Neutral Citation Number: [2025] EWHC 2364 (Comm)

Case No: CL-2018-000297, CL-2018-000404, CL-2018-000590, CL-2019-000487 & CL-2020-000369 (Consolidated Claims)

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 02/10/2025

Before :
MR JUSTICE ANDREW BAKER
- -
Between :

SKATTEFORVALTNINGEN **(the Danish Customs and Tax Administration)**	**Claimant**
- and -	
SOLO CAPITAL PARTNERS LLP **(in special administration)** **and many others**	**Defendants**

- -
- -

Lawrence Rabinowitz KC, Charles Graham KC, Jamie Goldsmith KC, Sam O'Leary, Abra Bompas, Michael d'Arcy, Gideon Cohen, James Ruddell, Ben Zelenka Martin, KV Krishnaprasad, James Gardner, Matthew Hoyle and Sabrina Nanchahal (instructed by **Pinsent Masons LLP**) for the **Claimant**

Nigel Jones KC, Lisa Freeman, Sarah McCann, Emily Betts, Miguel Henderson, Alice Whyte and Thomas Mitty (instructed by **Meaby & Co Solicitors LLP**) for the **Shah Defendants**

David Head KC, Christopher Bond, Tom De Vecchi, Hannah Glover and Sophia Dzwig (instructed by **DWF Law LLP**) for the **DWF Defendants**

Hugh Jory KC (instructed by **Penningtons Manches Cooper LLP**) for **John Devonshire**

Linos Choo of **Keystone Law**, with the permission of the court, for **Jas Bains**

Paul Baker and **Arthur Hogarth**, each a partner in the LLP, for **Lindisfarne Partners LLP**, with the permission of the court

Paul Preston represented himself at trial except that for closing argument he was represented (in writing and orally) by **Gary Hayes** (instructed directly)

James Hoogewerf and **Charles Knott** each represented himself at trial, but with written opening submissions settled by **Ian Bergson** (instructed by **Reed Smith LLP**)

Martin Smith represented himself at trial, but with written closing submissions settled by **Jonathan Rose** (instructed directly)

Daniel Fletcher, **Jonathan Godson**, **Mankash Jain**, **Guenther Klar**, **Owen Mitchell**, **Michael Murphy** and **Paul Oakley** each represented himself at trial

(other trial defendants being unrepresented corporations, or unrepresented individuals who either attended at trial but took no active part or did not attend, and all trial defendants having had the opportunity in any event to provide written submissions)

Hearing dates:
15, 16, 17, 18, 22, 23, 24, 25, 30 April 2024;
1, 2, 3, 7, 8, 9, 13, 21, 22, 23, 24 May 2024;
4, 6, 7, 10, 11, 12, 17, 18, 19, 20, 21, 24, 26, 27 June 2024;
2, 3, 4, 5, 8, 9, 10, 11, 17, 18, 19, 22, 23, 24, 25 July 2024;
2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 25 October 2024;
4, 5, 6, 7, 11, 12, 13, 25, 26, 27, 28, 29 November 2024;
2 December 2024;
24, 25, 26, 27, 28 February 2025;
3, 4, 5, 6, 10, 11, 12, 13, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31 March 2025;
1, 2, 3, 4, 7, 8, 9, 10 April 2025
- -

Approved Judgment

This is a reserved judgment to which CPR PD 40E has applied.
Copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE ANDREW BAKER

A. Introduction **[1]**

A.1 Overall Summary [1]

A.2 SKAT [14]

A.3 Danish Dividend Tax [17]

A.4 The Litigation [25]

A.5 The Main Trial [29]

A.6 Defendants and Claims [37]

B. Invalidity **[43]**

B.1 Terminology [45]

B.2 Initial Discussion [61]

B.3 More Terminology [86]

B.4 Further Discussion [92]

C. Main Narrative **[101]**

C.1 The Sample Trades [101]

C.2 The Tax Refund Claims [103]

C.3 The Tax Agents [107]

C.4 The Tax Reclaim Form [111]

C.5 The CANs [112]

C.6 Trading Models Summary [114]

C.7 Solo Model Overview [117]

C.8 Solo Model Genesis [131]

C.9 Solo Model 2012/2013 [150]

C.10 Solo Model 2014/2015 [172]

C.11 Solo Model Proceeds [230]

C.12 Varengold Bank [235]

C.13 Dero Bank [248]

C.14 Maple Point Overview [251]

C.15 Maple Point 2014 [258]

C.16 Maple Point 2015 [270]

C.17 Legal Advice [281]

C.17.1 SKAT's Legal Guide [286]

C.17.2 Clearstream [297]

C.17.3 Hannes Snellman [299]

C.17.3.1 The First HS Advice [301]

C.17.3.2 The First HS Email [326]

C.17.3.3 The Second HS Advice [328]

C.17.3.4 The Third HS Advice [329]

C.17.3.5 The Second HS Email [330]

C.17.3.6 The Belador Advice [331]

C.17.3.7 Conclusions on Hannes Snellman's Advice [337]

C.17.4 Other Advice? [342]

C.18 Klar Model [349]

D. Trial Witnesses [376]

D.1 Factual Witnesses [376]

D.2 Expert Evidence [386]

E. Sham Trading? [414]

F. Was SKAT Misled? [424]

F.1 Misrepresentations? [432]

F.1.1 Context [438]

F.1.2 The Core Representations Alleged [455]

F.1.3 *Other Representations Alleged* [471]

F.1.4 *The Tax Reclaim Documents* [474]

F.1.5 *The Alleged Tax Ownership Representation* [498]

F.1.6 *The Alleged Dividend Representations* [502]

F.1.7 *The Alleged Tax Representation* [509]

F.1.8 *The Alleged Honest Custodian Representation* [516]

F.1.9 *Conclusion on Alleged Representations* [521]

F.2 Inducement? [524]

F.2.1 *General* [524]

F.2.2 *The Pleaded Case* [539]

F.2.3 *Reliance by Mr Nielsen?* [546]

F.2.4 *Systemic Reliance?* [562]

F.2.5 *Conclusion on Inducement* [601]

G. Result (except SKAT vs. Syntax) [610]

H. SKAT vs. Syntax [615]

Appendix 1 – Trial Defendants and Defendant Groups p.173

Appendix 2 – Causes of Action Pursued p.181

Appendix 3 – Sample Trades Summary p.184

Appendix 4 – The Tax Reclaim Forms p.200

Appendix 5 – The CANs p.203

Appendix 6 – The Factual Witnesses p.212

SKAT's Factual Witnesses [1]

Christian Ekstrand [1]

Sven Nielsen [2]

Lisbeth Rømer [3]

Jens Sørensen [4]

Defendants [5]

Sanjay Shah [5]

Graham Horn [12]

Anupe Dhorajiwala [13]

Rajen Shah [15]

Guenther Klar [18]

Arthur Hogarth [20]

Paul Baker [23]

Martin Smith [26]

Michael Murphy [28]

Usha Shah [29]

Paul Preston [30]

Jonathan Godson [33]

Mankash Jain [35]

Daniel Fletcher [37]

John Devonshire [39]

Charles Knott [40]

James Hoogewerf [42]

Jas Bains [45]

Paul Oakley [51]

O*wen Mitchell* [52]

Appendix 7 – SKAT vs. Defendants other than Syntax **p.227**

Mr Justice Andrew Baker :

A. Introduction

A.1 Overall Summary

1. This litigation concerned share trading on cum-ex terms, Danish dividend tax, and the approach of the Danish customs and tax administration ('SKAT') to the processing and paying of claims for dividend tax refunds between mid-2012 and mid-2015. The final trial in these proceedings, on which this is the judgment, was the trial of claims pursued by SKAT concerning 4,170 of the dividend tax refund claims that were submitted to it and paid by it during that period. The aggregate amount paid by SKAT in response to those 4,170 claims was just under DKK12.1 billion (c.£1.4 billion at today's exchange rate).

2. An equity trade is on cum-ex terms if it is traded, i.e. entered into, on or before a dividend declaration date, for settlement, i.e. performance, after the record date for that dividend. In October 2021, in an interview for a German television documentary, Sanjay Shah said of the Danish cum-ex scandal and his part in it: "*... just going back to what happened in Denmark, why would they pay out for years and years and then, after four years of payments, they say, "Oh, we made a mistake, or we were cheated"? If there's a big sign on the street saying, "please help yourself", then me or somebody else would go and help themselves*".

3. This judgment determines whether SKAT was cheated in the sense that is relevant to this litigation. That is to say, it determines whether Sanjay Shah and others practised upon SKAT the deceit it alleged by its pleadings in this court. On the evidence put before the court at trial, and without forgetting that SKAT bore the burden of proof, one alternative to emerge was that Sanjay Shah and others were able to and did help themselves to a fortune because SKAT's processes were so limited as to fit Mr Shah's street sign analogy, not because they needed to or did practise deceit upon SKAT as it alleged.

4. Sanjay Shah is one of several trial defendants convicted in Denmark on criminal charges arising out of the activities considered in this judgment. A New York federal jury has awarded SKAT US$500 million in damages against a number of parties involved in some of those activities. There are also some judgments in favour of SKAT in Dubai. None of those decisions is relevant to whether any of the trial defendants in these proceedings is liable as alleged by SKAT. That falls to be judged by reference to the claims pursued by SKAT at the trial in this court, all of which are governed by English law, and upon the evidence and argument put before this court at that trial. Those claims, and that evidence and argument, may or may not be the same as or similar to the criminal charges or civil claims brought in other jurisdictions under systems of law other than English law, or the evidence and argument put to those other courts; and even if all was the same or materially similar, the decisions of judges or juries in other jurisdictions as to what had or had not been proved are inadmissible opinions about the facts in this court, which must reach its own decision.

5. SKAT accepted that if it made a financial recovery pursuant to any of the decisions elsewhere, credit would have to be given for that if remedies fell to be considered here, but that is a different point. Any such recovery might reduce the loss ultimately suffered

by SKAT at the date of this judgment, or it might involve a transfer or restoration to SKAT of assets in which it claimed to have an ownership interest. Either way, the recovery might need to be taken into account, without the decision of the other court having anything to say as to liability on a claim pursued here or as to the remedies available in this court if such a claim succeeded.

6. The broad factual claim advanced by SKAT was that market appetite to provide funding to support the cum-ex trading strategies upon which Sanjay Shah's main business had been focusing dried up by late 2011, and that he and senior individuals then working for him turned to fraud, developing a cum-ex trading model they knew and intended would result in false statements being made to certain tax authorities, including SKAT, in the hope of tricking them into paying tax refund claims, Sanjay Shah and his colleagues realising at the time that they would be invalid claims or at any rate having no honest belief that they were or might be valid claims. A large cast of individuals was assembled, all of whom, SKAT alleged, were made aware or became aware that the business in which they were participating existed to generate the deception of SKAT through false statements made in tax refund claims submitted to it, but participated anyway, through greed in view of the financial rewards on offer.

7. Greed can be a powerful motive, and I consider there was substantial greed here. However, the evidence at trial did not persuade me to accept SKAT's claim, and I do not make the findings it sought. I also do not accept, on the other hand, the positive factual case advanced by Sanjay Shah and the other architects of the cum-ex trading models that gave rise to SKAT's claims in the proceedings, that is Graham Horn, Rajen Shah and Guenther Klar, that during the relevant period they held a reasonable belief that those models generated tax refund entitlements under Danish tax law. In Mr Klar's case, I accept his evidence that he did think at the time that the resultant tax refund claims were valid in that sense, but I conclude that he had no reasonable basis for that view. In the case of Sanjay Shah, Mr Horn and Rajen Shah, I do not accept evidence they each gave that at the time they thought the tax refund claims they were facilitating were valid claims. That does not mean that the deceit alleged by SKAT occurred, however. My rejection of narratives put forward by many of the trial defendants, with findings I make that some, notably Sanjay Shah, were dishonest in various ways at the time and untrustworthy as witnesses, does not prove the case pleaded by SKAT and pursued by it at trial, although it is capable of lending some indirect support to it. On the evidence as a whole, however, I have concluded that that case was not established.

8. The money-making strategy devised and implemented by Sanjay Shah, with Mr Horn and Rajen Shah, likewise Mr Klar's version of it, was pursued, and worked between mid-2012 and mid-2015, not because they identified that it involved falsehoods being communicated to SKAT that might trick it into paying, but went ahead anyway. Rather, it was pursued and worked because they <u>did not</u> identify any such thing, that is to say they did not consider that anything untrue would be or was being stated to SKAT, and when they implemented the strategy, they found that SKAT paid. They engaged in concealment and obfuscation that involved pervasive collateral dishonesty, because of an instinct that if it was known that the tax refund claims resulted from pre-planned and coordinated trading, the sole purpose of which was to create tax refund claims predominantly (by value) for the benefit not of the tax refund claimant, SKAT might challenge the claims rather than pay and/or the Financial Conduct Authority ('the FCA') might disapprove (some of the entities central to the trading models being FCA

regulated financial services firms). Even bearing that well in mind, I was not persuaded that the strategy would have been pursued if Sanjay Shah, Mr Horn or Rajen Shah, respectively Mr Klar, thought that it would or did involve false statements being made to SKAT to mislead it into paying claims.

9. More fundamentally still, and the basis upon which I have concluded that the claims pursued by SKAT in this court on which liability was in issue all fail, I was satisfied on the evidence that SKAT was not misled by misrepresentations made to it through the tax refund claims it received, as it alleged. Its controls for assessing and paying dividend tax refund claims were so flimsy as to be almost non-existent. That, it might be thought, came to be exploited somewhat ruthlessly. However, that did not require, nor did it involve in fact, that the misrepresentations alleged by SKAT were made or induced SKAT to pay claims it would otherwise not have paid.

10. None of the 4,170 tax refund claims with which the trial in these proceedings was concerned was a valid claim under Danish tax law, and SKAT would have been entitled not to pay any of them. SKAT did not suggest, however, that paying a tax refund claim that it was not obliged to pay gave it a cause of action it could pursue in this court. The causes of action that SKAT did pursue in this court all required it to prove that it had been deceived into paying, except for one cause of action against Lindisfarne Partners LLP, claiming damages for negligent misstatement, but that cause of action still required SKAT to prove that it was misled into paying claims, as it alleged, by the misrepresentations it claimed were made to it.

11. The result is that SKAT failed to establish any of the claims it pursued at trial, where liability was disputed, and all those claims will be dismissed.

12. Against one trial defendant, Syntax GIS Ltd, SKAT was entitled to treat a default judgment as establishing liability on at least some of the claims pleaded against it, so that what was left was the measuring of the amount to be awarded to SKAT under that judgment. The default judgment against Syntax proved nothing against any other defendant; and my conclusions as to liability in respect of SKAT's claims against all the other trial defendants are irrelevant to SKAT's entitlements under the default judgment.

13. SKAT established at trial that, on tax refund claims for which it pursued remedies against Syntax under the default judgment, it paid in aggregate some DKK2,763,859,045.79, against which credit must be given by SKAT in respect of recoveries it has made to date. I shall ask counsel to assist further as to the amount of that credit and also as to whether, if SKAT asks for judgment for the net amount, after recoveries, by way of restitution to reverse unjust enrichment, there can then be any judgment for damages. A claim was also pleaded against Syntax for a declaration in contingent form, to the effect that if Syntax has retained to date any of the sums paid to it by SKAT, or their traceable proceeds, then it holds the same on trust for SKAT. No attempt was made to establish that Syntax *has* retained anything traceable to sums paid to it by SKAT, and I shall not grant any declaratory relief.

A.2 SKAT

14. The claimant is named in the proceedings as "*Skatteforvaltningen (the Danish Customs and Tax Administration)*". It is not a separate legal person from the Kingdom of

Denmark. Rather, it is an integral part of the Danish state, being that part of the state with responsibility for the areas of administrative activity that have been allocated to it. In other words, and as a matter of identity or substance, the claimant *is* the Kingdom of Denmark, acting by and suing in the name of Skatteforvaltningen, a ministerial authority going by that name since 1 July 2018, previously (from 2005) having been named "*SKAT*".

15. The nation state of Denmark is a constitutional monarchy. Professor, Dr.Jur Frederik Waage gave unchallenged expert evidence on that, confirming and explaining the view given in his treatise, "*Offentligretlige retssager*" (2020), at pp.188-189, that (in translation): "*The entire state administration is perceived in case law as one unit. This is consistent with the fact that [the monarch] is understood in The Constitutional Act as a collective term for all the ministries under the executive power … . The fact that the state is a single entity has, among other things, the consequence that different state authorities can set off a claim against a citizen across authority boundaries … . Although the State is perceived as an entity, it is the specific administrative authority responsible for the subject matter that acts as plaintiff or defendant on behalf of the State … .*"

16. Prof. Waage explained aspects of the independence of action, and knowledge, of different ministerial authorities as a matter of Danish public law that inform, for example, his observation that such an authority can and will act, in a Danish court, as plaintiff or defendant on behalf of the Danish state. I do not consider that sense in which, as Prof. Waage put it, a ministerial authority "*thus possesses an independent status and legal personality*", falsifies the fundamental "*single entity*" principle stated in his text and confirmed by his report. That principle, however, would not mean that any of the claims pursued in this litigation fell to be dismissed because the claimant was named in the proceedings as it was rather than as the Kingdom of Denmark; and I continue to refer to the claimant, as I have done throughout the litigation, simply as 'SKAT'.

A.3 Danish Dividend Tax

17. This case concerned exclusively the taxation of dividends on shares in Danish listed companies. Such shares existed at all material times as a legal construct, in dematerialised and fungible form. Everything I say refers only to such shares and such companies, during the period of interest in the case (2012-2015).

18. As I explained and found in *SKAT (Validity Issues)* [2023] EWHC 590 (Comm), Danish dividend tax was one head of the unlimited tax liability of legal persons who are tax domiciled in Denmark, and as a head of limited tax liability imposed on legal persons who are not, on a withholding tax ('WHT') basis. Subject to exceptions that are not relevant to this judgment, Danish companies were obliged to pay to SKAT 27% of the dividends they declared and only the balance to the Danish Central Securities Depository for distribution. The Danish Central Securities Depository was VP Securities ('VPS').

19. The payment by a Danish company to SKAT of 27% of its declared dividend (or possibly just the company's obligation to pay SKAT) discharged the Danish dividend tax liability of those liable to such tax on that dividend. Some such legal persons might be entitled under a double taxation treaty ('DTT') between Denmark and their tax domicile not to be taxed on Danish dividends, or not to be taxed at a rate exceeding

some rate below 27%. For example, tax-exempt US pension funds ('USPFs') were entitled under the Denmark-US DTT not to be taxed on Danish dividends (so long as they were the beneficial owner, for the purpose of the DTT, of the dividend); and tax-exempt Labuan corporations ('LabCos') were entitled under the Denmark-Malaysia DTT not to be taxed on Danish dividends (with no express beneficial ownership condition).

20. A beneficial ownership condition such as was explicit in the Denmark-US DTT was an additional requirement for relief from Danish dividend tax. In Danish tax law, it did not create an entitlement to relief in a party that had not been taxed by Denmark, but it could mean that, for example, a USPF which *had* been taxed by Denmark was not entitled to relief because it had not been the beneficial owner, in the sense used by the DTT, of the dividend on which it had been taxed. SKAT did not pursue at trial any claim that any of the tax refund claims impugned in these proceedings was a bad claim because the entity on behalf of which the claim was submitted, though entitled to and taxed on a Danish dividend, was not the beneficial owner in the relevant sense. Rather, SKAT's case was always that the entity on behalf of which a tax refund claim was submitted was not entitled to, or taxed on, any Danish dividend in the first place.

21. It is possible, but this was not explored fully at trial, that this approach of Danish law, providing an entitlement to a tax refund only where the beneficial owner of the dividend, in the sense used in DTTs, was also the party treated by Danish tax law as liable to tax on that dividend, did not properly discharge Denmark's treaty obligations. That possibility arises because it may be the Treaty obligation was not an obligation not to tax beneficial owners of dividends, if they qualified for a tax-favoured status recognised by the DTT, but an obligation not to tax dividends, if their beneficial owners so qualified. It is not necessary to make any definite finding about that, nor am I in any position to do so; it arises from my finding in *SKAT (Validity Issues)* that DTT beneficial ownership of a dividend, and tax law share ownership under Danish law, were cumulative requirements of entitlement to a tax refund in Denmark, and I find, below, that SKAT was not at the time operating its tax refund claim process on that basis.

22. In any event, the beneficial ownership condition in DTTs is part of the context for the standard form by which SKAT required tax refund claims to be made. It is therefore relevant when construing that form for the purpose of SKAT's allegation that misrepresentations were made to it. The same form was specified by SKAT for all tax domiciles with which I am concerned. The form current in the period I am considering required the applicant to identify themselves either as, or as acting on behalf of, the "*beneficial owner*", without further explanation, and without reference to whether any such concept was mentioned expressly in the pertinent DTT. SKAT's approach was that the beneficial ownership requirement went without saying, albeit sometimes it was made explicit in the DTT. Where I refer to 'beneficial owner', I shall be referring to that concept as used in, or as may be implicit in, a DTT.

23. Each of the tax refund claims made to SKAT with which I am concerned was made by an agent on behalf of an entity which had been *inter alia* the buyer under an equity trade on cum-ex terms in respect of Danish shares, i.e. an equity purchase traded on or before a dividend declaration date for settlement after the record date for that dividend.

24. In *SKAT (Validity Issues)*, I found that any entitlement to a Danish dividend tax refund from SKAT, based on a DTT, was not a matter of unjust enrichment with a claim against SKAT on that basis, but a statutory right under Danish tax law, arising (after 1 July 2012) under s.69B(1) of the Danish Withholding Tax Act, which provided as follows (in translation):

> "*If a person who is liable to pay tax pursuant to section 2 hereof or section 2 of the Danish Corporation Taxation Act has received dividends, royalties or interest, of which tax at source has been withheld pursuant to sections 65-65D which exceeds the final tax under a double taxation treaty, ..., the amount must be repaid within six months from the receipt by [SKAT] of a claim for repayment. ...*"

A.4 The Litigation

25. This litigation (and related litigation in other jurisdictions, in particular the US, Malaysia and Dubai) concerned Danish dividend tax refund claims presented to SKAT and paid between August 2012 and July 2015. In the proceedings in this court, SKAT said that it was wrongfully induced to pay those claims by misrepresentations made by the documents submitted to it, interpreting those documents sensibly in their context, namely that of making claims for relief and a refund in respect of Danish dividend tax.

26. As I mentioned at the outset (paragraph 1 above), this judgment concerns 4,170 tax refund claims accepted and paid by SKAT, for a total of just under DKK12.1 billion. Another DKK400 million odd was paid on tax refund claims arising from structured transactions involving MCML Ltd (previously ED&F Man Capital Markets Ltd). Claims against MCML in these proceedings failed, and a subsequent attempt by SKAT to pursue differently formulated claims against MCML was struck out earlier this year (*Skatteforvaltningen v MCML Ltd* [2025] EWCA Civ 371, a decision from which the Supreme Court has granted permission to appeal, with the appeal listed to be argued in Feburary 2026).

27. Each of those tax refund claims followed a series of what purported to be share trades and derivatives relating to shares in one of the leading Danish companies making up the OMX Copenhagen 20 ('C20') Index. SKAT's primary case on the facts was that those apparent transactions were not contracts at all, in that, so SKAT alleged, the respective parties to them intended only to create a documented pretence of share trading. That is not a necessary ingredient of any of the causes of action SKAT has pursued, and this judgment would be clumsy to read if it constantly qualified the transactions or their effects by 'purported', 'purportedly' or the like, so it does not do so.

28. I introduce the trial defendants and the claims SKAT made against them below, after first outlining the main stages of the litigation that brought it to the 'Main Trial' upon which this is now the judgment.

A.5 The Main Trial

29. Five Claims were consolidated: CL-2018-000297 (the 'First Claim', with 70 defendants); CL-2018-000404 (the 'Second Claim', with 25 defendants); CL-2018-000590 (the 'Third Claim', with 8 defendants); CL-2019-000487 (the 'Fourth Claim', with 9 defendants); and CL-2020-000369 (the 'Fifth Claim', with 7 defendants).

Allowing for overlap (some defendants were named on more than one Claim Form), in total 106 defendants were named (in error, I said 114 in my Revenue Rule judgment, referred to in paragraph 32(i) below).

30. At the date of this judgment, there are, on the defendants' side of the litigation: 4 legal teams representing between them 30 defendants (subject to the point mentioned in paragraph 38 below); 14 individuals litigating in person; a limited liability partnership (Lindisfarne) represented at trial, with my permission, by its partners; 10 unrepresented corporate defendants; and 1 corporate defendant (Syntax) against whom judgment was entered in default, for an amount to be determined. They are the 56 defendants SKAT's pleaded claims against whom fall to be determined, and are now determined, by this judgment (the 'trial defendants'), subject again to the point in paragraph 38 below. I note for completeness that the default judgment entered against Syntax with which I am concerned was entered against it as the 22nd defendant to the Second Claim. Syntax was also named as the 68th defendant in the First Claim. That is one of the duplications referred to in the previous paragraph. The First Claim stands stayed against Syntax.

31. The remaining 50 defendants originally in these proceedings, claims against whom are not now before the court for judgment, were:

    (i) 3 corporate defendants that no longer exist (2 dissolved, 1 liquidated);

    (ii) 1 corporate defendant never served, such that claims against it lapsed (Roxy Ventures LLC Solo 401K Plan);

    (iii) 7 defendants (2 individuals, 5 corporate entities) against whom the proceedings were discontinued by SKAT (Janice Allgrove, Robyn Llewellyn, Trixor Holdings One Ltd, Europa LLP Executive Pension Scheme, Khajuraho Equity Trading Sarl, SBD TT Ltd (in liquidation), and IPIS UK (Battersea London 1) Ltd (in liquidation));

    (iv) MCML (see paragraph 26 above);

    (v) 2 corporate defendants now indirectly ultimately owned by Sanjay Shah, Polaris Capital Ltd and Polaris Capital (One) Ltd, against whom, under an order I made on Day 63 of the trial, the proceedings are stayed until after this judgment is handed down;

    (vi) 36 defendants (7 individuals, 29 corporate entities) in respect of whom these proceedings were terminated or stayed by agreement between SKAT and those defendants, including 2 corporate defendants against whom judgment as to liability was entered in default early in the proceedings with stays relating to them being agreed much later, during the course of the trial.

32. The first main CMC in these proceedings was in January 2020, before which I was appointed as designated judge by Teare J. At a further CMC in July 2020, I gave a case management ruling, [2020] EWHC 2022 (Comm), explaining my decision to direct three trials:

(i) A 'Revenue Rule Trial' to decide whether SKAT's claims offended against what was then Dicey Rule 3, and is now Dicey Rule 20, *viz.* the rule of English law that:

> "*English courts have no jurisdiction to entertain an action:*
>
> *(1) for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign State; or*
>
> *(2) founded upon an act of state."*
>
> (*Dicey, Morris & Collins on the Conflict of Laws*, 16th Ed., Rule 20 at 8R-001.)

I held that SKAT's claims did offend against that Rule, [2021] EWHC 974 (Comm). The Court of Appeal allowed an appeal by SKAT, save in respect of its claims against MCML, [2022] EWCA Civ 234, and that outcome was upheld in the Supreme Court, [2023] UKSC 40.

(ii) A 'Validity Trial' to decide aspects of SKAT's allegation that the tax refund claims impugned in the proceedings were not valid claims under Danish tax law. I heard that trial in Hilary Term 2023. *SKAT (Validity Issues*) [2023] EWHC 590 (Comm) followed. I gave the judgment that short title because it decided identified foundational issues of Danish tax law and did not decide, in terms, the validity or invalidity of any individual tax refund claim. That said, in fact it follows from the decisions I made upon those issues that each of the 4,170 tax refund claims impugned in these proceedings was an invalid claim that SKAT was not liable to pay. I explain that conclusion in paragraphs 43 to 97 below.

(iii) The Main Trial, upon which this is now the judgment, to determine all remaining issues in all the claims SKAT made in these proceedings. The Main Trial was originally fixed to commence in January 2023 and to run until Easter 2024. It was re-fixed, after the Court of Appeal decision on the Revenue Rule, to commence immediately after Easter 2024. A Main Trial timetable was developed for openings and evidence to occupy the Easter, Trinity and Michaelmas Terms 2024, including reading time, respite breaks and possible overrun, with closing argument to follow in the second half of Hilary Term 2025, after an exchange of written closing submissions.

33. The Main Trial thus occupied 138 days over 33 weeks between 9 April 2024 and 10 April 2025. It ran generally as scheduled, sitting for 108 days between 15 April 2024 (Day 1) and 10 April 2025 (Day 108), with 30 reading days spread across the trial timetable, plus breaks for court vacations and for the parties to prepare closing argument after the completion of the evidence on (in the event) 2 December 2024 (Day 76). Given the number of parties to whom time needed to be allocated for argument and the number of points to be addressed, oral closing argument took 32 days, between 24 February 2025 (Day 77) and 10 April 2025 (Day 108), supported by written closing materials running to c.5,350 pages.

34. I am very grateful to all who participated in the preparation and conduct of the trial, helping me to plan its schedule in some detail and to keep substantially to that schedule

when the time came. At the risk of saying something that is invidious by omission, I wish to record here my particular thanks for three types of contribution:

(i) Firstly, I think it right to acknowledge specially the helpful contribution to the effectiveness of the presentation of the case at trial made by oral advocacy from junior counsel for SKAT, the Shah Ds and the DWF Ds. They were the only legally represented parties appearing by more than one advocate, so they were the only parties with decisions to make about how to share the key tasks of presenting the case orally at trial. In particular, Messrs Rabinowitz KC, Graham KC and Goldsmith KC, for SKAT, not only shared between themselves the large burden of leading the case in a way that was logical, efficient and helpful, but also led by example in ensuring that responsibility for oral advocacy was also shared substantially with their (extensive) team of juniors; and the extent to which Ms Freeman and Ms McCann led for the Shah Ds on parts of the case and with some of the witnesses was very welcome. In my view, this trial was a good example proving what is said in paragraph 2 of the Practice Guidance (Junior Advocacy) of 8 July 2025 issued jointly by Henshaw J and HHJ Pelling KC, for the Commercial Court and the London Circuit Commercial Court.

(ii) Secondly, I am grateful to Pinsent Masons for showing in numerous ways throughout the proceedings, and acting upon, a keen awareness that they had an important role, given the size and complexity of the case and the number of defendants, especially (as it became) the number of unrepresented defendants, in coordination and communication, with the other parties and with the court, and on occasion, at my request, effectively on behalf of the court. The way they fulfilled that role was a significant part of enabling the litigation to proceed at all, and assisted the court in making sure that all parties who wished to be heard had their fair and sufficient opportunity. In that role, it was essential that Pinsent Masons act independently as officers of the court, separately from acting as SKAT's solicitors pursuing their client's cause. I respectfully consider that they carried out that additional role to a high standard.

(iii) Thirdly, my particular thanks on behalf of all trial participants go to Opus2 International Ltd, whose services the parties used for the litigation here. Opus2 thus hosted the case digitally for 5½ years or so on a shared, secure workspace, and provided magnificent support for the Main Trial hearing (and also for almost all if not all of the other hearings in the case, including the two preliminary issue trials). For the Main Trial, that included Opus2 organising and hosting remote access for those authorised to attend remotely, for which they worked closely and constructively with my Clerk. As I said in court when thanking Opus2 for all that assistance: my instinct is that we are all good enough at what we do in the Commercial Court, that is the court itself, legal practitioners in the court, and our litigants, that without the kind of digital service that Opus2 (and no doubt other providers too) can now offer, somehow we would have found a way to make the trial work; but at the same time, the service from Opus2 was so good and so helpful that I am not at all sure I could in fact identify how, really, we could have managed without it, or something like it.

35. For the purpose of reaching my decisions and preparing this judgment, I have reviewed and considered the evidence adduced at trial and all the arguments put forward by the parties. It is neither necessary nor realistic for me to set out and deal individually with

every point taken, and I have not attempted to do so. Nor do I descend in this judgment to anything like the level of detail the parties gave me in their written submissions. That level of detail contributed to the very great length of some of those submissions, which will have involved huge effort on the part of the limited number of well-resourced legal teams in the case. It was not as helpful as would have been a focused written presentation of the important findings of fact contended for, identifying for each the case pleaded, and then the evidence said to establish it and/or the facts, inherent probabilities or other matters from which it was said that it should be inferred. A key task of litigation advocacy is to help the court to see the wood said to be constituted by the trees, which is not usually done by devoting hundreds of pages to describing in close detail the leaves or bark patterns of individual saplings. With hindsight, I regret that I was persuaded by the difficulty of identifying how many pages should suffice not to impose page limits on the written closing submissions.

36. As I described the decision-making process in *Kyla Shipping Co Ltd et al v Freight Trading Ltd et al* [2022] EWHC 1625 (Comm) at [24], so also here, "*My conclusions as to the facts follow from a consideration of all the evidence in the round, and all the parties' submissions on the evidence, even if I do not mention or summarise all of that evidence or all of those submissions. It is rarely possible to do full justice to the holistic, iterative, self-critical and cross-checking nature of the process of assessing a case on the evidence, in an essentially 'linear' written judgment. Thus, for example, my assessment of the factual witnesses was informed by the plausibility of their evidence, and its consistency or inconsistency with the documentary record, as well as by the ability "which cross-examination afford[ed] to subject the documentary record to critical scrutiny and to gauge [the witnesses'] personality, motivations and working practices" (per Leggatt J, as he was then, in Gestmin SGPS S.A. v (1) Credit Suisse (UK) Ltd & (2) Credit Suisse Securities (Europe) Ltd [2013] EWHC 3560 (Comm) at [22]); but at the same time, my final sense of the plausibility of rival accounts on disputed matters, bearing in mind what is or is not in the documentary record, was informed by the personalities involved (and their motivations and working practices), the most important of which I had an opportunity to gauge through the trial process.*"

A.6 Defendants and Claims

37. Appendix 1 to this judgment lists the trial defendants. It identifies where each is to be found on one or more of the five consolidated Claim Forms, and it defines the terms I use to refer to them in this judgment. Taking Sanjay Shah, for example: he is identified in Appendix 1 as the 34th defendant to the First Claim; the 'Sanjay Shah Defendants' or 'SSDs' are then identified as Sanjay Shah himself plus some 23 corporate entities; and the 'Shah Defendants' or 'Shah Ds' are then the SSDs plus Sanjay Shah's wife, Usha Shah, the 36th defendant to the First Claim.

