

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/03/2022 6:15:17 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID567/2019
File Title: J WISBEY & ASSOCIATES PTY LTD v UBS AG & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/03/2022 6:22:42 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 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 33
Rule 16.32

Fourth Respondent's Defence to the Amended Statement of Claim

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

Respondents

The Fourth Respondent (**JPMorgan**) pleads as follows to the allegations in the Amended Statement of Claim filed 19 November 2021 (**ASOC**). Headings used in this Defence which correspond with headings used in the ASOC are used for convenience only and without any admissions. Capitalised terms used in this Defence but not otherwise defined have the meaning ascribed to them in the ASOC.

A. THE APPLICANT AND THE GROUP MEMBERS

1. In answer to the allegations in paragraph 1, JPMorgan:

- (a) denies that the Applicant or any other person defined to be a Group Member has suffered any loss or damage; and
- (b) otherwise does not know and therefore cannot admit the allegations.

2. In answer to the allegations in paragraph 2, JPMorgan:

- (a) admits paragraph (a); and
- (b) otherwise does not know and therefore cannot admit the allegations.

Filed on behalf of	JPMorgan Chase Bank N.A. (Fourth Respondent)		
Prepared by	Representatives of the Fourth Respondent		
Law firm	Allen & Overy		
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3. JPMorgan does not know and therefore cannot admit the allegations in paragraph 3.

B. THE RESPONDENTS

4. In answer to the allegations in paragraph 4, JPMorgan:

- (a) admits paragraphs (a)-(c); and
- (b) otherwise does not know and therefore cannot admit the allegations.

5. In answer to the allegations in paragraph 5, JPMorgan:

- (a) admits paragraphs (a)-(c); and
- (b) otherwise does not know and therefore cannot admit the allegations.

6. In answer to the allegations in paragraph 6, JPMorgan:

- (a) admits paragraphs (a)-(c); and
- (b) otherwise does not know and therefore cannot admit the allegations.

7. In answer to the allegations in paragraph 7, JPMorgan:

- (a) as to paragraph (a), says that JPMorgan is and was at all material times incorporated in and under the laws of Delaware and otherwise denies paragraph (a); and
- (b) admits paragraphs (b)-(e).

8. In answer to the allegations in paragraph 8, JPMorgan:

- (a) admits paragraphs (a)-(c); and
- (b) otherwise does not know and therefore cannot admit the allegations.

C. THE GLOBAL FX MARKET

9. In answer to the allegations in paragraph 9, JPMorgan:

- (a) admits that from time to time during the Relevant Period there was demand for FX Instruments from persons and entities in various locations within the regions listed in paragraphs 9(a) to (g) including in London, New York, Sao Paulo, the Republic of Singapore, Johannesburg, Sydney and Auckland; and
- (b) otherwise denies the allegations.

10. In answer to the allegations in paragraph 10, JPMorgan:
- (a) admits that from time to time during the Relevant Period, acting as a Dealer, it entered into, and/or offered to enter into FX Instruments with persons and entities located in various locations including Australia, via:
 - (i) members of its FX sales and/or trading desks;
 - (ii) electronic platforms which could be accessed by persons and entities in various locations to place orders or execute trades with JPMorgan; and/or
 - (iii) certain third party brokers;
 - (b) admits that from time to time there were Dealers other than JPMorgan which entered into and/or offered to enter into FX Instruments with persons and entities located in various locations including Australia;
 - (c) otherwise does not know and therefore cannot admit the allegations in paragraph 10 insofar as they concern Dealers other than JPMorgan; and
 - (d) otherwise denies the allegations.
11. In answer to the allegations in paragraph 11, JPMorgan:
- (a) admits that a unit of a particular currency was fungible for another unit of the same currency;
 - (b) says that:
 - (i) entry into a Spot with respect to a currency pair of a specific volume was not a direct substitute for entry into any other Spot with respect to the same currency pair of the same volume;
 - (ii) entry into an Outright Forward with respect to a currency pair of a specific volume was not a direct substitute for entry into any other Outright Forward with respect to the same currency pair of the same volume;
 - (iii) the ability or willingness of a person or entity to enter into a Spot or Outright Forward with any particular Dealer typically depended upon a number of factors including the existence and terms of any pre-existing relationship with a particular Dealer, the desired method of execution of a trade, the desired timing and method of settlement and terms as to price;

- (iv) Dealers entering FX Instruments with persons or entities with respect to any given currency pair of a specific volume typically sought to differentiate themselves from other Dealers by offering price and non-price incentives which may have included:
 - (A) the provision of client relationship services across a customer portfolio including market analysis, back office administrative services, post trade services including trade allocation and settlement services, sales services and other non FX related services; and
 - (B) technology platforms and electronic trading;
- (v) Dealers entering into, and /or offering to enter into, FX Instruments with persons and entities in various locations including in Australia sought to differentiate themselves on price and non-price factors;
- (vi) persons and entities who sought to enter into an FX Instrument with respect to any currency pair of a given volume typically took into account price and non-price factors in the determination of choice of Dealers; and
- (c) otherwise denies the allegations.

