

Application Notice

CPR Part 23

- You must complete Parts A and B, and Part C if applicable
- Send any relevant fee and the completed application notice to the court with any draft order, witness statement or other evidence
- It is for you (and not the court) to serve this application notice

You should provide this information for listing the application

Time estimate (hours) (mins)

Is this agreed by all parties? ☐ Yes ☐ No

Please refer to the Financial List Guide and the Commercial Court Guide for details of how applications should be prepared and will be heard, or in a small number of exceptional cases can be dealt with on paper.

In the	High Court of Justice King's Bench Division Commercial Court Financial List Royal Courts of Justice
Claim No.	FL-2024-000005
Warrant no. (if applicable)	FL-2024-000005
Claimant(s) (including ref.)	Standard Chartered Plc
Defendant(s) (including ref.)	(1) Guaranty Nominees Limited, as the First Defendant (2) D.E. Shaw Galvanic Portfolios LLC, as the proposed Second Defendant (3) Olifant Fund, Ltd., as the proposed Third Defendant (4) FFI Fund Ltd., as the proposed Fourth Defendant (5) FYI Ltd., as the proposed Fifth Defendant
Date	25 April 2024

Part A

(The claimant)(The Proposed defendants)⁽¹⁾

1. Where there is more than one claimant or defendant, specify which claimant or defendant

D.E. Shaw Galvanic Portfolios LLC (“proposed Second Defendant”), Olifant Fund, Ltd. (the “proposed Third Defendant”), FFI Fund Ltd. (the “proposed Fourth Defendant”), and FYI Ltd. (the “proposed Fifth Defendant”) (the “Proposed Defendants”)

intend(s) to apply for an order (a draft of which is attached) that⁽²⁾

2. State clearly what order you are seeking (if there is room) or otherwise refer to a draft order (which must be attached)

- (1) the Proposed Defendants shall be joined as defendants to Claim No. FT-2024-000005 pursuant to CPR, r. 19.2(2)(a);
- (2) the Claimant shall serve the amended claim form on the Proposed Defendants within three days from the date when the Court grants permission under paragraph (1); and
- (3) the Proposed Defendants shall serve their acknowledgment of service and any evidence on which they intend to rely by 31 May 2024.

because⁽³⁾

3. Briefly set out why you are seeking the order. Identify any rule or statutory provision

It is desirable to add the Proposed Defendants to these proceedings on the basis that: (a) they will be directly impacted by the relief sought by the Claimant in these proceedings; and (b) the Defendant is not taking an active role in the proceedings, and (c) in light of the general importance of the issues raised, the Court would be assisted in its decision making by hearing a wider range of arguments, including by those opposing the relief sought by the Claimant.

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

Part B

*~~(The claimant)~~ (The Proposed defendants)⁽¹⁾ wish to rely on: ***tick one***

the attached (witness statement)(affidavit) ☐ (the claimant)(the defendant)'s⁽¹⁾ statement of case ☐
evidence in Part C overleaf in support of this application ☒

Signed

Richard Earl

(Applicants' legal representative)

**Position or
office held**

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

Partner at Quinn Emanuel Urquhart &
Sullivan UK LLP

Address to which documents about this claim should be sent (including reference if appropriate)⁽⁴⁾

4. If you
are not
already a
party to the
proceedings
, you must
provide an
address for
service of
documents

90 High Holborn London United Kingdom		If applicable	
		Tel. no.	020 7653 2000
		Fax no.	020 7653 2100
		DX no.	
Postcode	WC1V 6LJ	e-mail	qe-stanchart@quinnemanuel.com

(Note: Part C should only be used where it is convenient to enter here the evidence in support of the application, rather than to use witness statements or affidavits)

*(The claimant) The Proposed Defendants⁽¹⁾ wish to rely on the following evidence in support of this application:

1. This application concerns USD 750,000,000 6.409% Non-Cumulative Redeemable Preference Shares, issued by Standard Chartered Plc in 2006 (the “**Preference Shares**”). The Preference Shares are held by the Defendant, as nominee for JPMorgan Chase Bank, N.A. (as the “**Depository**”). The Proposed Defendants are holders of American Depositary Shares (the “**ADSs**”), which were, in turn, issued by the Depository. The Preference Shares had a fixed rate of 6.409% per annum up to and excluding 30 January 2017. Since then, the rate of dividends for each dividend period has been calculated by reference to the three-month US dollar London Inter-Bank Offered Rate (“**LIBOR**”).
2. On 5 March 2021, the Financial Conduct Authority (the “**FCA**”) announced that LIBOR would cease to be provided by its administrator or would no longer be a representative rate (i.e., would no longer represent the underlying market and economic reality). In response, on 8 November 2022, the Claimant launched a consent solicitation process by which the Claimant sought investors’ consent to amend the terms of the Preference Shares, so that the rate of dividends payable would be calculated by reference to the Secured Overnight Financial Rate (“**SOFR**”). However, the Claimant did not obtain approval of a sufficient number of the holders of the ADSs and the terms of the Preference Shares were not amended.
3. On 27 March 2024, the Claimant informed the holders of ADSs that it would commence Part 8 proceedings against the Defendant in the English High Court, seeking declarations as to the use of an alternative to three-month LIBOR with the effect from 30 October 2024 onwards (the “**Part 8 Proceedings**”) (**Annex, pages 3-12**). The Claimant confirmed that it did not expect the Defendant to take an active role in the Part 8 Proceedings, as the Defendant does not have any economic interest in the Preference Shares (**Annex, page 9**). In the same notice, the Claimant stated that “*if the ADS Holders intend to participate in the Part 8 Proceedings, the [Claimant] invites them to notify the [Claimant] as soon as possible using the contact details at the end of this letter*” (**Annex, page 10**).
4. On 7 April 2024, Quinn Emanuel Urquhart & Sullivan UK LLP, solicitors for the Proposed Defendants, wrote to the Claimant’s solicitors, notifying the Claimant of their intention to participate in the Part 8 Proceedings and oppose the relief sought by the Claimant. As such, the Proposed Defendants requested, among other things, the Claimant’s confirmation that they would be included as defendants to the Part 8 Proceedings (**Annex, page 14**).
5. On 9 April 2024, the Claimant’s solicitors responded that, whilst the Claimant “*will not oppose your clients’ making submissions in the Part 8 Proceedings, ... [the Claimant] does not intend to name [the Proposed Defendants] as defendants in the Part 8 Proceedings*” and reserved the Claimant’s position as to any application to be made by the Proposed Defendants to be added as parties to these proceedings (**Annex, page 17**).
6. On 12 April 2024, the Proposed Defendants reiterated their position that it would be simplest for them to participate in the proceedings as defendants. However, the Proposed Defendants agreed to proceed on the basis proposed by the Claimant, subject to the Claimant’s confirmation that, amongst other things: (i) it would not object to any application by the Proposed Defendants to adduce expert evidence; (ii) the Proposed Defendants would be able to make both written and oral submissions at the trial; (iii) the Proposed Defendants would be able to participate fully in any case management hearings or discussions and any interlocutory hearings that arise; and (iv) the Claimant would not object to the Proposed Defendants seeking alternative relief to that sought by the Claimant (**Annex, page 20**).
7. In a letter dated 16 April 2024, the Claimant refused to provide the confirmations sought by the Proposed Defendants, instead inviting the Proposed Defendants to “*make suitable applications*” to the Court (**Annex, page 23**). Consequently, the Proposed Defendants informed the Claimant that they “*are now in the position [in which they] will have to make an application to be joined as a party to the proceedings that could have and should have been avoided*” (**Annex, page 26**). The Proposed Defendants enclosed the draft application to their letter (**Annex, pages 29-32**) and invited the Claimant to confirm its consent (**Annex, page 26**).

8. By letter dated 24 April 2024, the Proposed Defendants also informed the Defendant of their position and sought the Defendant's consent to the their application (**Annex, pages 35-36**). As at the date of this application, the Defendant has not yet responded.

9. Later on 24 April 2024, the Claimant confirmed that while it "*does not object in principle to [the Proposed Defendants] being joined as defendants, [the Claimant] cannot confirm its position as regards [the Proposed Defendants'] application without certain further information*", including "*the size of [the Proposed Defendants'] ADS holdings and the dates on which they were acquired*" and the availability of our counsel for the trial to ensure that the Proposed Defendants' "*application does not impact the proposed timetable*" (**Annex, pages 37-38**). The Proposed Defendants consider it inappropriate for the Claimant to condition its consent on this information, particularly in circumstances where the Claimant invited the holders of ADSs to indicate if they wished to participate in the Part 8 Proceedings and has been on notice since 7 April 2024 that at least the Second and Third Proposed Defendants intend to do so, but has refused to list them as defendants.

10. It is the Proposed Defendants' position that it is appropriate and necessary for the Proposed Defendants to be added as parties to these proceedings:

- (a) As the beneficial owners of the Preference Shares through the ADSs with a face value of approximately USD 70 million, it is the Proposed Defendants who will be impacted by the outcome of these proceedings.
- (b) By contrast, the Defendant has no economic interest in the outcome of these proceedings. It has been added only because, as the sole registered holder of the Preference Shares, it is a "*necessary defendant*" (**Annex, page 9**). The Claimant has itself noted that the Defendant is not expected to take an active role. If the Proposed Defendants are not made parties to the proceedings the Court will not have the benefit of having the Claimant's arguments challenged.
- (c) The issues raised in this case may have a material impact on the financial markets and the construction of similar agreements or other agreements which rely on the publication of LIBOR. Indeed, the Claimant has noted that it issued the Part 8 Proceedings in the Financial List on the basis that they "*raise issues of general importance to the financial markets (namely, the transition from LIBOR)*" (**Annex, page 17**). It is therefore essential that the Claimant's position is properly tested by the Court, by hearing alternative arguments to those presented by the Claimant.

11. If, as requested, the Court orders the Proposed Defendants to be made parties, the Proposed Defendants request the Court to provide directions in relation to the service of the Claim Form on the Proposed Defendants, the service of the Proposed Defendants' Acknowledgment of Service and the service of the Proposed Defendants' evidence. In particular, the Proposed Defendants will need time to respond to the Claimant's 148-page expert report, having received the Claimant's evidence less than two weeks ago. The Proposed Defendants' proposed directions are set out in the draft order attached to this Application Notice. However, in light of the very limited time that the Proposed Defendants have had to analyse the evidence, they reserve the right to request further time in due course.

Statement of Truth

~~*(I believe)~~ The applicants believe that the facts stated in this application notice are true. ~~*(I understand)~~ The applicants understand 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.

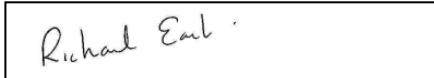
*I am duly authorised by the applicants to sign this statement.

Full name..... Richard Charles East

Name of Applicants' legal representative.....

..... Quinn Emanuel Urquhart & Sullivan UK LLP

Signed



Applicants' legal representative

**Position or
office held**

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

Partner at Quinn Emanuel
Urquhart & Sullivan UK LLP

Date

25 April 2024