38. Having mentioned the SSDs, it is convenient to explain now the point referred to in paragraph 30 above. The SSDs include nine companies that were struck off in their respective places of incorporation prior to the Main Trial, six of which remain struck off at the date of this judgment, all as noted in Appendix 1. The title page to this judgment says that the Shah Ds (which I have defined to include all of the SSDs) were represented by Mr Jones KC and his juniors, instructed by Meaby & Co. Strictly, that is not true for the corporate SSDs that still stand struck off, and it was not true during the Main Trial for those that were struck off at the time but have now been restored to the register (Colbrook, Ganymede and T&S).

39. What can or should happen to SKAT's claims against any of the SSDs that still stand struck off, if restored to a register after the date of this judgment, is not something I have been asked to consider or could properly consider until the restored company had been given a reasonable opportunity to be heard; and I was told that, as things stand, there is no plan to seek to have any of those companies restored to its respective register.

40. As for Colbrook, Ganymede and T&S, after those companies were restored to the register in the Cayman Islands, Meaby & Co confirmed to the court in writing that they, and counsel instructed by them, now represent the companies. By that letter, on behalf of those companies and with the agreement of Pinsent Masons on behalf of SKAT, Meaby & Co confirmed that the companies and SKAT jointly wished the Main Trial as conducted between April 2024 and April 2025 to be treated as the trial of SKAT's claims against the companies, even though they stood struck out at the time. Meaby & Co proposed, and I am content, that my recording all of that now in this judgment should be sufficient for the result under this judgment to be effective as between SKAT and each of Colbrook, Ganymede and T&S, and for any order made upon this judgment, so far as material, to determine SKAT's claims against each of those companies.

41. Appendix 2 to this judgment identifies in very summary form the causes of action pursued by SKAT at trial and maintained in closing argument against the various trial defendants (other than Syntax). All those defendants had a proper opportunity to plead a case for, call evidence at, and otherwise participate generally in the Main Trial (subject to paragraph 38 above). The heading of this judgment identifies which trial defendants in fact participated. I was and remain satisfied that the case management of the litigation provided all defendants with a fair opportunity to participate, even if in some cases their financial or other circumstances were not ideal for full participation. I am satisfied that it is just for the court now to proceed, on the basis of the Main Trial as completed on 10 April 2025, to determine all live claims pursued by SKAT, even where that means for some trial defendants having proceeded in their absence, in their presence but without hearing from them, or where they were unrepresented but would have preferred to have had legal representation.

42. Pursuant to case management directions concerning how any case was to be raised to the effect that any of SKAT's claims is not governed by or should not be determined under English law, all of SKAT's claims fall to be determined under English law, albeit, of course, by reference to Danish tax law as it governs the question whether the tax refund claims impugned by SKAT were claims that SKAT was not obliged to pay. That had become the case by the time of oral opening remarks at trial except for SKAT's claims against Mr Fletcher, the Jain Ds and the Godson Ds, who at that stage maintained a pleaded case that SKAT's claims against them were governed by and should be determined under Danish law. As to that:

    (i) SKAT's position was always that its claims pursued here were governed by English law and should be determined on the basis of English law;

    (ii) from SKAT's perspective, therefore, a plea that Danish law should be applied to one or more of its pleaded claims amounted, in effect, to a pleaded defence if the claim in question would succeed if judged under English law;

    (iii) SKAT confirmed at trial that therefore it pursued Danish law claims against Mr Fletcher, the Jain Ds, and the Godson Ds, only on a strictly alternative basis, if

and to the extent that any of their respective pleas succeeded to the effect that Danish law applied;

(iv) at the same time, SKAT submitted that where the question of governing law was in issue, then that question was logically the prior question when judging the relevant claim, and that may be the correct analysis;

(v) when the procedural position and its consequences were explored at trial, Mr Fletcher, the Godson Ds, and the Jain Ds, abandoned and withdrew their respective pleas that Danish law applied, after most of the factual witnesses had given their evidence and before any expert evidence had been called;

(vi) as a result, the claims against them now also fall to be determined under English law.

B. Invalidity

43. In this section, I explain why I concluded that SKAT was not liable to pay any of the 4,170 tax refund claims that give rise to the claims pursued in these proceedings. At trial, that was conceded, so far as material to the claims pursued against them, by the Shah Ds, the DWF Ds, Mr Klar and Lindisfarne. It was for SKAT to prove it, if it could, against all other trial defendants, although it was actively contested only by the Jain Ds, Godson Ds and Mr Fletcher.

44. It is convenient to explain how the trading worked in sufficient detail that what needs to be said about that for the purpose of later sections of this judgment has also been set out. This section of the judgment therefore goes further than would be required just to confirm the invalidity of the tax refund claims.

B.1 Terminology

45. SKAT made claims arising out of three trading models, the Solo Model, the Maple Point Model and the Klar Model. The scale involved is indicated by the aggregate total paid out by SKAT, to which I have already referred, namely c.DKK12.1 billion (≈ c.£1.4 billion). Another indication of scale is given by the aggregate purchase price of Danish shares on the face of things contracted to be acquired, namely c.DKK1.9 trillion (≈ c.£220 billion), made up as follows:

(i) c.DKK1.35 trillion from Solo Model trading, of which c.91% (c.DKK1.235 trillion) was in 2014/2015;

(ii) c.DKK470 billion from Maple Point Model trading, all of which was in 2014/2015; and

(iii) c.DKK70 billion from Klar Model trading.

46. It should not be thought, however, that those who designed the trading models had anything like that scale in mind when doing so. On 21 March 2012, when the Solo Model was being developed, Sanjay Shah forwarded to the DWF Ds at Solo a spreadsheet that had been prepared indicating the anticipated scope for the business as regards Danish shares. The email with the spreadsheet, from Edo Barac at Solo who had prepared it, expressed the view that "*the returns are potentially very good*", and

when forwarding it to the DWF Ds, Sanjay Shah endorsed that view: "*mmmmmmm*". The spreadsheet envisaged trading 3% of the total issued volume of 13 Danish stocks and estimated a gross revenue from tax refund claims, if paid, of €19.1m (on an assumed WHT rate of 28%; at 27%, that would have been €18.4m). In the event, significantly larger volumes were traded, in aggregate, from the outset, but still nothing like the scale later seen in 2014/2015.

47. I aim to be precise and consistent in my terminology when describing the trading models. They were designed and implemented so that each trade would generate a payment credit referable to a Danish dividend in the account at a custodian of an entity on behalf of whom a tax reclaim agent would claim a tax refund from SKAT on the basis of *inter alia* a credit advice note ('CAN') issued by the custodian in respect of that payment credit. I shall use that term throughout; 'dividend credit advice' or 'DCA' was also frequently used, both at the time and at trial.

48. My aim to be precise and consistent does not mean that participants involved in dividend arbitrage ('div-arb') strategies, or cum-ex trading, were as precise, or were consistent, in their use of language. Nor does it mean that how I define or use terms is necessarily how such parties did so at the material time or might do so today. I should also make clear that where I use or explain a use of language that involves legal concepts or effects, they are the ordinary legal concepts and effects of securities trading, not (if different) those of Danish tax law, unless I indicate otherwise.

49. An immediate example of imprecision or variability of terminology concerns the two terms just mentioned, div-arb and cum-ex. It would be wrong to imagine that if a trading strategy were described as div-arb, or if a person said they had experience, knowledge or awareness of div-arb trading in the market, that would necessarily mean trading focused on the generation of a tax refund claim, or trading on a cum-ex basis. In general, arbitrage trading is the practice of taking advantage of pricing differences in two or more markets relating to the same asset. Economic theory has it that in perfectly efficient trading markets, arbitrage opportunities should not exist; but trading markets are not perfectly efficient. A simple div-arb strategy, then, might use options, acquiring shares and put options for a matching share volume on or before a dividend declaration date, and exercising the put options after the record date, having earned and collected the dividend. That would be an attempt to make an arbitrage profit out of spot market equity prices and options market prices relating to the same shares, with particular reference to pricing around a dividend declaration date.

50. A div-arb strategy of that kind would be unrelated to tax refund claims in respect of the dividend. It would be a classic arbitrage, looking to create a small margin out of pricing differences across markets. It is conceivable, I think, that there could be some complex relationship between the potential availability of tax refund claims to some equity investors and market prices for spot trades and/or options that in some indirect way connects tax refund claims to that simple type of arbitrage; but that is a very different point.

51. A structured tax trade under which a tax-advantaged buyer acquires shares so as to earn and receive payment of a dividend from the share issuer, suffering withholding tax on that income, before then selling the shares ex-div and claiming a refund, is not a simple price arbitrage strategy of that kind. However, the evidence at trial indicated that those

involved in such structured tax trades might consider them and refer to them as (a species of) div-arb, although another term might be 'tax arbitrage'.

52. Div-arb of that kind does not involve trading on cum-ex terms, under which a buyer contracts for a deferred settlement such that, if the trade is performed as per contract, the buyer will not acquire cum-div shares. Again, however, the evidence at trial indicated that those involved in structured trades using cum-ex, in a structure designed to facilitate and profit from a tax refund claim made by or on behalf of the cum-ex buyer, might consider and refer to them also as (a type of) 'tax arbitrage', or as another (sub-)species of div-arb.

53. The trading with which I am concerned always centred on a cum-ex trade by a tax-advantaged buyer with, in the Solo and Maple Point Models, price hedges, stock loans, subsequent unwinds, and settlement procedures, all coordinated so as to facilitate a tax refund claim on behalf of that buyer to a national tax authority like SKAT. As I describe below, the Klar Model had the same focus, but it was simpler, with no price hedges and not always using stock loans.

54. In equity trading, participants will use 'sale / purchase', 'sell / buy' and 'sold / bought' to refer to an equity trade that, strictly, is only a contract to buy / sell, under which no shareholding is transferred on the trade date. They will use those terms even though the question whether any shareholding is transferred to the buyer will depend on whether and if so how the trade is 'settled', i.e. performed.

55. That use of language is so ubiquitous and efficient that I adopt it, but it has the consequence, and this must be borne in mind throughout, that "*V has today sold shares to B*", or similar, does <u>not</u> mean that any shareholding has been created in or transferred to B. It does not mean, without more, that any shares ever will be owned by or transferred to B. There are differences between different types of personal property, but at the basic level of that last proposition, a contract to buy Carlsberg A/S shares is not a shareholding in Carlsberg A/S any more than a contract to buy a pint of Carlsberg is a pint of Carlsberg.

56. I have laboured that slightly because it was apparent at trial that there may be those, possibly including some of the trial defendants, who would take the use of the language of 'bought' and 'sold' to the false conclusion that some kind of share ownership passes to the buyer the moment they execute a trade, i.e. enter into a contract to purchase shares. At that moment, however, all the buyer 'owns' is the seller's promise to perform the bargain on the settlement date. Just as a contract to buy a shareholding in a Danish company is not a shareholding in the company, 'owning' such a contract is not share ownership. Whether the buyer ever becomes the owner of any shares in the Danish company will depend on whether, and if so how, the bargain is in fact settled (performed).

57. Messrs Jain, Godson and Fletcher made the point in their closing argument that in a modern system of recording shareholdings through custody chains (as to which, see further paragraph 61*ff*, below), whether or what true ownership rights can be said to exist is a complex question, because "*Intermediation by the custody chain gives rise to the separation of a party who is economically or beneficially entitled to a security (the end investor or ultimate account holder) from a party who, under the statutory or contractual regime (which constitutes the security) is recognised as the holder of it, and*

therefore as entitled to exercise and enjoy the rights attached or flowing from it." There is force in that point, but it does not detract from what I said in paragraphs 54 to 56 above. It goes to what may nowadays be a complex question of what precisely is 'owned' by a holding of shares constituted by a complete custody chain. Whatever may be the correct answer to that possibly complex question, such a holding is not created merely by entering into a trade under which a seller is obliged to cause the buyer to acquire (receive a transfer of) such a holding some days later.

58. So, for example, in Sample Trade Solo 1 (see paragraph 101 below for the Sample Trades), on 27 November 2012 Mill River Capital Management Pension Plan sold, at DKK187.5903 per share, 1,000,000 shares in CHR Hansen Holdings, for settlement on 3 December 2012. But that means only that on that trade date (27 November), Mill River contracted to acquire, on 3 December, a holding of 1,000,000 shares in CHR Hansen. The conclusion of that contract on that trade date did *not* transfer a holding of shares to Mill River, Mill River did *not* become in any sense a shareholder by concluding it, and whether Mill River became a shareholder as a result of it would depend on how, if at all, the contract was performed.

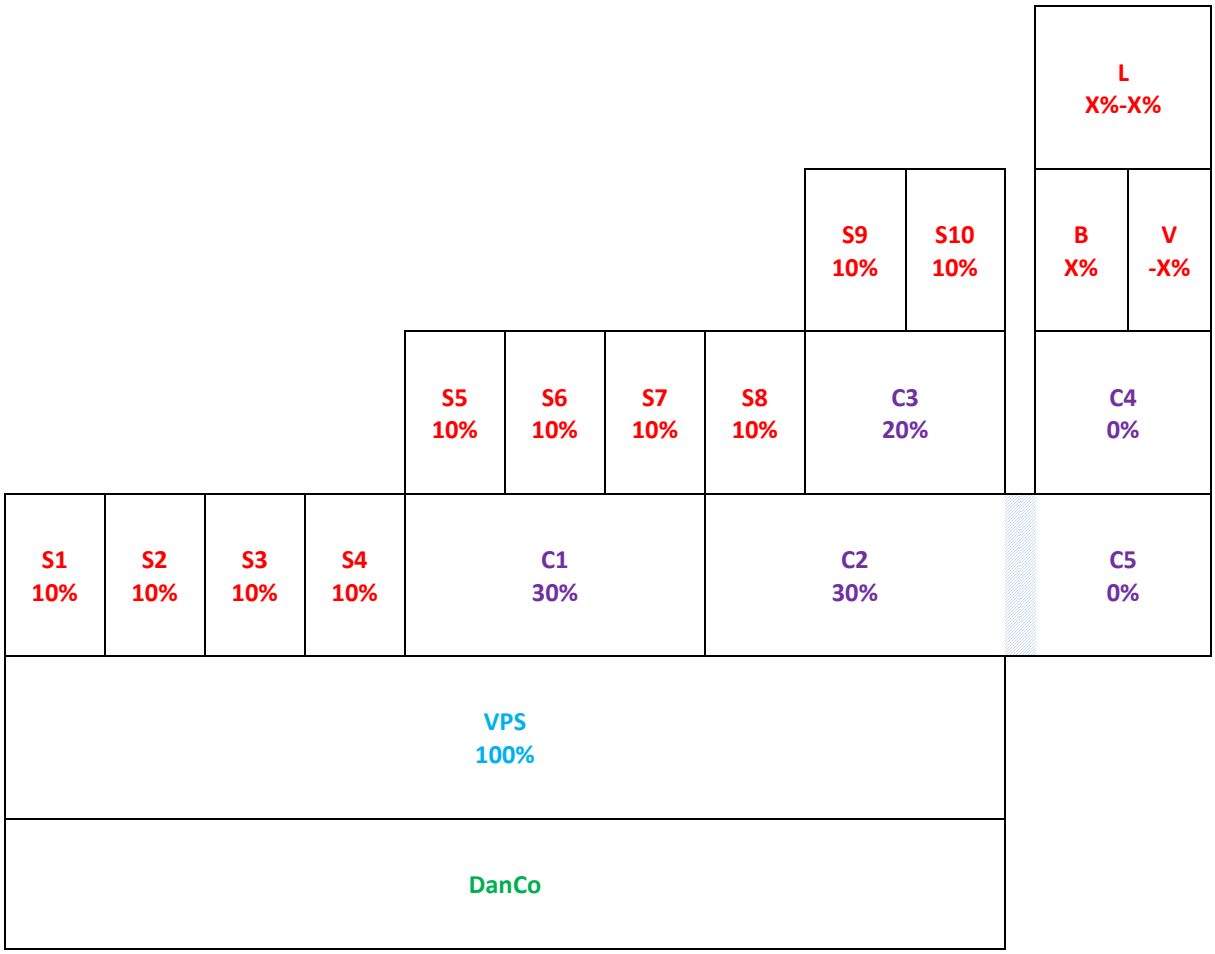
59. That will always be true for the trading considered in this judgment. By design, the sellers always held no shares, on the trade date or ever (and any direct or indirect sellers to those sellers likewise never held any shares). If the sales had settled in such a way that the buyers became shareholders, the more complex aspects of Danish tax law that in *SKAT (Validity Issues)* I found to exist might have been relevant to whether the buyers were liable to Danish dividend tax on a dividend declared after the trade date and prior to settlement, so as potentially to be entitled to a tax refund. Those aspects of Danish tax law do not arise, however, because, again by design, no buyer was ever going to become or ever in fact became a shareholder pursuant to any of the equity purchases, due to the way in which they were (treated as) settled.

60. For clarity, then, I need to distinguish between contracting to buy shares, on the one hand, and obtaining a holding of shares pursuant to such a contract, on the other hand. Since I use 'buying', 'selling', etc, for the former, for the latter, as in the preceding few paragraphs, I use 'acquiring' or 'acquisition' by a buyer, 'transferring' or 'transfer' by a seller.

B.2 Initial Discussion

61. Dematerialised, fungible shares in Danish listed companies can only be held as a shareholding recorded with VPS or with a custodian at the end of a custody chain leading to VPS, as I explained and sought to illustrate in *SKAT (Validity Issues)* at [154]-[163]. The diagram, below, is a revised version of the diagram at [159] in that judgment, adding cells to the right:

Illustrative Shareholding Diagram



62. The section of the revised diagram that features B, V, C4 and C5 illustrates the effect of vendor V, who holds no shares, selling X% of DanCo to buyer B, where B and V are both custody clients of custodian C4, and C4 is in turn a custody client of custodian C5. C4 holds no shares, since C5 holds no shares for it. C5 therefore also holds no shares so far as might be material to B or V, i.e. as sub-custodian of C4 indirectly through whom any shareholding of B or V would be held. I note for completeness that C5 need not be a different custodian to C1 or C2. For example, if C5 was C2, then it *would* have shares (a 30% shareholding), but not shares held for C4, and therefore not shares held via C4 as sub-custodian for B or V. That is illustrated by the shaded 'barrier' between C2 and C5 in the revised diagram.

63. The sale, assuming it is priced on the trade date, gives B and V immediate exposure, long and short respectively, to movement in DanCo's share price, but it gives neither of them any shares. If account entries at C4 recording the sale from V to B purport to show X% of DanCo in a securities account of B's at C4, prior to any completion of that sale, that does not make B a shareholder in DanCo. Any such record is not connected to DanCo via VPS, whether directly or via a sub-custodian or chain of sub-custodians. B may not realise that, if C4 produces an account statement purportedly recording that it holds X% of DanCo in custody for B, depending on what B knows or understands, if anything, of any wider set of transactions of which its equity purchase may form a part, and on whether it appreciates that concluding a purchase does not make it a shareholder.

B's possible ignorance that it is not immediately a shareholder in DanCo upon entering into its purchase with V does not affect the reality that it is not.

64. The other party in the new section of the diagram, L, is a stock lender, also a client of C4, that contracts to borrow X% of DanCo from B and to lend X% of DanCo to V, for settlement on the same settlement date as the sale by V to B. If the two stock loans and the sale are settled internally at C4, even though none of V, B or L has any shares to deliver, settlement date account entries at C4 might show X% of DanCo being:

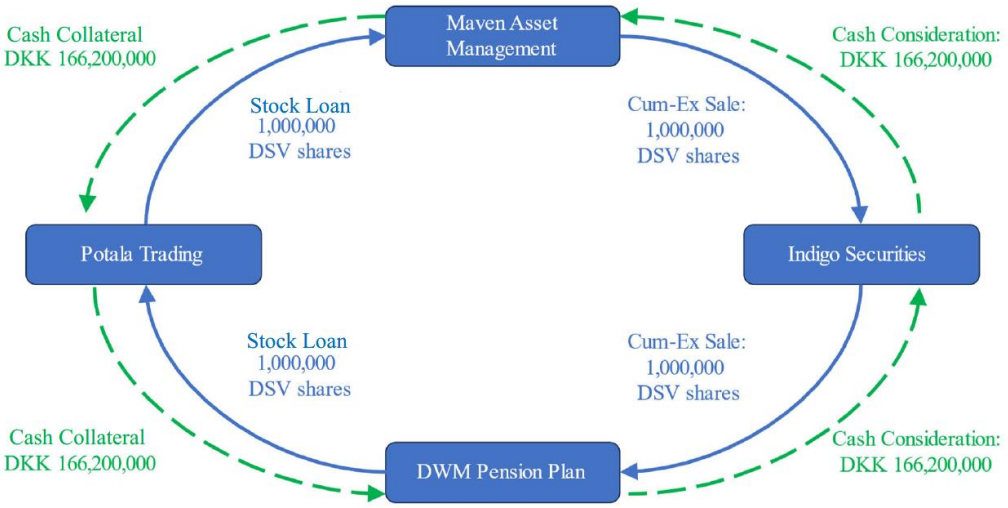
(i) credited to B to settle its purchase from V but also debited from B to settle its loan to L;

(ii) credited to V to settle its loan from L but also debited from V to settle its sale to B; and

(iii) credited to L as borrower from B and debited from L as lender to V.

65. In that way, the equity trade (V selling to B) and the stock loans (B lending to L; L lending to V) might be treated as having settled although none of B, V or L at any time has, acquires or transfers any shareholding in DanCo. It is easy to see that as a self-fulfilling settlement loop: B lends to L, so that L can lend to V, so that V can complete the sale to B. Mr Wade, the market expert instructed by SKAT, illustrated that with this diagram of the settlement transfers *prima facie* required to settle Sample Trade Indigo 1 (in which DWM Pension Plan bought from Maven Asset Management, Potala was the stock lender, and Indigo was the custodian):

Figure 2: Indigo 1 – Settlement Date Obligations: 20 March 2014



66. In his oral evidence at trial, Mr Baker of Lindisfarne said that he did not think of this settlement process as a loop, because "*I don't see any start or finish in it, I see things concurrently*", and "*there is a certain connotation with a loop that … nothing changes and everybody is the same … [but] this is different. I think people are taking on contractual obligations. I think there is risk there.*" I agree with Mr Baker that there is no start or finish to the loop. To spell that out:

(i) B lends to L, to enable L to lend to V, to enable V to complete the sale to B, to enable B to lend to L, to enable L to lend to V, and so on *ad infinitum*, so there is no finish; and

(ii) there is no *a priori* logic for beginning the description with B lending to L, rather than with V completing the sale to B or L lending to V, so there is no start.

67. I do not think that makes it inappropriate or inaccurate to think of this as a loop. There is then, as Mr Baker said, a certain connotation that nothing changes, but as regards share ownership indeed nothing changes. At no point, before, during (if that is meaningful) or after settlement, does any of V, L or B own, acquire or transfer any shares. I agree with Mr Baker nonetheless that it would not be true to say that nothing *at all* has changed. The position after settlement is not identical to the position prior to settlement, or prior to trading. That is because if this internalised settlement by the custodian is performance, not cancellation, of the individual transactions, then V and L now owe to L and B, respectively, a stock borrower's contractual obligation to transfer securities at the end of the stock loan that (other things being equal) will have to be covered in due course, and I come back to that in paragraph 74 below.

68. For such an internalised, share-less settlement to be a contractual performance, all of B, V and L would need to have agreed to it or to ratify it after the fact. But then, taking account of the agreement to allow that kind of settlement (or the ratification of it after the fact), what might otherwise have been a sale by V to B requiring a share transfer was in fact a trade that V could perform without any share transfer (and likewise for the stock loans).

69. Mr Baker's observation that the settlement loop has no beginning is an important one for that issue about the contractual arrangements: *prima facie*, V's sale to B cannot settle unless V has shares to transfer; V will have no shares to transfer unless its stock loan from L settles with a transfer of shares; but that cannot happen unless V's sale to B settles with a transfer of shares. On the face of it, therefore, the equity sale and both stock loans should all fail to settle since no party has any shares to transfer. That is what a contract term or ratification as to settlement methodology would have to overcome.

70. The simplicity of the basic analysis I have now set out can be clouded by jargon. Talk of 'traded positions' in contrast to 'settled positions' (or 'depot positions') may cloud the difference between a contract to buy shares and a shareholding. Talk of whether a custody record represents a 'settled balance of shares' may cloud the reality that a custody record in the books of a custodian with no shares cannot be a shareholding, and cannot make the custody client a shareholder.

71. In his written evidence in chief, Mr Dhorajiwala noted that the idea at the centre of the transaction structures in this case, on the cash side, was that "*it might be possible, as a custodian to create leverage synthetically via* [as he put it] *netting transactions between buyers and sellers of shares in the same omnibus account of a custodian*". I would prefer to say via the internal settlement of transactions, between buyers, sellers and interposed stock lenders, by equal and opposite account entries at a common custodian; but Mr Dhorajiwala was right to say that the transaction funding was synthetic, that is to say artificial. On the equity side, where all there ever were or would be were book entries in the accounts of a custodian with no shares, likewise any 'shareholding' evidenced was synthetic, not a holding of any shares.

72. To explain my quibble over terminology in the previous paragraph, I would now not say that an 'omnibus account' or 'netting' was used, and I acknowledge that means my own use of that language in *SKAT (Validity Issues)* was not as precise as it might have been:

    (i) As regards 'omnibus account':

        (a) the book entry settlements with which I am concerned occurred at a single custodian (C4 in my diagram), by entries in separate accounts maintained by it for each of the relevant clients (B, V, and L in the diagram);

        (b) C4's custody account at C5 (if it had one) might have been an omnibus account, so that if C4 held shares for more than one of B, V, and L, the existence and size of those separate holdings would be seen only in C4's custody records, not in C5's;

        (c) however, if none of C4, B, V or L held shares, any custody account of C4's at C5 would be empty at all times, and in truth C5, and any omnibus accounting between it and C4, did not need to exist or occur (unless some regulatory rule required C4 to have a sub-custodian even if it never used it, which is not something with which I am concerned).

    (ii) As regards 'netting': the internalised settlement at C4, as practised here, started and finished with nil balances; but it used matching *gross* debit and credit entries, not a cancellation (washout) of obligations such as 'netting' might be thought to connote.

73. I therefore disagree with Messrs Jain and Fletcher, who in one of their written submissions for closing said that "*SKAT proposes that there was no delivery (gross discharge of primary obligation) if the net balance within an omnibus account at the end of the day was zero*". Firstly, that description treats 'delivery' (of a shareholding) and 'gross discharge of primary obligation' as one and the same, whereas SKAT's allegation was, and my finding is, that the settlement methodology utilised here treated the primary obligation as discharged even though there was no delivery. Secondly, SKAT's point was not that on the settlement date there was a nil end-of-day omnibus account balance (although no doubt that was true), rather its point was, and my finding is, that any omnibus account that existed at all was empty (devoid of any shares held by anyone for anyone) at all times.

74. In the trading models considered in this judgment, there was always a second phase of trading, an 'unwind' phase. Where stock lending had been used to settle the initial phase, there had to be an unwind because, as Mr Rabinowitz KC put it on Day 1, "*otherwise the short seller is left with an obligation to return shares that it doesn't own and the buyer is left with an obligation to return cash collateral that it doesn't have.*" It suffices to say, in broad terms, that:

    (i) B and L as stock lenders would recall their stock loans, i.e. call for a transfer of equivalent securities that (other things being equal) would require payment by them of the stock loan cash collateral balance plus interest;

(ii) there would be a reverse equity trade, B selling, V buying; and

(iii) the stock loan recall and reverse equity trade would be internally settled at C4 by another balanced, share-less settlement loop, with a complex wrinkle on the 'cash' side of things.

As with the initial phase, so also in the unwind (irrespective of that wrinkle on the cash side), no shares changed hands at any stage, and none of B, V or L was ever a shareholder in DanCo.

75. In cross-examination, Mr Horn suggested that there was no requirement, when each set of initial trades was put on, for there to be an unwind set in the future. He was correct about that only in a very narrow sense, namely that the individual trade terms for the initial equity purchase and stock loans did not provide for it. However, in line with Mr Rabinowitz KC's pithy summary, the practical reality was that stock loans would come to an end and the participating entities would have no means to perform the obligations then arising without a managed unwind of the type just described. Furthermore, it would not have been rational for those entities to enter into their respective initial trades unless they were confident that such an unwind would be arranged. Mr Horn's attempt to quibble about that was not, in my judgment, because he was trying to be precise, making just the narrow point with which I opened this paragraph. He was trying to lay the ground for a line he intended to spin (and which he did spin the following day), in relation to Solo Model trading in Belgium, that the equity buyer was somehow free to do whatever it wanted with its entitlement to recall its stock loan, whereas in reality, as (I find) Mr Horn knew, the equity buyer was only ever going to recall the loan when told to do so by Solo, on terms determined by Solo, as part of Solo's management of its trading model.

76. None of what I have said so far is affected by whether, or as from when, as a matter of market practice, a trading party might think of itself as 'owning' 'shares', or by what exactly they might think they meant by that if they did. Any market practice of that kind cannot convert book entries at a custodian that holds no shares into shareholdings.

77. It makes no difference of substance in paragraphs 61 to 76 above if, rather than a direct sale by V to B, there is a matched pair of sales, by V to C4 and by C4 to B (as illustrated by Mr Wade's diagram reproduced at paragraph 65 above); and it then makes no difference whether, if that is the position, it is created by two trades concluded with C4 (V selling to C4, C4 selling to B), or by trades matched through a broker (V selling, B buying) where the broker gives the trades up to C4 for settlement, or at all events uses C4 as custodian for settlement of the matched trades. It is also no difference of substance if, where a broker is used, a different broker is used on the unwind.

78. Such additional complexity does not change the fact that, in the settlement loop described above, reversed on the unwind, even if, as a matter of contract:

(i) B is treated as acquiring shares under its equity trade and lending shares to L;

(ii) L is treated as borrowing shares from B and lending shares to V; and

(iii) V is treated as borrowing shares from L and transferring shares under its equity trade;

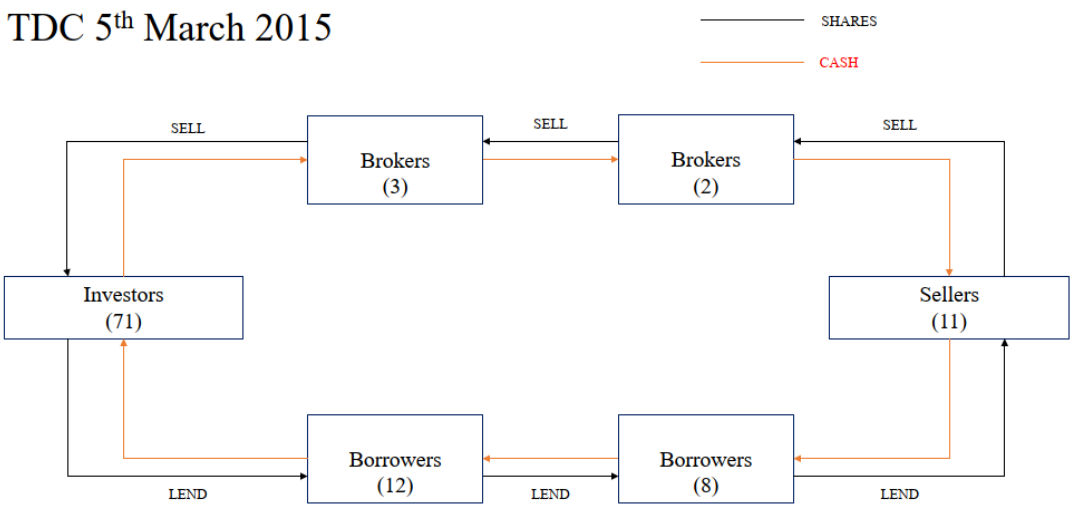
nonetheless no shares are ever held, acquired or transferred by any of B, V or L.

79. In that simple description, only a single set of transactions is assumed, in which B buys and agrees to lend X%, V sells and agrees to borrow X%, and L agrees to borrow and lend X%. However, it again makes no difference of substance if, instead, "B", "L" and "V" are sets of "buyer-lenders", "borrower-lenders" and "borrower-sellers", respectively, each of whose own positions is matched as to share volume, so that, for example, each buyer-lender, for its own part, contracts to lend whatever volume it buys, and all transactions are brought together for internalised, share-less, settlement at C4. Similarly, it makes no difference of substance if there are additional links in the transaction chains, putting greater distance between "B" and "V", for example:

- an equity trade chain of V → Broker 1 → Broker 2 → B, or
- a stock lending chain of B → Stocklender 1 → Stocklender 2 → V.

80. The more complexity of that sort that is introduced, the more challenging it may be to draft the contractual terms required for C4 to be entitled to operate a share-less settlement process equivalent to that which I have described for a simpler structure. But if that were achieved, still the upshot would be that: at C4, where everything balanced out, all transactions could be settled internally without any party ever having, acquiring or transferring any shares; even if under each contract, any seller or stock lender is treated as having delivered rather than defaulted, still the whole operation can and does occur in a world disconnected from VPS and DanCo, as illustrated by the diagram at paragraph 61 above, and thus involving no shares, that is to say, so far as shareholding (share ownership) is concerned, in a world entirely synthetic.

81. Sanjay Shah illustrated a more complex loop within a set of PowerPoint slides he prepared for use in his criminal trial in Denmark and adopted as part of his evidence in chief before me. The slides were proffered as an encapsulation of how Mr Shah says he understood things at the time. They included the following diagram to illustrate a settlement loop relating to a TDC dividend declared in March 2015:



V/34.1/32

31

82. The numbers in brackets identify the number of parties in each category. Thus:

(i) the 11 Sellers, all short sellers with no shares, are in aggregate 'V' in my diagram;

(ii) the 12 Borrowers from Investors, and the 8 Borrowers from those 12, all stock lenders with no shares, are in aggregate 'L' in my diagram;

(iii) the 71 Investors, all share buyers without means, are in aggregate 'B' in my diagram, their share purchases being via one of three brokers, who each buy via one of two other brokers, who each buy from one of the 11 Sellers; and

(iv) the aggregate share volumes and cash contracted to be delivered match, so that if everything settles at the same custodian ('C4' in my diagram), and if all parties have agreed to this or ratify it, internalised settlement can occur though no party has either cash or shares for the purpose.