Particulars

Particulars of the matters set out in paragraph 11 will be provided upon the service of expert evidence.

- 12. In answer to the allegations in paragraph 12, JPMorgan:
 - (a) repeats paragraphs 9 to 11 above; and
 - (b) otherwise denies the allegations.
- 13. In answer to the allegations in paragraph 13, JPMorgan:
 - (a) refers to and repeats paragraph 12 above;
 - (b) says that if, which is denied, there was a Global FX Market as alleged, it was a market within the meaning of s 4E of the TPA and s 4E of the CCA; and
 - (c) otherwise denies the allegations.

D. THE AUSTRALIAN FX MARKET

14. In answer to the allegations in paragraph 14, JPMorgan:
- (a) says that from time to time during the Relevant Period there was demand from persons and entities located in Australia and elsewhere to enter into FX Instruments with Dealers located in various locations including within Australia; and
 - (b) otherwise denies the allegations.
15. In answer to the allegations in paragraph 15, JPMorgan:
- (a) admits that from time to time during the Relevant Period, acting as a Dealer, it entered into, and/or offered to enter into, FX Instruments with persons and entities located in various locations including Australia, via:
 - (i) members of its FX sales and/or trading desks;
 - (ii) electronic platforms which could be accessed by persons and entities in various locations to place orders or execute trades with JPMorgan; and/or
 - (iii) certain third party brokers;
 - (b) admits that from time to time there were Dealers other than JPMorgan which entered into and/or offered to enter into FX Instruments with persons and entities located in various locations including Australia;
 - (c) does not know and therefore cannot admit the allegations in paragraph 15 insofar as they concern Dealers other than JPMorgan; and
 - (d) otherwise denies the allegations.
16. In answer to the allegations in paragraph 16, JPMorgan:
- (a) refers to and repeats paragraph 11; and
 - (b) otherwise denies the allegations.
17. In answer to the allegations in paragraph 17, JPMorgan:
- (a) repeats paragraphs 14 to 16 above; and
 - (b) otherwise denies the allegations.
18. In answer to the allegations in paragraph 18, JPMorgan:

- (a) refers to and repeats paragraph 17 above;
- (b) says that if, which is denied, there was an Australian FX Market as alleged, it was a market within the meaning of section 4E of the TPA and s 4E of the CCA; and
- (c) otherwise denies the allegations.

E. COMPETITION IN RELATION TO FX INSTRUMENTS

19. In answer to the allegations in paragraph 19, JPMorgan:

- (a) admits that, from time to time during the Relevant Period, JPMorgan entered into, and/or offered to enter into, FX Instruments with persons and entities in various locations, including in Australia;
- (b) in relation to the other Respondents:
 - (i) says that, from time to time during the Relevant Period, each other Respondent or other entities operating under the same generic corporate brand name or style of each of the other Respondents represented that it entered into, offered to enter into and/or was willing to enter into FX Instruments with persons or entities in various locations, including in Australia;
 - (ii) otherwise does not know and therefore cannot admit the allegations; and
- (c) otherwise denies the allegations.

20. In answer to the allegations in paragraph 20, JPMorgan:

- (a) admits that, from time to time during the Relevant Period, JPMorgan had one or more related bodies corporate which entered into, and/or offered to enter into, FX Instruments;
- (b) does not know and therefore cannot admit the allegations insofar as they relate to the other Respondents; and
- (c) otherwise denies the allegations.

21. In answer to the allegations in paragraph 21, JPMorgan:

- (a) admits that, from time to time during the Relevant Period, entities other than the Respondents and their respective Related Bodies Corporate represented that they entered into, and/or offered to enter into, FX Instruments with persons and entities in

various locations including one or more of the locations listed in paragraphs 9(a) to (g) of the ASOC;

- (b) admits that, from time to time during the Relevant Period, entities operating under the following general corporate brand, name and style represented that they entered into, and/or offered to enter into, FX Instruments with persons and entities in various locations:
 - (i) BNP Paribas;
 - (ii) Deutsche Bank;
 - (iii) Credit Suisse;
 - (iv) Bank of America;
 - (v) Goldman Sachs;
 - (vi) HSBC;
 - (vii) Standard Chartered Bank;
 - (viii) Morgan Stanley;
 - (ix) Société Générale;
 - (x) The Royal Bank of Canada;
 - (xi) Merrill Lynch, Pierce, Fenner & Smith;
 - (xii) State Street Bank and Trust Company;
 - (xiii) Mitsubishi UFJ Financial Group; and
 - (xiv) MUFG Bank; and
- (c) otherwise does not know and therefore cannot admit the allegations.

