> <li>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</li> <li>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</li> </ol> <p>b) where the FX Instrument is entered into upon the execution of a Resting Order:</p> <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol>
<b>ASOC</b>	Amended Statement of Claim filed 19 November 2021 in the Proceeding.
<b>Assessment Review</b>	the meaning given in clause 9.1(b).
<b>Assessed Trading Volume</b>	the amount calculated in accordance with clause 8.4.
<b>Australian Sanctions Laws</b>	the <i>Autonomous Sanctions Act 2011</i> (Cth) and the <i>Autonomous Sanctions Regulations 2011</i> (Cth) as amended or replaced from time to time.
<b>Business Day</b>	a day that is not a Saturday, Sunday or public holiday and on which banks in Victoria, Australia and New South Wales, Australia are open for business generally.
<b>Claim Data</b>	the meaning given in clause 6.1.
<b>Claims Database</b>	a database constructed by or on behalf of the Scheme Administrator to contain the Claim Data and Contact Details for each Registered Group Member and Eligible Group Member.
<b>Confidential Loss Assessment Methodology</b>	the methodology by which Eligible Group Members' claims are calculated as contained in Confidential Schedule B to the Scheme.
<b>Consolidated List</b>	the list maintained by the Department of Foreign Affairs and Trades of all persons and entities listed under Australian Sanctions Laws.
<b>Contact Details</b>	a Registered Group Member or Eligible Group Member's (or their agent or representative's) postal address, email address and mobile phone number and/or other telephone number.
<b>Court</b>	the Federal Court of Australia.

<b>Term</b>	<b>Meaning</b>
<b><i>Dealer</i></b>	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.
<b><i>Deed</i></b>	the Deed of Settlement between the Applicant, Maurice Blackburn and the Respondents dated 1 May 2025.
<b><i>Designated Person or Entity</i></b>	a person or organisation who or which is a sanctions target or appears on the Consolidated List as at the date searched by the Scheme Administrator.
<b><i>Dismissal Orders</i></b>	orders of the Court: <ul style="list-style-type: none"> <li>a) dismissing the Proceeding with no order as to costs; and</li> <li>b) vacating all costs orders in favour of any of the Respondents as against the Applicant, or in favour of the Applicant as against any Respondents previously made in the Proceeding.</li> </ul>
<b><i>Distribution</i></b>	any of the payments made to Eligible Group Members in accordance with this Scheme, being a Distribution Amount, Residual Distribution Amount or Fast Track Resolution Payment (as the case may be).
<b><i>Distribution Amount</i></b>	an amount calculated in accordance with clause 11.7.
<b><i>Distribution Date</i></b>	depending on the nature of the Distribution made to the relevant Eligible Group Member, either: <ul style="list-style-type: none"> <li>a) the date determined by the Scheme Administrator on which Fast Track Resolution Payments to Eligible Group Members will commence, being a date after the Approval Orders are Upheld; or</li> <li>b) the date determined by the Scheme Administrator on which payments to Eligible Group Members, excluding Eligible Group Members who have received a Fast Track Resolution Payment, will commence, being a date after the Approval Orders are Upheld and after the date referred to in subparagraph (a) above.</li> </ul>
<b><i>Distribution Settlement Sum</i></b>	the amount calculated in accordance with clause 11.4.
<b><i>Eligibility Criteria</i></b>	the meaning given in clause 5.1.
<b><i>Estimated Distribution Amount</i></b>	the amount calculated in accordance with clause 8.7. For the avoidance of doubt, Estimated Distribution Amount does not encompass or refer to a Fast Track Resolution Payment.
<b><i>Estimated Distribution Settlement Sum</i></b>	the amount calculated in accordance with clause 8.5.
<b><i>Eligible Group Member</i></b>	a Registered Group Member that meets the Eligibility Criteria.

<b>Term</b>	<b>Meaning</b>
<b><i>Estimated Recovery Amount</i></b>	the amount calculated in accordance with clause 7.4.
<b><i>Eligibility Review</i></b>	the meaning given in clause 9.1(a).
<b><i>Estimated Trades</i></b>	the meaning given in clause 8.2.
<b><i>Fast Track Payment</i></b>	the amount calculated in accordance with clause 7.5(b).
<b><i>Fast Track Resolution</i></b>	the meaning given in clause 7.5.
<b><i>Fast Track Resolution Payment</i></b>	a Low Value Fast Track Payment or Fast Track Payment made pursuant to clause 7.
<b><i>FX</i></b>	foreign exchange, being the purchase or sale of a currency against the sale or purchase of another currency.
<b><i>FX Instrument(s)</i></b>	foreign exchange spots and foreign exchange outright forwards.
<b><i>Group Member</i></b>	those persons referred to in paragraph 1 of the Amended Statement of Claim filed on 19 November 2021, other than those persons who have opted out of the Proceeding pursuant to section 33J of the Act.
<b><i>Holding Account</i></b>	the interest-bearing account opened by Maurice Blackburn to hold monies on trust for the Respondents in accordance with clause 2 of the Deed and this Scheme.
<b><i>Interest</i></b>	interest earned on the monies held in the Holding Account or Settlement Distribution Fund and any other interest-bearing account established by the Scheme Administrator in accordance with the Scheme.
<b><i>Low Value Fast Track Payment</i></b>	the meaning given in clause 7.5(a).
<b><i>Mancinelli Distribution Amount</i></b>	the product of the Mancinelli Recovery Rate and the Assessed Trading Volume for each Eligible Group Member.
<b><i>Mancinelli Recovery Rate</i></b>	0.00072 per cent, being the implied recovery rate from the <i>Mancinelli, et al v. Royal Bank of Canada, et al</i> , No. CV-15-536174CP proceeding in the Ontario Superior Court of Justice.
<b><i>Maurice Blackburn</i></b>	Maurice Blackburn Pty Ltd (ACN 105 657 949), the Applicant's solicitors in the Proceeding.
<b><i>Minimum Transaction Volume</i></b>	AUD \$500,000 calculated by reference to: <ul style="list-style-type: none"> <li>a) where an individual transaction involves AUD, the AUD amount; and</li> <li>b) where an individual transaction does not involve AUD, the higher of the AUD amount resulting from applying the exchange rates in the ASOC to each currency in the transaction.</li> </ul>

<b>Term</b>	<b>Meaning</b>
<b><i>Non-Responsive Group Member</i></b>	<p>a Registered Group Member or Eligible Group Member:</p> <ul style="list-style-type: none"> <li>a) who has failed to adequately respond to a notice or communication from the Scheme Administrator requesting that they take a certain step or steps by a date specified by the Scheme Administrator, provided that any such date or required time specified by the Scheme Administrator must not be less than 14 days from the date of any such notice; or</li> <li>b) who the Scheme Administrator determines has received a notice or communication under clauses 20.3(b) and 20.4.</li> </ul>
<b><i>Notice of Assessment</i></b>	the meaning given in clause 8.8.
<b><i>Notice of Assessment Review</i></b>	the meaning given in clause 9.5(a).
<b><i>Notice of Fast Track Resolution</i></b>	the meaning given in clause 7.8.
<b><i>Notice of Ineligibility</i></b>	a notice sent by the Scheme Administrator to a Registered Group Member containing the Scheme Administrator's determination that they do not meet the Eligibility Criteria and the basis upon which such determination has been made.
<b><i>Notice of Ineligibility Review</i></b>	the meaning given in clause 9.4(a).
<b><i>Notice of Review Assessment</i></b>	the meaning given in clause 9.8(f).
<b><i>Proceeding</i></b>	the proceeding against the Respondents in the Federal Court of Australia, proceeding VID567/2019, being a group proceeding under Part IVA of the Act.
<b><i>Registered Group Member</i></b>	<p>each Group Member who:</p> <ul style="list-style-type: none"> <li>a) registered their claim in the Proceeding by 4.00 pm AEST on 12 August 2024 in accordance with orders 19 and/or 20 of orders made by the Honourable Justice Beach on 5 April 2024;</li> <li>b) did not register their claim in the Proceeding in the manner described in (a) above, and who did not opt out of the Proceeding in accordance with order 1 of the orders made on 5 April 2024 in the Proceeding, who is permitted by the Court to be treated as a Registered Group Member for the purposes of the Scheme.</li> </ul>
<b><i>Registration Data</i></b>	the information provided by or on behalf of Registered Group Members when registering their claims with Maurice Blackburn by 4.00 pm AEST on 12 August 2024 pursuant to the orders of the Honourable Justice Beach made on 5 April 2024, including any updated information provided to Maurice Blackburn prior to the conclusion of the court-ordered mediation on 25 February 2025.
<b><i>Relevant Period</i></b>	1 January 2008 to 15 October 2013.