83. Mr Shah acknowledged in his explanatory slides that "*all depot positions and cash balances being zero at the start and end of trading (ie not "creating" or "destroying" money or shares) … accounts held by [the custodian, C4] with its sub-custodians therefore showed no balances.*" Putting it more plainly, this was share trading by parties with neither shares nor money, settled at a custodian with neither shares nor money, by and through which neither shares nor money ever changed hands. (I put to one side the possible view, on the cash side, that in some sense money moved because simultaneous matched debit and credit entries in B's cash account at C4 constituted or evidenced equal and opposite debts owed between B and C4 that instantly discharged each other (likewise for V and for L). No such argument could affect the conclusion that there were no shareholdings.)

84. All of the trading models involved activity materially similar, for my purposes, to that of B, V, L and C4 described above, in which (a) the equity purchase by B was cum-ex, (b) none of B, V, L or C4 ever held or transferred any shares, and (c) trades were settled internally at C4 by the share-less settlement loop method explained above. In fact, in every case, the cum-ex purchase was traded on the dividend declaration date for settlement on the dividend payment date, one business day after the record date for the dividend in question.

85. To be clear, I do not say that internalised settlement at a custodian necessarily means that no shares are ever held or transferred, only that internalised settlement was always used in this case in such a way that that was true. Messrs Jain, Godson and Fletcher argued that if the equity trades settled, there must have been a transfer of shareholdings between the parties. That is a false logic. A buyer who knew only that, according to its custodian, its share purchase had settled, might assume that a holding of shares had been transferred to it, especially if the buyer understood the custodian to be (as Messrs Jain, Godson and Fletcher put it) 'plumbed in' to the system for holding dematerialised shares via chains of custody; but that is a different point. Messrs Jain, Godson and Fletcher went on to submit that they never agreed to internalised settlement with no transfer of any shareholding, delivery versus payment. I agree with them, as indeed SKAT also submitted, that none of the written terms of business entered into between custodians and trading participants entitled the custodians to settle trades by the share-less internalised method in fact used. I also accept Messrs Jain, Godson and Fletcher's

case that nor was the share-less settlement method that was used ever agreed to by them in some other way. But whether it was or was not agreed to by all concerned, it was the method used in fact, with the result that no shareholding was ever acquired by the equity buyer.

B.3 More Terminology

86. In those circumstances, none of B, V or L could or did ever acquire a right to a real dividend, or receive a real dividend payment, i.e. a payment coming to them through a custody chain of payments by which a payment of dividend proceeds was made by the company to VPS for onward distribution to the company's shareholders. If B, the cum-ex buyer, had a contractual right to a dividend compensation payment calculated by reference to the declared dividend, that would necessarily be a manufactured dividend, as I used that term in *SKAT (Validity Issues)* (see at [53], [181]).

87. That use of terminology was not fixed in the market. Some used 'manufactured dividend' only in a more limited way, to refer to obligations under a stock loan or repo, and may have used a different term for the sort of payments with which I am concerned. That different term, for some in the market, may have been 'market claim', although that term was far more commonly reserved for the reallocation of distribution proceeds to a party contractually entitled, i.e. (so far as material) to the passing on of real dividend payments. A cum-ex buyer, by definition, is not contractually entitled to distribution proceeds, because it has contracted not to be put in a position which could have entitled it to such proceeds.

88. That more common, narrower, meaning of the term 'market claim' in relation to European equity markets was influenced particularly by the "*Market Standards for Corporate Actions Processing*" promulgated by the European Corporate Actions Joint Working Group (the 'CAJWG'), first published in 2009, re-published in 2012 and again in 2015 in identical terms so far as material (the 'CAJWG Standards'). They defined a 'Market Claim' as a "*Process to reallocate the proceeds of a Distribution to the contractually entitled party*", and they defined a 'Distribution' as a "*Corporate Action whereby the Issuer of a security delivers particular proceeds to the holder of the Underlying Security without affecting the Underlying Security*". The making or processing of a dividend compensation payment of the type with which I am concerned is not the processing of a Corporate Action as the CAJWG defined it, for which the CAJWG publication was designed to set market standards, *viz.* an "*Action initiated upon a Security by the Issuer or an Offeror*". It is therefore logical that the CAJWG defined a Market Claim as it did, such that it did not encompass dividend compensation payments of the kind I am considering.

89. I adhere to the finding that it was understood by market participants that only record date shareholders would receive a real dividend payment, and that a cum-ex buyer would not be a record date shareholder (see *SKAT (Validity Issues)* at [137]). I also adhere to what I said in that judgment at [146]-[147] and [182], given the definition of 'manufactured dividend' I was using; but I supplement it now by making clear that the use of that label was not fixed in the market. On any view, the sort of payment to which I referred at [147], and in the second half of [182(1)], would not be a real dividend payment. In this judgment generally, as I have just been doing, I refer to a payment from a cum-ex seller to its cum-ex buyer, required by contract to compensate the buyer

for the fact that it will not receive any real dividend payment, as a 'dividend compensation payment'.

90. It was also plain on the expert evidence, and that of factual witnesses at the Main Trial, in line with conclusions I stated in *SKAT (Validity Issues)*, for example at [146]-[147] again, that anyone in the market would understand that what types of entitlement or payment might or might not incur Danish dividend tax, or entitle a tax-exempt party to a WHT refund in respect of such tax, would be a matter of Danish tax law, not a matter of market practice or market terminology. That would obviously include any question of what might or might not count as a 'dividend' for that purpose.

91. In *SKAT (Validity Issues)*, at [269], I said, on the basis of the expert evidence at the Validity Trial, that it was the general practice of custodians to distinguish in CANs between real dividends and manufactured dividends (which, as I was then using that term, included dividend compensation payments). I do *not* adhere to that finding, as I explain in paragraphs 401 to 413 below. That does not affect the validity or otherwise of the tax refund claims that SKAT says it should not have paid.

B.4 Further Discussion

92. In the descriptions I have given above, I have not mentioned the other major element of most of the trading models in this case, namely matched price hedges using exchange-traded futures or over-the-counter forwards put on by B and V as part of the initial phase, traded on the same day as the initial equity trade, reversed by opposite-direction matched futures or forwards as part of the unwind. Those hedges, where used, served a function in the trading models, but they do not affect anything in what I have said as to whether any of B, V or L ever held, acquired or transferred any shares.

93. At the heart of the validity issue was an idea stated in Sanjay Shah's PowerPoint slides referred to in paragraph 81 above. One of those slides said this:

"***Explanation of dividend compensation payments***

Short sellers who sell shares ***cum-div*** *and settle* ***ex-div*** *are liable to pay a dividend compensation payment to their custodians. ...*

Long buyers who buy shares ***cum-div*** *and settle* ***ex-div*** *must receive a dividend compensation payment from their custodians. Such payments are documented as* ***dividend credit advice notices****. Under Danish Tax Law, these payments are considered* ***dividend income*** *for tax purposes.*" (underlining for my emphasis);

and the slide before the diagram reproduced at paragraph 81 above asserted that "*Even though shares and cash are not created or destroyed, the existence of the "legal loophole" results in long buyers becoming entitled to WHT reclaims due to the presence of short sellers*". The "*legal loophole*", as Mr Shah called it, was a proposition he stated that, "*Under Danish Tax Law, a buyer of shares becomes the legal and beneficial owner on the contract date, the date when he/she enters an irrevocable contract to buy shares.*"

94. Applying the preliminary issue decisions made upon the Validity Trial, the proposition that a dividend compensation payment by a short seller who sells cum-div for settlement ex-div was considered dividend income for tax purposes under Danish tax law was wrong at all material times. It was wrong, if taken literally, because Danish dividend tax attached to the accrual of a right to a dividend, not to the receipt of a payment. It was still wrong if, allowing for that first point, we say the proposition is that a cum-ex buyer's contractual right to a dividend compensation payment was dividend income for Danish tax purposes. Danish dividend tax did not apply to such a right. Whether at the time Mr Shah or others thought otherwise, or had any basis for doing so, does not affect the true position under Danish tax law as determined for these proceedings by the Validity Trial.

95. Under *SKAT (Validity Issues)*, it is possible to describe a cum-ex trade (which may or may not be a trade anyone would ever do), where a seller that is short on the trade date completes the trade on the settlement date by a transfer of shares as a result of arrangements made after the trade was executed, but before the dividend was declared, such that (a) the only dividend-related *payment* the buyer receives is a dividend compensation payment from the seller, but (b) the buyer *was* the party liable to Danish dividend tax on the real dividend. That is a possibility because of the complexities I found to exist, to which I referred in paragraph 59 above. On the facts, however, the short seller was always short until after the ex-date, and always did not complete the cum-ex trade by a transfer of shares anyway.

96. In the diagram at paragraph 61 above, B might receive a CAN issued by C4 to reflect a payment credit on B's account at C4 derived from B's contractual right to a dividend compensation payment, although C4 would be under no obligation to issue a CAN to report that credit over and above recording it accurately in periodic account statements issued to B. Or in Mr Shah's diagram (paragraph 81 above), the 71 Investors might each receive such a CAN. But that would not mean they had received or been entitled to a dividend (or a dividend payment) a right to which attracted Danish dividend tax.

97. In the actual trading activity, B was always an entity capable in principle of qualifying for relief from Danish dividend tax under a DTT between its tax domicile and Denmark. For the most part, B was either a USPF or a LabCo that could have been entitled to relief in full. In some of the Klar Model trades, B was a UK or Luxembourg entity capable in principle of being entitled to relief against tax above 15%. However, none of them had been taxed by Denmark, so none of them was entitled to any tax refund, and therefore in each case the tax refund claim that was made was an invalid claim that SKAT was not obliged to accept and pay.

98. The final conclusion to identify at this stage, as it follows from the analysis I have set out above, although the invalidity of the tax refund claims in the case does not turn on it, is that all the short selling activity from 1 November 2012 was in breach of Article 12(1) of the EU Short Selling Regulation ('SSR'), which applied from that date: see the SSR (Regulation (EU) No 236/2012 of 14 March 2012), Article 48, for the commencement date. That is because:

    (i) Danish shares are transferrable securities admitted to trading on a trading venue in the EU, and the SSR applied to such instruments, wherever traded: SSR, Articles 1(a) and 2(1)(a); item (1) in Section C of Annex I to Directive 2004/39/EC.

(ii) Under the SSR, a 'short sale' in relation to a share or debt instrument is "*any sale of the share or debt instrument which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share or debt instrument for delivery at settlement, not including: (i) [a sale under a repo]; (ii) a transfer of securities under a securities lending agreement; or (iii) entry into a futures contract or other derivative contract where it is agreed to sell securities at a specified price at a future date*": SSR, Article 2(1)(b).

(iii) Article 12(1) of the SSR provides that a natural or legal person may enter into "*a short sale of a share admitted to trading on a trading venue*" only if one of three conditions is satisfied, *viz.* the seller has:

(a) "*... borrowed the share or ... made alternative provisions resulting in a similar legal effect*";

(b) "*entered into an agreement to borrow the share or has another absolutely enforceable claim under contract or property law to be transferred ownership of a corresponding number of securities of the same class so that settlement can be effected when it is due*"; or

(c) "*an arrangement with a third party under which that third party has confirmed that the share has been located and has taken measures vis-à-vis third parties necessary for the [seller] to have a reasonable expectation that settlement can be effected when it is due*".

(iv) The short sellers had, I find, an informal understanding, but no binding commitment, that stock loans would be arranged to enable them to settle their short sales. Articles 12(1)(a) and 12(1)(b) plainly did not apply. That informal understanding did not satisfy Article 12(1)(c) either, as it did not involve, by the time the short sales were concluded, locate confirmations having been given, or steps vis-à-vis third parties having been taken, by any third party with whom the short sellers had any arrangement, let alone locate confirmations or measures that would satisfy the SSR Implementing Regulation, which specified in some detail what was required by Article 12(1)(c): see Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012, Articles 1(b), 6 and 8.

99. If the sellers had been covered short sellers by virtue of Article 12(1)(a) or 12(1)(b) of the SSR who settled their sales by transferring shares to their buyers, there would have been scope for the buyers to have been entitled to a dividend tax refund under the rules of Danish tax law that I found to exist in *SKAT (Validity Issues)*, *supra*. Provisionally, I consider the same would not be true for Article 12(1)(c). Its entire purpose, and effect, is to define limited circumstances in which a short seller will be considered to have sufficient cover for a trade that it ought not to be prohibited even though there is not, at the time of the trade, a final and binding right to acquire (in this case) a sufficient shareholding for the trade to settle. In *SKAT (Validity Issues)*, however, I found that such a right in the seller was required for the contract accruals rule to treat the buyer as having become a shareholder for the purpose of Danish tax law. I do not need to make a final decision about that, however, because whether or not the sales here were covered

short sales in terms of Article 12(1) of the SSR, they were not performed by any share transfer to the buyers.

100. To establish any given cause of action pursued against a trial defendant, SKAT had to prove, if it could, the necessary ingredients, as pleaded, of that cause of action, and any pleaded defence on which the defendant in question bore the burden of proof (e.g. time bar or contributory negligence, where either of those arose) had to fail. Without losing sight of that, a general allegation by SKAT was that defendants (a) must have realised that the equity buyers never acquired any shares, so (b) must have understood that those buyers could not be entitled to a dividend that might attract Danish dividend tax, and therefore (c) could not have thought that those buyers were or might be entitled to a tax refund from SKAT. Therefore, a main thread running through the trial, in submissions on the documentary evidence and in the trial evidence of the factual witnesses called by defendants, was the pursuit by SKAT, and the testing by defendants, of that allegation. Another main thread, in submissions on the documents and in the trial evidence of SKAT's factual witnesses, was whether SKAT was misled, as it claimed to have been, in making decisions to pay out on the tax refund claims submitted to it. Inevitably with such a large trial and many different defendants, there were also specific points relevant only to some of the defendants and the claims pursued by SKAT against them. For the purpose of considering any and all points arising, however, the underlying invalidity of the tax refund claims submitted to and paid by SKAT was established.

C. Main Narrative

C.1 The Sample Trades

101. Under the case management directions for the Main Trial, SKAT's claims were tried on the basis that sample trades, identified by a process that I was satisfied had been fair and sufficient for the purpose, were representative of the various trading models deployed ('the Sample Trades'). Schedules were created and appended to the relevant CMC Order (in June 2023) that identified the Sample Trades and listed every claim instance, specifying for each one the category of trading model to which it belonged. The Order, in material part, was in these terms:

> "… **UPON** the Claimant's claims being claims relating to WHT Applications made by WHT Applicants as a result of trading structures and/or series of transactions referred to in the Particulars of Claim (without prejudice to the Claimant's allegations that they involved sham trading) as:
>
> - the Solo Model as used in 2012-2013 ("**Solo Model 12/13**" cases) or the Solo Model as used in 2014-2015 ("**Solo Model 14/15**" cases), some Solo Model 14/15 cases involving multiple sellers contracting to sell shares through brokers to multiple buyers ("**Sub-Variant 1**" cases) and some Solo Model 14/15 cases involving multiple sellers contracting to sell shares through brokers to a single buyer ("**Sub-Variant 2**" cases);
> - the Maple Point Model as used in 2014 ("**Maple Point Model 2014**" cases), all involving either Indigo Securities ("**Indigo**" cases) or North Channel Bank ("**NCB**" cases); or the Maple Point Model as used in 2015 ("**Maple Point Model 2015**" cases), all involving either NCB cases, or Lindisfarne Partners ("**Lindisfarne**" cases) contracting as Custodian; or
> - the Klar Model involving Salgado Capital contracting as Custodian ("**Salgado**" cases)

> …
>
> 9. The issues in dispute in these proceedings shall be determined in the Main Trial on the basis that the sample trades identified in the … **Sample Trades List** … (the "**Sample Trades**") are representative of the trading structures and/or series of transactions in Solo Model 12/13 cases, Solo Model 14/15 cases (including where applicable Sub-Variant 1 or Sub-Variant 2 cases), Maple Point Model 2014 cases (and more specifically within that category, as applicable, Indigo or NCB cases) or Maple Point Model 2015 cases (and more specifically within that category, as applicable, NCB or Lindisfarne cases), and Salgado cases, all as respectively indicated by … the … **Full Trades List** … ."

102. I mentioned Sample Trade Solo 1 in paragraph 58 above. It is one of the Sample Trades taken under that Order to be representative of Solo Model 12/13 trading. A fuller and by that Order representative description of the trading models, illustrated by summaries of specific examples from the Sample Trades, is set out in Appendix 3 to this judgment.

C.2 The Tax Refund Claims

103. The 4,170 claims for a tax refund with which this judgment is concerned were made to SKAT between 20 August 2012 and 22 July 2015 using the 'Form Scheme', one of the schemes then in operation by which SKAT granted refunds of Danish dividend tax. Each claim referenced a stated number of shares in one of the companies listed on the OMX C20 Index. The 4,170 claims resulted in payments by SKAT totalling DKK12,090,844,948.33.

104. The Form Scheme involved the submission, with supporting material, of a standard form published by SKAT, to seek relief from and a refund of Danish dividend tax. Therefore, in each instance, SKAT received:

(i) a cover letter from one of four tax reclaim agents (the 'Tax Agents');

(ii) a completed tax reclaim form headed "*Claim to Relief from Danish Dividend Tax*" (the 'Tax Reclaim Form'), which in almost every case was the then current version, Form 06.003. A predecessor in a different format, Form 06.008, was still accepted by SKAT if it was used, and it was used in 84 of the 4,170 tax refund claims at issue (but see paragraph 106 below);

(iii) a CAN, or several CANs, issued by a custodian to the submitting Tax Agent's relevant client, which will have been a buyer like B in my diagram at paragraph 61 above;

(iv) a power of attorney authorising the submitting Tax Agent to make the claim on behalf of that client; and

(v) a document from the tax authority of that client's domicile certifying its status there for tax purposes.

105. SKAT alleged that, given some of the content of those documents and the fact that they were submitted as part of a tax refund claim in respect of Danish dividend tax, the making of each of the 4,170 tax refund claims involved particular misrepresentations being made to SKAT, intended to induce and in fact inducing it to pay the refund claimed. The detail as to that is considered later in this judgment (paragraph 424*ff*).

106. I need to say a little more about the older Form 06.008, used in 84 of 4,170 instances. By June 2012 it was not available on SKAT's website, which directed use of the then current Form 06.003. Form 06.008 stated by its n.1 that "*The claim must be made in triplicate*", and I accept the evidence from recollection of SKAT's Mr Nielsen that it comprised three materially identical pages, one for each of SKAT, the foreign tax authority and the tax refund claimant. I was shown single-page examples, each of which identified itself as either "*Copy 1 (For the Danish Tax Authorities)*" or "*Copy 2 (For the Foreign Tax Authorities)*". It seems likely, therefore, that the third page was "*Copy 3*", for the refund claimant. I do not accept evidence that Mr Nielsen and SKAT's Ms Rømer both gave that Form 06.003 replaced some yet different, two-page form. The evidence each gave on that was unclear and confusing, and not consistent with the evidence of the other. Form 06.008 did not call for a CAN or anything similar to be submitted in support. It required information about "*dividends from shares or participations*" of which the refund claimant was "*the owner / usufructuary*[(2)]" (n.2 being an instruction to "*Delete whichever is inapplicable*") and the Danish company was supposed to stamp and sign the Form itself by way of certification "*that the dividends stated in column 7 were paid after deduction of dividend tax at the amount of DKK:* " (obviously calling for an amount to have been inserted before the Danish company signed). So that I will have been clear in what I say about the older form:

(i) on the evidence I had at trial, the 'Copy 1' page seems to have been numbered '06.008', the 'Copy 2' page, potentially confusingly, seems to have been numbered '06.003', and I cannot say what, if any, number was given to the 'Copy 3' page (if indeed that is how the third page was labelled);

(ii) I shall always refer to the older form as 'Form 06.008', even if I am referring to a particular example in evidence of a 'Copy 2' page; and

(iii) when I say that Form 06.008 was still accepted by SKAT in the relevant period, if used, and that it was used in the 84 instances:

(a) there was no evidence that Form 06.008, when used and accepted during the relevant period, was used as intended, i.e. in triplicate and bearing the Danish company's attestation;

(b) in the examples of its use I was shown, only a single page ('Copy 1' or 'Copy 2') was used, without that attestation.

C.3 The Tax Agents

107. Goal Taxback Ltd ('Goal') submitted refund claims arising out of all three trading models (Solo, Maple Point, and Klar), in response to which SKAT paid DKK4.282bn of the DKK12.091bn with which I am concerned. CANs issued by each of the custodians who feature in the case are to be found among the tax refund claims submitted by Goal. The Goal cover letter stated: "*Please find enclosed a tax reclaim form together with evidence of payment and tax deduction paid on the above client's securities*". All 84 of the claims using Form 06.008 were submitted by Goal, in either the second half of 2012 or the first half of 2013.

108. Acupay Systems LLC ('Acupay') submitted refund claims principally arising out of Solo Model trading, but also a small number arising out of Maple Point Model trading.

Acupay came to submit CANs issued by all of the Solo Model custodians (SCP, Old Park Lane, Telesto and West Point), and CANs issued by NCB. DKK3.544bn of the DKK12.091bn with which I am concerned was paid out by SKAT in response to Acupay claims. The Acupay cover letter stated: "*Please find attach a reclaim application to obtain a full refund of Danish dividend tax for a [qualifying US pension fund / Malaysian company] within the meaning of the Double Taxation Convention concluded between Denmark and [the United States of America / Malaysia]"*. It further noted that it enclosed a "*Claim to Relief from Danish Dividend Tax Form",* one or more "*Dividend Credit Advices*", a tax residence certificate from the relevant foreign country, and a power of attorney authorising Acupay to make the claim.

109. Like Acupay, Syntax GIS Ltd ('Syntax') submitted refund claims principally from Solo Model trading, but also some from Maple Point Model trading, with CANs from all four Solo Model custodians and some NCB CANs, but also some Indigo CANs. Syntax claims generated DKK3.044bn of the DKK12.091bn paid out by SKAT with which I am concerned. The Syntax cover letter stated: "*please find enclosed a reclaim application form from a qualifying [US pension fund / Malaysian corporation] for a complete refund of Danish Dividend Tax that was previously withheld in relation to their investments*". It further noted that it enclosed a "*Claim to Relief from Danish Dividend Tax Form",* one or more "*Dividend Credit Advices*", a tax residence certificate from the relevant foreign country, and a power of attorney authorising Syntax to make the claim.

110. Koi Associates Ltd ('Koi') submitted only refund claims arising from Maple Point Model trading in 2015, involving NCB and Lindisfarne CANs, in response to which SKAT paid out DKK1.221bn of the DKK12.091bn with which I am concerned. The Koi cover letter stated: "*please find enclosed a reclaim application form from a qualifying US pension fund for a complete refund of Danish Dividend Tax that was previously withheld in relation to their investments*". It further noted that it enclosed a "*Claim to Relief from Danish Dividend Tax Form",* one or more "*Dividend Credit Advices*", a tax residence certificate from the relevant foreign country, and a power of attorney authorising Koi to make the claim.

C.4 The Tax Reclaim Form

111. Examples of Form 06.003 and Form 06.008 appear in Appendix 4 to this judgment. I consider their respective content more closely, below, when judging whether any of the representations alleged by SKAT was made by the refund claims with which I am concerned. (It should be noted, for completeness, that the '54-…' and 'SKSK…' reference numbers on the copies reproduced in Appendix 4, top right and bottom right respectively, are not original but come from the litigation.)

C.5 The CANs

112. As indicated in Appendix 3, several custodians were variously involved in the different trading models: SCP in the Solo Model 2012/2013; SCP, Telesto, West Point and Old Park Lane in the Solo Model 2014/2015; Indigo and NCB in the Maple Point Model 2014; NCB and Lindisfarne in the Maple Point Model 2015; Salgado in the Klar Model. Every refund claim paid by SKAT and now a subject of these proceedings was supported by a CAN issued by one of those custodians. Any one refund claim sent to and paid by SKAT might have been for the aggregate of the amounts shown in several

CANs submitted with a single Form. The 4,170 tax refund claims that between them form the subject matter of these proceedings are counted on the basis that one CAN equals one refund claim. The 4,170 tax refund claims, counted in that way, were thus constituted from fewer than 4,170 tax refund Forms submitted by the Tax Agents to SKAT over the period (the exact number does not matter).

113. CAN formats differed between custodians, but the format used by any one custodian remained constant over time, save that in the case of CANs issued by SCP, initially only a "*Pay Date*" for the referenced dividend was given, whereas later SCP CANs gave its "*Ex Date*" and "*Record Date*" as well. An example of a CAN from each custodian (and in SCP's case, one example of each type) appears in Appendix 5 to this judgment. Again I do not summarise their content further here because I examine it in more detail below, when judging whether any of the representations alleged by SKAT was made (and again, the '54-…' and 'SKSK…' reference numbers are not original). However, I do note now that the form of CAN used by NCB stated that it was "*Not a tax certificate*" and contained some detailed terms on a second page (or in hard copy, it may have been, the reverse side of a standard form), some of which may have been meaningful only in relation to German securities. I have not included that page of 'small print' in Appendix 5.

C.6 Trading Models Summary

114. All trial defendants except Lindisfarne had at least some involvement in Solo Model trading or the use of its proceeds. Solo Model trading generated refund claims submitted to SKAT between August 2012 and July 2015 on which SKAT paid out DKK9.025bn. Each trial defendant was pursued by SKAT only for and by reference to the extent of their individual involvement, as alleged by SKAT. For example, claims were not made against the DWF Ds in relation to the Solo Model 2014/2015, the DWF Ds having left Solo in 2013; nor were claims made against them in relation to Solo Model trading in 2013 after their respective dates of departure from Solo. That had a substantial impact on the aggregate amounts in respect of which relief was sought against some trial defendants. For example, of the 4,170 tax refund claims paid by SKAT, 3,238 came from Solo Model trading, but only 286 of those (8.8% by number, 8% by value) came from Solo Model trading in 2012/2013.

115. Maple Point Model trading generated refund claims submitted to SKAT between May 2014 and July 2015 in response to which SKAT paid out DKK2.74bn. The trial defendants with at least some involvement in Maple Point Model trading were the DWF Ds, Mr Klar and Lindisfarne.

116. Klar Model trading, in respect of which Mr Klar was the only trial defendant, involved refund claims submitted to SKAT between December 2012 and May 2015 in response to which SKAT paid out a total of DKK321m.

C.7 Solo Model Overview

117. The Solo custodians (SCP throughout, Old Park Lane from August 2014, Telesto and West Point from February 2015) were FCA regulated entities within Sanjay Shah's Solo Group. There were three key Solo entities:

(i) Solo Capital Ltd ('SCL'), an English company incorporated on 14 January 2009 which was owned 100% by Sanjay Shah and of which he was the CEO until August 2014. SCL, which Sanjay Shah described in his evidence as a "*boutique financial services firm*", was the main Solo regulated entity in the UK from 2009 to 2011 and the vehicle through which German cum-ex strategies were executed.

(ii) Solo Capital Partners LLP ('SCP'), an English partnership incorporated on 13 September 2011, which became the main Solo regulated entity in the UK from late 2011 or early 2012. SCP was the only Solo custodian until August 2014 and issued the majority of Solo Model CANs overall (c.60%, used in support of tax refund claims totalling DKK5.439bn). It was also the home of Solo's custody and clearing business, known as Global Security Services ('GSS'), that operated through SCP's middle office function to oversee the approval and settlement of trades and to prepare the Solo Model CANs and custody statements. From around late 2014, the GSS team was moved to another company, Genoa, ultimately owned by Sanjay Shah through Elysium Global. Genoa provided shared middle and back office functions to all four Solo custodians, including the settlement of trades and the production of CANs. SCP was a limited liability partnership with various members including a number of the trial defendants. Its original management committee was made up of Mr Horn, Mr Bains and Sanjay Shah (acting through SCL). At all material times, SCP's controlling party was recorded in its accounts as being Sanjay Shah acting through SCL or other entities.

(iii) The third was Elysium Dubai, incorporated in Dubai on 19 December 2011. It was ultimately owned 100% by Sanjay Shah, initially through SCL, and from April 2014 through Elysium Global as part of the Elysium Group. Sanjay Shah was based at Elysium Dubai's office in Dubai and several key individuals joined him there over time, including Mr Klar, Rajen Shah and Mr Horn. Solo's middle and back-office operations relating to the GSS business were split between SCP and Elysium Dubai until reorganised into Genoa in late 2014.

118. A fourth entity that featured heavily is Ganymede, incorporated in the Cayman Islands on 16 June 2010. At all times it formed part of the Elysium Group wholly owned by Sanjay Shah. Ganymede was not party to the Solo Model trading itself, but Sanjay Shah arranged for it to be the principal effective beneficiary of the proceeds generated by it, paid by SKAT. Ganymede was, in substance, a simple corporate incarnation of Sanjay Shah. The business concept was that Sanjay Shah, acting as and for Ganymede, was gatekeeper giving access to the GSS business to USPFs (and, later, LabCos) so they could trade with a view to profiting from tax refund claims made by Tax Agents on their behalf, and to the brokers and trading counterparties (short sellers, stock lenders and (from 2013) forwards counterparties) who would indirectly take a small share of that profit.

119. In the case of the brokers and trading counterparties, I find, their fees per transaction were not, as agreed by them, expressly conditional upon the success of a tax reclaim generated by the transaction. However, the practical reality was that the only source of funds from which they might be paid would be tax reclaims, if successful, and they were in fact paid as part of a coordinated exercise, under Sanjay Shah's ultimate direction, of accounting for the proceeds of successful tax reclaims amongst the various parties involved.

120. SCP charged proportionately modest fees for its role, amounting to a tiny fraction of the amounts paid out by SKAT. The main price for the USPFs' (and LabCos') access to the GSS trading platform was agreement that the lion's share of any successful tax refund claims made on their behalf would go to Ganymede. That gave Sanjay Shah effective control over what was done with that lion's share of what SKAT paid out, including over who else might take a portion of it or benefit from it in some other way.

121. Reflecting the elements involved in the Solo Model trading, as described in Appendix 3, there were different categories of individuals playing various roles that, when they were all put together, made the Solo Model possible.

122. Firstly, there were individuals involved in designing, structuring, or coordinating the execution of Solo Model trading. They included, amongst the trial defendants, Sanjay Shah, the DWF Ds when at Solo, i.e. until March 2013 (Rajen Shah), June 2013 (Mr Horn), and September 2013 (Mr Dhorajiwala), Mr Bains (until August 2014), and Mr Patterson (after he joined Solo in 2013). Members of the GSS team, which was managed initially by Mr Horn and then by Mr Dhorajiwala, until their respective departures, and by Omar Arti from 2014, were necessarily involved in the execution of Solo Model trading. Such individuals included Adam Forsyth, Martin Ward, Jessica Spoto, Nirav Patel, Biljit Johal, Claudia Sidoli and Jason Browne.

123. Secondly, there were principals behind the USPFs and LabCos that traded as buyers and on behalf of whom tax refund claims were submitted to SKAT. There were many such principals, but they included (from the trial defendants) Messrs Godson, Fletcher, Jain and Preston. Other principals of USPFs and LabCos involved in Solo Model trading have been a major target of SKAT's related proceedings in the US and Malaysia, respectively.

124. Thirdly, there were principals behind the short sellers. They included, from the trial defendants, Messrs Oakley, Mitchell, Körner and Murphy. Sanjay Shah introduced all four of them to GSS, as indeed he introduced most of those behind short sellers who participated in Solo Model trading, as ex-Solo employees or friends or associates of his. The exceptions were Paul Warner, who owned short sellers called Ceptorbay, Encorelite, Oakholley and Rhaltall, and the individuals behind short sellers called Aronex, Miralty, Wicklow and CFS Group (namely Rajiv Kumar, Satyendra Singh, Bijaya Swain and Jonathan Walton), although the trader for those short sellers, Richard Mills, was known to Sanjay Shah.

125. Examples of the connections leading to short seller introductions are as follows:

    (i) Sanjay Shah suggested involvement in Solo Model trading to three former Solo employees, Jason Browne (ex-GSS), Sanjeev Davé (Solo's Finance Director in Dubai), and Dilip Shah (an equities broker with whom Sanjay Shah socialised in Dubai).

    (ii) He also recruited a number of friends to become GSS clients, through corporate entities, as short sellers, such as Rajeev Davé (a close friend of Sanjay Shah's since college and Sanjeev Davé's brother), Mr Murphy and Dai Griffiths (with both of whom Sanjay Shah socialised in Dubai).

(iii) Other short seller principals were business contacts of Sanjay Shah introduced by him to GSS, such as Mr Oakley, Mr Mitchell (whom Sanjay Shah had known for years), Mr Körner (ex-Deka Bank, with whom Sanjay Shah also socialised), Stuart Wilson (ex-ABN Amro) and Richard Mills (ex-Macquarie).

126. Fourthly, there were principals behind the stock lenders, including Messrs Smith, Klar and Körner from the trial defendants. All were known to Sanjay Shah and became GSS clients at his suggestion. They were friends/family (Bhupendra Mistry, a friend and IT consultant to the Solo group, married to a cousin of Sanjay Shah; Nailesh Teraiya, a friend of Sanjay Shah who was also Mr Dhorajiwala's brother in law and later incorporated Indigo, one of the custodians in the Maple Point Model 2014), friends/business contacts (Messrs Smith and Körner), a former senior Solo employee who had been part of the initial discussions that culminated in the Solo Model (Mr Klar), and a relative of a former Solo employee (Pratul Shah, a retired accountant whose daughter worked for Sanjay Shah in Dubai).

127. Fifthly, there were principals behind the forward counterparties involved in the Solo Model for 2014 and 2015, including Mr Klar (again) and Ms Bhudia from the trial defendants. Again, all such principals were known to Sanjay Shah and were GSS clients at his suggestion. They were former Solo employees (Mr Klar and Rebecca Robson (involved as a forward counterparty only for 2015)), or friends of his (Ms Bhudia and Dai Griffiths) or of a Solo employee (Steven North, introduced to Sanjay Shah by Michael Smyth when at Solo, Mr Smyth later leaving Solo to set up LabCos for Solo Model 2014/2015 trading).

128. Sixthly, there were individuals who acted as traders for parties in the Solo Model trading, including current or former Solo employees Roger Lehman (who acted as authorised representative for 48 USPFs, including those of Mr Godson and Mr Fletcher), Rebecca Robson (who traded for LabCos connected to Mr Preston and others in 2014), and Jaiganesh Sethuraman (who traded for Mr Klar's forward counterparties from February 2014).

129. Seventhly, there were the brokers involved in the Solo Model trades, some of whom were entities of Sanjay Shah's friends or business contacts (e.g. Novus, Bastion, Mako, Sunrise, and FGC).

