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FX market manipulation claims: ongoing developments

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Recent settlements give impetus to claims

Earlier this month, it was reported that nine banks - Barclays, Royal Bank of Scotland (RBS), Goldman Sachs, HSBC, Bank of America, Citi, BNP Paribas, JPMorgan and UBS – settled claims in the US related to the manipulation of foreign exchange markets for $2bn. The claims related to the practices, investigated by the Financial Conduct Authority (FCA), the US Department of Justice, the Hong Kong Monetary Authority, the Monetary Authority of Singapore and other regulators worldwide, surrounding the deliberate fixing of FX spot prices and exchange of confidential customer information by traders at the banks.

The claimants include investment funds, pension funds and public bodies.

The settlement follows fines imposed in the UK by the FCA in November 2014 (Citi, HSBC, JPMorgan, RBS and UBS) and May 2015 (Barclays) totalling nearly £1.4bn in respect of manipulation of the G10 spot FX market, which includes USD, euros, GBP and JPY pairs, among others. The FCA found that the banks in question had attempted to fix prices in the forex market, to the benefit of the banks and the detriment of market users, by manipulating the WM/Reuters 4pm fix and the European Central Bank 1:15pm fix rate and attempting to artificially trigger stop-loss and limit orders.

The sums involved are significant: the FCA found, for instance, that trading on the manipulated WM Reuters GBP/USD rate on a single day generated a profit for HSBC of $162,000. The FCA found that the conduct in question took place over at least five years, from January 2008 to October 2013. The US claim alleged that the defendants conspired from at least as early as 2003 until 2013.

Counterparties that placed forex orders with any of these banks during the period in question were almost certainty subject to the effects of market manipulation. Institutional funds and investors – whether based in London or overseas - that make regular or high-value trades will likely have suffered the greatest losses.

The effect of the manipulation of the spot market will, moreover, have spilled over into the derivatives market. Prices in the currencies futures market closely track spot prices and futures prices will therefore also

Any comments or queries?

Tom Hibbert
Partner
+44 20 3060 6445
tom.hibbert@rpc.co.uk

Lambros Kilaniotis
Partner
+44 20 3060 6033
lambros.kilaniotis@rpc.co.uk

Simon Hart
Partner
+44 20 3060 6671
simon.hart@rpc.co.uk

have been artificially affected throughout the period of manipulation. Buyers of more exotic currency derivatives – such as digital (or "all or nothing") options, where the option pays out only if the buyer finishes in the money – will also have been exposed to the risk of their trades being affected.

The recent settlements indicate that the banks are keen to put this issue behind them and they will expect to have to make further payments. The banks will also be reluctant to give disclosure of internal documents relating to market manipulation, particularly where that raises questions as to the degree to which senior management were aware of the relevant conduct.

There is a fine distinction between banks quite properly managing their own risk through efficient implementation of trades and taking action that amounts to market manipulation. Many market users have, to date, taken the view that the extent to which the banks' conduct went beyond efficient risk management was unclear. The findings by the FCA, and the fact that the banks are now settling claims for large sums, however, should cause them to re-assess potential losses. Once one claim is brought, the likelihood is that others will follow.

The banks may also want to settle claims before the findings of the ongoing European Commission investigation into forex manipulation are released (the precise timing of which remains unclear). A finding of anti-competitive behaviour by the Commission would establish liability and make it considerably easier for claimants to bring follow-on damages claims. In the UK, the recent introduction of legislation (the Consumer Rights Act 2015) gives claimants the ability to pursue redress on a collective basis in competition claims, and provides further impetus for banks to resolve disputes now.

For further information relating to the detail of the techniques used by the banks to manipulate the fixes and the nature of the legal claims that might be pursued, please see our previous bulletin.

RPC's banking and financial markets disputes team

RPC has a dedicated team of lawyers specialising in banking and financial markets disputes, which is able to act against the investment banks. We work closely with our award-winning Competition practice in order to advise on competition-related claims.

Please contact any of the individuals named above, or your usual RPC contact, with any enquiries related to this issue.

Andy McGregor
Partner
+44 20 3060 6188
andy.mcgregor@rpc.co.uk

Parham Kouchikali
Partner
+44 20 3060 6189
parham.kouchikali@rpc.co.uk

Hong Kong

Jonathan Cary
Partner, Smyth & Co in association with RPC
+852 2216 7173
jonathan.cary@rpc.com.hk

Singapore

Jonathan Wood
Head of International Arbitration
+65 6818 5675
jonathan.wood@rpc.com.sg

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15025

Tower Bridge House
St Katharine's Way
London E1W 1AA
T +44 20 3060 6000

Temple Circus
Temple Way
Bristol BS1 6LW
T +44 20 3060 6000

11/F Three Exchange Square
8 Connaught Place
Central Hong Kong
T +852 2216 7000

8 Marina View #34-02A
Asia Square Tower 1
Singapore 018960
T +65 6818 5695

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