

## NOTICE OF FILING

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### 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 10:03:47 PM AEDT

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

Registrar

### Important Information

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Form 33  
Rule 16.32

## Fifth Respondent's Defence to the Amended Statement of Claim

No VID567/2019

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

*Except where otherwise noted, the Fifth Respondent adopts the definitions used in the ASOC but by doing so does not admit any allegation implied by the defined terms so used.*

#### A THE APPLICANT AND THE GROUP MEMBERS

1 As to paragraph 1 of the Amended Statement of Claim dated 19 November 2021 (**ASOC**), NatWest Markets Plc formerly known as The Royal Bank of Scotland plc (**NWM**):

- (a) admits that the Applicant purported to commence the proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of itself and certain others referred to as Group Members;
- (b) denies paragraph 1(c); and
- (c) otherwise does not know and cannot admit the allegations in the paragraph.

2 As to paragraph 2, NWM:

- (a) admits subparagraph 2(a); and
- (b) otherwise does not know and cannot admit paragraph 2 of the ASOC.

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Filed on behalf of Fifth Respondent  
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3 In respect of paragraph 3, NWM:

- (a) denies that any person suffered loss or damage by reason of the conduct of NWM; and
- (b) otherwise does not know and cannot admit the allegations in the paragraph.

**B THE RESPONDENTS**

4 As to paragraph 4, NWM:

- (a) admits subparagraphs 4(a), (b) and (c); and
- (b) otherwise does not know and cannot admit paragraph 4 of the ASOC.

5 As to paragraph 5, NWM:

- (a) admits subparagraphs 5(a), (b) and (c); and
- (b) otherwise does not know and cannot admit paragraph 5 of the ASOC.

6 As to paragraph 6, NWM:

- (a) admits subparagraphs 6(a), (b) and (c); and
- (b) otherwise does not know and cannot admit paragraph 6 of the ASOC.

7 As to paragraph 7, NWM:

- (a) admits subparagraphs 7(a), (b) and (c); and
- (b) otherwise does not know and cannot admit paragraph 7 of the ASOC.

8 As to paragraph 8 of the ASOC, NWM:

- (a) says that effective 31 August 2017, RBS ceased to carry on business in Australia;

**Particulars**

Form 407 signed by a director or secretary of a company which has been duly appointed as local agent of the foreign company and dated 20 September 2017 (ASIC Form 407 Document No. 030013281).

- (b) admits subparagraph 8(a);
- (c) admits subparagraph 8(b);
- (d) admits subparagraph 8(c);
- (e) in relation to subparagraph 8(d):
  - (i) says that it is not clear what is meant by “a global business”;

- (ii) says that it is not clear what is meant by a “Dealer”, and proceeds on the assumption that any reference in this Defence to a “Dealer” excludes proprietary trading, and pleads accordingly;
- (iii) admits that at all material times NWM was carrying on business as a Dealer of certain currencies in FX Instruments in the sense that it carried on business entering into, and offering to enter into, FX Instruments of various types in multiple countries;
- (iv) denies that the whole of NWM’s business could be said to be carried on in Australia and/or to customers in Australia;
- (f) admits subparagraph 8(e); and
- (g) otherwise denies the allegations in the paragraph.

### **C THE ALLEGED GLOBAL FX MARKET**

9 As to paragraph 9 of the ASOC, NWM:

- (a) says that it is not clear what is meant by “Global Trading Centres”;
- (b) admits that from time to time during the Relevant Period there was differentiated demand (in the sense that different customers wanted different things) for FX Instruments from certain customers in various locations, including those referred to in paragraph 9 of the ASOC (**Regions**);
- (c) says that it does not know and cannot admit the full nature or extent of that demand;
- (d) says that many customers are not located in a place that could properly be described as a “Global Trading Centre”; and
- (e) otherwise denies the allegations in the paragraph.

10 As to paragraph 10 of the ASOC, NWM:

- (a) admits that from time to time during the Relevant Period, NWM entered into, and offered to enter into, FX Instruments with certain customers including through:
  - (i) FX sales desks and/or trading desks, including in Australia;

#### **Particulars**

From time to time during the Relevant Period NWM:

- (A) operated a sales desk in Australia; and
- (B) operated a forwards trading desk in Australia.

NWM did not operate a spot trading desk in Australia at any time during the Relevant Period other than between approximately August 2009 and mid-2010 when two spot FX traders were seconded to Sydney on a proprietary trading desk only.