130. Eighthly, and finally, there were introducers, to Solo/GSS, of USPFs who went on to participate in Solo Model trades, including (from the trial defendants) Messrs Godson, Murphy, Fletcher, and Devonshire (although in the case of Mr Devonshire, his only direct introduction was of Mr Fletcher, to Mr Murphy, following which Mr Fletcher, and others introduced by him, became involved in Solo Model trades).

C.8 Solo Model Genesis

131. Sanjay Shah originally joined KPMG's corporate tax department in 1994 as a graduate trainee, but left before obtaining accountancy qualifications to pursue a career in investment banking, joining Merrill Lynch in 1996. He worked there in a financial reporting team, then in a middle office role for a precious metals trading desk where he acquired knowledge of derivatives and financial products. In 1998, he moved to Morgan Stanley for a job with similar functional responsibilities in equity derivatives, which introduced him to div-arb trading. He left Morgan Stanley in 1999 (the year in

which he and Mrs Shah married), moving to Donaldson, Lufkin and Jenrette ('DLJ') as an assistant trader for equity derivatives.

132. In late 2000, DLJ was bought by Credit Suisse First Boston which led Sanjay Shah to join a prime brokerage team. Over a period of three years or so, his role developed to that of dedicated div-arb trader, and in 2003 he moved to ING to become a senior trader there in an equity finance team. His work at ING covered equity derivatives, stock lending and hedge fund finance lending, and included dealings with Rabobank, to which he moved in 2007, joining as European Head of Equity Finance with a mandate to grow a European equities div-arb business. That was where he first encountered cum-ex trading, and his job at Rabobank was his last employment before setting up his own business under the Solo Capital name.

133. Rabobank withdrew from the equity finance business after the global financial crisis hit in late 2008, making Sanjay Shah redundant. To set up in business for himself, he incorporated SCL in 2009. His first recruits at SCL were Mr Smyth (a stock loan broker) and Messrs Rajen Shah and Klar (to act as structurers).

134. In 2010, SCL explored German cum-ex trading. It acted as investment manager for an Irish fund, Broadgate, which used cum-ex trades to generate a German WHT reclaim based on the Germany-Ireland DTT under which Irish entities were entitled not to be taxed above 10% on German dividends. Some of those involved in the Broadgate transaction were significant to the development and implementation of the Solo Model for Danish shares:

    (i) The investor in the Broadgate fund was Argre, to whom Sanjay Shah was introduced by Robert Klugman, a former colleague of his at Credit Suisse. Argre was a New York investment management company with four equal shareholder-principals (Matt Stein, Richard Markowitz, John Van Merkensteijn III, and Jerome L'Hote (the 'Argre Principals')), and a number of employees such as Adam LaRosa who later became a non-equity member. Argre invested c.€40m in Broadgate.

    (ii) Merrill Lynch, acting as prime broker, provided 20x leverage, allowing investment up to c.€800m. Merrill Lynch ceased to act as prime broker, and did not provide leverage, for later cum-ex trades structured by Solo.

    (iii) Novus was the broker and Acupay was the tax reclaim agent (which introduced Sanjay Shah to Camilo Vargas, who later founded Syntax).

135. The Argre principals were wealthy, sophisticated, knowledgeable and experienced professional investors. Prior to establishing Argre:

    (i) Mr Markowitz had been in investment banking for 30 years or so, principally at Kidder Peabody, then Goldman Sachs.

    (ii) Mr Van Merkensteijn was an attorney experienced in DTTs through work on multi-country acquisitions or investment structures for clients.

    (iii) Mr Stein had been an international tax partner at KPMG.

(iv) Mr L'Hote had been a KPMG international tax director in Luxembourg and New York.

136. The Broadgate transaction was very profitable for SCL. It received c.50% of the WHT refund net proceeds, from which it paid the other counterparties to the trade, including short sellers and stock lenders.

137. Argre and SCL collaborated on another German transaction in 2011, with a view to facilitating a WHT refund claim by or on behalf of the US tax-domiciled not-for-profit foundation behind the Ezra Academy in the Borough of Queens, New York. Funding of US$40m was created through a total return swap with Deutsche Bank as custodian. The transaction was loss-making because the WHT refund claim was withdrawn following questions from the German authorities, notwithstanding a tax certificate stating that the Ezra Academy had suffered WHT on dividends received. Deutsche Bank resigned as custodian on reputational grounds. The circumstances were explored in greater detail with some of the witnesses at trial, but they are peripheral.

138. I mention for completeness two other matters, also peripheral for my purposes, that arose from the German cum-ex trading.

139. Firstly, Solo had been given supportive legal advice on the German tax law treatment of that trading, by Martin Krause of Norton Rose LLP in Frankfurt. On 21 January 2011, he emailed Mr Klar, then still at Solo, to mention a legal article just published in which the author took the view that cum-ex trades created a substantial risk of prosecution as tax evasion. He said that the focus of the article was on a particular German court decision where a short seller sold and repurchased, never acquiring any shares because the delivery claims were netted on the settlement date, but that the author's explanations were not limited to that scenario and would extend more generally to cum-ex trades. Mr Krause said that to the best of Norton Rose's knowledge, "*the article is the first publication of a Frankfurt-based lawyer taking a particularly negative view to the effect that cum-ex trades could result in criminal prosecution. In terms of reputation, this is an entirely new quality and cannot be disregarded. Rather, one has to state, that a new view among peer lawyers has been formed that condemns cum-ex trades.*"

140. Mr Klar forwarded Mr Krause's email to Sanjay Shah and Rajen Shah, adding as comment, "*For fuck's sake*", to which Rajen Shah replied, "*No director is going to sign up if he refers to criminal prosecution in the tax opinion.*" Mr Graham KC submitted in oral closing argument for SKAT that Rajen Shah was thus angling to get Norton Rose not to disclose the risk of criminal sanctions in any opinion. I do not accept that. As I read him, Rajen Shah was recognising by his response that Mr Krause would be bound to refer to that risk in any opinion and that, even if Mr Krause's own view remained that German cum-ex trading was lawful, or at least could be depending on the detail, that would probably mean that no further German trading would be possible in practice.

141. That was an important development. I conclude, below, that when putting the Solo Model together, Sanjay Shah, Mr Horn and Rajen Shah did not govern themselves by whether it would generate tax refund claims that would be valid and not questionable under Danish tax law. However, in my judgment, as evidenced by Rajen Shah's

response to Mr Krause's update, they had no interest in or appetite for anything that might be considered criminal.

142. Secondly, three of the Zeta Plans (see paragraph 151 below) engaged in German cum-ex trading in 2011, through Macquarie as custodian. In connection with that trading, each of them entered into an agreement with Acupay and SCL dated 1 June 2011 appointing Acupay as agent to secure tax relief from the German tax authority through the use of SCL's "*DTV*" claim filer number, although SCL was not the Zeta Plans' custodian on the trades. On 10 October 2014, Blackfriars Crown Court issued an order under s.32 of the Crime (International Co-Operation) Act 2003 requiring SCL to produce certain documents, as specified in the order, relating to the Zeta Plans. SCL responded by letter dated 12 December 2014 signed by Sanjay Shah as director. Mr Shah was cross-examined about the response, and suggestions were made that it was variously untruthful, or misleading, or unhelpful. However, no case was put that SCL had acted in breach of the order, indeed Mr Rabinowitz KC disavowed any such case and the cross-examination was conducted without even a copy of the order. In the absence of any case that SCL acted in breach of the order, I consider this episode not to be relevant even as to credibility.

143. In 2011/2012, Solo tried without success to find another bank willing to provide it with leverage for cum-ex trades. For example, mainly for reputational reasons, none of Brown Brothers Harriman, Bank of Ireland, State Street or BNP Paribas was willing to provide leverage or act as custodian for cum-ex trades that might be arranged by Solo. There was some London market sentiment that, due in some way to the Broadgate transaction, Solo was to blame for a widespread withdrawal of appetite on the part of major financial institutions to fund cum-ex trading.

144. On 9 April 2012, Sanjay Shah emailed Mr Markowitz of Argre to ask if he had any USPFs that could be used for trading equities and derivatives, and in a subsequent call, it was explained that SCP itself would be the custodian. The idea, appreciated within Solo by at least Sanjay Shah, the DWF Ds and Mr Klar (who was then on the point of departing Solo to go into business for himself), was to structure out any need for funding of any kind external to the structured trades themselves, by the use of internalised settlement at SCP, acting as clearer to settle the trades.

145. That was the magic ingredient identified within Solo that, as those working on this perceived it, could allow trades to be settled without access to external funding, or shares, i.e. with synthetic leverage, as Mr Dhorajiwala called it, and (equally, I would say) synthetic shares (see paragraph 71 above). There was no consistent body of evidence as to how widely it was made known within Solo even, let alone within the wider community of participants in the Solo Model, or later the Maple Point Model, that this was how trades would be and were being settled. In my judgment, the more powerful evidence was to the effect that it was considered the trade secret of those who designed and ran the trading that will not have been shared with anyone it was not thought needed to know.

146. I did not consider trustworthy, for example, claims made by Mr Horn that of course the Argre Principals knew all about it. In that evidence, which notably fell short of Mr Horn claiming that he had himself explained Solo's settlement method to the Argre Principals, in my view Mr Horn was putting forward a line he liked for his defence that he saw no difficulty with the share-less settlement method, and believed that the

resulting tax refund claims were or might be valid claims. If the very impressive likes of the Argre Principals knew what was going on, and did not object to taking part, so that line of argument would have it, Mr Horn could be reassured that it was an honest way of doing things. In my judgment, in line with evidence given by a number of the trial defendants, Solo had and deployed a plausible pitch that proved successful for recruiting participants, namely that they had a method of using stock lending at settlement to finance a trading structure so that the equity trade would settle and the tax-advantaged purchaser could be in a position to make a tax refund claim, the details of which were for Solo to take care of. That was not crazy or suspicious in concept; and if it was shown to work in practice, it was reason in principle for the willingness of participants to see the lion's share of the profit generated through the tax reclaim going to those who were organising and implementing that trade. Moreover, as regards the Argre Principals in particular, in my view they would have been the last participants to whom Sanjay Shah would want the Solo method to be disclosed, as they had the experience, sophistication and contacts to replicate the method for themselves, depriving Sanjay Shah of his lion's share of the profits (realised through Ganymede).

147. None of the Argre Principals was a witness in these proceedings, and though SKAT relied on some isolated passages in the deposition testimony of Mr Markowitz in its US proceedings, they did not include evidence that it was ever explained to him, or that he realised on some other basis, that a share-less model for settlement was being operated. Certain legal advice taken by or shared with the Argre Principals was in evidence, but it did not demonstrate awareness on their part that there would never be any shares or share transfers. On the evidence I had at trial, in my judgment SKAT's submission that the Argre Principals should be found to have known of that was, in truth, an invitation to speculate that they sought to work out, and guessed correctly, how exactly Solo was settling Solo Model trades (and, therefore, how the Maple Point custodians, under direction from the DWF Ds, later settled Maple Point Model trades). I prefer and accept the Shah Ds' submission that, as Sanjay Shah said in his evidence, the explanation of the trading given to the Argre Principals was limited in scope, such that:

(i) they were told that stock lending would be used to fund the trades, so the USPFs would not need to provide any capital to invest;

(ii) Solo would act as custodian and clearer so as to be responsible for settlement;

(iii) beyond that, the method was not their concern and was confidential; and

(iv) it was not explained to them that there was no external leverage / funding arrangement, or that there were and would be no shares, with settlement achieved through self-fulfilling share-less settlement loops.

148. The idea of doing things as they were done arose at Solo from discussions after Sanjay Shah had been told by someone at CACEIS Bank about its use of internalised settlement to settle transactions without the need for access to the asset, in the context of which Mr Klar mentioned a trade when he was at ABN Amro in which the Philippines branch bought government bonds from the London branch, selling short, and the purchase settled by the Philippines branch lending identical bonds to London on the settlement date, with the transactions settling against each other but being treated as having both been performed (equal and opposite gross 'deliveries'), not cancelled. In evidence at trial that I accept, Mr Klar said that he cannot now recall the exact mechanism used,

but (a) as I have just said, it meant the two trades were treated by ABN Amro as having been performed, not washed out, but (b) "*nobody had to go out into the market to borrow Philippine government bonds*".

149. It takes only a moment to see that the trade Mr Klar described is functionally equivalent to a forward sale of government bonds by the London branch to the Philippines branch, for delivery at the end of what was in fact structured as a securities lending period (London borrowing bonds from the Philippines). The reason why it was structured as a mutually fulfilling sale and borrow-back (be it accounting, tax, regulatory, or as the case may have been) is a level of detail that Mr Klar does not recall (if he knew it at the time) about which, therefore, I am not in a position to make any finding.

C.9 Solo Model 2012/2013

150. As I have noted (paragraph 123 above; and see Appendix 3), one key element of the Solo Model was to have tax exempt clients that might be entitled in principle to the benefit of a DTT between their respective tax domiciles and Denmark. In the Solo Model 2012/2013 trades, the clients in question were all USPFs.

151. The first 30 USPFs to participate (the 'Original Argre Plans') were pension plans set up by the principals behind Argre, or contacts of theirs introduced to GSS following Sanjay Shah's approach to Mr Markowitz early in April 2012 (paragraph 144 above), together with a few other USPFs introduced by other contacts of Sanjay Shah (the 'Zeta Plans'). All of the Original Argre Plans were newly established entities with, so far as material, no assets. In late 2013, 10 further USPFs were taken on by GSS as custody clients and became involved in Solo Model trading, introduced by Mr Fletcher through Mr Murphy, Mr Murphy having been introduced to Mr Fletcher by Mr Devonshire.

152. All Solo Model trading in 2012/2013 (and again in 2014/2015) was planned and coordinated by Solo's GSS team. The Solo Model could not have been implemented otherwise. The GSS team decided the terms and prices for the individual transactions in the initial and unwind phases that participants should trade. There was no option to trade on any different basis – the terms and prices chosen by the GSS team were not open to negotiation, the only trading decision to be made by the participating parties was whether to trade as proposed by the GSS team or not.

153. From the outset, that coordinated effort built in obfuscatory elements to hide the fact that many individual trades and their resulting tax refund claims were being generated centrally, in reality, by a single entity (SCP through the GSS team, for the benefit, primarily, of Ganymede). For example, the share volumes, and sometimes also the traded prices, varied a little across any given set of trades referencing the same dividend, to avoid them being all equal, which might look like coordinated trading. There was no independent decision-making there by any of the participants. They were given volumes to trade and prices to fix. The communication of those details was done largely off email to avoid creating evidence trails. That evidences, in my judgment, an instinctive expectation that what Solo was doing might be challenged if it was appreciated that indeed this was a coordinated trading scheme being run by SCP rather than SCP acting simply as custodian for trading conducted independently by clients and brokers.

154. Hence, for an illustration from the very first Solo Model Danish trade: 10 Argre USPFs traded between them 63.5m TDC shares and the relevant TDC dividend was DKK2.30 per share; there was no reason, except to serve that obfuscatory purpose, for the trading not to be 10 x 6.35m, leading to 10 tax refund claims each for DKK3,943,350; instead, 10 different volumes were traded, ranging from 5.5m to 7.75m, that did not in any meaningful way reflect requests from or choices by the USPFs (e.g. by the California Catalog Company Pension Plan that it wanted 'only' 5.5m shares, or by Michelle Investments Pension Plan that it wanted to go big and buy 7.75m shares).

155. Efforts by some of the defendants (including Sanjay Shah and, notably again, Mr Horn) to pretend in their witness evidence that there was independent trading beyond decisions to say yes to whatever Solo put in front of participants were rather lame, and did not withstand cross-examination. Likewise refusals to acknowledge the obfuscatory purpose of the otherwise unnecessary details, like variation in volumes or prices, or for that matter like having as many USPFs as possible, to spread the overall volume of activity across lots of different putative tax refund claimants.

156. The ingredients assembled, in the form of the traded transaction terms, did *not* blend completely harmoniously to a nil end result in Solo Model trading. This is the complex wrinkle on the cash side to which I referred in paragraph 74 above. The traded terms of the equity price hedge (cash-settled exchange traded futures in Solo Model 2012/2013 trading), as put on at the outset and closed out on the unwind, and the stock lending cost (cash collateral interest less stock lending fee), did not create such a perfectly balanced hedge that the amounts credited to and debited from the cum-ex buyer over the full life of the structured trade aggregated to nil. Rather, there was an overall net trading profit or loss to the buyer, on paper, and an equal and opposite net trading loss or profit to the short seller, on paper, leaving any tax refund claim amount out of account.

157. This wrinkle was dealt with in Solo Model 2012/2013 trading by retrospectively amending the stock lending terms either on the same trade, or on previous and otherwise unrelated trades, so as to create offsetting losses or gains for the long buyer (and their opposites for the short seller), so that, as intended by Solo, the only profit element anywhere in the structure would indeed be the tax refund amount to be claimed from SKAT. Successful such reclaims would be the only source of funds out of which any of the parties to any of the Solo Model trading transactions could or would ever be paid anything.

158. The Solo Model was not only deployed in respect of Danish dividend tax. A number of other jurisdictions were also considered, and Solo Model trading was in fact undertaken with reference to Austrian and Belgian shares. The Belgian trading gave rise to an episode on which SKAT cross-examined Sanjay Shah. It was not pleaded by SKAT as any part of its case against Mr Shah, so I treat the cross-examination as no more than a matter going to Mr Shah's credibility:

    (i) On 20 May 2013, Acupay passed to Mr Horn a request from the Belgian tax authority for additional information relating to tax refund claims submitted on behalf of some of the Zeta Plans and one of the Original Argre Plans. The Belgian authority wanted to know the identity of "*the depository of the shares in regards to which the relevant coupons were detached*".

(ii) It is clear from later emails that, after some debate within Solo as to how Acupay should respond, it was told by Mr Horn to answer that the custodian had been SCP.

(iii) On 30 August 2013, after Mr Horn had left Solo, Acupay passed on a follow-up query from the Belgian tax authority, noting the initial answer and asking for documents or information before 22 September 2013 in response to the tax authority's comment, "*But was there no intervention of a Belgian financial intermediary, at the moment of the dividend payment.*" Acupay's email was addressed to Mr Dhorajiwala and Mr Lehman, but copied to the 'reclaims@' group email address at Solo to which Sanjay Shah (among others) had access. Acupay asked whether it should forward the query to the USPFs' representatives or would Solo be in touch with them.

(iv) Sanjay Shah promptly replied to Acupay, "*We will discuss internally and we will be in touch with the fund representatives directly*", and that, I have no doubt, was to ensure that Solo, and he personally, had control of how Acupay responded. He forwarded the email chain internally to Mr Dhorajiwala on 2 September 2013, noting that, "*The shit could hit the fan with this. Needs to be handled delicately*". A short exchange of emails followed, between Mr Shah and Mr Dhorajiwala. Harking back to the first response, Mr Shah said, "*The issue was the initial translation of "depositaire". I read that as "depositary" and so did Stef [Lambersy of Acupay], but GH [Graham Horn] read it as "custodian" so we replied saying Solo ...*"; to which Mr Dhorajiwala replied, "*I thought we all agreed on Depositary given that there was only one possibility at the time (other than BNY)! When did GH change his mind?? What a screw up...*"; with which Sanjay Shah agreed, "*Exactly*".

(v) The primary Belgian CSD was Euroclear Belgium, but BNY Mellon had recently established itself as a second CSD for Belgian shares, regulated by the National Bank of Belgium. Mr Dhorajiwala and Sanjay Shah were acknowledging to each other that in relation to the shares referenced in the relevant tax refund claims, the only candidate "*depositaire*" (if that meant a CSD) was Euroclear.

(vi) Contrary to a submission by SKAT, I do not read Mr Dhorajiwala as suggesting that a false answer should have been given suggesting a chain of custody down to Euroclear. He was saying that Euroclear should have been identified as the "*depositaire*" for the shares referenced; the "*screw up*" was Mr Horn deciding instead to answer by saying that SCP was custodian, inviting the further question from the authority. The need for delicate handling arose, in my judgment, because Sanjay Shah did not want any answer given by Acupay to reveal the ultimately synthetic nature of the trades (no real shares). That would be revealed if the answer said there was no chain of custody down to Euroclear; and an unqualified confirmation that no Belgian financial house was involved might be taken to mean that there was no such chain of custody.

(vii) On 13 September 2013, Acupay responded in terms approved by Sanjay Shah, as follows:

> "Acupay, as the tax reclaim agent appointed by the above-mentioned beneficial owners, has coordinated your request for additional information.
>
> The beneficial owners have informed us that they did not appoint a Belgian financial institution to intervene in the relevant dividend payments on which they are reclaiming excess Belgian withholding tax. As these shares are Belgian domestic shares (with a BE-ISIN), to the best of their knowledge, the dividend payments should have taken place through the facilities of Euroclear Belgium (C.I.K. NV/SA)."

(viii) I accept Sanjay Shah's primary evidence in cross-examination about this episode, which is that he has no recollection of it. The response was in my view an attempt to be clever by answering by reference to the USPFs' state of knowledge or understanding. When pressed about the response, although he said he did not remember it, Mr Shah suggested that Solo had Belgian tax advice that dividend compensation payments gave rise to valid tax refund claims in Belgium. That substantially over-stated the effect of the advice, which in any event did not cover the key feature of the Solo Model that the trades settled synthetically (no shareholding ever acquired). He also suggested, looking at the response, that it came from the USPFs' representatives and not from Solo. There is no documentary support for that, and I consider it highly unlikely. This was an important enquiry the response to which was sensitive for Solo, as Mr Shah saw it at the time. I am confident he will have paid close attention to the crafting of the reply, and nothing would have gone to Acupay to give to the tax authority without his approval.

(ix) The result was, I think, that Solo got Acupay to send an answer that Sanjay Shah thought plausibly could be given by the USPFs, since they did not have full knowledge of the Solo Model. Its substance was to say that (a) Euroclear was the "*depositaire*" of the relevant share issue, (b) so far as the USPFs were aware, Euroclear therefore should have been responsible for the dividend payments that led to the payments received by the USPFs, but (c) the USPFs did not appoint any Belgian financial institution in relation to the payments they received. It was a misleading response not because any of that was false, but because Acupay claimed to have been given that as the response by the USPFs, when in fact it came (to Acupay) from Solo, and Solo knew full well that Euroclear had no involvement, directly or indirectly, in the payments received by the USPFs.

159. I mentioned above that by late August 2013, Mr Horn had left Solo. His was not the only significant departure in 2013. Rajen Shah and Mr Dhorajiwala also left, following which they developed and implemented the Maple Point Model along similar lines to the Solo Model (see below). Solo's Head of Compliance, Gary Pitts, also left, and he does not feature in the case after 2013.

160. In Rajen Shah's case, his departure was triggered by Sanjay Shah's failure to agree promptly to the withdrawal of Austrian tax refund claims derived from Solo Model trading following an email on 19 March 2013 from LeitnerLaw ('Leitner'), tax law advisors in Vienna. Leitner had given advice as to Austrian tax law in 2012 that had been treated within Solo as supportive. They now wrote to Rajen Shah, unsolicited, to report "*negative developments*" for cum-ex trades, namely that "*in some cases, no withholding tax refund has been granted and some issues have been raised with regard*

to the fiscal criminal rules". By email a few days later, 22 March 2013, Rajen Shah asked for a 'self-declaration' form and any other documentation required to withdraw a tax refund claim. Leitner responded on 26 March 2013 with a written memo, indicating (in substance) that while in principle it should be permissible to withdraw a tax refund claim, the impact of doing so on any criminal charge relating to having made it in the first place was complex. A telcon followed on 28 March 2013, in which I infer Leitner was asked to draft a letter for the withdrawal of a tax reclaim, because on 1 April 2013, Rajen Shah by email asked Leitner to "*forward the draft letter to withdrawn [sic.] the reclaim as soon as you can*". Leitner replied on 2 April 2013, saying that they were working on the matter, both senior partners for tax criminal matters were out of the office (it was Easter week), and they would revert the following week. Rajen Shah was not satisfied that Sanjay Shah would ensure, or allow, that any pending Austrian tax reclaims be withdrawn. He resigned from Solo with immediate effect on Friday 5 April 2013.

161. In the event, Leitner did not provide a draft tax reclaim withdrawal letter, instead concluding that they were conflicted and could not continue to assist SCP. Their email to Solo dated 9 April 2013 reporting that conclusion stated that without a detailed consideration of the actual facts and circumstances of whatever trades had been done, they could not exclude adverse tax consequences (refusal of a pending reclaim, claim to recover reclaims previously paid) or criminal issues (monetary penalties, theoretically imprisonment). What mattered, Leitner said, was exactly how Leitner's original advice had been followed in the trading, if it had been; and a simple, informal withdrawal of the tax refund claim, without giving reasons, "*may not be sufficient to avoid tax criminal elements*" (if there were any, that is). Leitner recommended someone at Deloitte (Austria) who specialised in criminal tax matters, if Solo wanted further assistance. Now in Rajen Shah's absence, Mr Horn forwarded that email to Mr Dhorajiwala, but no action was taken arising from it.

162. Turning then to Mr Pitts, on 16 July 2013, by email to Sanjay Shah, copied to Mr Dhorajiwala, he recommended Solo take advice "*on the appropriateness of US based GSS clients entering into transactions that involve clearing on BClear and Eurex*". He did so because, as Chief Compliance Officer for SCP, he was uncomfortable signing off on the then recently recruited new USPF clients, since Solo Model trading at the time involved single stock futures being cleared via JP Morgan through Eurex, which might be unlawful under US law because Eurex was not listed as an approved means for interstate commerce by the US Commodity Futures Trading Commission ('CFTC'). There was effectively an exemption if the USPFs were Qualified Institutional Buyers ('QIB'); but Mr Pitts thought there was a risk that they were not, which in turn meant there was a risk that Solo was assisting US persons to circumvent US law and putting JP Morgan in a position where they were helping US persons breach US regulations and the rules of Eurex. Since no external legal advice had been taken before taking on USPF clients, Mr Pitts advised that SCP management was exposed to a risk of regulatory censure.

163. Mr Pitts' email also noted, fairly, that no one law firm had been asked to opine on the Solo Model in its entirety. Some advice had been taken, but it was on particular points put to different lawyers from time to time. He recommended a full review of the model by one firm before any more extensive activity was undertaken. No such full review

was ever commissioned. Cross-examination of Sanjay Shah as to that satisfied me that he had at the time, and can offer today, no good reason why not.

164. Focusing on the US law / QIB question, Sanjay Shah's immediate response was to resist "*burning money on legal fees at the drop of a hat*", suggesting that Solo had enough in house expertise for most issues and should recruit rather than outsource if that was not true. Mr Pitts responded *inter alia* that US securities law "*is an ugly sprawling mess that is hard to navigate and has lots of pitfalls for the unwary*". He said he was likewise not fond of spending money on external lawyers, but advised that "*if you or the firm are challenged about a course of action that has been taken, the only robust defence if we have got it wrong is that we took appropriate external counsel (as external counsel is not deemed to be under the delivery pressure that might be placed on a GC or CCO).*"

165. Mr Pitts followed his own recommendation and took advice on behalf of SCP from Jacob Preiserowicz of Schulte Roth & Zabel LLP ('SRZ') in Washington, DC. That advice confirmed Mr Pitts' understanding that US clients who did not meet the QIB definition would be acting in breach of US securities laws, facilitated by SCP; and it explained that a QIB had to own in aggregate at least US$100 million in securities. Mr Pitts recommended that onboarding of new clients should cease until the point was resolved and that any open trades should be unwound. Sanjay Shah did not accept that recommendation. He spoke to Mr Preiserowicz and declared himself unimpressed by him. He told Mr Pitts he regarded the QIB case as still open.

166. On 5 August 2013, Mr Pitts therefore sent Sanjay Shah draft instructions by which further advice might be sought from US counsel. They noted that when a USPF was taken on, it "*might not*" have US$100m in assets (in fact, more accurately, in the Solo Model it was certain not to have any substantial assets when approved for trading), and described SCP's idea (this having been Sanjay Shah's QIB theory) thus: "*However, through the leverage facility of our custody platform, the [USPFs] will take on positions in excess of this size and thus become eligible to be considered QIBs, at which point we would like to categorise them as QIBs and retain this categorisation for them as their holdings would fluctuate above and below this level.*" As Mr Pitts explained to Sanjay Shah when he queried it, the use of leverage obviously needed to be mentioned. Mr Shah's theory depended on (a) the *prima facie* implausible, circular thought that a regulatory requirement to qualify for trading defined by a client's assets might be satisfied by the value of the assets they would trade if they qualified, and then (b) an entitlement for that purpose to value assets gross of any leverage involved in 'acquiring' them.

167. The draft instructions also noted that the USPFs' trades would clear at SCP "*by netting off equal and opposite transactions in its omnibus custody account*". Sanjay Shah also baulked at the idea of mentioning that, asking why external counsel would need to know about it. Mr Pitts explained that "*the advisor might assume that we put the assets in custody in the traditional model – this might have an impact on the advice given – if someone talked to me of custody and clearing I would certainly not have our model in mind. In the UK, the difference between our model and a traditional custody model would definitely have an impact on any advice I gave.*"

168. In the event, Mr Pitts' draft instructions were not used, and Solo Model trading continued on Sanjay Shah's say so, contrary to Mr Pitts' recommendation to pause activity until the US law / QIB issue was bottomed out. Sanjay Shah took some advice

from Dechert LLP in New York in August 2013. Mr Shah first put the following to Dechert, as to part (a) of his theory (paragraph 166 above): "*After some digging, we believe we can clear [European single stock futures] for QIBs. We found that a QIB can be an employee benefit plan defined by Erisa, as long as it manages $100mm of assets or more. The clients we deal with are 401k pension plans, and they would have over $100mm under management. I would like to know if these plans would be considered to be QIBs.*" I think no lawyer reading that as a question for advice would guess that Mr Shah had in mind USPFs that would be signed up with SCP for trading when they had no or minimal assets, with the 'qualifying' US$100m in asset value then being the nominal value of assets traded through SCP, an integral part of that trading being the single stock futures that gave rise to the QIB issue. In response to the question put thus, Dechert advised that the USPF described would be a QIB.

169. At Mr Dhorajiwala's prompting, Sanjay Shah replied, so as to test part (b) of the theory (paragraph 166 above), with "*A quick question: is the $100mm test on gross or net assets? If the client owns $100mm of equities that were purchased through use of leverage, then do we deduct the leverage, or just look at the gross asset amount? In the event that the legislation isn't specific on this point and open to our interpretation, can I assume we can use gross assets if we wish?*". Again, I think, any lawyer reading that would have assumed the assets in question existed independently of the trading SCP was considering that gave rise to the need to clear single stock futures and therefore the QIB issue, and not (synthetic) assets created only by that very trading. Dechert responded that the language of the relevant rules was not conclusive, but it was reasonable to conclude that a gross asset value test applied.

170. Given the way Sanjay Shah had framed his questions to them, Dechert's positive advice could not reasonably have been understood to cover what SCP was doing through the Solo Model.

171. The QIB issue generated by clearing single stock futures on an exchange would not arise after 2013, as they were not used as the price hedge instrument in the Solo Model for 2014 or 2015. It is speculative to say whether Sanjay Shah's mishandling of the issue was a resigning matter for Mr Pitts, who departed Solo thereafter. The concerns he highlighted in the work plan and handover notes he left as he went were bigger picture issues of corporate governance and compliance. For example, he thought there was uncertainty over transaction reporting, a potential for market abuse behaviours or fraud within the GSS business because Adam LaRosa traded for so many USPF clients under powers of attorney, and still no unified legal opinion "*on the GSS platform as a whole*", that might be treated by the FCA as "*fundamentally poor governance (perception of poor product development, no collegiate approach involving all stakeholders, apparent drive for income at all costs).*" Or again, Mr Pitts was concerned that there was no documented business strategy at Solo and the Management Committee's role was in reality limited to approving decisions made by Sanjay Shah.

C.10 Solo Model 2014/2015

172. As noted in Appendix 3, Solo Model trading in 2014/2015 evolved from the 2012/2013 pattern through four main developments, but the basic concept and method was the same in substance.

173. First, the price hedge became an OTC forward rather than an exchange traded futures contract. This followed the resignation of Solo's futures clearers and its inability to find another clearer willing to act. In Solo Model 2012/2013 trading, JP Morgan cleared matched pairs of single stock futures through the London Stock Exchange ('LSE'). On 16 May 2013, a Compliance Officer at JP Morgan emailed Mr Pitts at SCP to inform him that JP Morgan had been contacted by the LSE about the matched and crossed business submitted by JP Morgan in April 2013, that is to say in fact some of the pricing hedges from Solo Model 2012/2013 trading. The LSE's enquiry was said to be a routine matter, but as a result the JP Morgan Compliance Officer wanted to understand the rationale behind the futures trades it had cleared for SCP.

174. On 17 May 2013, Mr Pitts forwarded the JP Morgan email to Mr Dhorajiwala and Mr Forsyth, copied to Mr Horn, asking for input and giving his view on what was probably happening: "*It looks like some of the crossing business is triggering market abuse flags at the exchange.*" In a prompt reply to all, adding Sanjay Shah as well, Mr Dhorajiwala provided the trade details Mr Pitts had requested, courtesy of Mr Forsyth, and said he had just had a call from JP Morgan, leading him to propose: "*Can we get together to discuss? I'll skype you all in 5.*"

175. The upshot was a reply to JP Morgan on 22 May 2013, sent by Mr Pitts but drafted by Mr Dhorajiwala and approved by Sanjay Shah, stating that:

> "*As part of our [GSS] business, [SCP] provides clients with a futures clearing service through an omnibus client account held with JPM. Our client base is purely institutional and made up primarily of brokers and institutional investors. The commercial rationale behind the business is to charge clients a premium for a facility to clear through a Global Bank such as JPMorgan where they would not normally have direct access to such a provider. The business has been running for over a year now and continues to be profitable. Significant resources have been deployed to build adequate control systems and risk is closely managed by ensuring that we only clear equal and opposite trades crossed by a third party broker.*"

That was a misleading description of the Danish cum-ex trading and the part played in it by the matched futures that SCP was getting JP Morgan to clear. Mr Dhorajiwala, Mr Horn and Sanjay Shah all knew that it did not give JP Morgan a fair or accurate description of the business rationale of the futures, which were in fact a price hedge on the equity leg of an aggressive cum-ex tax arbitrage strategy coordinated by SCP. I find that it was put forward to JP Morgan to avoid revealing that that was the truth of it, as they envisaged that JP Morgan would not wish to be connected to that type of activity.

