



Claim no. FL-2024-000005

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
FINANCIAL LIST**

FL-2024-000005

**Before: The Hon Mr Justice Foxton
On 15 May 2024**

B E T W E E N:

STANDARD CHARTERED PLC

Claimant

and

**(1) GUARANTY NOMINEES LIMITED
(2) D.E. SHAW GALVANIC PORTFOLIOS LLC
(3) OLIFANT FUND, LTD
(4) FFI FUND LTD
(5) FYI LTD**

Defendants

ORDER

UPON the Claimant's request for an expedited trial

AND UPON the application of the Second to Fifth Defendants (the "**Additional Defendants**") to be joined to the proceedings, and their joinder being ordered by consent on 10 May 2024 (the "**Consent Order**")

AND UPON the Additional Defendants' draft application for permission to rely on expert evidence (that application being agreed between the parties as concerns responsive evidence)

AND UPON a directions hearing to consider the above matters

AND UPON HEARING Counsel for the Claimant, the solicitor for the First Defendant and Counsel for the Additional Defendants

AND UPON the Court inviting the parties to liaise with the Court regarding a listing of the trial, and to consider further directions regarding expert evidence at an appropriate juncture

IT IS ORDERED THAT:

1. Subject to paragraph 2 below, the Additional Defendants have permission under CPR 35.4(1) to rely on the expert evidence of Dr Albert Metz in relation to the issues set out in the Annex to this Order.
2. Notwithstanding paragraph 3 of the Consent Order and CPR 8.5(3), the Additional Defendants' responsive evidence, including the evidence permitted by paragraph 1 above, shall be filed and served by 4pm on 14 June 2024.
3. The parties have liberty to apply in relation to further directions.
4. Costs reserved.

Annex – Expert Issues for Dr Albert Metz

1. Having regard to market practice as at December 2006:
 - (1) how was USD LIBOR calculated and what were its key features?
 - (2) what was the role played by USD LIBOR in financial markets?
2. Having regard to market practice as at December 2006, to what extent was it contemplated that USD LIBOR would or may at some point no longer be used or be available as a reference rate in financial markets?
3. 3. Having regard to market practice as at December 2006:
 - (1) what were the primary alternatives to USD LIBOR available and commonly used in the market?
 - (2) to what extent any such rates could be said to replicate USD LIBOR at the time (and if not, why not)?
4. The dividend reference rate provided for in the terms of the Preference Shares is three month USD LIBOR (the ‘**Existing Rate**’), plus 151 basis points. The Company has proposed replacing the Existing Rate with three month CME Term SOFR plus a fixed spread adjustment of 26.161 basis points (the ‘**Proposed Replacement Rate**’). To what extent would the Proposed Replacement Rate replicate the Existing Rate, and in particular:
 - (1) what features distinguish the Proposed Replacement Rate from the Existing Rate?
 - (2) what has been the historic correlation between the Existing Rate and the Proposed Replacement Rate? To the extent that the rates have not correlated, what were the reasons?
 - (3) to what extent would the Existing Rate and the Proposed Replacement Rate have continued to correlate in future had USD LIBOR continued to be published? What are the factors that could affect correlation and how likely are they to occur?

5. The proposed fixed spread adjustment of 26.161 basis points (the “**Fixed Spread Adjustment**”) for the Proposed Replacement Rate is calculated on the basis of the median difference between USD LIBOR and CME Term SOFR over a 5-year lookback period. If the purpose of the Proposed Replacement Rate is to replicate the Existing Rate:
 - (1) to what extent is a 5-year period for the calculation of the Fixed Spread Adjustment appropriate?
 - (2) are there any difficulties with the specific 5-year period used to calculate the Proposed Replacement Rate?
 - (3) what issues, if any, arise from using a median figure?
6. Dr Sabry’s report dated 10 April 2024 refers to a number of alternative benchmark rates to the Proposed Replacement Rate. Please explain whether any of the alternative benchmark rates referred to by Dr Sabry replicate USD LIBOR?