Term	Meaning
<b>Respondents</b>	UBS AG (ABN 47 088 129 613), Barclays Bank Plc (01026167), Citibank N.A. (ABN 34 072 814 058), JPMorgan Chase Bank N.A. (ABN 43 074 112 011) and NatWest Markets Plc (SC090312).
<b>Remittance Notice</b>	the notice to be sent by the Scheme Administrator to each Eligible Group Member confirming the payment of their Distribution.
<b>Residual Distribution Amount</b>	the amount calculated in accordance with 13.5.
<b>Residual Settlement Sum</b>	the meaning given in clause 13.2.
<b>Review</b>	a review of a Notice of Ineligibility or a Notice of Assessment in accordance with clause 9.
<b>Review Assessor</b>	any of the following persons appointed by the Scheme Administrator to perform a Review pursuant to clause 9.8: <ul style="list-style-type: none"> <li>a) a member of an Australian State or Territory Bar or a solicitor who is not employed by or a principal of Maurice Blackburn and who has more than 5 years' post admission experience; or</li> <li>b) a foreign exchange industry expert, computer scientist, economist, econometrician or data analyst.</li> </ul>
<b>Review Material</b>	any documentation or other information provided with and in support of a Notice of Ineligibility Review by an Eligible Group Member and/or Notice of Assessment Review by a Registered Group Member.
<b>Scheme Administrator</b>	Maurice Blackburn, or such other person as appointed by the Court, as administrator of the Scheme. Prior to the appointment, Maurice Blackburn will execute the functions of the Scheme Administrator under the Scheme in accordance with the Scheme and subject to Court approval.
<b>Settlement Distribution Fund</b>	the meaning in clause 4.3 and, where the context admits, will include any account, fund or trust established for the purposes of this Scheme as a separate fund from the original Holding Account, and holding funds drawn from the original Holding Account.
<b>Settlement Distribution Scheme or Scheme</b>	the terms of the Scheme as approved by the Court on <span style="background-color: yellow;">[insert date]</span> , including Schedules.
<b>Settlement Sum</b>	the sum of \$59,000,000, inclusive of all costs (including the costs of any contradictor, assessor or referee appointed by the Court as part of any settlement approval), interest and any taxes including taxes becoming due and payable on the Settlement Sum, if any (or any interest earned on the Settlement Sum).
<b>Upheld</b>	in respect of a court order, the earlier of: <ul style="list-style-type: none"> <li>a) the expiration of all applicable appeal periods for that order without the lodgment of any appeal or application for leave to appeal from that order; and</li> <li>b) the ultimate determination of any appeal or appeals from that order without the order being overturned.</li> </ul>

Term	Meaning
<b><i>Withdrawn Group Member</i></b>	any Registered Group Member or Eligible Group Member who notifies the Scheme Administrator that they wish to withdraw their claim and who has received written notice from the Scheme Administrator confirming such withdrawal.

## Interpretation

### 2.2. In the Scheme:

- (a) headings are for convenience only and do not affect interpretation;
- (b) where the context permits, the singular includes the plural, and the plural includes the singular;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether it comprises a separate legal entity;
- (f) a reference to any thing done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed or Scheme;
- (g) a reference to money (including 'dollars', 'AUD', and '\$') is to Australian currency;
- (h) specifying anything in the Scheme after the words "include", "including" or "for example" or similar expressions, does not limit what else might be included;
- (i) unless otherwise specified, a reference to a clause is a reference to a clause of the Scheme;
- (j) a reference to an agreement or document (including a reference to the Scheme) is to the agreement or document as amended, supplemented, novated or replaced; and
- (k) a reference to a day is to a calendar day and not to a business day, unless the context requires otherwise.

## 3. SCHEME ADMINISTRATOR

### Appointment of Scheme Administrator

3.1. The Scheme will be administered and applied by the Scheme Administrator.

3.2. In acting as Scheme Administrator, including discharging any function or exercising any discretion conferred by the Scheme, the Scheme Administrator:

- (a) must not act as the solicitor for the Applicant or any individual Group Member in relation to the Scheme;
- (b) will administer the Scheme fairly and according to its terms and in doing so will;
  - i. act in accordance with a duty owed to the Court in priority to any obligation owed to the Applicant or any individual Group Member;
  - ii. balance the interest of any individual Group Member against the interests of Group Members as a whole; and
  - iii. at all times and when exercising the discretion conferred upon it under the Scheme, ensure that the Scheme is administered in a practical, proportionate and cost-effective manner. This includes, but is not limited to the following:
    - 1. implementing processes and procedures necessary to ensure the efficient and effective operation of the Scheme;
    - 2. seeking expert advice as it considers necessary;
    - 3. correcting any error, slip or omission necessary to facilitate the administration of the Scheme;
    - 4. applying to the Court to amend the Scheme if it considers it desirable or appropriate to do so; and
    - 5. extending time for compliance with any deadline fixed by the Scheme by the Scheme Administrator while administering the Scheme.
- (c) together with its employees and agents;
  - i. subject to the approval of the Court, will be indemnified from the Settlement Sum against all liabilities (including any Administration Costs) arising from or in connection with the administration of the Scheme; and
  - ii. will have the same immunities from suit as those attaching to an expert appointed by the Court pursuant to section 54B of the *Federal Court of Australia Act 1976* (Cth).

### **Immunity from claims**

- 3.3. The Scheme Administrator, together with its employees and agents, in discharging any function or exercising any power or discretion conferred by the Scheme, will not be liable for any loss to any Group Member arising by reason of any mistake or omission made in good faith or of any other matter or thing except wilful and individual fraud and wrongdoing on the part of the Scheme Administrator, its employees or agents who are sought to be made liable.

- 3.4. The Scheme Administrator will have no liability to any Group Member who is not paid a Distribution or is paid an incorrect Distribution arising from:
- (a) the provision of incorrect or otherwise insufficient Registration Data, Claim Data or other information by the Group Member, or persons acting on their behalf;
  - (b) incorrect or otherwise insufficient bank account information provided by an Eligible Group Member or persons acting on their behalf;
  - (c) fraudulent conduct of a party other than the Scheme Administrator;
  - (d) an electronic funds transfer using the bank account information provided by the Eligible Group Member, or persons acting on their behalf;
  - (e) a Registered Group Member or Eligible Group Member's failure to receive a communication described in the Scheme or who, for any other reason, failed to submit documentation to the Scheme Administrator or the Court within a time limit set under the Scheme; and/or
  - (f) any error or omission by the Scheme Administrator.