176. The relevant enquiry will have been triggered by the fact that at the Exchange, matched 'buys' and 'sells' will have been observed, posted by JP Morgan *for the same JP Morgan client account* (i.e. SCP's account). I accept evidence Mr Dhorajiwala gave that therefore, and as was explained to him in telephone discussions with JP Morgan, the key point for them was whether there were separate interests buying and selling, sitting behind SCP, for whom in turn JP Morgan was acting as General Clearing Member on the Exchange. The question in the JP Morgan Compliance Officer's email, however, was not so narrowly framed; and the knowingly false answer is not excused by the fact that the question it addressed might have gone beyond the narrow point that triggered an alert.

177. I also accept evidence Mr Dhorajiwala gave in re-examination that through other lines of correspondence with JP Morgan, it was made aware that the SCP clients trading futures were not banks or substantial investment funds, as calling them "*institutional investors*" would be likely to convey. I cannot say on the evidence whether that discrepancy was identified by JP Morgan, or whether it otherwise identified or suspected the truth about the futures trades it had been clearing for SCP.

178. Whether it was satisfied by or had concerns over the business rationale provided by Mr Pitts, as to which I make no finding, in the event, on 1 August 2013, JP Morgan gave notice of the termination of its custody and clearing agreement with SCP.

179. SEB took over the role as futures clearer but again concern as to the underlying business surfaced. On 5 August 2013, a representative from SEB's sales and marketing team emailed Ms Spoto at GSS to say that SEB's risk team had questioned the fact that there seemed to be "*no volume traded or open interest on the SSF [single stock futures]*", and so asked if it was possible "*to give a bit of background to give risk some comfort*". That email was copied to, among others, Sanjay Shah and Mr Dhorajiwala. Mr Shah replied that "*For single stock futures, there is typically no open volume at the exchange. Our clients will be buying and selling OTC with each other, and the exposure will be no more than 50k lots at any one time. The buying and selling interest won't be shown to the open market on screen, but will be reported to the exchange as they are crossed.*" (The immediate context of this exchange was a trade in relation to Belgian shares, but by its nature the concern over what underlay the matched futures trading was not specific to that jurisdiction.)

180. Two weeks later, there was an exchange of emails between SEB and SCP (for whom Mr Dhorajiwala took the lead) about whether, once crossed, the equal and opposite futures could be closed out, as Solo had requested, or had to be left open. SEB's Head of Sales and Client Services took the view that, assuming there were two separate underlying clients on opposite sides of the futures trade, then the trade should not be closed out just because there was a complete match. Closing out, in their view, caused misreporting to the Exchange as SEB were then "*not reflecting to the exchange the existence of one long and one short position in this contract*". Mr Dhorajiwala yielded to that view, saying on 2 September 2013 in relation to the contracts then most recently traded that "*We will continue to leave them open so long as clients wish to keep their open interest position*". This was misleading spin, making it appear as if the two sides of the position might be acting, and might act in relation to their open positions, other than in tandem, as orchestrated by GSS.

181. On 28 November 2013, SEB's compliance department forwarded to SCP, by email addressed to Sanjay Shah, among others, an incident report from the Exchange flagging the possibility that futures trades SEB had cleared for SCP represented a 'wash trade'. The email said that SEB's own monitoring system had also generated alerts for the relevant trades. SCP was asked to confirm that the buy and sell sides of the trades were executed on behalf of different clients and that those clients had different underlying interests. Sanjay Shah confirmed both elements by reply email the same day.

182. I infer that SEB's risk management or compliance concerns were not alleviated entirely, because on 13 February 2014 SEB informed Sanjay Shah by telephone that it was not able to act as clearer for single stock futures crossing.

183. SCP also began a relationship with Citigroup Global Markets ('Citi') for futures clearing, developed from around September 2013, and Citi began clearing futures in relation to Danish shares in mid-November 2013. But on 26 November 2013, Citi asked a number of questions about SCP's business model, including whether the trading was around or close to dividend record dates and whether the purpose was to make tax reclaims. In due course, this led Solo to share a draft legal opinion that might be provided by Hannes Snellman, the Danish firm to which I refer below, to try to get Citi comfortable with the trades. However, on 21 January 2014 Citi explained that the draft opinion "*lack[ed] any description of the economic reasons for engaging in such purchases and sales of futures over the record date*", such that it was "*of no help in evaluating the tax or franchise risk to Citi of these transactions*". Citi was not persuaded to change its view following a telephone discussion and it did not clear any further futures for SCP. Sanjay Shah was closely involved in this, and I do not accept evidence he gave in cross-examination claiming otherwise.

184. The factual basis given to Hannes Snellman and recited in the draft opinions included inaccurate descriptions of important elements of the Solo Model. In my judgment, that was deliberate on Mr Shah's part because he did not want to disclose to Citi that this was coordinated cum-ex trading, organised centrally by Solo's GSS team for the purpose of facilitating tax refund claims by the equity buyers and having no business rationale other than the creation of such claims. Thus:

    (i) It was said that the equity trades "*would be given up to Solo by the IDB [Inter-Dealer Broker] for clearing with a general clearing member ("**GCM**") of the Exchange. Solo would typically accumulate all such trades undertaken by Clients each day and submit to the GCM for clearing on Exchange.*" There was no such clearing process, since the settlement of the equity trades was always to be achieved internally at the Solo custodian, using the share-less settlement loop methodology that was the hallmark of the Solo Model. It was also substantially false to talk about accumulating daily trades undertaken by clients, as that connotes independent trading by the clients quite different to the passive participation required of them by the Solo Model.

    (ii) It was also said that all parties to the trading in respect of which SCP acted as custodian "*engage on independent, commercial terms with a view to realising profit*". Again, that was substantially false. The trade terms were dictated by Solo and were artificially set, and if necessary retrospectively adjusted, to ensure that there was no trading profit or loss such that the only potential profit lay in the facilitated tax refund claim, the proceeds of which, if it was paid, would be shared among those involved.

185. The SSDs put a false spin on this interaction with Citi in their Defence. It was claimed that the Solo Model had been disclosed to Citi and that Citi had identified it as a competing business, causing it to decline to continue clearing single stock futures for SCP; and that was then alleged to have "*reinforced Mr Sanjay Shah's genuine and honest belief that the trading structures deployed in the GSS business were genuine, legitimate, would result in the [equity buyers] becoming shareholders in Equities for Danish tax purposes and permit [them] to make valid [tax refund claims]*". I consider that to have been all fiction.

186. The difficulties in finding an external clearer prompted the switch from futures to OTC forwards for the 2014 dividend season as OTC forwards did not need to be cleared by an external bank.

187. The second evolutionary change in the Solo Model for 2014/2015 was the use of additional parties, creating more links in the transaction chains and greater complexity, as described in Appendix 3. There was no legal or business reason for any of these changes. They represented an escalation of the obfuscatory effort to which I referred in paragraphs 153 to 155 above, to facilitate an escalation of scale in Solo Model activity. Those changes did not alter the reality, however, that the trading continued to be centrally coordinated at Solo, and constructed so that it would settle to zero in the absence of either cash or shares, all with the sole purpose of generating tax refund claims.

188. In cross-examination, after initial prevarication and unconvincing invention, Sanjay Shah conceded that having multiple Solo custodians with different addresses, and different-looking CANs, was an exercise in creating obscurity, but he insisted that he was not concerned to obscure anything *from SKAT*:

"*MR RABINOWITZ: … So opacity was the order of the day Mr Shah, yes?*

A: As regards competitors, yes."

I do not accept that the concern here was competition. For 2014 and 2015, Mr Shah did have an eye on competition, from the DWF Ds and their Maple Point Model trading, but I do not consider that competitive activity to have formed part of the motivation towards increased complexity whereby to obscure what was happening. I accept submissions by SKAT, and find, (i) that the purpose behind *all* the complicating features in Solo Model 2014/2015, not just the multiplicity of custodians, was obfuscation, and (ii) that the only purpose for that deliberate obfuscation was to reduce the chance that SKAT might wake up to how much tax reclaim business was coming its way from a single effective source, i.e. Sanjay Shah's GSS business, or that the FCA might take a dim view of such activity and intervene to stop it. However, I do not accept SKAT's submission that that was in turn driven by a belief or understanding that a fraud was being practised on SKAT.

189. Nor though do I accept Mr Shah's claim that he thought he was cleverly using a legal loophole in Danish tax law. In my judgment, he thought the tax refund claims might well not be valid claims, so that if SKAT ever challenged them or stopped paying that would be an end of the very lucrative business he had developed, and he assumed that SKAT would challenge claims or stop paying if the centrally coordinated nature of the Solo Model business became apparent to it (although, in the event, that was not said by SKAT in these proceedings to have invalidated the claims).

190. To facilitate the use of these more complex structures, additional counterparties were recruited, for example further short sellers, further stock lenders, and now forward counterparties. They were recruited in part from existing participants in the Solo Model and in part from new participants. For example, in 2014, Messrs Oakley and Mitchell, and Dilip Shah, each incorporated three new short sellers, Mr Murphy incorporated four new short sellers, Mr Smith incorporated six new entities to act as stock lenders, and Mr Körner brought new companies to participate. Also in 2014: Jason Browne

(formerly of GSS) incorporated four new short sellers; Mr Klar's company, Amalthea, which had been a Solo Model stock lender in 2013, acted as a forward counterparty; and the other forward counterparties were all incorporated by their principals to participate in Solo Model trading.

191. The third significant development for 2014/2015 was the scale of the Danish tax reclaim industry that the Solo Model became, as summarised in paragraphs 192 to 208 below, such that over 90% of the amount paid by SKAT in relation to the Solo Model came from 2014/2015 trading (DKK8.306bn, 92% of the Solo Model total).

192. In mid-2013, Mr Stein and Mr L'Hote left Argre to pursue cum-ex business separately through what became the Maple Point Model. Messrs Markowitz, Van Merkensteijn and Klugman incorporated 40 new USPFs for themselves, their friends and family, in July 2014, 39 of which traded under the Solo Model (the 'New Argre Plans') in place of the Original Argre Plans.

193. At about the same time, Sanjay Shah made efforts to find more US individuals who had or could establish USPFs that might participate in Solo Model trading. On 30 July 2013, in New York, as a result of Mr Devonshire's introduction of Mr Fletcher to Mr Murphy, Sanjay Shah, with Mr Murphy, met Mr Fletcher and some of his work colleagues at a brokerage called Standard Credit: Mr Bradley, Mr Tucci, Mr Vergari, Mr Driscoll and Ms Anderson (the 'Standard Credit Individuals'). Mr Shah described the opportunity as USPFs engaging in div-arb trading in Danish stocks in order to seek a tax refund. He did not explain that the opportunity was structured around cum-ex purchases by USPFs, or the detail of how the trades would be structured and settled. Mr Fletcher and the Standard Credit Individuals and their friends/family set up 31 USPFs, 10 of which traded under the Solo Model from late 2013 and others of which traded only in 2014/2015 (the 'Standard Credit Plans').

194. This New York recruitment trip is significant. Mr Shah had no reason to suppose that any of the Standard Credit Individuals would be willing to participate in a fraud. Neither did Mr Murphy or Mr Fletcher; and neither did Mr Devonshire have any reason to suppose that his long-standing good friend Mr Fletcher would have any interest in being involved in a fraud. I find that whatever was said to Mr Devonshire, causing him to put Mr Murphy in touch with Mr Fletcher, and whatever was then explained to Mr Fletcher and the Standard Credit Individuals, did not cause them to think that the Solo Model was or might be a means for practising fraud upon SKAT. Moreover, I consider it highly unlikely that Mr Shah would have gone about this client recruitment as he did if he had understood that what he was selling was in fact participation in such a fraud.

195. In relation to these introductions, initially Mr Murphy was paid 15% of the net profits of the USPFs' tax reclaims, from which he made smaller payments to the Standard Credit Individuals and to Equilibrium Capital, an entity majority owned by Mr Devonshire of which Mr Fletcher was a director. I accept Mr Fletcher's evidence that in the late summer of 2014, he agreed new terms with Sanjay Shah, having learned that Mr Murphy had dealt dishonestly with him in relation to the introduction of the Standard Credit Plans. He and Mr Devonshire would be paid US$1m per USPF for new introductions, to be paid in each case once the USPF had been set up, taken on by GSS as a client, and successfully traded. Fletcher-Devonshire companies received US$20m under that new arrangement (for 20 new USPFs at US$1m each), of which c.US$3.6m was paid on to Messrs Tucci and Bradley.

196. Messrs Tucci and Bradley later made their own direct arrangement with Sanjay Shah to be paid for introducing further USPFs, which were set up in December 2014 (the 'Further Tucci/Bradley Plans'). Messrs Tucci and Bradley, through corporate vehicles, were paid c.US$10m for this by Ganymede or the mini-Ganymedes (as defined in paragraph 233 below).

197. In around October 2013, Sanjay Shah invited Mr Godson, at the time a partner in the broker FGC, to introduce potential investor clients for GSS, in return for a commission or fee. This led to the introduction of another 24 new USPFs (the 'Godson Plans'). Mr Godson was the beneficiary or trustee of 13 of the Godson Plans, and he was paid €9,659,761 by Ganymede, some of which he paid on to the other individuals he had introduced.

198. At some point in 2014, Sanjay Shah agreed to pay introducer fees to one of the individuals introduced by Mr Godson, Gavin Crescenzo, as a result of which Mr Crescenzo's companies were paid US$1.4m for the introduction to GSS of yet further new USPFs for Solo Model trading (the 'Further Crescenzo Plans').

199. Roger Lehman, mentioned in paragraph 128 above, was initially hired by Solo in 2013 to assist in the tax reclaim process for USPFs trading under the Solo Model, but also acted as trader for some of the USPFs, including those of Mr Fletcher and Mr Godson. Sanjay Shah subsequently agreed to pay Mr Lehman US$1m for introducing his own USPF (Valerius) and US$700-800k for each further new USPF introduced in 2014. As a result, Mr Lehman, friends of his, and his brother Kevin and friends of his, set up between them 20 USPFs that traded under the Solo Model in 2014/2015 (the 'Lehman Plans').

200. Also during 2014/2015, as noted in Appendix 3, the GSS cum-ex tax reclaim business expanded to Labuan. Some 24 LabCos were established, with the assistance of Labuan corporate service providers, to participate in Solo Model trading. They fall into two groups:

    (i) There were 12 LabCos founded in February 2014, four each by Mankash Jain, Michael Smyth and Michael Turner, who left SCP on 31 January 2014 and received business loans of £20,000 each to cover their start-up costs in Malaysia (the 'Former Solo Individuals'). The Former Solo Individuals traded for their respective LabCos in 2014, from an office shared with Rebecca Robson (also ex-Solo), before hiring traders for 2015.

    (ii) The other 12 LabCos were introduced through IP Global, a property company of which Sanjay Shah was a client. Three individuals who worked for IP Global, Mr Preston (a trial defendant), Mr Tim Murphy and Mr Garry Hope (the 'IPG Individuals'), set up between them 6 LabCos in February 2014 and another 6 LabCos in the autumn of 2014. Since the IPG Individuals had no real knowledge or experience of equity markets or financial trading, on Sanjay Shah's recommendation they hired a trader to act for their LabCos. This was initially Rebecca Robson, who was replaced for 2015 by Niall O'Carroll.

201. Again as noted in Appendix 3, Solo Model 2014/2015 trading involved four Solo custodians, rather than only SCP. The additional custodians were Telesto, incorporated by Solo in October 2013, West Point, 90% of which was acquired by Hooloomooloo,

part of the Elysium Group, in September 2013, and Old Park Lane, acquired by Solo in mid-2014. Old Park Lane issued CANs from August 2014 in respect of Solo Model 2014/2015 trades on which it had acted as custodian; Telesto and West Point each did so from February 2015. As noted in paragraph 117(ii) above, SCP and the other Solo custodians shared middle/back office functions which were serviced by the Solo GSS team at SCP, later Genoa. Reflecting this, most of what Old Park Lane, West Point and Telesto charged in custody fees was passed on to SCP; and SCP also received the proceeds of successful refund claims supported by Old Park Lane, West Point and Telesto CANs, for onward distribution (mostly to Ganymede).

202. In conjunction with the expansion of the Solo Model business, Sanjay Shah sought control of or exclusivity with some of the Tax Agents and brokers:

(i) In September 2014, Elysium Global acquired an indirect 82% share of Syntax, which had been formed in 25 March 2014 by Camilo Vargas (formerly of Acupay). That increased to 100% ownership in April 2015. The detail of the acquisition is a little complex, so I do not set it out. I accept SKAT's submission that as a result Syntax in substance became a Sanjay Shah entity, and Sanjay Shah was its real directing mind, from the 82% acquisition in September 2014.

(ii) In late 2014, exclusivity agreements were concluded with Goal and Acupay. In particular, Solo Holdings (at the time still called AESA Holdings) entered into exclusivity agreements: (a) dated 26 November 2014 with Goal, agreeing to pay an annual fee of £1.5m for the exclusive use of Goal's tax reclaim services (subject to certain *caveats*), which was guaranteed by Sanjay Shah and funded by Ganymede; and (b) dated 5 December 2014 with Acupay, agreeing to pay an annual fee of €1m rising to €1.65m after the first year for the exclusive use of its services.

(iii) In August 2014, Sanjay Shah offered to buy Novus, one of the brokers involved in Solo Model trading, for £2 million, and a purchase by Solo Holdings was ultimately agreed on 5 December 2014, completing some months later. Sanjay Shah had it in mind for Novus, under Solo Group ownership, to become an additional custodian for GSS business, as well as continuing to act as broker, but that was never implemented.

(iv) In August 2015, Sanjay Shah funded companies of his, FGC Holdings and FGC Elysium, with US$11 million to acquire FGC, another of the brokers involved in Solo Model trading. An initial tranche of US$1.9m was paid to FGC's parent company, but the transaction did not complete and the down payment was refunded.

203. To facilitate and accelerate the expansion of the Solo Model business, during 2014/2015 increasing automation was developed and implemented. That was a longer-standing goal for Sanjay Shah, but it received particular impetus after, in March 2013, some unwind phase transactions were not matched properly so that some first phase traded positions were not unwound.

204. On (Friday) 8 March 2013, Sanjay Shah emailed Mr Dhorajiwala and Rajen Shah that: "*today's trades/activity is in meltdown for about a dozen different reasons. Pogo [Mr Patterson], Nirav [Patel] and me are in the office trying to sort. I have said a million*

times before that we need a system. We need a developer hired asap". Mr Shah asked Mr Patterson and Mr Patel for a timeline of what had gone wrong; and on the following Monday (11 March 2013), Mr Patel sent the requested timeline to Rajen Shah and Mr Dhorajiwala. He identified a number of issues that had arisen with the trading including issues with SCP's systems, participants in the Solo Model failing to respond, and entry errors in the system. After this, developers were recruited by SCP to automate the GSS systems, namely Stuart Ervine, Albert Lacatz and Darren Hoggs. They were later reorganised into a different Sanjay Shah company, Theorem, working from the same office used by GSS, as reorganised into Genoa.

205. The first automated system was the Trade Approval System ('TAS'), into which trades were inputted for approval, at first manually and later fully automated. This was in operation in 2013. It was updated and refined over time.

206. From late February 2015, two other systems came into use: (a) Brokermesh, used by the brokers, which matched orders and sent automated confirmations by email, all confirmed orders being executed at the published closing price for the Danish stock in question; and (b) Octave, an automated email system that included static data such as Danish companies' dividend dates and amounts, and generated matched orders for all the trading counterparties (buyers, short sellers, stock lenders, forward counterparties). Octave could access and communicate with Brokermesh. As Ms Spoto of GSS explained on 23 February 2015 in an email to Mr O'Carroll, the trader for the IPG Individuals' LabCos, those entities having "*put a trade schedule in place*", "*the new algo system will automate this. You will NOT need to contact anyone ... unless the system goes down at any stage*. …".

207. The operation of the fully automated system can be illustrated by Sample Trade Solo 4 (see Appendix 3, below, at paragraph 18*ff*). All emails from Octave were sent from a single email address, octave@hydracapitallimited.com. Each was addressed to a designated email address for the addressee and set out a message to that addressee written as if it was a message from another Solo Model participant, to whose designated email address the email was copied. So, for example (and taking the initial trading phase as sufficient illustration), on 26 March 2015, the Solo 4 dividend declaration date:

(i) at 10:49:23 hrs, Octave sent an email to the broker TJM, copied to Ellbell, one of Mr Smyth's LabCos, the content of which was a message from Ellbell to TJM stating that it was "*looking to buy*" 538,827 Carlsberg shares at closing price for settlement on 31 March 2015;

(ii) at 10:49:37 hrs, Octave sent an email to the short seller JBJB, copied to the broker Arian, the content of which was a message from Arian to JBJB stating that it was "*looking to buy*" 538,827 Carlsberg shares at closing price for settlement on 31 March 2015;

(iii) at 10.52:43 hrs, Octave sent an email to Arian, copied to JBJB, the content of which was a message from JBJB to Arian stating, "*Yes, I can fill your request for 538,827 CARLSBERG AS-B @ closing price for settlement date 31 March 2015*";

(iv) at 10.53:29 hrs, Octave sent an email to Ellbell, copied to TJM, the content of which was a message from TJM to Ellbell stating, "*Thanks for the order you are filled*" and repeating the basic terms;

(v) Arian and TJM's matching commitments were booked through Brokermesh and confirmed by Old Park Lane as custodian so as to complete the Equity Trade transaction chain;

(vi) at 10:53:43 hrs, Octave sent an email to the forward counterparty North Capital, copied to Ellbell, the content of which was a message from Ellbell "*looking to sell*" a forward at closing price for 538,827 Carlsberg shares "*for Expiry 19 June 2015 (settlement date 31 March 2015)*";

(vii) at 10:53:44 hrs, Octave sent an email to the forward counterparty T&S Capital, copied to JBJB, the content of which was a message from JBJB "*looking to buy*" a matching forward;

(viii) at 10:56:34 hrs, Octave sent an email to Ellbell, copied to North Capital, the content of which was a message from North Capital to Ellbell stating, "*Thanks for the order you are filled*";

(ix) at 10:56:38 hrs, Octave sent an email to JBJB, copied to T&S Capital, the content of which was a message from T&S Capital to JBJB stating, "*Thanks for the order you are filled*";

(x) North Capital and T&S Capital were matched via Brokermesh, but with the expiry date *inter se* of 18 September 2015 as I note in Appendix 3; and

(xi) an equivalent sequence of automated communications created by Octave was generated on 30 March 2015, the dividend record date, setting up a matching stock lending chain, Ellbell lending to Colbrook, Colbrook to RVT Consult, RVT Consult to JBJB, that would feed the internalised settlement loop at Old Park Lane on the dividend payment date, 31 March 2015.

208. These automated systems covered each of the Solo custodians, SCP, West Point, Old Park Lane and Telesto.

209. SKAT sought to make something of the fact that, in the manner just illustrated, Octave generated messages pretending that active processes of supply and demand, offer and acceptance, were in play, with parties looking to do trades and brokers looking to find liquidity, match principals, and confirm having done so. I agree that was all pretence; no doubt it would have been possible to design an automated trading system that documented things differently, for example it might just issue trade confirmations for trades that the embedded code 'decided' to allocate to participants within (it would have to be) parameters defined by the participation agreements, so as to commit the participants to such auto-allocated trades. But the pretence was transparent from the email correspondence that Octave generated. In other words, to put it less pejoratively, it was quite plain – and would have been so to any outside party, such as an auditor or regulator, if they looked at the trading records – that this was an automated system creating trades without input from the parties at the time of trading, programmed to document those trades in a way that mirrored non-automated trading processes.

210. I therefore do not find anything suspicious or untoward in the automation, or its detailed implementation, in itself. Its real significance, in the context of the Solo Model trading, is how it manifested the lack of real-world constraint upon the volume of trading, and consequent tax reclaims, that could be generated by using balanced, self-fulfilling, share-less settlement loops.

211. In April 2015, Anne Stratford-Martin ('Ms Stratford'), a qualified lawyer by original background who had been CEO of SCP since January 2014, recruited by Sanjay Shah from Cantor Fitzgerald, although in truth Sanjay Shah continued to operate as *de facto* CEO of SCP for the GSS / Solo Model business, reviewed the draft opinion letter from Hannes Snellman to which I referred in paragraph 183 above (strictly, a slightly revised version of it provided by Hannes Snellman in February 2014 of which no use had been made). Ms Stratford first saw that draft opinion in late January 2015, when she was considering an enquiry from a *Wall Street Journal* journalist, Jenny Strasbourg, investigating Solo's German and Danish cum-ex strategies.

212. SCP's then General Counsel, Michael Herron, proposed that there should be a board paper, supported by legal advice, "*in relation to the position under relevant tax laws as regards dividend arbitrage operations for which GSS was acting as the clearing agent*". That led Ms Stratford to look at the draft opinion letter from Hannes Snellman in detail in April 2015. Her review, as reflected by her marked-up comments sent to Priyan Shah and Gerard O'Callaghan on 20 April 2015, identified *inter alia* that:

    (i) the draft opinion letter did not describe the Solo Model accurately because of the statement that Solo was acting as a clearing broker, aggregating client trades into material volumes and giving them up to a General Clearing Member of an Exchange for settlement;

    (ii) it therefore did not consider at all that "*as a result of the various transactions which the clearers clear and settle and the internal netting carried out by the clearers there are no assets that require to be held in custody*"; and

    (iii) Hannes Snellman were assuming that "*Solo would not be involved in the process of seeking refund of Danish withholding tax levied on the Equities*", when, to the contrary, Solo had "*the benefit of arrangements with tax agents who will provide these services to the clearers' clients*".

213. No further legal advice was sought, either to address Ms Stratford's concern about the adequacy of the draft opinion she had reviewed, or at all. Available records show that Ms Stratford and Sanjay Shah had a 44-minute telephone discussion on 21 April 2015, the day after she sent her comments on the draft opinion letter to Priyan Shah and Mr O'Callaghan. Mr Shah's evidence was that he has no recollection of that call, and that it was unlikely that they discussed the draft opinion letter and Ms Stratford's comments on it, as that would indeed have been a matter, at the time, being considered by the other Mr Shah and Mr O'Callaghan. I do not accept SKAT's invitation to reject that as implausible. To the contrary, it is in my view both inherently plausible and supported by the fact that Ms Stratford's email the previous day was not sent to Sanjay Shah, said that it followed a conversation she had had with Priyan Shah and Mr O'Callaghan on 20 April 2015, and asked for a further discussion *with them* the next day, i.e. 21 April 2015. It is of course plausible that in a long call with Sanjay Shah on that day, Ms Stratford might have mentioned that she was discussing what Hannes Snellman had

said in the past with the other Mr Shah and Mr O'Callaghan; but it would be speculation, not a finding based on evidence, to say on that basis that the subject was mentioned on that call; and on any view the story around what must have been discussed that was put to Sanjay Shah by SKAT was speculative.

214. SKAT's further, and imaginative, speculation was that Ms Stratford's mark-up of the draft Hannes Snellman opinion letter, discussed (as SKAT would have it) in her call with Sanjay Shah the following day, was the catalyst for agreements Mr Shah made with Ms Stratford a month later to pay her £5 million, and Messrs Knott and Hoogewerf £2 million each. SKAT submitted that these were agreements for 'hush money' to buy the silence of Ms Stratford, Mr Knott and Mr Hoogewerf, about (as SKAT alleged) the fraud being perpetrated through Solo Model trading against SKAT (and other tax authorities). Mr Knott and Mr Hoogewerf each maintained that his agreement, agreed with Ms Stratford and negotiated by her with Sanjay Shah, was by way of retention bonus, documented as a loan but on the agreed understanding that it would be forgiven (i.e. repayment would be waived) if he had not left Solo by choice prior to the repayment date.

215. Ms Stratford pleaded an equivalent position in her Defence, as regards her £5 million. Ms Stratford was not a trial defendant, the proceedings against her having been stayed by consent between her and SKAT. Neither SKAT nor any defendant called her as a witness, so I had no evidence from her at trial. Sanjay Shah also maintained that the agreements were to incentivise Ms Stratford, Mr Knott and Mr Hoogewerf to stay at Solo, but he denied that there was any agreement about forgiving the loans if they did stay.

216. Save to confirm that I do reject as speculative SKAT's suggestion that Ms Stratford's consideration of the Hannes Snellman draft opinion letter had any connection to these agreements, I set out here only a few further basic facts relating to them, as follows:

(i) The discussions leading to the agreements were in Dubai on 20 May 2015, Ms Stratford, Mr Knott and Mr Hoogewerf having travelled together from London.

(ii) The initial agreements reached orally, between Sanjay Shah and Ms Stratford for the payment to her, and between Ms Stratford, on behalf of and with authority from Sanjay Shah, and each of Mr Knott and Mr Hoogewerf for the payment to him, were for the Sterling amounts to which I referred above, but in the event the currency became Euros at Sanjay Shah's request. Ms Stratford received €7,014,500, Messrs Knott and Hoogewerf €2,760,000 each.

(iii) Written contracts were prepared and signed documenting agreements between Sanjay Shah personally and each of Ms Stratford, Mr Knott and Mr Hoogewerf. They provided for loans repayable in December 2018 and said nothing about staying at Solo or loan forgiveness. At Sanjay Shah's direction, much of the email correspondence on this subject was conducted through personal email addresses, not work email addresses at Solo. Also at his instance, the payments were made to accounts at Varengold Bank specially opened for the purpose.

(iv) Messrs Knott and Hoogewerf did not in fact stay at Solo for anything like the 3½ year period of their documented loan. That was not by choice on their part, and each concluded settlement agreements in connection with their departure.

Those agreements did not mention or make express provision concerning the €2.76 million loans.

217. As in relation to the Belgian tax authority's enquiry in 2013 (see paragraph 158 above), without having pleaded any relevant case concerning them, SKAT cross-examined Sanjay Shah about enquiries of Solo received in June 2015 from the LSE, to whom all Solo Model equity trades (i.e. the purchase trades) were routinely reported, and the FCA, the regulator of SCP and the other Solo Model custodians. Those enquiries were mentioned in SKAT's pleading, but only to say that SKAT would rely on the fact that Sanjay Shah dealt with them in support of its case that he remained the relevant directing mind and will of SCP (and related entities) notwithstanding Ms Stratford's role as CEO in London. Therefore, as with the Belgian tax authority enquiry, I treat the cross-examination as going, if it went anywhere, only to Sanjay Shah's credibility.

218. On 1 June 2015, the Market Supervision Department of the LSE asked SCP, Telesto and West Point to confirm that equity trades for TDC shares reported to the LSE on 27 May 2015 were "*good trades*". These will have been trades for an unwind phase within the Solo Model. TDC had declared a dividend of DKK1 per share on 5 March 2015; and SCP, Telesto and West Point between them had been the custodian for 102 automated Solo Model trades around that dividend declaration date for an aggregate volume of 292,689,111 shares, some 36% of TDC's total issued share capital at the time. The enquiry was passed up to Ms Stratford in London, who passed it on to Sanjay Shah for instruction on how to respond (hence SKAT's reliance on this in support of its well-founded argument that Sanjay Shah was the directing will and mind of the custodians in relation to the GSS / Solo Model business). At Mr Shah's direction, Ms Stratford caused confirmations to be given to the LSE that the trades were indeed "*good trades*".

219. The LSE made a slightly fuller enquiry on 3 June 2015 in relation to 24 trades for Danske Bank shares reported that day, which again were unwind trades in the Solo Model, this time in respect of original trading around the Danske Bank dividend declaration on 18 March 2015. The 24 trades were each for 1,886,972 shares at DKK198 per share, after noting which the LSE's email continued, "*It's quite unusual to [see] so many large trades at the same size and price; please could you confirm whether they are good trades, and if so, help us to understand the strategy behind these reports?*". An accurate response would have confirmed that the trades were "*good trades*" and explained that they were trades to unwind positions traded in March as part of a cum-ex trading strategy in relation to Danish shares. The response sent, as directed by Sanjay Shah, was a misleading half-truth: "*We can confirm that the trades are good trades. Please be aware that the reported trades are the unwinding by clients of their positions* [true]. *They follow the closure of clients' OTC derivative hedges which were closed with the clients' brokers at the market closing price* [misleading spin]. *We as clearer had imposed a limit of €75m per ticket as so [sic.] you see the trades occurring in batches of the same size* [misleading spin]. *All trades were executed OTC by the clients' brokers* [half-truth at best, cloaking Solo's role as director of all trading, and a gross spin on the fully automated Solo Model then in operation]."

220. In response, the LSE asked for clarification, and at Sanjay Shah's direction was given the following response (questions posed by the LSE, answers added in reply):

"• *Were these market facing trades? These trades were OTC and Broker facing*

- *Was there a change of legal ownership? Yes*
- *Was there a change of beneficial ownership? Yes*"

The first answer was again a half-truth masking the reality that all trading was directed by Solo, now on a gargantuan scale via automation. The second and third answers were not true.

221. The LSE remained curious and set up a call with Alan Hadley (then Deputy Head of Compliance at Solo), on which, to reassure Sanjay Shah, Ms Stratford stood over Mr Hadley so she could, as she put it to Mr Shah in a Skype message, "*stop the conversation if it strays beyond providing the answers we have already provided*". Although to his discredit Sanjay Shah refused to accept this in cross-examination, the obvious purpose was to ensure that as little information as possible about the Solo Model was disclosed.

222. On 11 June 2015, the LSE sent another email, attaching a simple table showing for each of 10 securities that the aggregate traded volumes reported by SCP between 1 May and 4 June 2015 represented significant percentages of the total issued stock, ranging between 5.01% to 25.42%. The email said that those traded volumes had resulted in several queries from the market, that the same applied for Telesto, Old Park Lane and West Point, and that the LSE wanted "*to understand the origination of these trades; how the business was generated at the client level and the process in chronological order from the start to the point of trade reporting.*" An accurate response could only have been to say that Solo was coordinating a cum-ex trading strategy to profit from tax refund claims, using automated processes to trade very large volumes, and the trades in question were part of the unwind phase of that strategy. Sanjay Shah instead approved, as a "*good idea*", a proposal by Ms Stratford to say that "*since we believe clients are taking advantage of tiny price differences by default the volumes are large to make the returns meaningful. Clients are not exposing themselves to market risk by undertaking such large trades as they are ensuring they are fully hedged.*"

223. The full response, approved by Sanjay Shah and sent at his direction (via Ms Stratford) by Mr Hadley, was thoroughly dishonest:

"*We have spoken with some of our clients and explained that we need to respond to your query. The clients are reluctant to share their intellectual property with us but we understand that the equity trades which we report are the hedges to OTC derivatives. The clients advise that their books are fully hedged for market risk.*

(Nothing in the first two sentences was true. Solo's clients had neither input nor even knowledge of these LSE enquiries. The party with 'intellectual property', who was indeed unwilling to share it, in my judgment vehemently so, was Sanjay Shah. On a point of detail for the second sentence, of course, in ordinary logic, if Product A hedges Product B, equally Product B hedges Product A. But it was misleading to suggest that there was a derivatives trading strategy, as part of which equity trades were used to hedge market risk.)