- (ii) multi-bank electronic platforms, being automated systems that connected certain customers and Dealers, including multi-bank electronic platforms accessible in Australia;
- (iii) a single-bank electronic platform that was accessible in Australia;

**Particulars**

NWM's single-bank electronic platform was during the Relevant Period known as RBS Marketplace or "RBSM".

- (b) admits that on occasion customers with which it entered into an FX Instrument were in a different location from a sales and/or trading desk, and on occasion customers were in a different location from Dealers;
- (c) says that demand from customers was differentiated, in the sense that different customers wanted different things;
- (d) says that some of the currencies of the Affected Currency Pairs were not capable of being the subject of an FX Instrument or FX Instruments, at least for offshore transactions;

**Particulars**

The currencies that were subject to capital controlled onshore markets and only capable of being traded offshore as non-deliverable forwards included the Brazilian real (BRL), Chinese yuan (CNY), Indian rupee (INR), Indonesian rupiah (IDR), Malaysian ringgit (MYR) and South Korean won (KRW).

- (e) says that there were approval processes before FX Instruments could be entered into with customers, and any approval was normally given subject to limitations;
- (f) does not know and cannot admit the allegations insofar as those allegations concern "Dealers" other than NWM; and
- (g) otherwise denies the allegations in the paragraph.

11 As to paragraph 11 of the ASOC, NWM:

- (a) in respect of subparagraph 11(a):
  - (i) says that it is unclear what is meant by currency the subject of any FX Instrument being fungible;

- (ii) says that currency the subject of any FX Instrument was only replaceable by another unit of currency without any cost or hindrance as cash of the same currency, upon settlement of the FX Instrument;
  - (iii) says that all FX Instruments were subject to a settlement risk; and
  - (iv) otherwise denies subparagraph 11(a);
- (b) in respect of subparagraph 11(b):
- (i) says that:
    - (A) a Dealer's willingness to enter into an FX Instrument with a particular customer;
    - (B) the price at which a Dealer was willing to quote a Spot, even with respect to the same currency pair of the same volume; and
    - (C) a customer's willingness to enter into FX Instruments with a particular Dealer,

varied depending on various factors such that a particular Spot (even when precisely the same numerically and for the same volume) may not necessarily be substitutable for a different Spot, and a Spot in one location may not necessarily be substitutable for a Spot in another location;
  - (ii) says that the factors referred to in subparagraph 11(b)(i) included but were not limited to:
    - (A) settlement risk;
    - (B) credit risk;
    - (C) the location/s of the Dealer and the customer;
    - (D) the creditworthiness of the customer;
    - (E) service levels provided to the customer and Dealer expertise;
    - (F) the wider relationship of the customer with the bank, including whether a lending relationship with the customer exists, and whether other services such as strategy or research are provided;
    - (G) factors applicable to that customer including costs by client sector and type, client execution style, and volumes traded by the customer;

- (H) market and jurisdictional factors including any applicable regulations that limited trading in the currencies the subject of the relevant instrument, market liquidity, market events, and recent data releases in relation to the market;
  - (I) transaction-specific factors including the transaction type, the size of the notional of the proposed transaction, the currency pair of the proposed transaction, the terms of the relevant Spot instrument including any terms requiring the provision of security, what capital was to be utilised for the trade, the channel of request, and the likely time of the transaction;
  - (J) the existing net market position of the Dealer; and
- (iii) otherwise denies subparagraph 11(b);
- (c) in respect of subparagraph 11(c):
- (i) repeats paragraph (b) above replacing references to a Spot as references to an Outright Forward;
  - (ii) says further that while the same general factors which are taken into account when quoting a Spot price are relevant to quoting an Outright Forward price, the relative importance of each factor may differ; and
  - (iii) otherwise denies subparagraph 11(c);
- (d) in respect of subparagraph 11(d):
- (i) says that the sub-paragraph is vague and embarrassing, including because the “service” referred to in sub-paragraph (d) is not identified; and
  - (ii) otherwise denies subparagraph 11(d);
- (e) in respect of subparagraph 11(e):
- (i) says that the choice of Dealer for a customer seeking to enter into an FX Instrument with respect to any currency pair of a given volume anywhere in any of the Regions depended on a range of factors including but not limited to:
    - (A) whether the customer was an approved customer of the Dealer and had a trading relationship with the Dealer;
    - (B) customer specific factors including the customer type, the purpose of the transaction and other customer requirements