#### **4. FINANCIAL MANAGEMENT**

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##### **Holding Account**

- 4.1. Maurice Blackburn opened the Holding Account on 2 May 2025. The Respondents paid the Settlement Sum into the Holding Account pursuant to clause 2(b) of the Deed.
- 4.2. The Scheme Administrator will, subject to and in accordance with the terms of the Deed, the Scheme and any applicable statutory requirements, hold the funds standing from time to time in the Holding Account on trust for the Respondents until the Approval Orders are Upheld.

##### **Settlement Distribution Fund**

- 4.3. After the Approval Orders are Upheld, the Holding Account will become the Settlement Distribution Fund.
- 4.4. The Scheme Administrator will be responsible for the management of the Settlement Distribution Fund, and all moneys in the Settlement Distribution Fund, in accordance with the Scheme.

##### **Management of the Settlement Distribution Fund**

- 4.5. The Scheme Administrator will, subject to and in accordance with the terms of the Deed, the Scheme and any applicable statutory requirements, hold the money standing from time to time in the Settlement Distribution Fund on trust for:
- (a) the Applicant and Eligible Group Members; and

- (b) the Scheme Administrator, to the extent of its entitlement to receive Administration Costs in accordance with the terms of the Scheme.
- 4.6. The Scheme Administrator may:
  - (a) pay all or a portion of the funds in the Settlement Distribution Fund into one or more interest-bearing accounts, including without limitation, fixed term deposit account(s) for varying terms; and
  - (b) at any time, convert the Settlement Distribution Fund to a non-interest earning account if it determines that the cost of administering the taxation implications of further interest being earned on the funds in Settlement Distribution Fund may be disproportionate to the further interest expected to be earned.
- 4.7. The Scheme Administrator will pay from the Settlement Distribution Fund (or any account, fund or trust established for the purposes of this Scheme and using funds from the Settlement Distribution Fund) any taxes, duties or other imposts and:
  - (a) may at its discretion obtain expert advice and assistance as to the payability or quantum of the impost, or as to any dispute regarding the same;
  - (b) will be indemnified from any fund to which the impost attaches for any payment of the impost and for the costs of any advice or assistance referred to in subclause (a) above, and if the said fund:
    - i. has been established as a separate fund from the Settlement Distribution Fund; and
    - ii. is insufficient to indemnify the Scheme Administrator as set out in this subclause (b);will be indemnified from the Settlement Distribution Fund.

#### **Application of Interest**

- 4.8. Interest accruing on the Holding Account and Settlement Distribution Fund may be applied, in the first instance, to payment of Administration Costs.
- 4.9. Any Interest which is not otherwise required for the payment of Administration Costs will form part of the Settlement Sum and be available for distribution to Eligible Group Members if determined appropriate to do so by the Scheme Administrator.

## 5. DETERMINATION OF ELIGIBILITY

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### Eligibility Criteria

- 5.1. A Registered Group Member becomes an Eligible Group Member and is eligible to participate in the Scheme if the Registered Group Member:
- (a) at any time during the Relevant Period, was 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 stated in sub-paragraph 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;
  - (d) are not, and were not at any material time, any of the persons excluded from the definition of Group Member at paragraph 1(d) of the ASOC; and
  - (e) has not become a Withdrawn Group Member or Non-Responsive Group Member before the Scheme Administrator determines eligibility,
- together, the **Eligibility Criteria**.

### Process for determining eligibility

- 5.2. The Scheme Administrator will determine whether a Registered Group Member meets the Eligibility Criteria using, as appropriate, the Registration Data and/or any other information provided by the Registered Group Member or available to the Scheme Administrator as at the time the Scheme Administrator makes the eligibility determination. The Scheme Administrator is not required to make an eligibility determination under this clause in respect of any Registered Group Member who is a Non-Responsive Group Member or a Withdrawn Group Member.
- 5.3. The Scheme Administrator will send a Notice of Ineligibility to each Registered Group Member that does not meet the Eligibility Criteria, advising them that they have not met the Eligibility Criteria and the basis upon which such determination has been made.
- 5.4. Where the Scheme Administrator determines that a Registered Group Member does not meet the Eligibility Criteria, the Registered Group Member may seek an Eligibility Review pursuant to clause 9.

## 6. CLAIM DATA

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### Claim Data

- 6.1. Claim Data means the following information for each Registered Group Member or Eligible Group Member:
- (a) the identity of the Registered Group Member or Eligible Group Member;
  - (b) the Registration Data;
  - (c) any information provided to the Scheme Administrator by the Registered Group Member or Eligible Group Member amending the Registration Data; and
  - (d) any other information required by the Scheme Administrator to assess the claim of a Registered Group Member or Eligible Group Member or obtained by the Scheme Administrator, including but not limited to transaction data, the Scheme Administrator's analysis of that transaction data and any other information pertinent to the assessment of the claim obtained by the Scheme Administrator under this Scheme.

### Obligations and powers of the Scheme Administrator regarding Claim Data

- 6.2. The Scheme Administrator must use reasonable endeavours to ensure the accuracy of the Claims Database, including, to the extent necessary, updating the Claims Database for any amended or corrected Claim Data provided under this clause or provided by the Respondents pursuant to clause 9 of the Deed or requesting further information or documents from a Registered Group Member or Eligible Group Member.
- 6.3. Notwithstanding any other clause in this Scheme, if in the opinion of the Scheme Administrator, at any stage a Registered Group Member or Eligible Group Member's Claim Data contains insufficient information or does not otherwise substantiate a Registered Group Member or Eligible Group Member's claim, the Scheme Administrator may, by written notice, require the Registered Group Member or Eligible Group Member to provide and/or verify the Claim Data by through any means that the Scheme Administrator deems appropriate and within a timeframe that the Scheme Administrator deems reasonable.
- 6.4. For the avoidance of doubt, if:
- (a) following a request made to a Registered Group Member or Eligible Group Member by the Scheme Administrator pursuant to clause 6.3; or
  - (b) after the Scheme Administrator's reasonable attempts to contact a Registered Group Member or Eligible Group Member to make a request pursuant to clause 6.3,
- that Registered Group Member or Eligible Group Member's Claim Data continues to contain insufficient information or does not otherwise substantiate a Registered Group Member or Eligible

Group Member's claim (either in whole or in part), such that the Scheme Administrator cannot reasonably assess whether that Registered Group Member is an Eligible Group Member or whether an aspect of an Eligible Group Member's claim is unsubstantiated, that Registered Group Member or Eligible Group Member will forfeit any right to receive a distribution (either in whole or in part) from the Settlement Distribution Fund.

- 6.5. The Scheme Administrator may in its absolute discretion make corrections or amendments to the Claim Data for an Eligible Group Member if the Scheme Administrator considers it appropriate to do so.

## 7. FAST TRACK RESOLUTION

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### Application of this clause

- 7.1. This clause 7 applies only to Eligible Group Members.
- 7.2. The Scheme Administrator may, in respect of some or all Eligible Group Members, assess the Eligible Group Members' claim by way of Fast Track Resolution pursuant to this clause 7 in lieu of the assessment process set out at clause 8, in circumstances where the Scheme Administrator forms the opinion that it is likely to be uneconomical to assess those Eligible Group Members' claims in accordance with clause 8.

### Calculation of Estimated Recovery Amount

- 7.3. The Scheme Administrator will determine the Estimated Trades and Assessed Trading Volume for each Eligible Group Member in accordance with clause 8 below.
- 7.4. The Eligible Group Member's Estimated Recovery Amount will be calculated by multiplying their Assessed Trading Volume by the Mancinelli Recovery Rate.