The motivation for trading is to take advantage of the small differences in the implied financing rates in the OTC derivatives market and the stock lending market. The clients

buy or sell equities, which are then borrowed or lent on to their stock lending counterparties.

(The second sentence, taken on its own, could have been true. But it was in the context of Solo's prior confirmation that legal and beneficial ownership of equities was transferred, making it misleading. The first sentence was false. Small pricing differences of that kind could in theory have been the target of an arbitrage strategy of some kind. But not only was that not the trading strategy in the Solo Model, the impact, if any, of those differences on how Solo Model trades would turn out was retrospectively adjusted out.)

Chronologically, it appears the equity hedges are only initiated when the clients have an OTC derivative and stock lending trade which they would like to execute.

(This was dishonest nonsense, given Sanjay Shah's understanding of the Solo Model trading strategy, design and implementation.)

The clients noted that the trade volumes are not unusual compared to previous years.

(This was substantially false. First, again, Solo's clients had not 'noted' any such thing, having not been involved at all in how the LSE's enquiries should be answered. Second, while the total Solo Model traded volume being unwound in May-June 2015 (from trading around February-March 2015 dividend dates) was similar to the total traded volume for the whole of 2014 (c.2.3bn vs. c.2.1bn), it was larger by an order of magnitude against 2012 (c.79m, albeit only from the smaller second half of the year) and 2013 (c.381m for the full year).)

It is worth noting that the volume reported doesn't reflect that we have many (over 100) clients trading so that each client's volume is small compared to the overall volume that is reported.

(That was true but misleading, given that the large number of trading clients was a deliberate construct of the Solo Model precisely to mask the fact that a huge volume was being traded on a coordinated basis by Solo.)

We hope that this answers your queries in full."

224. Sanjay Shah in cross-examination tried a number of lines of argument as to why that response was not thoroughly and deliberately misleading. They were all, I regret to say, feeble attempts to defend the indefensible. He resorted instead to an attempt to distance himself from it, effectively claiming to have been merely a post-box passing messages between Ms Stratford, on the one hand, and Priyan Shah and Mr O'Callaghan, on the other, whom he wished to say held the drafting pen. That flew in the face of the documentary record and was in my judgment an example of Sanjay Shah saying whatever occurred to him to say in the moment, question by question, in the hope that something he said might be thought plausible.

225. On 23 June 2015, Ms Stratford passed to Sanjay Shah an enquiry from the FCA as to why the bulk of SCP's revenue in 2014 was generated between April and September. She suggested "*replying (along the lines of the response to LSE) that "activity is client driven and clients do not share their trading strategies with us therefore I cannot*

provide a particular reason why there was more activity in that period"; and Sanjay Shah approved: "*i think thats fine. this year the clearing fees are a flat monthly rate so there should be no spikes*". Mr Shah knew that proposed response to be false. The trading strategy was Solo's strategy, given to the clients and directed by Solo in its execution; and the spike in revenues for SCP will have arisen because its major revenue stream was Solo Model trading, on which its fees were charged trade by trade prior to 2015, and that was tailored around dividend declaration dates and the generation of tax refund claims the chronological pattern of which across the calendar year was not smooth. I do not consider this to be evidence that Mr Shah knew or believed that the Solo Model amounted to or involved a fraud upon SKAT, rather than at most further corroboration that Mr Shah wanted to keep the reality of the Solo Model under the radar for fear that the FCA would seek to put a stop to it as an unacceptable form of trading.

226. The LSE and FCA enquiries are indications, however, of how the scale on which the Solo Model came to operate in 2014 and the first half of 2015 was going to make it impossible to stay under the radar much longer; and indeed, the lack of practical constraint in the Solo Model by 2015, to which I referred in paragraph 210 above, did lead to its undoing, and in consequence to the undoing of the Maple Point and Klar Models when SKAT's investigations caught up with what had been happening.

227. There was an initial attempt in June 2015, not wholly effective, to tip SKAT off to what was happening, initiated (at the time anonymously) by Mr Bains. That was followed by a more concrete, detailed and informative tip-off from HMRC in July 2015. In different ways, the sheer scale of the Solo Model operation, as it had become in 2015, triggered both calls to SKAT to look into what was going on. Mr Bains had come to the view by the end of 2014 that Sanjay Shah was out to "*bleed dry an innocent Nordic country [viz., Denmark] next year*", and the magnitude of the Solo Model by then was a spur to Mr Bains' attempt to tip SKAT off. I cannot make any full finding as to what sparked HMRC's initial interest to investigate, but the terms in which it tipped SKAT off in late July and early August 2015 evidence that the scale of Solo's operation, as it had become, must have been part of it.

228. The almost total lack of control within SKAT over what it was paying, or why, by way of WHT refunds, described below as part of considering whether on the evidence SKAT can say it was misled into making payments, makes it possible, I think, that if Solo Model and Maple Point Model operations between them had been kept within (proportionately) more modest bounds, they might not have been stopped at all. From the main Danish dividend season in the first half of each year, the Solo Model generated c.DKK490m in WHT reclaims in 2013, but that leapt to DKK2.25bn in 2014 (with almost DKK1bn from Maple Point running independently alongside), then DKK5.71bn in 2015 (plus DKK1.75bn from Maple Point). Whether Sanjay Shah and others were greedy fraudsters, as SKAT claimed, or just greedy opportunists who had alighted upon a way of making a fortune without having to commit the fraud that SKAT alleged, as it seems to me greed was their downfall.

229. SKAT's investigations following the HMRC tip-off led to a decision in August 2015 to suspend all WHT reclaim payments and eventually to these proceedings and all the other litigation around the world, civil and criminal, by which the Kingdom of Denmark has sought to make a recovery against what was paid out and to punish those whom it considers to have taken dishonest advantage of those lax controls.

C.11 Solo Model Proceeds

230. For each USPF or LabCo that participated in Solo Model trading, there was a consultancy services agreement between the USPF/LabCo itself or the principal behind it (directly or through a corporate vehicle) and Ganymede, providing that the successful provision of consultancy services by Ganymede would entitle it to fees. Pursuant to those agreements, Ganymede invoiced for consultancy services supposedly provided by it, as the means by which it would take most of the proceeds of tax refund claims generated from Solo Model trading. Until mid-2013, the Tax Agents paid the USPFs (net of the Tax Agents' fees) and the USPFs made onward payments to Ganymede; thereafter, the Tax Agents paid the amounts intended for Ganymede to SCP, and SCP paid Ganymede.

231. Ganymede thus received from the Original Argre Plans and the Zeta Plans 66.6% and 60% respectively of their net tax reclaim proceeds, 75% from the New Argre Plans, between 76.5% and 80% from the LabCos, and 95% from the Standard Credit Plans, Further Tucci/Bradley Plans, Godson Plans, Further Crescenzo Plans, and Lehman Plans. Ganymede was paid only if and after a tax refund payment had been received from SKAT.

232. There were in fact no consultancy services, or agreements for Ganymede to provide such services. The language of consultancy or advisory services was a euphemism for the provision by Sanjay Shah of access to the Solo Model, in return for which (through Ganymede) he would take most of any profit (see paragraph 118 above). The obvious dishonesty of documenting things in that way was relied on by SKAT in support of its allegations of fault and knowledge as they arise in the context of the causes of action it advances; but there was no freestanding point taken as to whether the true arrangement, i.e. the nature and extent of the Sanjay Shah/Ganymede profit share, itself affected the validity of the tax refund claims from which any profit to be shared would be and was generated. The point on the way the Ganymede profit share was documented was weakened substantially anyway by the fact that in the early period of the Solo Model, the agreements were explicit that what was to be shared between Ganymede and the client were tax refund claim proceeds, as remuneration for "*tax reclaim advisory services provided by [Ganymede]*".

233. In turn, Ganymede made payments, directly or (from May 2015) via four BVI companies established for the purpose, Parla, Fire, Philo and Acai (the 'mini-Ganymedes'). The mini-Ganymedes were owned and nominally controlled by Usha Shah, but she acted at all times solely on Sanjay Shah's instructions in relation to them, and they were transferred to Elysium Global in October 2015. Payments were made to:

    (i) corporate vehicles of introducers of USPFs to the Solo Model (Messrs Murphy, Fletcher, Devonshire, Godson, Lehman, Bradley, Tucci, and Crescenzo);

    (ii) corporate vehicles of the principals behind the short sellers, stock lenders and forward counterparties in the Solo Model, all of which were paid on a percentage of the gross dividends by reference to which the cum-ex trades in which they participated had been structured. Such payments were made by Ganymede or the mini-Ganymedes to corporate entities of, in particular, Mr Smith, Mr Murphy, Mr Körner, Messrs Oakley and Mitchell, Mr Klar and Ms Bhudia, from among the trial defendants;

(iii) others who had played a role in the Solo Model trading, including the DWF Ds and Mr Patterson.

234. The arrangements with introducers and trading counterparties were documented as consultancy services agreements, treating them as consultants to Ganymede and providing that the successful provision of consultancy services would entitle them to fees payable by Ganymede. Here also, there were in reality no such agreements or services, and there was no honest reason for documenting the fiction. The true arrangement was simply that Sanjay Shah, acting through Ganymede, was happy to pay substantial sums (in absolute terms, even if at the same time modest percentages of the tax reclaim profits to be generated) for the availability of tax-exempt entities or trading counterparties for the Solo Model trading operation.

C.12 Varengold Bank

235. Between May 2014 and February 2016, funds totalling c.€46.8m were paid from accounts at SCP to fund the acquisition of c.80% of Varengold Bank AG, a German bank. Individual share acquisitions were coordinated by or on the instructions of Sanjay Shah, and on 26 August 2015 he was elected, together with Mr Barac and Mr Murphy, to the Supervisory Board of Varengold Bank. The various acquisitions were as follows:

(i) €3.191m was used by Agrius Capital to acquire 159,571 Varengold Bank shares between 1 and 13 May 2014, which were transferred to Rivera in April 2015, Agrius Capital and Rivera at the time both being ultimately owned by Priyan Shah and Gerard O'Callaghan, the main transaction structurers at Solo after the departure of the DWF Ds;

(ii) €2.24m was used by AESA, ultimately owned by Sanjay Shah, to acquire 160,000 Varengold Bank shares on or about 12 June 2014;

(iii) €4.96m was used by Ampersand to acquire 160,000 Varengold Bank shares on 17 June 2014, which were transferred to PCM in April 2015, both Ampersand and PCM then being owned ultimately by Mr Patterson;

(iv) €4.68m was used by Ace City to acquire 151,000 Varengold Bank shares on 24 June 2014, which were transferred to Astella in April 2015, Ace City and Astella at the time both being owned ultimately by Darren Lui, who worked with Messrs Priyan Shah and O'Callaghan at Solo;

(v) €3.1m was used by Oberix to acquire 100,000 Varengold Bank shares on 27 June 2014, which were transferred to Eris in April 2015, Oberix and Eris at the time both being owned ultimately by Mr Jain;

(vi) €5.239m was used by Silverfox to acquire 169,000 Varengold Bank shares on 27 June 2014, which were transferred to Silvercouk in July 2015, both of those entities at the time being owned ultimately by Mr Bains;

(vii) €3.54m was used by Skyfall to acquire 176,963 Varengold Bank shares on 18 February 2015, which transferred them to Bellview in May 2015, both those entities being at the time owned ultimately by Mr Preston;

(viii) €5.7m was used by Ms Bhudia's T&S Capital to acquire 194,446 Varengold Bank shares between 15 December 2014 and 7 September 2015;

(ix) €1.496m was used by Mr Smith's Colbrook to acquire 84,174 Varengold Bank shares between 7 January and 2 April 2015; and

(x) €12.66m was used by Elysium Dubai to acquire c.974,000 Varengold Bank shares on around 16-17 February 2016 (there is evidence for the exact number being either 973,812 or 974,184 shares).

236. Those Varengold Bank shareholders, except AESA and Elysium Dubai which were under Sanjay Shah's control anyway, held their shares *de facto* as nominees for Sanjay Shah. Their acquisition of Varengold Bank shares was funded indirectly by him so he would obtain covertly, as thus he did, effective control of Varengold Bank, when an overt attempt would have failed because it would have required a regulatory approval that Sanjay Shah did not have and did not want to take the time to seek. This was disputed by the trial defendants in question, save for Mr Patterson and (effectively) Mr Preston (see below); but in my judgment it was comfortably demonstrated by the evidence, and the relevant defendants' denials were not credible.

237. Several funding mechanisms were used for the Varengold Bank share acquisitions. The primary technique was the use of sham "High-Low Trades" in June 2014. Purported trades to buy and sell German shares, matching except as to price, were documented with Ganymede through Bastion, one of the brokers that participated in Solo Model trading, at prices chosen so that Ganymede would appear to have made an intra-day trading loss as the supposed commercial basis for transfers of sums totalling €23.7m from Ganymede's account at SCP to fund the acquisition of Varengold Bank shares.

238. Some of the Varengold Bank share purchases were funded through loans and counter-loans between the purchasers and Elysium Dubai. For example, in relation to Mr Preston, on 18 January 2015 Elysium Dubai and Skyfall Holdings, the parent company of Skyfall, Mr Preston's Varengold Bank buyer, entered into: (a) a loan facility for Elysium Dubai to lend Skyfall Holdings €5.31m; (b) a loan facility for Skyfall Holdings to lend Elysium Dubai €1.77m. The net effect was a loan of €3.54m from Elysium Dubai to Skyfall Holdings.

239. In other cases, funding was provided by Sanjay Shah's companies ostensibly pursuant to invoices raised for purported consultancy services provided.

240. Whatever funding mechanism was used, the majority of the ultimate indirect owners of the Varengold Bank shares provided or were intended to provide security for the funding. Some arranged for a charge over the shares in the Varengold Bank share purchaser, or an entity with effective control of that purchaser, in favour of a Sanjay Shah entity. Others granted a Sanjay Shah entity an option to purchase the Varengold Bank shares.

241. Sanjay Shah accepted that he had the money to acquire all the shares in Varengold Bank and that his goal was to achieve sole ownership. He said that he believed an acquisition of Varengold Bank by him, or by a company of his, would "*engage various regulatory rules which would be time consuming to resolve*". He claimed to have assembled the principals behind the other acquirers, therefore, to be "*shareholders in their own right*"

as part of an "*investment club*". This might have made sense if any of these 'investment club' members were co-investing with Sanjay Shah, but it was not a credible explanation for his funding of their investment on terms that entitled him to any upside. The transparent reality, confirmed by contemporaneous evidence, is that Sanjay Shah was using the other individuals, with their consent, to disguise his effective indirect acquisition of a controlling stake in the bank.

242. Mr Patterson admitted in his Defence that his companies' Varengold Bank shares were held as nominee for Sanjay Shah. In October 2014, Mr Bains confirmed in a note to his new employer, Arunvill, that he and all the others held their Varengold Bank shares as nominees for Sanjay Shah. His denial of nomineeship in his Defence was fatally undermined by that. The cross-examination of Mr Bains on this aspect demonstrated, in my judgment, that the account in his note for Arunvill was substantially accurate. The further detail emerged that, at the time, Mr Bains intended not to honour the arrangement with Sanjay Shah, or at least to threaten not to do so, so that he would either sell his Varengold Bank shares, or force Mr Shah to buy him out, as a self-help means of enforcing what he (Mr Bains) believed to be bonus entitlements that Mr Shah had not honoured. That proved successful, as Mr Shah arranged for and funded Mr Barac to buy Mr Bains out.

243. Mr Preston's Defence also denied that he was Sanjay Shah's nominee but in his evidence he admitted, in substance, that he was, even if he did not use that label. His evidence was that it was agreed from the outset that he would "*hand the shares back to Sanjay Shah in the future*", that they "*were always going to be returned to Sanjay Shah*", and that at all times he took direction from Sanjay Shah in relation to the shares.

244. Other trial defendants who were Varengold Bank 'investors', for example Mr Jain and Mr Smith, clung in their evidence to a story that they were investing for their own account, not on behalf of Sanjay Shah. In my judgment, they did so as a dishonest response to SKAT's allegation that participation in the Varengold Bank acquisition evidenced knowledge or understanding that the GSS cum-ex trading business involved, and was designed to generate, deceit practised upon SKAT. I do not accept that allegation. It did the defendants in question no credit that they did not tell the truth about the Varengold Bank arrangement, and trust the court with any decision over whether that took SKAT anywhere on the claims made in these proceedings. As juries are rightly and routinely directed, defendants may lie for any number of reasons other than that the material allegations against them in the case are true and they have no answer to them. In my view, that was the position here in relation to the Varengold Bank business.

245. To be clear, I am not considering whether the true arrangement, informal and undocumented as it was, that the Varengold Bank shareholders funded by Sanjay Shah would act as his nominees so that he had effective control over Varengold Bank, would have been legally enforceable, even apart from any impact of their purpose of circumventing regulatory takeover requirements, and I am not in a position to make, nor do I need to make, any definite finding as to whether those requirements were breached. My finding is only of the understanding, informal but accepted at the time, between Mr Shah and all of those shareholders (through their respective principals).

246. After 2015, Mr Patterson, Ms Bhudia, Mr Smith, and Mr Preston transferred the shares in their Varengold Bank vehicles, or parent companies, to entities controlled by Sanjay Shah. Mr Jain, and also former defendants Messrs Barac, Lui, Priyan Shah and

O'Callaghan, resisted subsequent attempts by Sanjay Shah to obtain 'their' Varengold Bank shares. They were identified in an October 2016 note by Greg Nixon, a lawyer at Elysium Dubai, as "*hostile*" shareholders, apart from Mr Jain whom he identified as "*non-hostile*", meaning that at that time Mr Jain was not yet pretending that he did not hold his Varengold Bank shares for the benefit of Sanjay Shah. The later refusals to transfer Varengold Bank shares to Sanjay Shah, or to his order, does not disprove that they were supposed to be being held as nominees for him. By that time, Solo had been the subject of publicly reported raids, and those "*hostile*" shareholders may well have considered that it was not in their interests to admit involvement in what had been a dishonest scheme by which Sanjay Shah took effective control of Varengold Bank.

247. The funding of the Varengold Bank share acquisitions by the companies of Mr Lui, Mr Jain, Mr Barac and Messrs Priyan Shah and O'Callaghan was never repaid, and their shares were later transferred to SKAT pursuant to proceedings brought in Germany by a prosecution authority in the context of an investigation into the Varengold Bank acquisition as possible money laundering.

C.13 Dero Bank

248. Between November 2014 and June 2015, funds totalling approximately €59.48m were paid from accounts at SCP to an account in the name of Trillium Capital to fund its purchase, which completed in the second half of 2015, of 100% of the shares of Dero Bank, another German bank, for €28.573m.

249. Prior to 12 November 2014, Trillium Capital was wholly owned by Trillium Holdings, which was in turn owned and controlled by Sanjay Shah. Between 12 and 14 November 2014, Trillium Holdings sold shares in Trillium Capital, as follows:

(i) 1,726 shares (c.8.85%) to Kenna Investments (of which Mr O'Callaghan was ultimate owner);

(ii) 1,531 shares (c.7.85%) to Wong (of which Mr Lui was ultimate owner);

(iii) 1,726 shares (c.8.85%) to Serafine Investment (of which Priyan Shah was ultimate owner);

(iv) 1,531 shares (c.7.85%) to Double Two Investments (of which Mr Jain was ultimate owner);

(v) 1,336 shares (c.6.85%) to Woodfields Financial (of which Mr Patterson was ultimate owner);

(vi) 1,336 shares (c.6.85%) to Polaris Capital (of which Mr Murphy was ultimate owner); and

(vii) 1,531 shares (c.7.85%) to Zuben (of which Mr Barac was ultimate owner);

so that Trillium Holdings retained 8,783 shares, c.45.05% of Trillium Capital.

250. Those new shareholders in Trillium Capital funded their acquisitions through loan and security agreements concluded with Elysium Global and/or Elysium Dubai. As with Varengold Bank, but in the different ownership structure used here, the 'co-investors'

in Trillium Capital held their shares (and thus their indirect ownership interests in Dero) as nominees for Sanjay Shah. That was admitted by Messrs Patterson and Murphy. It was denied, but not credibly, by others. The acquisition was entirely directed and coordinated by Sanjay Shah for his benefit as a means by which to obtain sole control of Dero while making it appear that he had only a minority stake, to avoid the inconvenience (as Mr Shah saw it) of satisfying regulatory requirements that might have attached to the acquisition of a controlling stake.

C.14 Maple Point Overview

251. The Maple Point Model trading was designed and implemented following the departure of Messrs Stein and L'Hote from Argre, and the DWF Ds from Solo, in 2013. As described in Appendix 3, it reproduced the essential features of the Solo Model 2012/2013 trading, using non-Solo custodians and OTC forwards rather than exchange-traded futures for the equity price hedge. It enabled those principally involved to take a greater share of the resulting profits than they took from the Solo Model trading.

252. Maple Point Model trading extended exclusively to USPFs associated with Maple Point, a US company formed by Messrs Stein, L'Hote, La Rosa and McGee, formerly of Argre, and Donald ('Don') Donaldson, a New York lawyer. Mr Donaldson was appointed to act, and acted, as the authorised representative of all of the Maple Point USPFs.

253. Other key individuals for Maple Point Model trading included:

(i) the DWF Ds, who designed and oversaw execution of the trading; and

(ii) Mr Klar, whose companies Potala and Sherwood acted as stock lenders and/or forward counterparties.

All of the DWF Ds were involved in Maple Point Model 2014 trading, but only Mr Horn was involved in Maple Point Model 2015 trading. Mr Klar remained involved throughout.

254. As with Solo Model trading, the key to the whole structure for each transaction, so as to achieve internalised settlement to zero meaning that the trades would be treated as settled although no shares were acquired or transferred, was to have:

(i) equal and opposite cum-ex trades, a USPF buying and a short seller selling, in respect of the same volume of shares in the same Danish company at the same price for settlement on a dividend payment date for that company; and

(ii) stock loans by the USPF buyer and to the short seller entered into after the ex-date, for settlement on the same dividend payment date; such that

(iii) the stock loans were treated as allowing settlement of the equity sales which allowed settlement of the stock loans; achieved by

(iv) brokers who, as matched principals or agents on the equity trades, gave them up for settlement to the participating Maple Point custodian, and stock loan intermediaries borrowing from the USPF buyers and lending to the short sellers; the whole thing requiring

(v) careful pre-planning and coordination, but neither cash nor shares.

255. The complex wrinkle on the 'cash' side of unwind settlements at Solo, referred to in paragraphs 74 and 156-157 above, was ironed out for Maple Point trading by using a breakage fee. The unwind phase was traded for settlement prior to the scheduled expiry of the stock loans and forwards (as indeed it was in Solo Model trading). That involved an element of 'early termination'. A breakage fee was calculated to match, and cancel out, what would otherwise have been a trading profit, on paper, for one side of the trade or the other (the short or the long), leaving aside the tax reclaim. To illustrate that, using Sample Trade NCB 2 relating to 920,000 Coloplast B shares:

(i) on the initial trade date, a USPF bought at DKK517 and sold forward at DKK514.61372, for a paper loss of **(DKK2,200,269.47)**;

(ii) on the settlement date, the USPF was treated as receiving cash collateral of DKK476,699,850, but immediately returning DKK3,028,934.25 of it, giving it a cash collateral balance, on paper, of **DKK473,670,915.75**;

(iii) also on the settlement date, the USPF was credited with a dividend compensation amount of **DKK3,028,934.25**;

(iv) on the unwind trade date, the USPF sold at DKK484.60 and bought forward at DKK484.85307, for a paper loss of **(DKK233,343.19)**;

(v) on the unwind settlement date, the accrued collateral to be returned was DKK473,670,915.75 plus stock lending net cost (interest on collateral less lending fee) of DKK581,299.47, a total of **(DKK474,252,215.22)**;

(vi) (i) + (ii) + (iii) + (iv) + (v) = **DKK14,022.12**, i.e. a net overall profit for the USPF in that amount, if there were no breakage fee;

(vii) a breakage fee of **(DKK14,022.12)** was therefore applied to balance the books, payable by the USPF to the stock loan trading counterparty, and by that counterparty to the short seller.

256. A stock loan termination fee was charged to the USPF, and a smaller such fee was charged to the stock loan intermediary, as the mechanism by which to pay to the stock loan intermediary and the short seller their agreed percentages of the dividend amount referenced in relevant trade. If the stock loan intermediary was also the forward counterparty (NCB and Lindisfarne trades), this also dealt with that party's profit share as forward counterparty. In Indigo trades, where the forward counterparty was different, a separate termination fee was charged to the USPF only, i.e. not also on the back-to-back forward with the short seller, so as to pay the forward counterparty its reward for participation.

257. As in Solo Model trading, no Maple Point custodian ever held any Danish shares, directly or via any sub-custodian, as custodian for any of the USPF buyers, short sellers or stock loan counterparties, or at all, or received any dividend payment as part of any distribution from a Danish company, via VPS and a custody chain. As Mr Sharma put it concisely in his expert report, "*the trades were structured so that no shares or cash (other than the dividend reclaim [i.e. tax refund] amount) needed to be sourced*

externally". In fact, "*to be sourced externally*" adds nothing (it is a clouding use of jargon: paragraph 70 above). Putting it plainly, by design there was no need for shares or cash to execute or settle the trades, given how they were in fact settled.

C.15 Maple Point 2014

258. In around June 2013, Rajen Shah had discussions with Maple Point regarding the possibility of working together, with a view to profiting from the Solo Model strategy. Later, he invited Mr Horn and Mr Dhorajiwala to collaborate with him in replicating the Solo Model, for use to generate trades focused on USPFs that Maple Point might be able to offer. Mr Horn had left Solo in June 2013 when he had been effectively fired by Sanjay Shah with immediate effect. Mr Dhorajiwala did not leave Solo until 30 September 2013, but began discussions with Rajen Shah about the possibility of working with Maple Point in June 2013 and but for that opportunity may well have stayed at Solo.

259. The DWF Ds between them represented a complementary offering. Rajen Shah was an experienced structurer, who was eager for Mr Horn to be involved given his understanding of the 'technology', and Mr Dhorajiwala had expertise in the operational mechanics required for custodians to operate the trading model.

260. In mid to late 2013, agreement was reached with Maple Point whereby the DWF Ds, in exchange for a substantial share of anticipated profits, would identify and assist new custodians, implement trading, and facilitate the making of tax refund claims to SKAT. A significant amount of the DWF Ds' time thereafter, in late 2013 and early 2014, was spent getting what I have been calling the Maple Point Model ready for action. I have used that label following the terminology used generally in the litigation, but it should not be thought that it was a trading model designed or developed by Maple Point (or its ex-Argre principals). On the evidence of who did what, and who had the relevant expertise and 'IP', it was the DWF Ds' trading model, not Maple Point's.

261. The DWF Ds worked through two entities established by Rajen Shah for the purpose:

(i) Oryx, a UAE entity in which Rajen Shah was the sole shareholder until June 2015, after which Mr Dhorajiwala and Piero Politeo became co-owners. Mr Politeo was a business contact and friend of Rajen Shah, who worked with him on various other projects at Oryx and had very little, if any, involvement in the Maple Point business. Mr Dhorajiwala was employed by Oryx, and Mr Horn contracted with it as consultant; and

(ii) Siladen, a BVI company owned by Messrs Rajen Shah, Dhorajiwala, Politeo and Craig Price (who had worked at Solo), and to which also Mr Horn was a consultant.

262. The first order of business was obtaining the services of a custodian willing to approve and settle the trades, and issue CANs accordingly. From the beginning there was a desire for two such custodians. This was not, I find, with a view to obscuring things in the way that the creation of extra Solo Model custodians was. There were different profit splits with Maple Point as between NCB, brought to the activity by Messrs Stein and L'Hote, and Indigo (replaced for 2015 by Lindisfarne), brought by the DWF Ds (or in the case of Lindisfarne, by Mr Horn alone); and the involvement of a custodian not

linked to Messrs Stein and L'Hote would mean that, if they wished to do so, the DWF Ds might be able to continue the business even if they (Stein/L'Hote) at some stage decided to stop and the connection to NCB was therefore lost.

263. The custodianship arrangements at NCB were set up first. It was a small German bank ultimately majority owned and controlled by Messrs Stein and L'Hote through their vehicle Oban. During late 2013 and early 2014, the DWF Ds worked closely with the management of NCB to set up its new custody business and develop the capabilities needed to execute the Maple Point Model. The DWF Ds, among other things, provided sample trading documents to NCB, explained and answered queries about how the Maple Point Model worked, and introduced brokers and trading counterparties. A separate email domain was set up for correspondence relating to these special trades, to facilitate the deletion of records given that anything passing through NCB email servers would be retained.

264. The second custodian was Indigo, a company of Mr Dhorajiwala's brother-in-law, Nailesh Teraiya. Mr Teraiya had participated as stock lender in Solo Model trading through his entity, Aquila, but that does not mean he will have been aware of how the Model worked. He now needed, and received, assistance from the DWF Ds to understand the custody aspect, in which he had not previously engaged. After discussions with Rajen Shah and Mr Dhorajiwala in late 2013, Mr Teraiya agreed to seek the necessary approvals from the FCA so that Indigo could act as custodian for Maple Point Model trades. As with NCB, the DWF Ds then worked closely with Indigo to establish its new custody business. Mr Horn also joined Indigo as a director (in May 2014). The necessary approvals were obtained from the FCA by use of a business plan that misdescribed the business Indigo intended to conduct, so as to avoid giving the FCA the chance to refuse to approve the actual trading model.

265. When Maple Point Model trading then commenced, the DWF Ds were involved in coordinating it, planning details of the intended trading and communicating to the trading counterparties what they each respectively needed to know to execute the trades the DWF Ds needed them to execute, being on call to manage any issues on trading days, and managing the unwinds.

266. NCB's CANs were generated by its systems and sent by it to Mr Horn at Indigo, at Rajen Shah's request, so that he could provide them to the Tax Agents, which he did. Mr Horn had responsibility for Indigo CANs, but Rajen Shah also reviewed most of them, and Mr Dhorajiwala was aware at the time of their form.

267. The DWF Ds then managed the process by which tax refund claims supported by Indigo or NCB CANs were made to SKAT. Oryx dealt with the Tax Agents including by agreeing their fees, referring the Maple Point USPFs to them via Don Donaldson, and providing other assistance *ad hoc*, including with the on-boarding process. The DWF Ds also liaised with the Tax Agents as to the status of the tax refund claims and kept Maple Point informed.

268. In total, Maple Point Model 2014 trading resulted in CANs used to support successful tax refund claims to SKAT for: (a) DKK306,062,482.50 for CANs issued by NCB; and (b) DKK688,383,354.02 for CANs issued by Indigo. A significant proportion of those proceeds was ultimately received, indirectly, by the DWF Ds:

(i) The tax refund profit from Maple Point Model trading was split: (a) 67% to Maple Point and 33% to Siladen for claims based on trading through NCB; and (b) 45% to Maple Point and 55% to Siladen for claims based on trading through Indigo.

(ii) The Maple Point principals were lied to in relation to the profit split on trading through Indigo. They were told that Siladen had committed to a 15% Indigo profit share, which would mean a final split of 45% to Maple Point, 40% to Siladen, 15% to Indigo. There was no such commitment, nor any intention for Indigo to have a share of the profits. Siladen in fact kept for itself (and distributed to its principals) the full 55%. This was a deception practised by Siladen on its primary, trusted business partner. Rajen Shah said in cross-examination that he regarded it as a normal and acceptable negotiating tactic. I am prepared, on balance, to accept that Mr Shah did not at the time think of this as dishonesty or fraud, and still did not do so when cross-examined about it. It plainly was both, however, and Mr Shah's failure to identify it as such or feel any shame, looking back, at his own behaviour, did him no credit.

(iii) The subject matter of the profit share was profit net of Tax Agent, broker, custodian and trading counterparty fees, and the USPFs' own share (as to which, see paragraph 269 below). Spreadsheets produced by the DWF Ds and agreed by Maple Point during 2014 confirm that:

(a) stock loan and forward counterparties received fees equal to 0.5% of the gross dividend; and

(b) short sellers received fees equal to 1.5% of the gross dividend.

(iv) Between August 2014 and April 2015, in satisfaction of invoices from Siladen, the Maple Point USPFs paid a total of €56,842,244 to Siladen (via a DIFC entity, La Tresorerie), from which Siladen promptly made substantial payments on to the DWF Ds.

269. The Maple Point USPFs themselves received a "*long fee*", typically (although not in every case) of 4%. In an email at the time, Rajen Shah wrote: "*Pension funds end up with 4% of the P&L after all fees*". However, the spreadsheet to which I was referred at trial shows that it was more complex than that. A Maple Point USPF's fee was not quite an agreed percentage of "*the gross … reclaim less all fees due to the Tax Agents, Brokers and other trading counterparties*", as SKAT submitted. It was less than that, because:

(i) it was treated as a cost in calculating the profit to be split between Maple Point and Siladen, however

(ii) it was not calculated as a percentage of the gross reclaim less the other costs listed by SKAT, but as a percentage of Maple Point's profit share plus the long fee itself.

So, for example, where the agreed percentage was 4%, as mostly it was, if I use 'LF' for the long fee and 'MP' for Maple Point's profit share, then LF was 4% of (MP + LF). Solving that little equation for LF gives LF = 4.1667% of MP, which would be equal to

c.2.8% of the reclaim less other costs for NCB trades and c.1.875% of the reclaim less other costs for Indigo trades.

C.16 Maple Point 2015

270. In late 2014, Rajen Shah, Mr Dhorajiwala and Mr Teraiya ceased to be involved with Maple Point. Mr Horn took steps to ensure that Maple Point Model trading could continue in 2015.

271. First, Mr Horn found a custodian to replace Indigo. He incorporated Gold Eagle Securities Ltd ('GESL') for that purpose on 8 January 2015 and Natassia Kourousi was employed as compliance officer, a role she had held at Indigo. However, GESL did not obtain authorisation from the FCA to act as custodian until August 2015. As with Indigo for 2014 trading, the FCA authorisation application prepared by or under the direction of Mr Horn misdescribed the proposed business so as to avoid disclosing the true nature of the trading model, which (I find) Mr Horn expected that the FCA would not approve.