- relevant to that particular transaction, the creditworthiness of the customer, and the volumes traded by the customer;
- (C) transaction specific factors including the transaction type, the terms of the relevant instrument including any terms requiring the provision of security, the size of the proposed transaction, and the currency pair of the proposed transaction;
  - (D) services available to the customer and the wider relationship of the customer with the Dealer including whether a lending relationship between Dealer and customer exists, whether other services such as strategy or research are provided, and Dealer expertise;
  - (E) the location/s of the Dealer and the customer;
  - (F) whether the customer's usual or preferred Dealer was available;
  - (G) the likely time of the transaction;
  - (H) settlement risk;
  - (I) credit appetite;
  - (J) market and jurisdictional factors including any applicable regulations that limited trading in the currencies the subject of the relevant instrument, market liquidity, and market events;
  - (K) probability and speed of execution;
  - (L) price; and
- (ii) otherwise denies subparagraph 11(e);
- (f) In respect of subparagraph 11(f):
    - (i) admits that Dealers often competed on price in relation to the same type of FX Instrument for the same currency pair for the same volume;
    - (ii) says that price was not a factor for all order types entered into and/or offered to be entered into by a Dealer;
    - (iii) says that Dealers competed on factors other than price in relation to FX Instruments entered into and/or offered to be entered into with customers in different Regions, including in Australia, which factors included but were not limited to:
      - (A) the onboarding of customers;



- (B) service offering and quality;
  - (C) the wider relationship of the customer with the Dealer including their trading and lending relationships;
  - (D) strength and breadth of services provided to the customer including whether other services such as strategy or research were provided;
  - (E) the breadth the depth of the Dealer's offering including transaction offering, offering of FX Instruments, and the range of transactions accommodated including size of transactions;
  - (F) strength and breadth of coverage;
  - (G) terms of business and overall terms of trading;
  - (H) perceived expertise;
  - (I) quality of execution; and
  - (J) credit risk;
- (iv) says that the allegation is not limited to a particular type of FX Instrument, currency pair or a given volume, and says that Dealers did not compete on price in relation to different FX Instruments; and
  - (v) otherwise denies subparagraph 11(f).

12 As to paragraph 12 of the ASOC, NWM:

- (a) says that the Applicant has not alleged facts that would support the existence of a global market for the supply of FX Instruments by Dealers to customers;
- (b) otherwise denies the allegations in the paragraph; and
- (c) refers to and repeats its defence to paragraphs 9 to 11 above.

13 NWM denies the allegations in paragraph 13 of the ASOC.

#### **D THE ALLEGED AUSTRALIAN FX MARKET**

14 As to paragraph 14 of the ASOC, NWM:

- (a) admits that from time to time during the Relevant Period there was differentiated demand (in the sense that different customers wanted different things) from certain customers located in Australia and outside Australia to acquire certain FX Instruments from Dealers; and
- (b) otherwise denies the allegations in the paragraph.

- 15 As to paragraph 15 of the ASOC, NWM:
- (a) repeats paragraph 10 above;
  - (b) does not know and cannot admit the allegations in relation to Dealers other than NWM; and
  - (c) otherwise denies the allegations in the paragraph.
- 16 As to paragraph 16 of the ASOC, NWM:
- (a) repeats its defence to paragraphs 9 to 11 mutatis mutandis and 14 above; and
  - (b) otherwise denies the allegations in the paragraph.
- 17 As to paragraph 17 of the ASOC, NWM:
- (a) says that the Applicant has not alleged facts that would support the existence of an Australian market for the supply of FX Instruments by Dealers to customers;
  - (b) repeats its defence to paragraphs 14 to 16 above; and
  - (c) otherwise denies the allegation in the paragraph.
- 18 As to paragraph 18 of the ASOC, NWM:
- (a) repeats paragraph 17 above; and
  - (b) otherwise denies the allegations in the paragraph.