### Fast Track Resolution

- 7.5. A **Fast Track Resolution** means the final resolution of an Eligible Group Member's claim for compensation under this Scheme by way of a single, lump sum payment calculated as follows:
- (a) **Low Value Fast Track Payment**– for Eligible Group Members with an Estimated Recovery Amount equal to or less than \$200, the Low Value Fast Track Payment is to be \$250; and
  - (b) **Fast Track Payment** – for Eligible Group Members with an Estimated Recovery Amount greater than \$200 but less than \$20,000, the Fast Track Payment is to be the Eligible Group Member's Estimated Recovery Amount multiplied by 1.25,
- together, the **Fast Track Resolution Payment(s)**.



## **Binding calculations**

- 7.6. The Scheme Administrator may, in exceptional circumstances and in its absolute discretion having regard to the principles set out in clause 3.2(b) make corrections or amendments to the calculation of the Estimated Recovery Amount for an Eligible Group Member based on information provided to them by that Eligible Group Member.
- 7.7. Subject to the discretion in clause 3.2(b), the calculation of Estimated Recovery Amount and Fast Track Resolution Payments by the Scheme Administrator is final and binding. Eligible Group Members are not entitled to seek a review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.

## **Notice of Fast Track Resolution**

- 7.8. Where an Eligible Group Member's claim is assessed by way of Fast Track Resolution in this clause 7, the Scheme Administrator will provide the Eligible Group Member with a **Notice of Fast Track Resolution** which will include:
- (a) an explanation of the offer for the Eligible Group Member to have their claim resolved by way of a Fast Track Resolution;
  - (b) the quantum of the Fast Track Resolution Payment (as applicable to the Eligible Group Member);
  - (c) the quantum of the Eligible Group Member's Estimated Recovery Amount;
  - (d) that the Eligible Group Member can elect to accept or reject the Fast Track Resolution;
  - (e) the consequences of electing to accept or reject the Fast Track Resolution; and
  - (f) that an election must be made within 28 days of the Notice of Fast Track Resolution in the format specified by the Scheme Administrator.

## **Election to accept or reject a Fast Track Resolution**

- 7.9. Eligible Group Members who do not respond by the required time to any request made by the Scheme Administrator under clause 7.8 will be deemed to have rejected the Fast Track Resolution.
- 7.10. The Scheme Administrator may in their absolute discretion accept late notification of an election by an Eligible Group Member to accept a Fast Track Resolution.

## **Consequences of electing to accept a Fast Track Resolution**

- 7.11. If an Eligible Group Member elects to accept a Fast Track Resolution, the Scheme Administrator will pay the Fast Track Resolution Payment from the Settlement Distribution Fund to the Eligible

Group Member as soon as possible after the Eligible Group Member has provided the Scheme Administrator with all information necessary for the Scheme Administrator to securely process such payment.

7.12. An Eligible Group Member who elects to accept a Fast Track Resolution fully and finally resolves their claim for compensation under this Scheme and any such Eligible Group Member will have no entitlement to:

- (a) further compensation under this Scheme;
- (b) assessment of their claim pursuant to clause 8 of this Scheme;
- (c) any right to seek an Assessment Review pursuant to clause 9 of this Scheme; or
- (d) withdraw the Fast Track Resolution election and have their claim assessed in accordance with clause 8.

7.13. The Scheme Administrator will process the Fast Track Resolution Payments in accordance with clause 12.

#### **Consequences of electing to reject a Fast Track Resolution**

7.14. If an Eligible Group Member elects to reject or has been deemed to have rejected a Fast Track Resolution, the Eligible Group Member's claim will be assessed and determined in accordance with clause 8. For the avoidance of doubt, if an Eligible Group Member's Distribution Amount is less than the Fast Track Resolution Payment offered to the Eligible Group Member, the Eligible Group Member cannot subsequently seek a Fast Track Resolution.

### **8. ESTIMATED TRADES, ASSESSED TRADING VOLUME, AND ESTIMATED DISTRIBUTION AMOUNT**

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#### **Application of this clause**

8.1. This clause 8 applies only to Eligible Group Members who have not been offered, or have declined, to accept a Fast Track Resolution pursuant to clause 7 and who are not Non-Responsive Group Members or Withdrawn Group Members.

#### **Estimated Trades**

8.2. Estimated Trades mean trades that an Eligible Group Member has estimated meets the eligibility criteria set out in paragraph 1(a) of the ASOC, being trades whereby the Eligible Group Member:

- (a) was party to a spot or outright forward trade (**FX Instrument**);
- (b) in relation to one or more of the Affected Currency Pairs;
- (c) which was 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) was in Australia; and/or
- ii. by the Dealer (or their employee or agent) while the Dealer, employee or agent (as the case may be) was in Australia,

**(Arranged in Australia);**

- (d) at any time during the period from 1 January 2008 to 15 October 2013 (the **Relevant Period**).

8.3. The Scheme Administrator will determine the Estimated Trades of each Eligible Group Member using the Claim Data.

### **Calculation of Assessed Trading Volume**

8.4. Assessed Trading Volume will be calculated by applying the Confidential Loss Assessment Methodology in Schedule B to the Estimated Trades of Eligible Group Members.

### **Calculation of Estimated Distribution Amounts**

8.5. The Scheme Administrator will estimate the portion of the Settlement Sum that will be available for distribution to Eligible Group Members, taking into account the deductions in clause 11.2, the quantum of any pre-approved Administration Costs or estimated Administration Costs if any such costs are not pre-approved, estimated interest on the Settlement Sum and any Fast Track Resolution Payments made pursuant to clause 7. This amount is the **Estimated Distribution Settlement Sum**.

8.6. Provisional estimates of distributions from the Estimated Distribution Settlement Sum will be calculated in the proportion which the Assessed Trading Volume of each Eligible Group Member bears to the aggregate of the Assessed Trading Volume for all Eligible Group Members (excluding those who have accepted a Fast Track Resolution).

8.7. The amount calculated in accordance with clause 8.6 is the **Estimated Distribution Amount** for each Eligible Group Member.

### **Notice of Assessment**

8.8. The Scheme Administrator will send to each Eligible Group Member a **Notice of Assessment** which must include, but is not limited to:

- (a) the Eligible Group Member's Estimated Trades;
- (b) the Eligible Group Member's Assessed Trading Volume;
- (c) the Eligible Group Member's Estimated Distribution Amount; and

- (d) information regarding the right of the Eligible Group Member to seek an Assessment Review and the process for doing so in accordance with clause 9.

## 9. REVIEWS

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### Rights to seek a review

- 9.1. A person has the right to seek a review of any of the following determinations:
  - (a) in the case of a Registered Group Member, a determination that the Registered Group Member does not meet the Eligibility Criteria under clause 5 (**Eligibility Review**); and
  - (b) in the case of an Eligible Group Member, a determination of the Eligible Group Member's Assessed Trading Volume under clause 8 (**Assessment Review**).
- 9.2. An Eligibility Review will be limited to the application of the Eligibility Criteria to the Registered Group Member. A Registered Group Member cannot seek a review of the Eligibility Criteria itself.
- 9.3. An Assessment Review will be limited to the application of the Confidential Loss Assessment Methodology to the Eligible Group Member's Claim Data to determine the Eligible Group Member's Assessed Trading Volume. An Eligible Group Member cannot seek a review of the Confidential Loss Assessment Methodology itself.

### Process for seeking an Eligibility Review

- 9.4. A Registered Group Member that wishes to seek an Eligibility Review must:
  - (a) do so by giving written notice to the Scheme Administrator (**Notice of Ineligibility Review**) no later than 28 days after the Scheme Administrator has sent a Notice of Ineligibility to the Registered Group Member; and
  - (b) ensure that the Notice of Ineligibility Review:
    - i. is in the format prescribed by the Scheme Administrator;
    - ii. is submitted to the Scheme Administrator in accordance with the means and methodology prescribed by the Scheme Administrator;
    - iii. identifies the components of the determination with respect to the Eligibility Criteria which the Registered Group Member disputes;
    - iv. contains the reasons why the Registered Group Member disputes those components; and
    - v. attaches Review Materials required by the Scheme Administrator to support the Eligibility Review.