22. In answer to the allegations in paragraph 22, JPMorgan:

- (a) repeats the matters pleaded in response to paragraphs 4(d), 5(d), 6(d), 7(d), 8(d), 11, 16, 19, 20 and 21; and
- (b) otherwise denies the allegations.

F. RELEVANT ARRANGEMENTS OR UNDERSTANDINGS**F.1 FX Understanding**

23. JPMorgan denies paragraph 23.

24. JPMorgan denies paragraph 24.

F.2 FX Chatroom Understandings

25. JPMorgan denies paragraph 25.

26. JPMorgan denies paragraph 26.

G. RELEVANT CONTRAVENTIONS BY THE RESPONDENTS**G.1 FX Understanding: price fixing****G.1.1 Price fixing conduct prior to 24 July 2009: TPA Contraventions**

27. JPMorgan denies paragraph 27.

28. JPMorgan denies paragraph 28.

29. JPMorgan denies paragraph 29.

30. JPMorgan denies paragraph 30.

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

31. JPMorgan denies paragraph 31.

32. JPMorgan denies paragraph 32.

33. JPMorgan denies paragraph 33.

G.2 FX Understanding: restricting supply

34. JPMorgan denies paragraph 34.

35. JPMorgan denies paragraph 35.

36. JPMorgan denies paragraph 36.

37. JPMorgan denies paragraph 37.

G.3 FX Understanding: substantially lessening competition

38. JPMorgan denies paragraph 38.

39. JPMorgan denies paragraph 39.

40. JPMorgan denies paragraph 40.

G.4 FX Chatroom Understandings: price fixing**G.4.1 Price fixing conduct prior to 24 July 2009: TPA Contraventions**

41. JPMorgan denies paragraph 41.

42. JPMorgan denies paragraph 42.

43. JPMorgan denies paragraph 43.

44. JPMorgan denies paragraph 44.

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

45. JPMorgan denies paragraph 45.

46. JPMorgan denies paragraph 46.

47. JPMorgan denies paragraph 47.

G.5 FX Chatroom Understandings: restricting supply

48. JPMorgan denies paragraph 48.

49. JPMorgan denies paragraph 49.

50. JPMorgan denies paragraph 50.

51. JPMorgan denies paragraph 51.

G.6 FX Chatroom Understandings: substantially lessening competition

52. JPMorgan denies paragraph 52.

53. JPMorgan denies paragraph 53.

54. JPMorgan denies paragraph 54.

H. LOSS OR DAMAGE

55. JPMorgan does not know and therefore cannot admit paragraph 55.

56. JPMorgan denies paragraph 56.

H.1 FX Understanding

57. JPMorgan denies paragraph 57.

58. JPMorgan denies paragraph 58.

59. JPMorgan denies paragraph 59.

60. JPMorgan denies paragraph 60.

61. JPMorgan denies paragraph 61.

H.2 FX Chatroom Understandings

62. JPMorgan denies paragraph 62.

63. JPMorgan denies paragraph 63.

64. JPMorgan denies paragraph 64.

65. JPMorgan denies paragraph 65.

66. JPMorgan denies paragraph 66.

H.3 Damage suffered

67. JPMorgan denies paragraph 67.

68. JPMorgan denies paragraph 68.

69. JPMorgan denies paragraph 69.

I. COMMON QUESTIONS OF LAW OR FACT

70. JPMorgan does not plead to paragraph 70 on the basis that no allegation of fact is made.

J. PASS THROUGH / PASS ON

71. In further answer to paragraphs 67 to 69, JPMorgan says:

(a) if (which is denied) the transactions the subject of the FX Instruments entered into by the Applicant were:

- (i) at higher prices than they otherwise would have been, in the cases where the Applicant was a buyer; and/or
- (ii) at lower prices than they otherwise would have been, in cases where the Applicant was a seller,

then, the Applicant's loss is reduced to the extent that the Applicant passed on to its own customers, in whole or in part, the increased cost to the Applicant of those transactions;

(b) if (which is denied) the transactions the subject of the FX Instruments entered into by Group Members were:

- (i) at higher prices than they otherwise would have been, in the cases where Group Members were buyers; and/or
- (ii) at lower prices than they otherwise would have been, in cases where Group Members were sellers,

then, each Group Member's loss is reduced to the extent that the Group Member passed on to its own customers, in whole or in part, the increased cost to it of those transactions.