272. In the meantime, in early 2015 Mr Horn was introduced to Arthur Hogarth and Paul Baker at Lindisfarne. The introduction came from Mr Price, who had been a founding partner of Lindisfarne. Lindisfarne suggested Fox Davis Capital or Shard Capital as custodians, but discussions with them did not bear fruit. Lindisfarne agreed to act as custodian itself, on condition that all trading netted to zero so that their accounts would only ever show nil share and cash balances, meaning there would be no settled balances of shares and no connection to shares registered at VPS.

273. Mr Horn then worked with two ex-Syntax employees under his supervision, Gelara Avak and Harry Rowe, to assist Lindisfarne in preparing for Maple Point Model trading. For example, they introduced Maple Point USPFs, brokers, short sellers, stock lenders and forward counterparties to Lindisfarne, provided template or draft documentation, including custody agreements, fee schedules, email trading confirmations and CANs, commented on drafts of Lindisfarne CANs, custody agreements, client statements and internal record-keeping documents, explained to Lindisfarne how the Maple Point Model worked, and provided a trading calendar for Denmark. They assisted Lindisfarne with the onboarding of Maple Point USPFs and other compliance matters.

274. As a second main step, Mr Horn considered that a new Tax Agent should be found, given Sanjay Shah's efforts to tie Tax Agents to Solo, as described above. In late 2014, Mr Horn agreed with Alba Brown, formerly of Acupay, that she would establish her own company, in the event Koi, to act as Tax Agent. Mr Horn provided a start-up loan to Koi of £36,000 in December 2014 to cover its establishment costs and initial operating expenses. He also concluded an agreement with Ms Brown, later extended to her brother, Alasdair, who became a co-owner of Koi, to refer clients to Koi. In the event, Koi's only clients were Maple Point USPFs.

275. As a third main step, in early 2015 Mr Price introduced Mr Horn to Adnan Haider, a former UAE banker with div-arb experience who was operating through his Seychelles company, WWAM, which he later settled onto a discretionary trust organised under the law of Gibraltar, the WWAM Trust. Mr Haider also owned White Rock and was the authorised trader of Lannister, two companies which then participated as short sellers in Maple Point Model trading via the NCB platform in 2015. WWAM agreed to act as

consultant to the Maple Point USPFs and together with Mr Horn essentially took over the role that had been played by the DWF Ds for Maple Point Model 2014 trading. Mr Horn later entered into a consultancy agreement with WWAM on 27 September 2015, which he assigned to his entity GMH Advisory LLP on 13 October 2015.

276. Again, the trading was pre-planned, as realistically it had to be if it was always to result in the desired and intended net zero settlement loops. As Mr Hogarth of Lindisfarne said in his evidence, "*the trading strategy was known and when the trades were presented to Lindisfarne, we could work out the cash flows at maturity*", and the trading "*appeared to be pre-planned in terms of which accounts would participate, the structure of the trade and the times of the trades*".

277. As in 2014, NCB CANs from Maple Point Model 2015 trading were sent to Mr Horn, and he provided them to the Tax Agents. Assisted by Mr Rowe and Ms Avak, he also reviewed Lindisfarne CANs before they were sent. He liaised with Maple Point and the Tax Agents relating to progress of the tax refund claims, as he had in 2014.

278. In total, Maple Point Model 2015 trades resulted in successful tax reclaims on behalf of Maple Point USPFs to an aggregate value of (a) DKK829,712,963.69 for claims supported by NCB CANs, and (b) DKK920,721,444.02 for claims supported by CANs from Lindisfarne.

279. Between July 2015 and September 2015, in satisfaction of the WWAM invoices for services provided, the Maple Point USPFs between them paid €83,286,000 to WWAM from their accounts at either NCB or Lindisfarne. Disclosure in the proceedings did not locate much evidence of the fees payable to short sellers, stock lenders and forward counterparties in Maple Point Model 2015 trading, but it seems probable that they were similar to the previous year. In the case of Mr Klar's entities, Sherwood and Potala, indeed, there is good evidence that they were paid on the same basis in 2015 as in 2014.

280. Koi was also paid a bonus of €30,000 per Maple Point USPF, in total €900,000; and Lindisfarne received total fees of c.€4.5m.

C.17 Legal Advice

281. As I indicated in paragraph 100 above, one main theme at trial was whether, and if so on what basis, trial defendants who were aware of it believed that the use of balanced share-less settlement loops of the type used in the Solo Model or Maple Point Model, settling to zero, could leave the USPF (or LabCo) with an entitlement to a dividend tax refund from SKAT. In that connection, it is natural to consider, among other things, whether advice was taken on Danish tax law, and if so by whom, on what basis, with what outcome. It is convenient to answer that now on the facts, before turning to deal with the Klar Model to complete this main narrative.

282. The short answer as regards legal advice, I find, is that none was ever sought on that question, and I conclude that Sanjay Shah, Mr Horn and Rajen Shah, at the time, knew that advice had not been sought on that question and expected that if it had been sought, it would probably have been negative.

283. The outcome of the Revenue Rule Trial, after SKAT's successful appeal, is that none of the pleaded claims pursued by SKAT at the Main Trial is regarded as inadmissible

in an English court as a claim to enforce, directly or indirectly, Danish tax law or some other sovereign interest of the Kingdom of Denmark. The tax law context is still relevant, as it may bear upon aspects of the case pursued by SKAT, for example: the purport or effect, considered objectively, of the submission of a tax refund claim to SKAT, or of the documents that went to SKAT; the assessment of SKAT's actions or thinking said to justify a finding of inducement by representations; the investigation of the understanding or intention of those who played some part in the trading that resulted in tax refund claims being made to SKAT, or in the making of those claims.

284. Further, it is right to keep in mind throughout that the process scrutinised in this litigation was not a business negotiation or commercial transaction, between SKAT and anyone. It was a process created and operated by SKAT as a national tax authority for receiving claims for relief from Danish dividend tax and for a payment accordingly from Danish public funds. Persons considering or interacting with that process might or might not draw any or any clear distinction between questions of having, or not, an entitlement to a tax refund, on a proper understanding of Danish tax law, on the one hand, and questions of understanding and satisfying (or not) what SKAT had decided, or appeared to have decided, to treat as sufficient for it to accept a claim and make a payment.

285. With that in mind, I summarise not only the private legal advice, to the extent I had evidence of it, sought and received by parties involved in Solo Model or Maple Point Model cum-ex trading, but also, and first, the advice and guidance published at the time by SKAT and by Clearstream.

C.17.1 SKAT's Legal Guide

286. SKAT's Legal Guide was published on its website only in Danish. Where I quote from it in English, therefore, I am quoting translations from the Main Trial, not anything that appeared in English at the time. Section C.B.3 of the Legal Guide concerned "*Taxation of dividends and distributions of shares, etc.*", and included the following guidance:

(i) in section C.B.3.1, "***Rule**: Dividends of shares, certificates of shares and similar securities are included in the statement of taxable income. Dividends includes everything that the company distributes to its shareholders or unit holders, regardless of the form in which the distribution takes place. See the **Tax Assessment Act (LL) Section 16A**, subsection 1. …*";

(ii) also in that section, "***Individuals subject to the rule**: Only the amounts distributed to current shareholders are considered taxable dividends. See **LL Section 16A**, subsection 2 no.1. The determining factor will then be whether you are a shareholder (i.e. have ownership rights to the share) when declaring the dividend [sic.]*". That is the translation used at trial, but the sense surely will have been "*when the dividend was declared*" (the Danish was "*tidspunktet for deklarering af udbyttet*");

(iii) section C.B.3.1 also stated the opinion of the Ministry of Taxation to be that dividends were generally taxed on the basis of dividend rights, and in a summary of sources at the end referred *inter alia* to a Danish Tax Tribunal decision that a 56.8% shareholder was to be taxed on the basis of the right to 56.8% of dividends that went with the shareholding, since in the Tax Tribunal's view,

"*according to practice, a final right to dividends is considered to be acquired at the time of determination of the dividend (declaration) at the company's general meeting*", and thus "*An oral agreement on disproportionate division was not recognised for tax purposes*";

(iv) section C.B.3.2 said as to "*Time of taxation*" that "*Taxation of dividends is based on the legal acquisition principle. This means that the shareholder must include the dividend income statement when the final right to the dividend has been acquired … The time of payment itself is irrelevant to the time of taxation.*"

287. Section C.B.2 of SKAT's Legal Guide concerned "*Taxation of gains and losses on disposal of shares*". Within that Section:

(i) in section C.B.2.1.1.5, SKAT explained that share dividends were "*The portion of a limited company's profits distributed between shareholders. For tax purposes, the term includes any financial benefit that accrues to shareholders or members …*"; and

(ii) in section C.B.2.1.6.1, SKAT asked and answered the question "*When is a share acquired or disposed of?*", its answer being that, "*A share is acquired or disposed of on the date when there is a final and binding agreement on the acquisition or disposal.*" On its face, that statement required there to have been an acquisition or disposal of shares. In that case, it said, then for tax purposes the shares were treated as having been acquired (or disposed of) when a final and binding agreement had come into existence for the acquisition or disposal in question. It did not state that, and therefore did not evidence a view held by SKAT that, shares were acquired (or disposed of) merely by contracting to buy (or sell).

288. Section C.F.3.1.7 noted that in Denmark there was a customary withholding rule, so that the company paying the dividend would withhold (it said) 28%, "*even if the shareholder is domiciled in a State with which Denmark has [a DTT]. The shareholder will then be able to apply for a refund of the dividend tax via SKAT.*" Then section C.F.8.2.2.10.1.1, concerning "*dividends covered by Article 10 of the Model Agreement [for DTTs]*", said that in that context:

"*… dividends are the distribution of profits from the legal entities that can distribute profits to the persons who own shares in the legal entity. In Denmark, these include share dividends and dividends paid by a limited liability company to its shareholders. Abroad, the legal entities, the ownership interests in them and the distributions to the owners may have different designations. … The law of the country where the distributor of the dividends is resident determines which types of income are covered by Article 10 … .*"

289. The Legal Guide also contained the following guidance about DTTs (and Article 10 in particular), and their operation:

(i) In section C.F.8.2.2.10.1.3, the text sought to explain, in Danish, how best to understand the English term 'beneficial owner' in DTTs. With assistance at trial from the interpreter who was sworn so that SKAT's factual witnesses could have assistance if needed, I find that the Danish text, which was,

> "*Begrebet retmæssig ejer*
>
> *Det er altid den retmæssig ejer og ikke den, som umiddelbart optræder som modtager, der anses for modtager af udbytte i modeloverenskomstens forstand. Se punkt 11 og 12 i kommentaren til modeloverenskomstens artikel 10.*
>
> *Begrebet retmæssig ejer er den almindeligt anvendte oversættelse af det engelske udtryk beneficial owner.*",

is best rendered into English, so as accurately to capture the sense, as,

> "*The rightful owner concept*
> *['retmæssig ejer' translates literally as 'rightful owner']*
>
> *It is always the rightful owner [in Danish, 'retmæssig ejer'] and not the immediate recipient who is considered the recipient of a dividend in the sense of the Model Convention. See points 11 and 12 in the commentary on article 10 of the Model Convention.*
>
> *The [Danish] term retmæssig ejer is the commonly used translation of the English expression beneficial owner.*"

(ii) In section C.F.8.2.2.10.3.2, SKAT gave guidance as to "*Danish dividend tax refund*" in these terms:

> "*If a source country withholds tax on dividends at a higher rate than agreed in the [DTT], the overpaid tax can be refunded … For a refund of Danish dividend tax, the forms 06.002 (Switzerland), 06.005 (Germany) and 06.003 (all other countries) which can be found at www.skat.dk are used.*
>
> *One form must be completed per Danish company paying the dividends. The form must be signed by the tax authorities of the country of residence, which must confirm that the recipient of the Danish dividend is domiciled/resident in that country.*"

SKAT did not adhere to either of those last two requirements. The first was not stated in the Form, and in practice a single Form would be accepted and processed when accompanied by multiple CANs, even if they did not all reference the same Danish company. The second was built into the Form, but was ignored in practice and SKAT accepted other evidence of foreign tax status sent with the Form.

290. SKAT's website carried *inter alia* the following English language pages during the relevant period:

(i) a page on "*How to avoid double taxation*", which advised that, "*You can avoid double taxation on dividends if the authorities in your country certify your country of residence. If you own Danish shares in the VP Securities Services (Værdipapircentralen), you might risk double taxation of dividends*", and that "*You may avoid double taxation on dividends, if: • You are able to certify that*

your country of residence is outside Denmark. • Your country of residence has entered into a double taxation agreement with Denmark. This means that the Danish withholding of dividend tax is only going to be with the tax rate stated in the double taxation agreement … .", and included a link for "*How to get a refund of dividend tax*";

(ii) the page thus linked, "*How to get a refund of dividend tax*", which so far as material said only, "*The form* ***Claim for Refund of Danish Dividend Tax*** *must be completed and returned to SKAT*", the name of the Form being a hyperlink to Form 06.003 for downloading. SKAT also relied in argument on a bullet point on that page referring to an entitlement to claim a refund on the part of "*unit holders who are resident outside Denmark*", but that was part of separate information on the page specific to Swiss investment funds, and "*unit holders*" referred to holders of units in such a fund.

291. SKAT's published stance and guidance at the material time, therefore, was that:

(i) Danish dividend tax liability was imposed on shareholders, i.e. those with 'ownership rights' to shares, when the dividend was declared. It did not explain further, or provide specific guidance about, what it meant by, or what was required to acquire, 'ownership rights' to shares.

(ii) If ownership rights to shares were acquired, they were treated by Danish tax law as having been acquired when a final and binding agreement for the acquisition was concluded. It did not explain further, or provide specific guidance about, what it meant by, or what was required to constitute, such an agreement.

(iii) Foreign shareholders might be entitled to a dividend tax refund, to claim which (for the foreign jurisdictions relevant to these proceedings) Form 06.003 had to be completed and returned to SKAT. However also, by virtue of Article 10 of Denmark's DTTs, it was the 'beneficial owner' (an English language Treaty concept), and not the immediate recipient of a dividend, that had the benefit of the treaty. That was not explained further, nor were its implications considered. At face value, it indicated SKAT's view to be that the party entitled to claim a tax refund, by virtue of a DTT, need not have been the party considered under Danish tax law to have been the shareholder with the dividend tax liability.

292. I found in *SKAT (Validity Issues)*, *supra*, that there were in fact cumulative requirements. I held, on the language of s.69B(1) of the Danish Withholding Tax Act and the expert evidence of Danish tax law at the Validity Trial, that to be entitled to a refund a party had to have been the beneficial owner of a dividend for the purpose of a DTT *and also* the shareholder under Danish tax law when the dividend in question was declared. That was not SKAT's published understanding at the time; and s.69B(1) of the Danish Withholding Tax Act was not mentioned in the Legal Guide, SKAT's website, or Form 06.003. An applicant using Form 06.003 would claim either "*In my capacity as beneficial owner*" or "*On behalf of the beneficial owner*", and the Form required the full name and address of the "*Beneficial Owner*" to be filled in. Those would all naturally be taken, in context, to refer to the 'beneficial owner' concept in DTTs, which concerned dividends and did not require share ownership. SKAT relied in argument on a different standard form published by SKAT at the time by which a declaration of beneficial ownership of securities might be made. No such declaration

was required for a dividend tax refund claim, however, and in my view its existence does not affect the purport or implications of SKAT's Legal Guide and Form 06.003, read sensibly in the context of Denmark's DTTs.

293. As the DWF Ds submitted, SKAT's published position and guidance therefore gave no hint that short selling, deferred settlement, or stock lending, might be relevant to the incidence of dividend tax liability or any entitlement to a tax refund. It was submitted for the DWF Ds that it likewise gave no hint (i) "*that any dividend which was the subject of a refund application should be traceable to a payment by a company paying the dividend*" or (ii) "*that any shares which were the subject of an acquisition contract should be traceable to shares held by VP Securities*". As to those submissions:

(i) The first may be true, if care is taken over what is meant by it. What SKAT said in the Legal Guide was clearly to the effect that the dividends it taxed were entitlements that, by nature, would always be traceable to the company by which they were declared. The "*dividend … the subject of a refund application*" to which the DWF Ds referred in the submission meant, I think, a payment, labelled a 'dividend' or treated as dividend income, based on the receipt of which a tax refund claim was submitted to SKAT. If that is what was meant, then I agree with the submission.

(ii) The second is not true. Firstly, when the Legal Guide referred to 'shares', since no different meaning was indicated, that meant shares which are, by definition, traceable to VPS and the company. Secondly, the website made explicit that when SKAT referred to shares in the present context it was referring to securities ultimately custodied at VPS (see paragraph 290(i) above).

294. One upshot of the above is that if someone with knowledge of cum-ex trading strategies consulted SKAT's Legal Guide as part of considering whether cum-ex 'worked' for Denmark, they would reasonably have concluded that it did or at least might. If shares were acquired after a dividend record date under a purchase (contract to buy) concluded with a short seller before the ex-date, and lent out by the buyer under a stock loan concluded only after the ex-date, the buyer would have acquired, it might be thought, ownership rights to shares that according to SKAT would be treated for Danish tax law purposes as having been acquired prior to the ex-date, and the disposal under the stock loan would seemingly take effect for tax purposes, according to SKAT, only from after the ex-date.

295. On what was said in SKAT's Legal Guide, that would have appeared to mean the buyer was the shareholder subject to liability for Danish dividend tax. The question would remain whether the buyer was the beneficial owner of the dividend for the purpose of any DTT, on which the Legal Guide provided no real assistance.

296. The magic ingredient of the Solo, Maple Point and Klar Models, of course, was that the buyer never acquired shares at all. SKAT's Legal Guide said nothing to suggest that such a buyer might be entitled to a tax refund, except in the limited sense that it was not definitively ruled out as impossible given that the Legal Guide indicated that a beneficial owner of a dividend, for the purpose of a DTT, was entitled (if they fell within a tax-favoured category under the DTT) and need not necessarily have been a shareholder liable for dividend tax.

C.17.2 Clearstream

297. Clearstream material publicly available at the time supported the view that a cum-ex buyer of Danish shares should be credited, and their seller debited, with what I am calling a dividend compensation payment, if the sale settled. On one reading of the Clearstream material, cum-ex trading where settlement is always intended to be with ex-div shares was within the cases where what it called a 'market claim' should be processed on a settlement after the record date. In my view, on balance, the better reading of the relevant Clearstream material is that it dealt only with the processing of market claims as defined by the CAJWG Standards, but as I have just indicated I can see how it might have been read differently. Nothing in the Clearstream material advised that a cum-ex dividend compensation payment would be treated as a dividend for tax purposes in Denmark, although it did not expressly rule that out, as it did for certain other jurisdictions where Clearstream felt able to make a positive statement to the contrary, for example, for the Netherlands, "*Note: Market claims are considered indemnities. Recipients of indemnities are not able to reclaim Dutch withholding tax*", and for Italy, "*Compensations on the Italian market are not considered as income but as a price adjustment*".

298. A reasonable view that may have been gleaned from the Clearstream material at the time was that of Rajen Shah, expressed in an email to Sanjay Shah and Mr Horn on 30 August 2012, that for Danish shares: "*Dividend entitlement is based on traded position at ED [i.e. ex-date]. The CSD [i.e. VPS] will credit accounts only when position settles (this should not impact entitlement)*". Again, however, the secret to the Solo Model trading that was by then underway (the first trading was around TDC's dividend date of 8 August 2012) was the absence of shares and the related share-less settlement method. The Clearstream material did not help to answer the question whether trades settled in that way might generate a Danish tax refund entitlement.

C.17.3 Hannes Snellman

299. The only Danish tax advice obtained during the design or implementation of Solo Model cum-ex trading was advice given by the Danish law firm Hannes Snellman, in: (a) an opinion letter dated 27 June 2012 (the 'First HS Advice'); (b) an email dated 1 July 2013 (the 'First HS Email'); (c) an updated opinion letter dated 20 December 2013 (the 'Second HS Advice'); (d) an opinion letter dated 29 January 2014 (the 'Third HS Advice'); and (d) an email dated 12 February 2014 (the 'Second HS Email'). There were also drafts for a further Hannes Snellman opinion letter in January and February 2014, but they add nothing to the body of Danish legal advice obtained, given that they were only drafts, although they played a separate part in the factual narrative, as mentioned in paragraphs 183 and 211 above.

300. The First to Third HS Advices were addressed to Elysium Dubai, but stated that they had been prepared at the request of SCP. The First and Second HS Advices concerned possible trading by USPFs and the Danish tax consequences thereof. The Third HS Advice concerned LabCos.

C.17.3.1 The First HS Advice

301. Hannes Snellman were not asked to advise, by reference to any actual trading, on the validity or otherwise of the tax refund claim, actual or prospective, of any Solo Model

USPF or LabCo. Nor were they given a detailed or complete transaction structure for Solo Model trading, as they could have been since every element of it was designed at, and would be directed by, Solo.

302. Hannes Snellman were asked instead to consider the "*Danish tax implications*" for a USPF (or LabCo), and for SCP, if the USPF (or LabCo) entered into trades described in general terms in the introductory parts of the advice, which did not disclose that those trades would be part of a structure designed and coordinated by Solo for the sole purpose of generating a possible tax refund claim by the USPF (or LabCo). Among the trial defendants, Sanjay Shah, Rajen Shah and Mr Horn had responsibility for what Hannes Snellman were asked and how they were asked it. In cross-examination, Rajen Shah and Mr Horn both argued that they sought advice candidly and obtained advice that Solo Model trading did generate valid tax refund entitlements, when perfectly obviously neither was the case.

303. Sanjay Shah in cross-examination was somewhat more frank about the limited nature of what Hannes Snellman were asked to consider, but not very coherent in his argument overall. In my judgment, he found himself unsure whether to push the line that although there were limitations to it, Hannes Snellman's advice *did* confirm that Solo Model tax reclaims would be valid under Danish tax law, or to stick to the different line, closer to the truth, that Solo was not seeking that type of advice at all, but rather something more akin to a 'marketing tool' for recruiting potential clients, i.e. tax-advantaged equity buyers for Solo Model trading. That tension in Sanjay Shah's evidence was created by the fact that he has claimed to have thought that Solo was cleverly exploiting a Danish tax law loophole, but he knows that Solo never sought advice on whether any loophole that might exist extended to cover transactions where no shares were ever acquired.

304. I was unimpressed by those efforts to explain away the fact that Solo did not do what one would expect if it had been looking for advice on whether the Solo Model generated valid tax reclaims. I draw the firm conclusion that that is not what Solo was doing. For a more positive finding, the best explanation for what they did, in my judgment – in fact, I think, the only plausible explanation – is that their focus was on whether Solo Model equity buyers, who would know and see only something like the transactional facts that Hannes Snellman were asked to assume, would or might reasonably conclude that they had a right to a tax refund, or at least an arguable position on the basis of which they might be comfortable filing a claim with SKAT. That is not dissimilar to Sanjay Shah's sometime notion that the Hannes Snellman advice was a marketing tool. It is not quite the same in that, I find, it was never intended to be, and generally was not, shared outside Solo.

305. Rajen Shah sent a copy of the First HS Advice to the Argre Principals; but they were rather different to all other principals behind Solo Model (and Maple Point Model) equity buyers, given their backgrounds and history of involvement with Solo. In sending it to them, Rajen Shah invited them to find it a "*riveting read*", obviously a bit of irony (Mr Shah said in cross-examination that it was "*tongue in cheek*"). In my judgment, there was only sensibly room for such flippancy if Mr Shah did not think the Argre Principals would be interested in it, because they would know it was not for them to rely on confidential legal advice where they were not the advisor's client and would be deciding for themselves whether to participate, and if so by reference to what, if any, legal advice that they might choose to obtain. I considered whether, perhaps, it might corroborate Mr Horn's evidence that the Argre Principals knew before they decided to

participate, and when participating, how Solo was going to enable their USPFs, or the USPFs of others whom they might introduce, to trade without funds or funding external to the traded structure itself. In my view, it does not, although I think it plausible that the Argre Principals may have assumed that Solo had a full transaction structure in mind supporting the trading activity posited for the USPF and if so may have noted that that wider supporting structure was not set out or explained. That would naturally be considered to be Solo's 'IP', and I do not think there is a sufficient basis in evidence to find that the Argre Principals were troubled by not having all the detail. To proceed on that basis would be speculative.

306. SKAT relied heavily on the inadequacy of Hannes Snellman's advice, if it was supposed to be advice on whether the Solo Model generated valid tax reclaims. I agree with SKAT that it did not provide any reasonable basis for considering that Solo's magic ingredient of share-less equity trade settlement had no impact on possible tax refund entitlement. However, I do not consider that the way Sanjay Shah and his colleagues went about obtaining Hannes Snellman's advice evidences preparation to commit the fraud that SKAT has alleged in these proceedings. They did not consider (and SKAT did not allege) that tax reclaims would state that there *was* a tax refund entitlement. They did not tell the truth at trial about the Hannes Snellman advice, in the face of a certain relentlessness of SKAT's insistence that it was central to the case. They had, in consequence, a general unwillingness to admit what might be thought the unattractive truth that they constructed what became a tax reclaim industry on a massive scale without ever having, or having any solid basis for, an opinion that the reclaims were valid under the applicable rules of Danish tax law. But in my judgment they never saw what they were doing as setting things up so that SKAT would be or were being told untruths.

307. Denmark was not the only jurisdiction that Solo investigated. The Solo Model was also deployed in Austria and Belgium, and a decision was made not to make the attempt in some other jurisdictions. In closing argument, Mr Graham KC for SKAT initially developed a submission that in that planning phase, Solo was actively seeking to identify soft targets to exploit. That submission was not pressed, however. Mr Graham accepted, on reflection, that it was a new point, materially different to anything put in cross-examination. However, I agree with the submission that remained open to SKAT, namely that the evidence on which it had been based negatived any suggestion that declining to extend the Solo Model to other jurisdictions evidenced a focus on the validity under local law of tax refund claims. Without contemplating the more cynical notion of picking soft targets, in my judgment the evidence did show that Solo's focus was the tax authorities' processes and the documentary requirements involved in them. If Solo Model trading would generate the documents enabling claims to be filed, the view at Solo, I find, was that it was worth putting Solo Model trades on and seeing whether they resulted in successful outcomes, i.e. tax reclaims that the tax authority decided to accept and pay.

308. The First, Second and Third HS Advices were all structured in the same way, so far as material:

    (i) After a very brief Section 1, "**INTRODUCTION**", Section 2, "**SCOPE**", equally brief, said that the advice considered "*the tax implications for USPF [LabCo in the Third Advice] of the contemplated transactions*", and that it did not consider the potential tax implications for other parties to the posited transactions.

(ii) Section 3, "**CONTEMPLATED TRANSACTIONS**", then described a possible set of transactions that might be entered into by a USPF (or LabCo in the Third Advice), and Section 4, "**ASSUMPTIONS**", set out matters that "*For the purpose of this Opinion, we have assumed …*".

(iii) Section 5, "**OPINION**", advised that "*Based on the facts and assumptions outlined in Section 3 and Section 4*", Hannes Snellman were of the opinion that the posited transactions should not attract any Danish tax other than "*withholding tax on dividends distributed on the Equities*" and "*USPF [or LabCo] should be entitled to claim a full refund of the Danish dividend withholding tax imposed on the Equities pursuant to the [pertinent DTT]*".

(iv) Section 6, "**APPLICABLE DANISH TAX RULES**", provided a general explanation of relevant matters of Danish tax law, and Section 7, "**ANALYSIS**", set out why, in the light of it, Hannes Snellman had given the opinion expressed in Section 5.

309. The USPF's transactions posited in the First HS Advice, then, were as follows:

"**3 CONTEMPLATED TRANSACTIONS**

USPF contemplates to make the following transactions:

1) USPF purchases Danish exchange traded equities (the "**Equities"**) (either via a regulated inter-dealer broker or via purchasing Eurex single-stock, physically delivered listed flex future contracts regarding the relevant Equities);

2) The purchase of the Equities will take place prior to the ex-dividend date but no later than the dividend approval date meaning the date where the dividend is finally approved for distribution (generally meaning the date of the annual general shareholder's meeting) ("**Dividend Approval Date**"). The settlement date for the purchase of the Equities will be on or after the dividend record date. In the case of physically delivered listed futures contracts, the expiry date of the futures contract will be no later than the Dividend Approval Date;

3) USPF will receive the dividend which has been declared on the Equities on Dividend Approval Date (the "**Danish Dividend**");

4) On purchase of the Equities, USPF will hedge its long exposure on the Equities by selling exchange-traded, cash-settled single stock futures over the Equities (the "**Short Derivative**"). The price of the Short Derivative will take into account a proportion of the expected Danish Dividend in calculating the strike price of the Short Derivative but no adjustment will be made if the actual dividend amount is more or less than the expected dividend amount;

5) On or after the ex-dividend date USPF will sell the Equities via an inter-dealer broker. The settlement date for the sale of the Equities will be the same date as the settlement date of the purchase of the Equities in 2) above. At the same time, USPF will enter into a long futures position over the Equities in order to close out the short futures position created in step 4 above The long futures

position will expire on the same date as the short futures position created in step 4 above;

6) It is possible that in the period until sale, the Equities would be lent out under a stock loan (using a standard Global Master Securities Lending Agreement) to an unrelated party (which could be located in any jurisdiction) in order to minimize financing costs. The period of the stock loan is not expected to exceed 3 months and the stock loan would be cash collateralised. The stock loan transaction may be entered into on or after dividend record date (with settlement of the stock loan occurring on the same day) but always after Dividend Approval Date and the borrower of the Equities would not receive any dividend on the Equities."

310. The language of 'purchase' and 'sale' seems to connote contracting (to buy and sell), as with my use of that language in this judgment, because the 'purchase' is said to occur prior to a dividend ex-date, for settlement on or after the associated record date. The transaction pattern posited, read literally, makes no sense. It proposes that:

(i) on or before a dividend declaration date, a USPF buys Danish shares for settlement on or after the dividend record date, so that is a basic purchase trade that might be cum-ex (physically settled futures with expiry before the ex-date, said to be a possibility, is just another way of creating such a purchase);

(ii) on or after the ex-date for that dividend, the USPF will sell the Danish shares it thus bought, for settlement on the same date as its purchase, so that is an on-sale by the USPF buyer that will be a simple ex-div sale; and

(iii) the Danish shares bought by the USPF might be lent out until the sale date ((ii) above) under a stock loan with same-day settlement traded on or after the ex-date (and, it might be, only on or after the dividend record date); however

(iv) such a stock loan by the USPF is an impossibility: the USPF buys and later sells, for simultaneous settlement on or after the record date; but therefore both prior to and after settlement the USPF will have no stock to lend out.

311. That impossibility, then, is created by the fact that the posited sale, terminating the USPF's investment, is for settlement on the same date as its (possibly cum-ex) purchase. That element of the fact pattern was introduced by Rajen Shah at the last minute, relatively speaking, in an iterative process of working up the First HS Advice with Hannes Snellman. Mr Shah introduced it as part of tracked changes he sent to Hannes Snellman on 25 June 2012, and the First HS Advice was finalised and issued on 27 June 2012.

312. Hannes Snellman were first given a fact pattern to consider in an email from Mr Horn on 23 May 2012. In that fact pattern, and thereafter until Rajen Shah's late amendment, the clear impression given was that there would be an interval of unspecified length (but not expected to exceed three months) between the USPF acquiring the shares and the USPF later selling them, *during which interval* the USPF might lend the shares out to minimise financing costs. Although not much of his evidence about this, or anything else, was satisfactory, on balance I accept Rajen Shah's evidence that, at all events in

the final version, the stock loan possibility was intended to be a strict alternative to immediate re-sale. He accepted that it would have been better to spell that out, for example by amending paragraph 6) of the fact pattern so that it began, "*It is possible that, instead, the Equities will be sold later, and until that sale, …*".

313. Rajen Shah claimed that he made that clear to Hannes Snellman on the telephone. I do not accept that evidence. It is clear from the correspondence that there were telephone discussions with Hannes Snellman (also involving Mr Horn), but there is no hint that Hannes Snellman had taken this 'alternative structures' point on board, and, as will become clear below, I find that Hannes Snellman did not do a good or careful job with this advice, so I do not infer that they must have understood the point because they did not protest that paragraph 6) of the fact pattern had become nonsensical. I think it more likely that Hannes Snellman did not spot the tension created by Mr Shah's amendment to paragraph 5) of the fact pattern. In itself, that amendment was apt only to cause Hannes Snellman to apply their mind to whether settlement of an ex-div sale on the same date as settlement of (what might be) a cum-ex purchase would affect the Danish tax law analysis; and if the clash it created with paragraph 6), as it stood, had been noted, I think it unlikely that Hannes Snellman would have left it as it was.

314. On any view, the fact pattern gave as fixed points that:

(i) the USPF "*will receive the dividend … declared on [the dividend declaration date]*" (paragraph 3) of the fact pattern);

(ii) any stock borrower to whom the USPF lent "*would not receive any dividend*" (paragraph 6)); and

(iii) the USPF's long exposure to movement of the stock price of the Danish shares would be hedged using cash-settled single stock futures at a price fixed by reference to the expected dividend that would not be adjusted if the actual dividend was different (paragraph 4)).

315. The fact pattern did not clarify or elaborate what was meant by the proposition that because of the equity purchase the USPF would "*receive the dividend*", either generally or in particular if the purchase was cum-ex, which was within the fact pattern.

316. The brief to Hannes Snellman therefore was, or included, a brief to advise whether a USPF which bought Danish shares cum-ex but nonetheless in some unspecified sense "*receive[d] the dividend*", and sold ex-div for settlement at the same time as its purchase, would be entitled to a refund of Danish dividend tax, and whether a stock loan by the USPF entered into on or after the ex-date would affect the answer.

317. Against the background of the hypothetical transactions described in Section 3, in Section 4 the assumptions that are material for present purposes were stated as follows:

"**4 ASSUMPTIONS**

For the purpose of this Opinion, we have assumed that:

…

5) On purchase of the Equities, USPF will obtain unconditional ownership to the Equities and will have full ownership rights over the Equities on Dividend Approval Date including the right to receive the dividend declared on that date;

6) The Equities will be held by USPF through a custodian. USPF's ownership to the Equities will be recorded with the custodian and, depending upon the custodian's and sub-custodian's other long and short positions, the Danish Securities Centre;

7) The custodian's records will show that USPF is the legal and beneficial owner of the Equities on Dividend Approval Date and that the Danish Dividend represents a real dividend on the Equities which is passed on to USPF by the custodian."