## **Process for seeking an Assessment Review**

9.5. An Eligible Group Member that wishes to seek an Assessment Review must:

- (a) do so by giving written notice to the Scheme Administrator (**Notice of Assessment Review**) no later than 28 days after the Scheme Administrator has sent a Notice of Assessment to the Eligible Group Member; and
- (b) ensure that the Notice of Assessment Review:
  - i. is in the format prescribed by the Scheme Administrator;
  - ii. is submitted to the Scheme Administrator in accordance with the means and methodology prescribed by the Scheme Administrator;
  - iii. identifies the components of the assessment which the Eligible Group Member disputes;
  - iv. contains the reasons why the Eligible Group Member disputes those components of the assessment; and
  - v. attaches Review Materials submitted to support the Assessment Review.

## **Failure to seek a Review**

9.6. If a Registered Group Member or Eligible Group Member does not give a Notice of Ineligibility Review or Notice of Assessment Review to the Scheme Administrator within 28 days as required by clauses 9.4 and 9.5 respectively, the Registered Group Member or Eligible Group Member will be deemed to have accepted their Notice of Ineligibility or Notice of Assessment (as the case may be).

## **Payment of a bond for Reviews**

9.7. Where a Registered Group Member or Eligible Group Member seeks either an Eligibility Review or Assessment Review, the Scheme Administrator may, in their absolute discretion:

- (a) require that the Registered Group Member or Eligible Group Member pay to the Scheme Administrator a bond not exceeding \$2,000 for the cost of the Eligibility Review or a bond not exceeding \$4,000 for the cost of the Assessment Review; and
- (b) if the Registered Group Member or Eligible Group Member fails to pay the bond within 14 days of the Scheme Administrator requesting payment of the bond, treat the Registered Group Member or Eligible Group Member's request for an Eligibility Review or Assessment Review as void and of no effect.

## Process for determination of Reviews

9.8. Following receipt of a Notice of Ineligibility Review or Notice of Assessment Review and upon payment of any bond required in accordance with clause 9.7:

- (a) the Scheme Administrator will engage a Review Assessor;
- (b) the Scheme Administrator will provide the following materials to the Review Assessor:
  - i. the Notice of Ineligibility Review and any Review Material provided by the Registered Group Member and/or Notice of Assessment Review and any Review Material provided by the Eligible Group Member;
  - ii. either of the following, depending on the nature of the Review that is sought by a Registered Group Member or Eligible Group Member:
    - 1. Notice of Ineligibility; or
    - 2. Notice of Assessment,including the Scheme Administrator's reasons;
- (c) unless the Review Assessor considers it reasonably necessary to do so, the Review Assessor will not consider any new evidence or additional materials that are not already included in the materials referred to in clause 9.8(b). Where a Review Assessor considers it reasonably necessary to do so, they can request that the Registered Group Member or Eligible Group Member obtain additional evidence and the Scheme Administrator can specify a time for compliance with this request pursuant to clause 17;
- (d) the Review Assessor will:
  - i. in an Eligibility Review, make a determination as to whether the Scheme Administrator made an error in applying the Eligibility Criteria and determine whether the Registered Group Member meets the Eligibility Criteria; or
  - ii. in an Assessment Review, make a determination as to whether the Scheme Administrator made an error in applying the Confidential Loss Assessment Methodology to the Eligible Group Member's Claim Data and make a determination as to the Eligible Group Member's Assessed Trading Volume. In doing so the Review Assessor must only consider the components of the assessment in relation to which the Eligible Group Member seeks a Review;
  - iii. in relation to either type of Review, prepare and provide to the Scheme Administrator a brief statement of reasons for the Review Assessor's determination and, if relevant, include details of the Assessed Trading Volume;
- (e) in carrying out an Assessment Review, a Review Assessor may determine that the:
  - i. Eligible Group Member's Assessed Trading Volume as initially assessed is correct;

- ii. Eligible Group Member has a higher Assessed Trading Volume than was initially assessed; or
  - iii. Eligible Group Member has a lower Assessed Trading Volume than was initially assessed;
- (f) after receiving a Review Assessor's determination and statement of reasons, the Scheme Administrator will promptly send to the Registered Group Member or Eligible Group Member a **Notice of Review Assessment**, which will include:
- i. whether the Review is upheld or refused;
  - ii. the impact of that decision on the Registered Group Member's entitlements (if any) under this Scheme; and
  - iii. a copy of the Review Assessor's statement of reasons.

#### **Determinations of Reviews are final and binding**

- 9.9. A determination of a Review Assessor is final and binding on the Scheme Administrator and all relevant Registered Group Members or Eligible Group Members, and neither the Scheme Administrator nor the relevant Registered Group Member or Eligible Group Member is entitled to seek a further review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Review Assessor's decision.
- 9.10. Following an Assessment Review, the Review Assessor's determination will be treated as the Eligible Group Member's Assessed Trading Volume under this Scheme.

#### **Cost of Reviews**

- 9.11. Subject to clause 9.12, the Registered Group Member or Eligible Group Member requesting a Review will pay the costs of the Review Assessor as outlined below:
- (a) if the Review Assessor is a member of the Victorian or New South Wales Bar, \$800, exclusive of GST, for the first two hours' attendance by the Review Assessor (or any part thereof) and \$450 per hour, exclusive of GST, for each subsequent hour (or any part thereof);
  - (b) if the Review Assessor is a computer scientist, economist, econometrician, data analyst or foreign exchange industry expert, up to \$2000, exclusive of GST, for the first two hours' attendance by the Review Assessor (or any part thereof) at the Review Assessor's standard hourly rate and up to \$1000 per hour, exclusive of GST, for each subsequent hour (or any part thereof) at the Review Assessor's standard hourly rate.
- 9.12. The Scheme Administrator may waive the requirements in clause 9.11 where the Scheme Administrator considers that, even compared to the typical circumstances of a Registered Group

Member or Eligible Group Member, the circumstances of the Registered Group Member or Eligible Group Member disclose special compassionate grounds for the waiver.

### **Eligibility Review**

- 9.13. If the Review Assessor upholds an Eligibility Review and determines that a Registered Group Member meets the Eligibility Criteria, any bond paid by the Registered Group Member pursuant to clause 9.7 will be refunded to the Registered Group Member.
- 9.14. If the Review Assessor determines that a Registered Group Member does not meet the Eligibility Criteria, any bond paid by the Registered Group Member pursuant to clause 9.7 will be used to pay the costs outlined in clause 9.11 and any residual will be refunded to the Registered Group Member.

### **Assessment Review**

- 9.15. If the Scheme Administrator or Review Assessor determines an Eligible Group Member's Assessed Trading Volume is less than or equal to 120% of the Assessed Trading Volume set out in their Notice of Assessment, the Eligible Group Member will pay the costs outlined in clause 9.11.
- 9.16. Any costs payable to the Scheme Administrator or Review Assessor pursuant to clause 9.11 will be deducted from any bond paid pursuant to clause 9.7 and thereafter from any amount otherwise payable to the Eligible Group Member pursuant to this Scheme.
- 9.17. If the Scheme Administrator or Review Assessor determines that an Eligible Group Member's Assessed Trading Volume is more than 120% of the Assessed Trading Volume set out in their Notice of Assessment, any bond paid pursuant to clause 9.7 will be refunded to the Eligible Group Member.

### **No reimbursement**

- 9.18. For the avoidance of doubt, Registered Group Members and Eligible Group Members will not be entitled to reimbursement for any costs incurred by the Registered Group Member or Eligible Group Member in respect of any Review.