## **E ALLEGED COMPETITION IN RELATION TO FX INSTRUMENTS**

- 19 As to paragraph 19 of the ASOC, NWM:
- (a) repeats paragraph 10(a) above;
  - (b) says that from time to time during the Relevant Period, NWM entered into, offered to enter into and/or was willing and able to enter into FX Instruments to certain customers in one or more of the Regions, including in Australia;
  - (c) as to the other Respondents, NWM does not know and cannot admit the matters alleged;
  - (d) says that any competition between the Respondents was not in relation to FX Instruments generally; and
  - (e) otherwise denies the allegations in the paragraph.
- 20 As to paragraph 20 of the ASOC, NWM:
- (a) admits that from time to time during the Relevant Period it had related bodies corporate which, from time to time, also entered into and/or offered to enter into FX Instruments with certain customers in one or more of the Regions;

- (b) does not know and cannot admit the allegations in relation to the other Respondents;
- (c) says that any competition between the Respondents (including any related bodies corporate) was not in relation to FX Instruments generally; and
- (d) otherwise denies the allegations in the paragraph.

21 NWM does not know and cannot admit the allegations in paragraph 21.

22 As to paragraph 22 of the ASOC, NWM:

- (a) repeats paragraphs 4 to 8, 11, 16 and 19 to 21 above; and
- (b) otherwise denies the allegations in the paragraph.

## **F ALLEGED RELEVANT ARRANGEMENTS OR UNDERSTANDINGS**

### **F1 The alleged FX Understanding**

23 NWM denies the allegations in paragraph 23 of the ASOC.

24 NWM denies the allegations in paragraph 24 of the ASOC.

### **F2 The alleged FX Chatroom Understandings**

25 NWM denies the allegations in paragraph 25 of the ASOC.

26 NWM denies the allegations in paragraph 26 of the ASOC.

## **G ALLEGED RELEVANT CONTRAVENTIONS BY THE RESPONDENTS**

### **G1 Alleged FX Understanding: price fixing**

#### ***G1.1 Alleged price fixing conduct prior to 24 July 2009: TPA Contraventions***

27 NWM denies the allegations in paragraph 27 of the ASOC.

28 As to paragraph 28 of the ASOC, NWM:

- (a) repeats paragraph 27 above; and
- (b) denies the allegations in the paragraph.

29 As to paragraph 29 of the ASOC, NWM:

- (a) repeats paragraphs 27 and 28 above; and
- (b) denies the allegations in the paragraph.

30 As to paragraph 30 of the ASOC, NWM:

- (a) repeats paragraphs 27 and 28 above; and
- (b) denies the allegations in the paragraph.

**G1.2 Alleged price fixing conduct on or after 24 July 2009: TPA and CCA contraventions**

31 NWM denies the allegations in paragraph 31 of the ASOC.

32 As to paragraph 32 of the ASOC, NWM:

- (a) repeats paragraph 31 above; and
- (b) denies the allegations in the paragraph.

33 As to paragraph 33 of the ASOC, NWM:

- (a) repeats paragraphs 31 above; and
- (b) denies the allegations in the paragraph.

**G2 Alleged FX Understanding: restricting supply**

34 NWM denies the allegations in paragraph 34 of the ASOC.

35 As to paragraph 35 of the ASOC, NWM:

- (a) repeats paragraph 34 above; and
- (b) denies the allegations in the paragraph.

36 As to paragraph 36 of the ASOC, NWM:

- (a) repeats paragraphs 34 and 35 above; and
- (b) denies the allegations in the paragraph.

37 As to paragraph 37 of the ASOC, NWM:

- (a) repeats paragraphs 34 and 35 above; and
- (b) denies the allegations in the paragraph.

**G3 Alleged FX Understanding: substantially lessening competition**

38 NWM denies the allegations in paragraph 38 of the ASOC.

39 As to paragraph 39 of the ASOC, NWM:

- (a) repeats paragraphs 23 and 38 above; and
- (b) denies the allegations in the paragraph.

40 As to paragraph 40 of the ASOC, NWM:

- (a) repeats paragraphs 23, 24 and 28 above; and
- (b) denies the allegations in the paragraph.

**G4 Alleged FX Chatroom Understandings: price-fixing*****G4.1 Alleged price fixing conduct prior to 24 July 2009: TPA Contraventions***

41 NWM denies the allegations in paragraph 41 of the ASOC.

42 As to paragraph 42 of the ASOC, NWM:

- (a) repeats paragraph 41 above; and
- (b) denies the allegations in the paragraph.

43 As to paragraph 43 of the ASOC, NWM:

- (a) repeats paragraphs 41 and 42 above; and
- (b) denies the allegations in the paragraph.

