



N208(CCFL)

Claim Form

(CPR Part 8)

In the **High Court of Justice**
Business and Property Courts of
England and Wales 20 May 2024
King's Bench Division
Commercial Court
Financial List

for court use only

Claim no.

FL-2024-000005

Issue date

12 April 2024

Amended Claim Form by order of Mr Justice Foxton dated 10 May 2024

Claimant(s)

Standard Chartered plc

1 Basinghall Avenue,
London
EC2V 5DD

SEAL

Defendant(s)

(1) Guaranty Nominees Limited, 25 Bank Street, Canary Wharf, London, E14 5JP(2) D.E. Shaw Galvanic Portfolios LLC, C/O The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801, United States(3) Olifant Fund, Ltd., C/O Waystone Corporate Services (Cayman) Ltd., Suite 5B201, 2nd Floor, One Nexus Way, Grand Cayman, Camana Bay, KY1-1108, Cayman Islands(4) FFI Fund Ltd., C/O Waystone Corporate Services (Cayman) Ltd., Suite 5B201, 2nd Floor, One Nexus Way, Grand Cayman, Camana Bay, KY1-1108, Cayman Islands(5) FYI Ltd., C/O Waystone Corporate Services (Cayman) Ltd., Suite 5B201, 2nd Floor, One Nexus Way, Grand Cayman, Camana Bay, KY1-1108, Cayman Islands

Name and address of Defendant receiving this claim form

(1) Guaranty Nominees Limited, 25 Bank Street, Canary Wharf, London, E14 5JP(2) D.E. Shaw Galvanic Portfolios LLC, C/O The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801, United States(3) Olifant Fund, Ltd., C/O Waystone Corporate Services (Cayman) Ltd., Suite 5B201, 2nd Floor, One Nexus Way, Grand Cayman, Camana Bay, KY1-1108, Cayman Islands(4) FFI Fund Ltd., C/O Waystone Corporate Services (Cayman) Ltd., Suite 5B201, 2nd Floor, One Nexus Way, Grand Cayman, Camana Bay, KY1-1108, Cayman Islands(5) FYI Ltd., C/O Waystone Corporate Services (Cayman) Ltd., Suite 5B201, 2nd Floor, One Nexus Way, Grand Cayman, Camana Bay, KY1-1108, Cayman Islands

Court fee

Legal representative's costs

The court office at the Admiralty and Commercial Registry, The Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL is open between 10am and 4.30pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the case number.

Details of claim

This claim concerns the US\$750,000,000 6.409% Non-Cumulative Redeemable Preference Shares issued by the Claimant (“**the Preference Shares**”). The Preference Shares are currently held by the [First](#) Defendant as nominee for JPMorgan Chase Bank, N.A. (“**the Depositary**”). The Depositary has in turn issued American Depositary Shares (“**ADSs**”) to investors, representing interests in the Preference Shares.

Pursuant to the terms of the Company’s articles of association (“**the Articles**”), the Preference Shares carry a quarterly non-cumulative preferential dividend. The dividend rate was fixed at 6.409% per annum up to but excluding 30 January 2017. Thereafter, a floating rate of 1.51% plus three-month US dollar London Interbank Offered Rate (“**USD LIBOR**”) has applied.

Publication of three-month USD LIBOR settings ceased at the end of June 2023. Thereafter, the Financial Conduct Authority has required the publication of synthetic settings until 30 September 2024. The Claimant can only use these synthetic settings for the dividends payable up to and including 30 October 2024.

Pursuant to the Articles, three ‘fallback’ rates apply in the event that three-month USD LIBOR is unavailable. As explained in the accompanying evidence, the first two fallbacks are both unavailable. The final fallback is “*three month US dollar LIBOR in effect*”.

The Claimant has adduced factual evidence setting out the background to the Preference Shares and its efforts to resolve the matter prior to seeking the Court’s assistance.

The Claimant asks the Court to determine which rate should be used once the synthetic settings cease to be published. The Claimant seeks declarations to answer the following questions:

- (1) Should the phrase “*three month US dollar LIBOR in effect*” be construed to mean a rate that effectively replicates or replaces three-month USD LIBOR?
- (2) If not, should a term be implied in the Articles that allows the Claimant to use a reasonable alternative rate once synthetic USD LIBOR settings cease to be published?
- (3) In either case, which alternative rate should be used for dividend periods commencing on and after 30 October 2024?

While the Claimants’ Counsel will make submissions at the hearing of this claim, the essential argument will be that, where contractual machinery fails, the Court can and should substitute its own machinery to allow the contract to remain workable. In this case, the substitution can be effected by construction or by implication, meaning that one of questions (1) and (2) above should be answered positively.

The Claimant will rely on the accompanying expert report of Dr Faten Sabry of National Economic Research Associates, Inc. That report explains the reasons for the use and cessation of use of USD LIBOR. It then analyses alternative benchmark rates both quantitatively and qualitatively. Dr Sabry finds that the most appropriate replacement rate is 3-month CME Term SOFR with the 3-month ISDA Spread Adjustment (as defined in her report). This is the same rate that is used to calculate synthetic three-month USD LIBOR. The Claimant will therefore invite the Court to approve this rate in response to question (3) above.

The Claimant considers the claim suitable for the Financial List because it relates to a financial benchmark (namely, USD LIBOR); the value is more than £50 million (namely, US\$750 million); and it raises issues of general importance to the financial markets (namely, the transition from USD LIBOR).

The Claimant has used the Part 8 procedure because it considers that the claim principally concerns the meaning and effect of the Articles and is unlikely to involve a substantial dispute of fact.


Statement of Truth

~~*(I believe)~~(The Claimant believes) that the facts stated in this amended claim form are true. ~~(I understand)~~
(The Claimant understands) that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

* I am duly authorised by the claimant to sign this statement

Full name PETER DAVID WZCKHAM

Name of *(claimant)'s legal representative's firm) SLAUGHTER AND MAY

signed  position or office held PARTNER

*(Claimant)'s legal representative)

(if signing on behalf of firm, company or corporation)

Slaughter and May

One Bunhill Row,
London
EC1Y 8YY

DX: n/a

Ref: PDXW/OXL/LNP

Claimant's or legal representative's address to which documents or payments should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.