### **Role of Review Assessors**

- 9.19. Review Assessors engaged by the Scheme Administrator:
- (a) will act as independent arbitrators and not as counsel or solicitor acting for any individual Registered Group Members, Eligible Group Members, or the Scheme Administrator; and



- (b) in the discharge of any office under this Scheme, shall have the same immunities from suit as those attaching to an expert appointed by the Court pursuant to section 54B of the *Federal Court of Australia Act 1976* (Cth).

## **10. PROVISION OF BANK ACCOUNT INFORMATION**

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- 10.1. Eligible Group Members whose Distribution(s) are greater than \$0 (zero) must, by the deadline set out in the Notice of Assessment or Notice of Fast Track Resolution, provide sufficient bank account details for a single Australian bank account to enable the Scheme Administrator to process the Distribution(s).
- 10.2. Eligible Group Members will nominate a single Australian bank account to process their Distribution(s). Upon request from an Eligible Group Member, the Scheme Administrator may in its absolute discretion having regard to the principles in clause 3.2(b), agree to make payments to more than one nominated bank account or to an overseas bank account. The Scheme Administrator will deduct from each Distribution the costs outlined in Schedule A unless, in its absolute discretion, it determines to waive those costs.
- 10.3. If an Eligible Group Member does not provide sufficient bank details by the specified deadline, they will be considered a Non-Responsive Group Member and:
- (a) the Scheme Administrator may, in its absolute discretion:
    - i. make further attempts to obtain the necessary details or information, the acceptance of which will be subject to the Scheme Administrator's exercise of discretion in clause 12.3; and
    - ii. if it does so, may deduct from the Settlement Sum as additional Administration Costs any additional costs incurred in making such further attempts; but
  - (b) unless clause 10.3(a) applies:
    - i. the Eligible Group Member's Distribution(s) will be forfeited, and the Eligible Group Member will have no claim against the Scheme Administrator or the Settlement Sum; and
    - ii. all forfeited Distribution(s) will be included in the calculation of the Distribution Settlement Sum in accordance with clause 11.3.

## **11. CALCULATION OF DISTRIBUTION AMOUNTS**

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### **Application of this clause**

- 11.1. This clause 11 applies only to Eligible Group Members who have not been offered, or have declined, to accept a Fast Track Resolution pursuant to clause 7.

## **Deductions from the Settlement Sum**

11.2. As soon as practicable after the Approval Orders are Upheld, the Scheme Administrator will pay the following amounts from the Settlement Sum, as approved by the Court:

- (a) to the Applicant, the Applicant Reimbursement Payment; and
- (b) to Maurice Blackburn, the Applicant's Costs and Disbursements.

## **Calculation of the Distribution Settlement Sum**

11.3. The Scheme Administrator will:

- (a) pay any pre-approved Administration Costs as and when they are incurred from the Settlement Sum; and
- (b) calculate and set aside from the Settlement Sum:
  - i. any remaining pre-approved Administration Costs yet to be paid;
  - ii. any further amounts to be deducted from the Settlement Sum (subject to Court approval), including, without limitation, the Scheme Administrator's reasonable estimate of any additional Administration Costs to be sought to be approved; and
  - iii. any amount payable to any tax authority for any tax obligation and/or tax related expense.

11.4. The remaining Settlement Sum will be the **Distribution Settlement Sum**.

## **Calculation of Distribution Amounts**

11.5. As soon as reasonably practicable after the expiration of the time period specified for the provision of bank details by Eligible Group Members, the Scheme Administrator will calculate the Distribution Amount for each Eligible Group Member.

11.6. The Distribution Settlement Sum will be allocated among the Eligible Group Members in the proportion which each of their respective Assessed Trading Volumes, as amended by any Review, bears to the aggregate Assessed Trading Volumes for all Eligible Group Members (excluding those who have accepted a Fast Track Resolution).

11.7. The amount calculated in accordance with 11.6 is the **Distribution Amount** for each Eligible Group Member. If the Distribution Amount exceeds the product of the Mancinelli Recovery Rate and the Assessed Trading Volume for each Eligible Group Member (the **Mancinelli Distribution Amount**), then the Distribution Amount will be reduced to the Mancinelli Distribution Amount for each Eligible Group Member to ensure compliance with clause 5.2 of the Deed.

## **Binding calculations**

- 11.8. The calculation of Distribution Amounts by the Scheme Administrator are final and binding on Eligible Group Members, and Eligible Group Members are not entitled to seek a review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.

## **12. PAYMENTS TO ELIGIBLE GROUP MEMBERS**

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- 12.1. Subject to clause 12.3, the Scheme Administrator will as soon as practicable after the Distribution Date (as applicable to the Eligible Group Member):

- (a) pay the relevant Distribution to Eligible Group Members by electronic funds transfer to Eligible Group Member's nominated bank details provided in accordance with clause 10.1; and
- (b) send to each Eligible Group Member being paid a Distribution a Remittance Notice.

- 12.2. The Scheme Administrator will commence processing payments on the Distribution Date applicable to the Eligible Group Member or as soon as practicable thereafter. Payments will be processed in tranches over a period of time to be determined by the Scheme Administrator.

- 12.3. The Scheme Administrator may process the Distributions to Eligible Group Members by alternative means if the Scheme Administrator, in its absolute discretion having regard to the principles in clause 3.2(b), considers that:

- (a) an Eligible Group Member has demonstrated to the Scheme Administrator's satisfaction that payment by electronic funds transfer is impracticable for that Eligible Group Member; or
- (b) the Scheme Administrator, in its absolute discretion, considers that another method would be more conducive to effecting a timely and/or efficient payment to any Eligible Group Member or group of Eligible Group Members.

- 12.4. If the Scheme Administrator is unable to attempt payment to an Eligible Group Member, or a payment to an Eligible Group Member is rejected, due to:

- (a) incorrect bank account details provided by the Eligible Group Member; or
- (b) any other action or inaction by the Eligible Group Member,

the Scheme Administrator will not make further inquiries with those Eligible Group Members to obtain additional bank account details or reattempt the payment of the Distribution unless the Scheme Administrator, in its absolute discretion and consistent with the principles in clause 3.2(b), determines it is reasonable to so.

- 12.5. If the Scheme Administrator exercises its discretion under clause 12.3 above, the Scheme Administrator will deduct from the Distribution any additional costs incurred in doing so including the costs of the Scheme Administrator and any additional fees or charges unless, in its absolute discretion, it determines to waive those costs. If the deduction of these costs reduces the Distribution to below \$0 (zero), the Distribution will be forfeited, and the forfeited distribution(s) will form part of the Residual Settlement Sum to be distributed in accordance with clause 13.
- 12.6. If, after 60 days from the Distribution Date applicable to the Eligible Group Member, the Scheme Administrator is unable to transfer the relevant Distribution to an Eligible Group Member or any payment to an Eligible Group Member is rejected due to the reasons outlined in clause 12.4(a) or 12.4(b):
- (a) the Eligible Group Member's Distribution will be forfeited, and the Eligible Group Member will have no claim against the Scheme Administrator or the Settlement Sum; and
  - (b) the forfeited Distribution will form part of the Residual Settlement Sum to be distributed in accordance with clause 13.
- 12.7. Notwithstanding any other provisions in this Scheme, no payment from the Settlement Distribution Fund will be made to any Registered Group Member who is identified by the Scheme Administrator as a Designated Person or Entity.