44 As to paragraph 44 of the ASOC, NWM:

- (a) repeats paragraphs 41 and 42 above; and
- (b) denies the allegations in the paragraph.

***G4.2 Alleged price fixing conduct on or after 24 July 2009: TPA and CCA contraventions***

45 NWM denies the allegations in paragraph 45 of the ASOC.

46 As to paragraph 46 of the ASOC, NWM:

- (a) repeats paragraph 45 above; and
- (b) denies the allegations in the paragraph.

47 As to paragraph 47 of the ASOC, NWM:

- (a) repeats paragraph 45 above; and
- (b) denies the allegations in the paragraph.

**G5 Alleged FX Chatroom Understandings: restricting supply**

48 NWM denies the allegations in paragraph 48 of the ASOC.

49 As to paragraph 49 of the ASOC, NWM:

- (a) repeats paragraph 48 above; and
- (b) denies the allegations in the paragraph.

50 As to paragraph 50 of the ASOC, NWM:

- (a) repeats paragraphs 48 and 49 above; and
- (b) denies the allegations in the paragraph.

51 As to paragraph 51 of the ASOC, NWM:

- (a) repeats paragraphs 48 and 49 above; and
- (b) denies the allegations in the paragraph.

**G6 Alleged FX Chatroom Understandings: substantially lessening competition**

52 NWM denies the allegations in paragraph 52 of the ASOC.

53 As to paragraph 53 of the ASOC, NWM:

- (a) repeats paragraphs 25 and 52 above; and
- (b) denies the allegations in the paragraph.

54 As to paragraph 54 of the ASOC, NWM:

- (a) repeats paragraphs 25, 26 and 42 above; and
- (b) denies the allegations in the paragraph.

**H ALLEGED LOSS OR DAMAGE**

55 NWM does not know and cannot admit the allegations in paragraph 55 of the ASOC.

56 NWM denies the allegations in paragraph 56 of the ASOC.

**H1 Alleged FX Understanding**

57 As to paragraph 57 of the ASOC, NWM:

- (a) repeats paragraph 23 above and paragraph 58 below; and
- (b) denies the allegations in the paragraph.

58 As to paragraph 58 of the ASOC, NWM:

- (a) repeats paragraphs 55 and 56 above; and
- (b) denies the allegations in the paragraph.

59 As to paragraph 59 of the ASOC, NWM:

- (a) repeats paragraph 58 above; and
- (b) denies the allegations in the paragraph.

60 As to paragraph 60 of the ASOC, NWM:

- (a) repeats paragraphs 57 and 59 above;
- (b) denies the allegations in paragraph 60; and
- (c) says further that if (which is denied) there was any effect on Spreads and mid-points as alleged, that effect (in whole or in part):

- (i) may have been passed on to down-stream customers, other counterparties or otherwise of the Applicant and Group Members;
- (ii) is likely to have resulted in the maintaining or narrowing of Spreads offered by the Other Banks in order to win more trades or attract further business; and
- (iii) should have been mitigated by the Applicant and the Group Members transferring increased costs upstream or downstream.

61 As to paragraph 61 of the ASOC, NWM:

- (a) repeats paragraphs 57, 59 and 60(c)(ii) above; and
- (b) denies the allegations in the paragraph.

## **H2 Alleged FX Chatroom Understandings**

62 NWM denies the allegations in paragraph 62 of the ASOC.

63 As to paragraph 63 of the ASOC, NWM:

- (a) repeats paragraphs 55 and 56 above; and
- (b) denies the allegations in the paragraph.

64 As to paragraph 64 of the ASOC, NWM:

- (a) repeats paragraphs 60(c)(ii) and 63 above; and
- (b) denies the allegations in the paragraph.

65 As to paragraph 65 of the ASOC, NWM:

- (a) repeats paragraphs 60, 62 and 64 above; and
- (b) otherwise denies the allegations in the paragraph.

66 As to paragraph 66 of the ASOC, NWM:

- (a) repeats paragraphs 62 and 64 above; and
- (b) denies the allegations in the paragraph.

## **H2 Alleged FX Chatroom Understandings**

67 As to paragraph 67 of the ASOC, NWM:

- (a) repeats paragraphs 55 to 66 above;
- (b) denies the allegations in the paragraph; and
- (c) says that if, which is denied, the pleaded impact upon transactions entered into by the Applicant and Group Members did occur, they may have also obtained

benefits from the conduct as alleged by reason of transactions (the subject of the FX Instruments entered into by the Applicant and the Group Members):

- (i) carried out in the other direction; and/or
- (ii) carried out at FX rates more favourable than they otherwise would have been.