K. LIMITATION PERIOD

72. In further answer to paragraphs 67 to 69, JPMorgan says:

- (a) the Applicant commenced these proceedings on 27 May 2019;
- (b) in respect of FX Instruments entered into by the Applicant or any Group Members on or before 27 May 2013, if the Applicant or any Group Member has suffered any otherwise recoverable loss or damage (which is denied):
 - (i) any such loss or damage was suffered at the time the Applicant or Group Member entered into the FX Instrument and more than six years elapsed between the entry into the relevant FX Instruments and the date these proceedings were commenced by the Applicant;
 - (ii) by reason of the matters alleged in (i) above, any cause of action under s 82 of the TPA or CCA is statute barred or extinguished by operation of s 82(2) of the TPA or CCA; and

(iii) by reason of the matters alleged in (i) above:

- (A) any cause of action under s 87(1) of the TPA or CCA has also been statute barred or extinguished;
- (B) in the alternative to (A) above, the Court has no power to make any orders for compensation in favour of the Applicant or Group Member under s 87(1) of the TPA or CCA; and
- (C) further in the alternative to (A) and (B) above, the Court should in its discretion decline to make an order for compensation under s 87(1) of the TPA or CCA in favour of the Applicant or Group Member including because of the undue delay in commencing these proceedings and the limitation period in s 82 of the TPA or CCA.

L. RELEASE OR OTHER RECOVERY

73. In further answer to paragraphs 68 and 69, the Applicant and any Group Member is barred from bringing any claim against JPMorgan in this proceeding to the extent that the claim arises out of the same FX Instrument(s) the subject of a settlement agreement by operation of which JPMorgan is released from any claims that person had or may have, or a judgment or order in which such claim has merged or been extinguished.

Particulars

JPMorgan relies upon the following settlement agreements and orders for their full terms, meaning and effect, as they apply to the Applicant or any Group Member:

- a. In respect of *In Re Foreign Exchange Benchmark Rates Antitrust Litigation* (13 Civ. 7789):
 - I. Stipulation and Amended Agreement of Settlement With JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. dated 22 October 2015;
 - II. Orders made on 6 August 2018 by the United States District Court Southern District of New York.
- b. In respect of *Mancinelli & Ors v Royal Bank of Canada & Ors*, CV-15-536174CP (Ontario Superior Court of Justice):
 - I. Settlement Agreement dated 28 November 2016;
 - II. Orders made on 13 April 2017 by the Ontario Superior Court of Justice.

c. In respect of *Béland v Royal Bank of Canada et al*, No 200-06-000189-152 (Superior Court of Québec):

- I. Settlement Agreement dated 28 November 2016;
- II. Order of the Superior Court of Québec dated 5 May 2017.

Further particulars will be provided closer to trial.

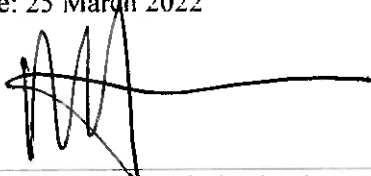
74. In further answer to paragraph 68 and 69, JPMorgan says that if the Applicant or a Group Member has suffered loss or damage (which is denied), any such loss or damage is extinguished by or reduced to the extent of any amount received by that person in respect of the same loss or damage by reason of a determination, order or settlement of a claim for such loss.

Particulars

JPMorgan repeats the particulars to paragraph 73 above.

Further particulars may be provided closer to trial.

Date: 25 March 2022

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Signed by Michael Shepherd
Lawyer for the Fourth Respondent

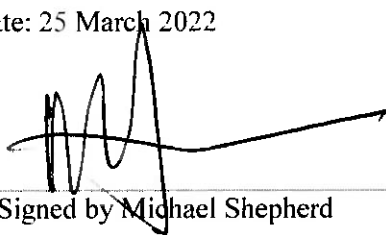
This pleading was prepared by C M Archibald QC, S Lawrance SC, L Rich and D Blazer of counsel.

CERTIFICATE OF LAWYER

I, Michael Shepherd, certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 25 March 2022

A handwritten signature in black ink, appearing to read 'Michael Shepherd', is written over a horizontal line. The signature is stylized with a large initial 'M' and a long horizontal stroke extending to the right.

Signed by Michael Shepherd

Lawyer for the Fourth Respondent

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: 25 March 2022