### **13. CALCULATION AND DISTRIBUTION OF RESIDUAL SETTLEMENT SUM**

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- 13.1. As soon as practicable after completing the payment of Distribution Amounts to Eligible Group Members, the Scheme Administrator will calculate the amount remaining in the Distribution Settlement Sum as follows:
- (a) paying any remaining pre-approved Administration Costs as incurred; and
  - (b) calculating and setting aside any further amounts approved to be deducted from the remaining Distribution Settlement Sum, and, if appropriate, the Scheme Administrator's reasonable estimate of any additional Administration Costs to be sought for any further distribution to Eligible Group Members that were successfully paid a Distribution.
- 13.2. The remaining Distribution Settlement Sum will be the **Residual Settlement Sum**.
- 13.3. The Scheme Administrator will determine, having regard to the principles in clause 3.2(b), whether the Residual Settlement Sum will be distributed to Eligible Group Members.
- 13.4. If the Scheme Administrator determines that it is uneconomical for the Residual Settlement Sum to be distributed, the Residual Settlement Sum will be returned to the Respondents pursuant to clause 5.2 of the Deed.
- 13.5. If the Scheme Administrator determines that it is economical for the Residual Settlement Sum to be distributed, the Scheme Administrator will:

- (a) pay any remaining pre-approved Administration Costs which have been incurred from the Residual Settlement Sum;
- (b) calculate and set aside from the Settlement Sum final amounts approved to be deducted from the Settlement Sum or the Residual Settlement Sum by the Court, including, without any limitation, any additional Administrative Costs to be sought relating to the distribution of the Residual Settlement Sum; and
- (c) calculate the distribution of the Residual Settlement Sum on a pro-rata basis to Eligible Group Members in the proportion which their Assessed Trading Volume bears to the aggregate Assessed Trading Volumes for all Eligible Group Members (excluding those who have accepted a Fast Track Resolution);

being the **Residual Distribution Amount** for each Eligible Group Member.

- 13.6. If the sum of the Distribution Amount and Residual Distribution Amount is greater than the Mancinelli Distribution Amount for each Eligible Group Member, then the Residual Distribution Amount will be reduced such that the sum of the Distribution Amount and the Residual Distribution Amount is equal to the Mancinelli Distribution Amount for each Eligible Group Member.
- 13.7. If an Eligible Group Member's Residual Distribution Amount is less than \$200, nothing will be distributed to the Eligible Group Member and this amount will be included in the Residual Settlement Sum for distribution.
- 13.8. The Scheme Administrator will process the Residual Distribution Amount payments in accordance with clause 12. Any payments that are rejected, unsuccessful or otherwise returned to the Settlement Distribution Fund, and any amount remaining after payment of the Residual Distribution Amount to each Eligible Group Member, will be returned to the Respondents pursuant to clause 5.2 of the Deed.

#### **Binding calculations**

- 13.9. The calculation of Residual Distribution Amounts by the Scheme Administrator is final and binding on Eligible Group Members, and Eligible Group Members are not entitled to seek a review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.

#### **14. COMPLETION OF SETTLEMENT DISTRIBUTION**

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- 14.1. The payment of all Distributions in accordance with this Scheme will satisfy any and all rights, claims or entitlements of all Group Members in or arising out of the Proceeding.

#### **15. TAXATION**

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- 15.1. Eligible Group Members are responsible for obtaining their own taxation advice.

15.2. The Scheme Administrator is not responsible for, and will not be required to, provide or obtain any taxation advice or rulings in relation to any tax potentially payable by Eligible Group Members in relation to payment of a Distribution.

## **16. CLAIMS MADE ON BEHALF OF OTHER PERSONS AND/OR THIRD PARTIES**

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### **Application of this clause**

16.1. The following provisions apply in circumstances where:

- (a) A Registered Group Member or Eligible Group Member is a corporate entity; and/or
- (b) a person participates in the Scheme on behalf of another person who is a Registered Group Member or Eligible Group Member,

whether in respect to all or part of their claim.

### **Authorised representative**

16.2. The Scheme Administrator may rely on information, instructions and/or declarations from, and steps taken pursuant to the Scheme by, a person who:

- (a) is authorised by law to represent a corporate entity or individual, including, without limitation, authorised company officers, partners, trustees, assignees, or executors or administrators; or
- (b) declares to the Scheme Administrator that they are authorised to act on behalf of the Registered Group Member or Eligible Group Member and the Scheme Administrator accepts that declared authority.

16.3. The Scheme Administrator reserves the right, in its absolute discretion, to request evidence of any authority referred to in clause 16.2.

16.4. The Scheme Administrator will implement processes for the payment of Distributions to Eligible Group Member authorised representatives, having regard to the principles in clause 3.2(b) of the Scheme and the quantum of the payment(s) to these Eligible Group Members.

## **17. RIGHTS AND OBLIGATIONS OF ELIGIBLE GROUP MEMBERS**

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### **Cooperation of Registered Group Members and Eligible Group Members**

17.1. Each Registered Group Member and Eligible Group Member must cooperate with the Scheme Administrator and take all steps that they are required to take pursuant to the Scheme and/or that are reasonably requested or directed by the Scheme Administrator, including:

- (a) providing instructions, information, documents or other materials;

- (b) providing authorities or permissions or executing documents;
- (c) attending and participating in meetings or telephone conferences with the Scheme Administrator or any other person;
- (d) promptly informing the Scheme Administrator of any change in their Contact Details and Claim Data;
- (e) providing bank account details.

17.2. Each Registered Group Member and Eligible Group Member must meet the requirements of clause 17.1:

- (a) to the best of their ability with the substance and not merely the form of the requirement, request or direction; and
- (b) by any date or within any required time specified in the requirement, request or direction by the Scheme Administrator.

#### **Obligation regarding honesty**

17.3. In fulfilling the obligations in clause 17.1, each Registered Group Member and Eligible Group Member must act honestly and must take all reasonable steps to ensure that any of their agents or representatives likewise act honestly.

#### **Failure to comply**

17.4. Non-Responsive Group Members will have their claims assessed as \$0 by the Scheme Administrator. Where an Eligible Group Member becomes a Non-Responsive Group Member after the Scheme Administrator has issued a Notice of Assessment, the Scheme Administrator may, but is not obliged to, issue a new Notice of Assessment assessing the claims as \$0.

17.5. For the avoidance of doubt, Registered Group Members or Eligible Group Members will not be entitled to recover any amount they might have received pursuant to the Scheme, but for a failure to comply with the requirements under the Scheme, in any future payment of moneys under the Scheme.

#### **Forfeiture of Distribution**

17.6. An Eligible Group Member may notify the Scheme Administrator in writing that they wish to forfeit their Distribution. Any Distribution forfeited by an Eligible Group Member will form part of the Distribution Settlement Sum or Residual Settlement Sum to be distributed in accordance with clause 11 and clause 13 respectively.

17.7. An Eligible Group Member's decision to forfeit their Distribution is final and the Eligible Group Member will not be entitled to recover any amount they might have received pursuant to the Scheme, but for their decision to forfeit, in any future payment of moneys under the Scheme.

#### **Eligible Group Members indemnify the Scheme Administrator**

17.8. If an Eligible Group Member has a legal obligation by reason of receiving a Distribution pursuant to the Scheme, whether under statute or contract or otherwise to any government department, agency, or authority to pay or repay a sum from their Distribution and they do not notify the Scheme Administrator of such obligation prior to payment of the Distribution pursuant to the Scheme, the Eligible Group Member indemnifies and holds harmless the Scheme Administrator from and against any claim associated with that legal obligation.

### **18. COSTS**

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#### **Administration Costs**

18.1. Subject to other provisions of the Scheme, Administration Costs are to be paid:

- (a) to the Scheme Administrator on a "solicitor and own client" basis if the Scheme Administrator is a legal practice, or on such other reasonable basis as the Court considers appropriate if the Scheme Administrator is not a legal practice;
- (b) in the first instance, from any Interest earned on the Settlement Sum, Distribution Settlement Sum and Residual Settlement Sum while held in the Settlement Distribution Fund;
- (c) in such amounts as are approved by the Court from time to time during the implementation of the Scheme; and
- (d) at the hourly rates set out in Schedule A or at such other rates that are approved by the Court from time to time, and if the Scheme Administrator is not a legal practice on such other basis as the Court may approve.