68 As to paragraph 68 of the ASOC, NWM:

- (a) repeats paragraph 67 above;
- (b) denies the allegations in the paragraph; and
- (c) says further, and in the alternative, that if:
  - (i) the Applicant establishes the matters alleged in paragraph 67 of the ASOC, and the Applicant obtained financial gains or benefits by reason of those matters, then any award for loss or damage should account for the corresponding amount of those financial gains or benefits; and
  - (ii) a Group Member establishes the matters alleged in paragraph 67 of the ASOC, and that Group Member obtained financial gains or benefits by reason of those matters, then any award for loss or damage should account for the corresponding amount of those financial gains or benefits.

69 As to paragraph 69 of the ASOC, NWM:

- (a) repeats paragraph 68 above;
- (b) denies the allegations in the paragraph; and
- (c) says further, and in the alternative, that if:
  - (i) the Applicant establishes the matters pleaded above at paragraph 67 of the ASOC by reason of any of the Respondents' alleged contraventions of the TPA and/or the CCA alleged in the ASOC, and the Applicant obtained financial gains or benefits by reason of those matters, then any award for loss or damage should account for the corresponding amount of those financial gains or benefits; and
  - (ii) a Group Member establishes the matters pleaded above at paragraph 67 of the ASOC by reason of any of the Respondents' alleged contraventions of the TPA and/or the CCA alleged in the ASOC, and the Group Member obtained financial gains or benefits by reason of those



matters, then any award for loss or damage should account for the corresponding amount of those financial gains or benefits.

## **I ALLEGED COMMON QUESTIONS OF LAW OR FACT**

70 NWM does not plead to paragraph 70 of the ASOC as the paragraph contains no allegations against it.

## **J LIMITATION**

71 In further answer to paragraphs 68 and 69 above, NWM says that:

- (a) the Applicant commenced proceedings including for damages under section 82 of the TPA and/or of the CCA on 27 May 2019 and accordingly if (which is denied) any loss or damage of the Applicant or Group Members was suffered as a result of the contraventions alleged in the ASOC for the period prior to 27 May 2013, then:
  - (i) such loss or damage is excluded by operation of section 82(2) of the TPA and/or of the CCA, and may likewise not be recovered, or alternatively should be denied, under section 87(1) of the TPA and/or of the CCA; and
  - (ii) any order under s 87(1) of the TPA and/or of the CCA would be inappropriate having regard to the Applicant's delay in commencing the proceeding; and
- (b) even if (which is denied), the truth of the Concealment is assumed, the Applicant was able to commence proceedings prior to 27 May 2019.

## **K CLAIMS BARRED BY REASON OF FOREIGN SETTLEMENTS**

72 In further answer to the claims of Group Members, NWM says that:

- (a) Group Members may have been, or may become, party to settlement agreements in foreign jurisdictions and released NWM from claims for loss or damage suffered as a result of the contraventions alleged in the ASOC;
- (b) pending proper particularisation of the Group Members' identities, their trading activity in FX Instruments and the nature of their businesses, NWM reserves the right to plead that the claims for loss or damage suffered as a result of the contraventions alleged in the ASOC are barred, either wholly or in part, by reason of settlement agreements, or judgments, in foreign jurisdictions; and
- (c) to the extent Group Members were or may become party to any settlement agreements or judgments in foreign jurisdictions, their loss or damage should be reduced or offset by any benefits they had or have from time to time from the

same transactions, and may have been avoided, mitigated or recovered by those settlement agreements or judgments.

**L RELIEF CLAIMED**

NWM denies that the Applicant and Group Members are entitled to the relief set out in the Originating Application dated 19 November 2021 or any relief.

Date: 25 March 2022



.....  
Peta Stevenson  
Lawyer for the Fifth Respondent  
King & Wood Mallesons

This pleading was prepared by Peta Stevenson, lawyer and settled by C Moore SC, N De Young QC, and M Sherman.

**Certificate of lawyer**

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

- (d) each allegation in the pleading; and
- (e) each denial in the pleading; and
- (f) each non admission in the pleading.

Date: 25 March 2022



.....  
Lawyer for the Fifth Respondent

**Schedule**

No VID569/2019

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