#### **Cost of Reviews**

18.2. For the avoidance of any doubt and subject to clause 18.1, the costs associated with a Review (including the reasonable fees of a Review Assessor) are Administration Costs, except to the extent covered by a payment from a Registered Group Member or Eligible Group Member (including the amount of any bond that is not refunded to the Registered Group Member or Eligible Group Member).



### **Costs of lawyers other than the Scheme Administrator**

18.3. Nothing in the Scheme prevents a Registered Group Member or Eligible Group Member from retaining or seeking advice in respect of this settlement from a lawyer who is not performing the role of Scheme Administrator, provided that:

- (a) the Registered Group Member or Eligible Group Member does so at their own cost; and
- (b) the Registered Group Member or Eligible Group Member is not entitled to recover any legal costs from the Scheme Administrator and any such legal costs must not be treated as Administration Costs unless the Scheme Administrator made a written request that the Registered Group Member or Eligible Group Member's lawyer carry out the legal work in question and on the basis that such costs would be paid as Administration Costs.

### **19. SUPERVISION BY THE COURT**

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19.1. The Scheme Administrator may refer any issues arising in relation to the Scheme or the administration of the Scheme to the Court for determination.

19.2. On the application of the Scheme Administrator, or of its own motion, the Court may vary or amend the terms of the Scheme.

19.3. Any costs incurred by the Scheme Administrator in any such reference to the Court, or in any application made by the Scheme Administrator, will be deemed to be Administration Costs, unless the Court otherwise orders.

19.4. Within 30 days after final distribution of monies under the Scheme (including any repayment to the Respondents pursuant to clause 13.8), the Scheme Administrator will:

- (a) provide a brief report to the Court on:
  - i. the total of all Distributions made to Group Members;
  - ii. the number of Group Members who have received Distributions; and
  - iii. the total Administration Costs, including whether any further Administration Costs have been incurred by the Scheme Administrator and have been recouped or defrayed from the Interest earned on the Settlement Sum, and if so what amount; and
- (b) together with the parties to the Proceeding, request the Court to make the Dismissal Orders.

## 20. NOTICES

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- 20.1. Any notice or communication to be given pursuant to the Scheme, sent by the Scheme Administrator, will be deemed given and received for all purposes associated with the Scheme if it is:
- (a) addressed to the person to whom it is given; and
  - (b) either:
    - i. sent by email to that person's email address recorded on the Claims Database;
    - ii. sent by SMS to that person's mobile number recorded on the Claims Database; or
    - iii. sent by pre-paid mail, to that person's postal address recorded on the Claims Database.
- 20.2. Any notice or communication that complies with this clause will be deemed to be given and received:
- (a) if it was sent by email or SMS, at the time it was sent;
  - (b) if it was sent by mail to an addressee in Australia, three clear business days after being sent; or
  - (c) if it was sent by mail to an addressee overseas, five clear business days after being sent.
- 20.3. If a notice or communication is undelivered by email, SMS or post in accordance with clause 20.2, and a Registered Group Member or Eligible Group Member has not informed the Scheme Administrator of any change in their Contact Details in accordance with clause 17.1(d), the Scheme Administrator will determine, in its absolute discretion, whether:
- (a) the notice or communication will be sent via alternative means; or
  - (b) the notice or communication is deemed to have been given in accordance with clauses 20.1 and 20.2.
- 20.4. If the Scheme Administrator deems a notice or communication to be given in accordance with clause 20.1, that Registered Group Member or Eligible Group Member will be a Non-Responsive Group Member unless they otherwise contact the Scheme Administrator in relation to the matters in the notice or communication.
- 20.5. Where a Registered Group Member or Eligible Group Member is not a natural person and one person has been nominated as the designated contact in respect of multiple Registered Group Members or Eligible Group Members, it is sufficient for the purpose of giving notice or communications that any of the provisions of clauses 20.1 and 20.2 are complied with in relation to that nominated person.

20.6. The Scheme Administrator's contact details are as follows unless and until the Scheme Administrator notifies the sender otherwise:

By mail: Foreign Exchange Class Action (Settlement Administration Team)  
Maurice Blackburn Lawyers  
Level 21, 380 La Trobe Street  
MELBOURNE VIC 3000

By email: [ForexClassAction@mauriceblackburn.com.au](mailto:ForexClassAction@mauriceblackburn.com.au)

## **21. TIME**

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21.1. The time for doing any act or thing or for any act or thing to occur under the Scheme may be extended by the Scheme Administrator in its absolute discretion or by order of the Court.

## SCHEDULE A – APPLICABLE FEE RATES AND COSTS

### Item 1 - Applicable hourly rates (clause 18.1)

Position	Hourly rate (ex GST)
Principal / Special Counsel / Settlement Claims Manager > 15 years	\$ 940.00
Principal / Special Counsel / Settlement Claims Manager < 15 years	\$ 860.00
Senior Associate	\$ 695.00
Associate	\$ 640.00
Solicitor	\$ 520.00
Trainee Lawyer / Law Graduate	\$ 415.00
Law Clerk / Paralegal	\$ 295.00
Litigation Technology Consult / Senior Data Analyst / Product Manager	\$ 285.00
Client Services Officer / Data Analyst / Business Analyst	\$ 215.00

### Item 2 - Deductions from Distribution(s) (clause 10.2)

#### Individual Eligible Group Members

Nominating an international bank account - \$125 per account (excl. GST)

Nominating more than one bank account:

- a) International bank account - \$125 per account (excl. GST)
- b) Domestic bank account - \$75 per account (excl. GST)

Obtaining updated bank details (clause 10.4):

- a) International bank account - \$125 per account (excl. GST)
- b) Domestic bank account - \$75 per account (excl. GST)

Reprocessing payment:

- a) International bank account - \$125 per account (excl. GST)
- b) Domestic bank account - \$75 per account (excl. GST)

#### Claims Aggregators or Eligible Group Members that are corporate or trading entities

Claims aggregators or Group Members that are corporate or trading entities that do not nominate a single Australian bank account for payment of the Distribution(s) will be charged at the applicable hourly rates in Item 1 of this Schedule for time spent by the Scheme Administrator to collect:

- a) A single international bank account; or
- b) Additional or multiple bank account details (domestic or international),

including any costs associated with verifying and confirming the accuracy of those bank details, including, without limitation, costs of communicating with that Eligible Group Member.

## **CONFIDENTIAL SCHEDULE B – LOSS ASSESSMENT METHODOLOGY**

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The Confidential Loss Assessment Methodology is confidential and will only be provided:

- a) On written request to Registered Group Members in the Foreign Exchange Class Action; and
- b) In accordance with the terms of the Group Membership and Confidentiality Undertaking that Registered Group Members who wish to access the Confidential Loss Assessment Methodology will be required to complete and return to Maurice Blackburn.

The Confidential Loss Assessment Methodology must be read in conjunction with the Settlement Distribution Scheme to understand how it is applied.

At this stage, it is not possible to estimate each Eligible Group Member's Distribution Amount because the number of group members participating in the settlement and the details of their claim data has not been finalised.

If you wish to request a copy of the Confidential Loss Assessment Methodology, please email:

[ForexClassAction@mauriceblackburn.com.au](mailto:ForexClassAction@mauriceblackburn.com.au)

Please ensure that the subject of your email includes "Request for Confidential Loss Assessment Methodology".