318. Those assumptions are not ordinary matters of fact. For the most part, they state matters or consequences of law. Assumption 5), for example, is all law. It said that on purchase, i.e. by concluding the purchase trade, the USPF would obtain (a) unconditional ownership of Danish shares, with (b) full ownership rights over those shares on the dividend declaration date, and (c) the right to receive the dividend declared on that date. In an advice as to the Danish tax law consequences for the USPF, given those assumptions, the assumptions could not sensibly have been stating conclusions of Danish tax law. They could only sensibly have been understood as defining the position under the general law that Hannes Snellman said they were assuming would exist, upon the basis of which they were offering an opinion on the Danish tax law treatment.

319. Assumption 6) stated as assumption that the USPF's "*ownership to the Equities*", which harked back to Assumption 5), would be recorded with its custodian, and may or may not be recorded at VPS, depending on the detail of the custody chain. Assumption 7) reinforced the position, making clear that it was assumed that, in particular even though VPS may not have any record of the USPF's share title, the USPF's custodian's records would show it to have had title on the dividend declaration date, and would show that the payment it received was a real dividend payment being passed on by the custodian. Sanjay Shah, Rajen Shah and Mr Horn all knew at the time that none of that would be true for Solo Model trades:

(i) As regards Assumption 6), the USPF would not have share title that might or might not be recorded at VPS, depending on detail relating to the custody chain. The USPF would never have share title constituted by a custody chain; the USPF's custodian would not even need to have a sub-custodian; and even if it did, and there was then a complete chain of custody arrangements with segregated accounting all the way down, still there would be no record at VPS of the USPF ever having any share title.

(ii) As regards Assumption 7), the USPF's custodian would not be passing on a real dividend payment, it would just be debiting a short seller and crediting the USPF with a dividend compensation payment. Further, the USPF's custodian's records would not show that the USPF had any share title on the dividend declaration date, because those records would show that the custodian never held any shares for the USPF at any time.

320. By the supporting explanation and analysis, Hannes Snellman advised that as a general rule, the liability to Danish dividend tax was that of "*the person or entity … registered as the holder of the dividend paying shares on Dividend Approval Date*". They said they believed "*that USPF must be considered the recipient of the Danish Dividend from a Danish domestic law perspective*", so that "*the Danish Dividend should be taxed in the hands of USPF*"; but that was "*[b]ased on our understanding that USPF will have full ownership rights over the Equities on Dividend Approval Date and … would only lend out the Equities after Dividend Approval Date with no dividend rights attached*".

321. The First HS Advice did not refer to any special rule of Danish tax law as to when ownership of equities (and therefore entitlement to dividends) was taken to have accrued. It did not consider how, if at all, including in what settlement circumstances, it might be possible, given the transaction pattern described, for the USPF buyer to "*have [under the general law] full ownership rights over the Equities on Dividend Approval Date*" (Assumption 5), or to receive something that "*represents a real dividend … passed on … by the custodian*" (Assumption 7).

322. As I read the First HS Advice, "*the Equities*" meant throughout real Danish shares, not something synthetic or derivative, referable to but not constituting shares. That means that Assumption 5) was an impossibility, creating severe difficulties for Assumption 7), even without knowing in detail the Solo Model settlement mechanics. Yet Hannes Snellman did not qualify their opinion by reference to any of that, or refuse to offer an opinion because of it. In expressing their opinion, Hannes Snellman said in terms that it was on the basis of the stated assumptions, but it is not competent or careful advice for an expert adviser, giving advice on stated assumptions, to fail to note and explain that parts of them seem to be impossible, if it is within the adviser's professional competence to identify and understand that. The obvious danger of stating assumptions without cautionary advice about them is that the adviser may be taken by the client to be advising, implicitly, that (other things being equal) the assumptions should be satisfied, or at all events that there is no reason that it would be within the adviser's competence to identify why they could not be satisfied or it is otherwise unreasonable to make them as assumptions.

323. Assumption 7) was added by Hannes Snellman after exchanges and discussions between their Anne Becker-Christensen, Rajen Shah and Mr Horn. Ms Becker-Christensen explained in a covering email on 26 June 2012, attaching in final draft form what became the First HS Advice, that Hannes Snellman had added Assumption 7) because, "*We need the opinion to reflect somehow that the payment for which USPF will claim treaty benefits is de facto a dividend payment which USPF has received, as a shareholder, from the dividend distributing Danish company (via the custodian)*". SKAT relied on the history to that observation, which was as follows:

    (i) In an earlier draft, dated 13 June 2012, Hannes Snellman had included Assumption 6) in these terms: "*USPF will be recorded as the owner of the Equities with [VPS]*".

    (ii) There was discussion on the telephone between Rajen Shah, Mr Horn and Ms Becker-Christensen, about which Messrs Shah and Horn gave evidence. Given what followed (see below), it must have involved at least confirmation, although it is surprising that Ms Becker-Christensen should have needed it, that the USPF would not be identified as a shareholder at VPS. I am prepared to accept Rajen

Shah and Mr Horn's evidence that Ms Becker-Christensen was also told that share trades would be settled in the books of a custodian by netting opposite positions. On the basis, again, of what followed (see below), I do not accept their evidence that she was told anything that disclosed to her that there would never be any shares at all.

(iii) As a result of that discussion, in the next draft on 20 June 2012, Ms Becker-Christensen amended Assumption 6) to read as follows: "*The Equities will be held by USPF through a custodian. USPF's ownership to the Equities will be recorded with the custodian who will be recorded as the custodian holder with [VPS]*". A further telephone discussion followed.

(iv) On 25 June 2012, Mr Horn sent a mark-up of the 20 June draft showing changes that Solo asked Hannes Snellman to consider. He proposed that the reference to VPS should be deleted from Assumption 6), because "*the custodian's ownership records will depend upon the combination of other long and short positions that it has entered into at the same time as this specific share purchase*". The mark-up of Assumption 6) was as follows: "*The Equities will be held by USPF through a custodian. USPF's ownership to the Equities will be recorded with the custodian.* ~~*who will be recorded as the custodian holder with [VPS].*~~"

(v) This confused Ms Becker-Christensen, who replied on the same day that Hannes Snellman assumed "*that the custodian, or a sub-custodian, would be registered as the holder of the Equities with [VPS]*". If that was not so, she asked Mr Horn "*… to explain who would be registered with [VPS] as the holder of the Equities upon USPF's purchase thereof*".

(vi) Rajen Shah suggested in cross-examination that this showed Ms Becker-Christensen did not understand net settlement. I disagree. Net settlement would mean that the settlement is not reported further down the custody chain, so that (in particular) VPS would never hear of it. It does not mean or imply that there are no shares, so it does not betray misunderstanding of net settlement for Ms Becker-Christensen still to be assuming that there would be a real shareholding involving a complete custody chain down to VPS.

(vii) A further telephone call followed, in which this aspect was discussed again, and after which Mr Horn sent another mark-up, proposing that Assumption 6) read thus: "*The Equities will be held by USPF through a custodian. USPF's ownership to the Equities will be recorded with the custodian and [VPS] (depending upon the custodian's and sub-custodian's other long and short positions)*".

(viii) That was tweaked only very slightly to become the final version, quoted in paragraph 317 above. This qualifying of Assumption 6) is what caused Hannes Snellman to add Assumption 7), which Ms Becker-Christensen explained as she did.

324. The upshot, as SKAT submitted, is that (a) the First HS Advice can only sensibly be read as assuming that the USPF would acquire full title to real shares in respect of which (therefore, by definition) there would be a complete custody chain, and that, although VPS might or might not have a record that the USPF sat at the top of the custody chain,

what was paid to the USPF would be a real dividend payment, passed on to it by its custodian, and (b) lest there might have been any doubt about that, Ms Becker-Christensen had made it clear in her emails that that was Hannes Snellman's intent.

325. Hannes Snellman thus did not advise, because they were not asked to advise, that the Solo Model would or did result in the acquisition of any ownership rights to shares. They advised only that, if under the transactions described such rights were acquired, then for tax purposes they would be treated as having been acquired in time for the USPF to be considered the party liable to Danish dividend tax and entitled in principle to claim a refund.

C.17.3.2 The First HS Email

326. The email dated 1 July 2013 referred to in paragraph 299 above was from Ms Becker-Christensen to Jessica Hammers in SCP's legal department, following a telephone call between them. By the email, Ms Becker-Christensen confirmed her advice in these terms:

"*As a general rule, dividends distributed by a Danish company are subject to Danish tax in the hands of the owner of the shares, i.e. the person who has legal ownership to the shares on the date where the dividend is declared … . The taxable event is the declaration of dividend and not the receipt of the dividend. Therefore, the Danish dividend tax is not cancelled if the dividend for some reason is never received by the owner of the shares.*

With respect to dividends on Danish shares which are subject to a stock loan arrangement, … the dividends according to Danish practice are taxed in the hand of the lender and not the borrower if the borrower has an obligation to pay a manufactured dividend to the lender."

327. That was inaccurate advice in that, without further explanation, one would not know that Danish tax law took a bespoke view, different from that of the general law, on the identification of the owner of shares. The email adopts the simple understanding of an accrual rule of taxation that I remain residually concerned might in fact be the true rule of Danish tax law, even though I was persuaded, on balance, to find otherwise, so that I am now bound to say that the email was inaccurate: see as to that, *SKAT (Validity Issues)*, *supra*, at [184], [193]-[195], [308]. Be that as it may, there is no hint in the email that Hannes Snellman understood they might be advising in relation to trading in which no party ever owned shares at all.

C.17.3.3 The Second HS Advice

328. The Second HS Advice was, for my purposes, materially similar to the First HS Advice, as regards the possible entitlement of the posited USPF to a refund of Danish dividend tax. It now made clear that SCP might be the USPF's custodian and, again expressly on the basis of the hypothetical facts in Section 3 and the assumptions in Section 4, advised additionally in Section 5 that:

> "1) The custodian services which may be carried out by [SCP] in relation to the Equities (a) does [*sic.*] not entail that [SCP] has established a permanent establishment in Denmark for Danish tax purposes and (b) should not trigger

any adverse Danish tax consequences for [SCP]; and

2) In the event that USPF's reclaim of Danish withholding tax withheld by the Danish tax authority is rejected, no economic penalties should be imposed on USPF or [SCP]."

C.17.3.4 The Third HS Advice

329. The Third HS Advice was materially similar to the Second HS Advice, but it considered hypothetical share transactions by LabCos rather than by USPFs. At step 3 in the transaction description, it was made explicit that the dividend it was said would be received by the LabCo would be "*of an amount equal to the gross dividend net of the relevant rate of Danish withholding tax*"; and at step 6, a repo was stated to be an alternative to a stock loan: "*Alternatively*, *the Equities may be refinanced under a sale and repurchase agreement (i.e. a repo) documented under a Global Master Repurchase Agreement … entered into on or after dividend record date (with settlement of the stock loan [sic.] occurring on the same day) but always after Dividend Approval Date and the buyer [viz., the repo buyer, not the USPF] would not receive any dividend …*". That, I think, reinforces the conclusion I reached, on balance, about the First HS Advice, namely that steps 5 and 6 of the hypothetical fact pattern in Section 3 should be read as alternatives to each other.

C.17.3.5 The Second HS Email

330. Finally, the email dated 12 February 2014 referred to in paragraph 299 above was from Ms Becker-Christensen to Priyan Shah at Agrius Capital (the services company through which he and Mr O'Callaghan worked for Sanjay Shah/Solo), but copied to Sanjay Shah, among others. By that email, Ms Becker-Christensen confirmed that the analysis detailed in the Second and Third HS Advices would not change if the price hedging was via cash settled forwards rather than exchange-traded futures, provided that "*the counterparties to the cash settled forwards are: 1) unrelated, independent parties and 2) are not counterparties to the equity trades in question*".

C.17.3.6 The Belador Advice

331. I was also shown written opinions from Hannes Snellman in June 2013 and February 2014 addressed to Belador Advisers UK Ltd (the 'Belador Advice'). The Belador Advice was not seen at the time by any of the trial defendants. It was provided by Hannes Snellman in relation to the structured trading organised by MCML (when it was still ED&F Man), on which see paragraph 26 above. The Belador Advice referred to a 'USPP' rather than a 'USPF' (i.e. 'Plan' rather than 'Fund'). It had the same general structure and format as the First to Third HS Advices, and much of the content is similar, but there were differences.

332. One of the differences was an addition in Section 3 that, "*USPP may receive the Danish Dividends as a compensation payment from its custodian based on the fact that (a) the Share Purchase may settle on a T+4 settlement basis or (b) the settlement of the transfer of the Danish Equity under the … Share Purchase … may be delayed because of settlement failure*". There was then an additional opinion given, relating to that possible fact, that "*If the … Share Purchase due to an agreed settlement in accordance with a*

T+4 settlement cycle or a settlement failure settles after the dividend record date, USPP should be able to claim a full refund of the Danish dividend withholding tax on received dividend compensation payments pursuant to the Denmark – US Tax Treaty provided that the conditions discussed in Section 7.1 below are met".

333. Hannes Snellman should not have used language suggesting that the dividend compensation payment would have been the subject of Danish dividend tax or that its receipt would have generated an entitlement to a tax refund. The point of substance in the additional opinion is advice that it would not defeat the USPF's entitlement to a tax refund if the only payment it received, because of settlement being after the record date, was a dividend compensation payment. That entitlement, according to the advice, still was to a full refund of the Danish dividend tax that had been imposed on the real dividend, arising because of the assumption (as in the First to Third HS Advices) that the USPF became the full legal and beneficial owner of real shares prior to the dividend declaration.

334. In 'Section 7.1', setting out the conditions the USPF would need to satisfy to be entitled, Hannes Snellman advised *inter alia* that it would be "*crucial*" that it could provide, *inter alia*:

> "*Documentation that the Danish Equity was purchased pursuant to an unconditional and legally binding agreement entered into prior to the ex-dividend date and that the Danish Equity according to such agreement was purchased on a cum dividend basis. Further, USPP must be able to document that the Danish Equity has subsequently been delivered, ideally only a few days dividend record date [sic., after that date]*."

335. That confirms that in Hannes Snellman's view a cum-ex buyer whose purchase was settled by a transfer of shares on the settlement date *was* a shareholder for tax purposes in respect of a dividend declared between the trade date and the settlement date, under a 'contract accruals rule' of Danish tax law, if it had not committed prior to the dividend declaration to a disposal of those shares to another. That oddly contrasts with the view seemingly given to SCP in the First HS Email (see paragraphs 326 to 327 above). I am also bound to find that the view given in the Belador Advice was incorrect under Danish tax law as determined for these proceedings. That is because I held on the evidence at the Validity Trial that the contract accruals rule does *not* mean that a trade prior to a dividend declaration that settles by a transfer of shares in due course is sufficient to create tax ownership of shares, because the seller may have been short when the trade was entered into and when the dividend was declared, yet still have achieved that physical settlement when the time came: see *SKAT (Validity Issues)* at, e.g., [247], [306]-[307], [309] and [310]-[313].

336. I have to find that the Belador Advice was inaccurate in that way, but it evidences that it would have made no difference to any of the First to Third HS Advices if Section 3, the fact pattern put to Hannes Snellman, had made it clear that the USPF's (or LabCo's) equity purchase would always be a cum-ex trade. That does not mean it was Hannes Snellman's view that tax ownership of shares could be created by a trade that did not settle by a share transfer, DVP.

C.17.3.7 Conclusions on Hannes Snellman's Advice

337. Whether Hannes Snellman would have articulated it precisely as I did on the expert evidence at the Validity Trial, I consider it clear on the whole of the evidence available as to Hannes Snellman's opinions that in their view, as I found, "*if a buyer never receives, by physical performance (share transfer), the shareholding seemingly contracted to be sold to them, they will not incur dividend tax liability on dividends declared after the contract was concluded (or at all)*" (*SKAT (Validity Issues)*, *supra*, at [228]). I am confident overall, and find, that Hannes Snellman would not have issued a positive opinion letter on the eligibility of a USPF (or LabCo) for a dividend tax refund if they understood that on the facts (actual or assumed) by reference to which they were advising, no shares would ever be transferred to the USPF (or LabCo). As Ms Becker-Christensen made clear to Rajen Shah and Mr Horn, in Hannes Snellman's analysis the USPF (or LabCo) had to have acquired a real shareholding. Therefore, not only can it be said that given the hypothetical factual basis and explicit assumptions upon which they advised, Hannes Snellman did not advise that the Solo Model share-less settlement method resulted in tax refund entitlement, in my view it is clear, and was clear at the time to Rajen Shah and Mr Horn, that, if asked, Hannes Snellman would have advised that it did not.

338. That factual basis, and those assumptions, mean that Hannes Snellman had been asked to assume that the USPF (or LabCo) was a dividend date shareholder (as I defined that term in *SKAT (Validity Issues)*, *supra*, at [166]). In effect, all they were being asked to consider was whether, if a dividend date shareholder was hedged against share price movement and traded, after the ex-date, to sell their shares or lend them out ex-div, the price hedge or the ex-div disposal affected things. Their advice was nonetheless poor, irrespective of points of detail that might be made on the basis of *SKAT (Validity Issues)*, because it should have been obvious to Hannes Snellman that as a matter of law the posited dividend date shareholding was an impossibility.

339. Not only did Hannes Snellman not qualify their opinion because of that, or explain it, they introduced the relevant assumption. It did not come from Solo, but arrived as Assumption 5) with Hannes Snellman's first draft for their advice, and remained throughout the process of finalising it. It is a little difficult to know what to make of that, without evidence from Hannes Snellman to explain their thinking. It is plausible, I think, that Hannes Snellman may have introduced the assumption to 'join the dots' in the fact pattern between paragraphs 1) and 2) (describing the equity purchase trade) and paragraph 3) (asserting that as a consequence the buyer would "*receive the dividend*"); but there is in truth no evidence to go on and I do not think I can make any finding as to what was their thinking.

340. Whatever the thinking, I do consider it surprising that Hannes Snellman did not spell out that not only was their opinion an 'IF' opinion (*if the facts are as stated, and if the assumptions stated hold true, then …*), but also that, for reasons of law upon which they were qualified and might be expected to advise, on the face of it the key assumption they had themselves introduced could not hold true. It is like asking a firm of shipping market tax lawyers to advise on the tax implications of some cash flow under a time charter, and being given by them an opinion that states as an assumption that the time charterer enjoys a right to possession of the ship and opines that on that assumption the cash flow will have a certain tax treatment, without a note of caution that the

assumption, on the face of things, could not hold true because a time charter does not grant a right to possession, it creates only a contractual right to direct employment.

341. Standing back, as I said at the start of this section of the judgment, it would have been simple, if Solo had been interested to know the tax treatment of the actual trading, to set it out, accurately and in full, and ask that question. That was not done, and in my view Sanjay Shah, Rajen Shah and Mr Horn knew it had not been done. In truth, they were only taking advice from Hannes Snellman to get an idea as to whether a Solo Model equity buyer who saw and knew about only their own trades might believe that they were entitled, or at least take the view that they had a 'filing position', i.e. a plausible argument that they might have an entitlement.

C.17.4 Other Advice?

342. Some of the trial defendants relied on an absence of complaint or protest from SCP's compliance or legal functions as fortifying the belief they say they had that there was nothing improper about the trading. How far that can take any given defendant would depend on their circumstances and knowledge, as well as those of the compliance or legal personnel said to have appeared to be content. I therefore do not deal with those defence arguments in this general narrative except to dispose of one point taken by SKAT, which goes back to Mr Pitts' departure from Solo mentioned in paragraph 171 above.

343. Mr Pitts' handover file note, prepared on 29 August 2013, said this as regards the Solo Model trading to that point:

"*GSS Platform and legal advice – there is no evidence that the GSS platform as a whole has been reviewed by a single law firm to provide senior management with external comfort that it is fit for purpose. CMS Cameron McKenna opined on the client money/TTCA side (and concluded that we could just about justify it) and they opined on the Custody agreement, but this appears to have been in isolation and they did not see all the other agreements needed to make this work. JB [Mr Bains] and GH [Mr Horn] did agree to having a lawyer look at this, then backtracked. I raised the issue again only for SS [Sanjay Shah] to say no in writing. At present senior management is exposed if the model is wrong – and GP [Mr Pitts] has advised this. In my opinion the firm urgently needs to have a lawyer look at all the docs and have a full description of how the process works so they can confirm whether JB's work and the assorted advice from different advisers works together.*"

344. I accept Mr Dhorajiwala's evidence that the holistic review by an external lawyer that Mr Pitts had advocated concerned SCP's regulatory compliance, that the single law firm he (Mr Pitts) had in mind would have been a London firm advising under English law, and that his concerns were not directed at the foreign tax law validity or invalidity of the tax refund claims the SCP clients were intended to make on the back of Solo Model trading. I also accept Mr Bains' evidence that he did not backtrack, as Mr Pitts put it, on support for the commissioning of such a review. Any reluctance will have been that of Sanjay Shah and Mr Horn.

345. Two legal opinions were referred to in evidence in connection with the setting up or implementation of Maple Point Model cum-ex trading:

(i) In February 2014, Rajen Shah and Mr Horn saw an advice from the Frankfurt office of Norton Rose Fulbright ('the NR Advice') addressed to Oban Holdings LLC, through which Messrs Stein and L'Hote were ultimate beneficial owners of NCB. The NR Advice expressly limited itself to "*German banking regulatory law and the underlying legislative acts of the European Union*", with civil law covered only as to whether "*civil-law provisions compulsorily prohibit the transaction*", and stated in terms that "*tax law is excluded from ... scope ... . Therefore, in the event of a dividend record date, no statements are made on the party entitled to the dividend and/or tax credits, if any, and who might be obliged to [sic.] compensation payments.*"

(ii) NCB took Danish tax law advice from the Danish firm Bech-Bruun in August 2014 ('the BB Advice'), although none of the trial defendants saw it at the time. On 20 November 2023, the Danish Supreme Court upheld a claim by SKAT against Bech-Bruun, concluding that the firm acted in reckless disregard of SKAT's interests as tax authority by advising NCB in the BB Advice, albeit with qualifications, that there should not be civil or criminal liability under Danish law for NCB's participation as custodian in what was in fact Maple Point Model trading, because (in the Danish Supreme Court's view) there was "*an obvious risk that [NCB], together with others, was involved in drawing up a model for unjustified refund of dividend tax*". After giving credit for recoveries already made by SKAT, the loss to SKAT resulting from Maple Point Model trading involving NCB was said to have been DKK705.8 million. On creative reasoning about foreseeability of loss, the Supreme Court decided that Bech-Bruun should be held liable to pay the round sum of DKK400 million in compensation, plus interest from 8 June 2020 and a contribution towards SKAT's costs.

346. The BB Advice was obtained for NCB by the Frankfurt office of Jones Day, which was advising NCB in connection with the possibility of acting as custodian in Maple Point Model trading. Dr Martin Bünning, the responsible partner at Jones Day, made initial contact with Anders Orbey Hansen of Bech-Brunn, explaining that advice was sought:

- "*in relation to a dividend stripping transaction in a Danish listed stock ...*", where
- "*the parties to the transaction will realize a tax benefit in Denmark which probably consists in a double refund of dividend withholding tax (but we have not seen a structure paper)*", noting that
- "*Until recently there were loopholes in German tax laws which allowed the double refund of withholding tax. Tax authorities are now looking into these transactions and try to claim that they [are] abusive or even criminal offences.*"

347. In the email exchange that followed, Bech-Bruun explained that "*[t]he type of transaction you are describing, which may entail a possibility for two shareholders to reclaim the same withholding tax has been presented to us before ("cum-/ex trades")*" and that such trades were "*generally problematic from a legal perspective*", "*typically problematic under Danish law*", and "*problematic from a Danish legal point of view*", so that providing a 'should' opinion, *viz.* that NCB "*should not be subject to criminal prosecution*" or similar, would require Bech-Bruun to have "*a full overview of the*

transaction and the role of the client, including what takes place in Denmark". When in mid-April 2014, a transaction description was given to Bech-Bruun by Jones Day, Bech-Bruun took it to indicate that "*USPF acquires cum dividend shares from a Seller which does not own (or delivers) cum dividend shares*" and made clear that if that was the position, then "*by definition USPF cannot be a holder of cum dividend shares on the dividend approval date, which in our view is a condition for being considered owner of the shares and thus the dividend itself for Danish tax purposes.*"

348. In the SSDs' Defence, it was said that tax advice relating to other jurisdictions fortified a belief in Sanjay Shah that a share buyer becomes the owner of shares the moment a trade is entered into, whether or not the seller was selling short and whether or not shares were ever delivered. I do not think this was intended to suggest that legal advice (if there was any) that a particular cum-ex trading strategy would work for (say) German shares and German withholding tax refunds could inform a view that the same structure would work for Danish shares and Danish dividend tax refunds. Sanjay Shah's evidence indeed was that "*at no point did I (nor [did] anyone else at Solo to my knowledge) believe that a positive legal opinion about a cum-ex trading structure in one country could be relied upon to say that it would be valid in another country*". To similar effect, Rajen Shah acknowledged in evidence that "*it was necessary to obtain legal advice in respect of each jurisdiction in which equities trading was to occur and … you could not assume that the tax position in one jurisdiction would be the same as the tax position in another*".

C.18 Klar Model

349. Klar Model trading, between March 2012 and May 2015, appears to have been Mr Klar's principal occupation in 2012, while in 2013 to 2015 it sat alongside lucrative activity as a trading counterparty in both Solo Model and Maple Point Model trading. The Klar Model used Salgado as custodian. Salgado was a Comoros Islands company Mr Klar incorporated for the purpose. He used a simplified cum-ex trading model to generate successful tax refund claims dated between December 2012 and May 2015 for an aggregate amount paid out by SKAT of DKK321m.

350. Mr Klar qualified as a chartered accountant in 1997 and worked at Shell, as a tax structurer, then at Enron, as director of a tax department, between 1997 and 2001. After the collapse of Enron in 2001, he joined ABN Amro as director of Structured Debt & Equity working on tax-related projects, but not cum-ex. He was introduced to Sanjay Shah by Rajen Shah, probably in 2008, and became one of the first recruits to the Solo business.

351. In September 2010, Mr Klar described his role at SCL as "*Principal of Solo Capital's start-up fund management business*" in charge of "*structuring … vehicles to trade market neutral equities strategies over listed Western European shares*". He was a Co-Chief Investment Officer, together with Rajen Shah, and he was SCL's Compliance Officer, as a result of which he was among other things the designated person with responsibility for the FCA-regulated controlled functions at SCL of money laundering reporting (from 20 September 2010 to 17 January 2011), significant management (from 20 September 2010 to 3 January 2012) and customer-dealing (from 7 January 2010 to 3 January 2012).

352. The basis on which Mr Klar was engaged was changed from employment by SCL to self-employed consultancy. This was documented only from late 2011 but the changed basis was backdated to December 2010, so that his employment by SCL was treated as having ended on 20 December 2010 and his engagement (by Sanjay Shah) as a consultant was treated as having started on 21 December 2010. The change in the basis of his engagement, whether before or after it was documented, did not make any difference to the work he was doing and did for Solo.

353. At Solo, the idea to use internalised settlement with settlement loops settling to zero, to avoid any need for funding or the acquisition of shares, as a foundation for dividend tax refund claims, came from Mr Klar and Sanjay Shah, as I have described above. Mr Klar was no longer at Solo, in any capacity, by the time Solo Model trading commenced, as he had left, with effect from 3 January 2012, to pursue his own interests. They came to include participation as a stock lender and (later) a forward counterparty, at Sanjay Shah's invitation, in whatever trading strategy he (Sanjay Shah) had finally settled upon.

354. Mr Klar insisted, in evidence that I accept, that he was not told in any detail what that strategy was. However, as he accepted, he did not need to be told. When he did the trading himself (in 2013, before he had Mr Sethuraman trading for him), he was a stock lender borrowing and lending on back-to-back terms from and to SCP clients, where always the lender to him was a USPF and the borrower from him was not, trading on a dividend record date for next day settlement with cash collateral calculated at a cum-div price from before the ex-date, with no margin or haircut, and his reward for doing the trade was 0.5% of the dividend amount, payable not by his lender or his borrower but by Ganymede. To Mr Klar, it was obvious, and he in fact assumed, that he was participating in a coordinated cum-ex trading strategy designed at Solo around the idea of settling internally so that neither cash nor shares would be required, in order to facilitate the making of a tax refund claim to SKAT by the end buyer within the structure.

355. Mr Klar's Solo Model activity was carried out through his company, Amalthea. Amalthea was incorporated on 14 February 2013 and over the rest of that year acted as stock lender on dozens of Solo Model 2012/2013 trades. In 2014, Amalthea was a forward counterparty on hundreds of Solo Model 2014/2015 trades, and another company of his, Cork Oak, after incorporation on 7 March 2014, also participated, as a forward counterparty, in 250 settlement loops in Solo Model 2014/2015 trades between March and December 2014. Mr Klar insisted, and I accept, that all of the individual decisions to conclude those 2014 and 2015 trades will have been made by Mr Sethuraman, as Mr Klar left him to get on with the trading once he was in post in time for the first 2014 trades.

356. Through Sherwood and Potala (incorporated, respectively, on 6 and 11 February 2014), Mr Klar also participated in Maple Point Model trading. Sherwood was onboarded by NCB, Potala by Indigo and (later) Lindisfarne. This participation came in response to an initial invitation from Rajen Shah, the later invitation to trade via Lindisfarne then coming from Mr Horn. Sherwood acted as both stock lender and forward counterparty via NCB; Potala acted as stock lender via Indigo, and as both stock lender and forward counterparty via Lindisfarne. Mr Klar appreciated that the transactions of Sherwood and Potala were, like those of Amalthea and Cork Oak, elements of coordinated

structures designed to create circular settlement loops settling to zero that would generate CANs from the custodians.

357. Returning to the Klar Model, Mr Klar devised, orchestrated and participated in the entirety of the trading, involving himself in all aspects of it and preparing all the trading documents including the CANs issued by Salgado. The other key participants were his companies, Salgado, Europa and Khajuraho, plus Blue Ocean and Cole, which were corporate vehicles (limited liability companies incorporated in Illinois) of Kevin Kenning and Todd Bergeron.

358. Europa was Mr Klar's English pension scheme, founded by him on 3 December 2010, and Khajuraho was a company he incorporated in Luxembourg on 23 May 2012. Under Denmark's DTTs with, respectively, the UK and Luxembourg, each of Europa and Khajuraho was entitled not to pay more than 15% in Danish dividend tax. The tax refund claims made on their behalf, and paid by SKAT, are the only instances with which I am dealing where the reclaim was for a partial refund (12%, given the WHT rate of 27%) rather than a full refund. Blue Ocean and Cole, for their part, each established a USPF that became a client of Salgado, and in due course full refund claims were presented to SKAT on behalf of those USPFs, and paid by SKAT.

359. Salgado was incorporated on 28 February 2012 in Anjouan, a Comoros Island, with a share capital of US$1. None of its customers ever deposited any funds with it, its only receipts being proceeds received from successful dividend tax refund claims made to SKAT and its counterparts in other jurisdictions, in particular Belgium and Austria.

360. Mr Klar had control of Salgado, and was its directing mind and will, at all times. He was its only authorised trader, made all of its trading decisions and prepared all trading documents, was in charge of all brokerage and custody services, and prepared all broker and stock loan confirmations, and all Salgado CANs. In practical terms, Salgado was Mr Klar, documenting trades and their settlement using standard office software products, without any connection of any kind to any equity trading or financial market.

361. Nominal ownership of Salgado was not with Mr Klar, however. His evidence was that he wanted someone else to own Salgado because he intended to trade cum-ex and "*did not want to give any tax authority an excuse, no matter how invalid it might be, to be difficult about approving WHT reclaims*". I consider it more likely that Mr Klar simply wanted Salgado to appear to be independent of Europa and Khajuraho, to disguise the fact that in Klar Model trades involving them, Mr Klar was effectively on both sides of the trade.

362. The result was that Mr Klar arranged for a corporate service business in Anjouan to hold the shares in Salgado, via Hillingdon Turner Nominees Ltd from 28 February 2012 to 11 June 2012 and by the Salgado Charitable Trust, a Mauritian trust, thereafter. Mr Klar was in my judgment at all times the shadow director and true, but hidden, ultimate owner of Salgado.

363. As I noted above, Europa was an English pension scheme established by Mr Klar. It was his personal pension fund. He was its sole trustee and beneficiary and had absolute control and effective indirect ownership of all the trust assets. Europa was eventually wound up only in April 2021, although Mr Klar decided to wind it up in August 2016. Khajuraho was incorporated in Luxembourg, with Mr Klar as sole shareholder and

ultimate beneficial owner. It had a *gérante* and office manager (Janice Allgrove), but she had a purely administrative role and played no part in Khajuraho's trading which was directed entirely by Mr Klar. In November 2020, Khajuraho was placed in compulsory liquidation following a claim by the Luxembourg tax authorities, and it was dissolved by a judgment of the Luxembourg District Court on 15 May 2023.

364. Between December 2012 and May 2015, Goal made tax refund claims to SKAT on behalf of Europa and Khajuraho, supported by Salgado CANs, on which SKAT paid out a total of DKK114,049,140. Tax Agents made tax refund claims on behalf of the Blue Ocean USPF dated between 13 March 2013 and 7 May 2015, and on behalf of the Cole USPF dated between 17 April 2013 and 7 May 2015, all supported by Salgado CANs, on which SKAT paid out totals of DKK105,633,585 and DKK101,076,120 respectively.

365. The involvement of Blue Ocean and Cole arose out of a meeting in Dublin between Mr Klar, Messrs Kenning and Bergeron, and Barry O'Sullivan in the second half of 2012. Mr O'Sullivan was the principal of QED Equity ('QED'), an Irish investment firm, who had discussions with Solo (Mr Klar, Sanjay Shah and Rajen Shah) in early 2011 about QED's involvement in one of the German transactions at Solo. Mr Klar explained the trading strategy, in broad terms at least. That included, and Messrs Kenning, Bergeron and O'Sullivan therefore cannot have failed to appreciate, that the submission of tax refund claims based on the trading carried out was fundamental to the strategy, as the only source of realisable profit for any of the participants. Mr Klar explained to them (and used a whiteboard to illustrate in some way) that the strategy involved the short sale to the equity buyer being settled by netting it against a stock loan by the buyer, through Salgado, to the short seller.

366. Mr Klar's case was that from 2013, the short seller in Klar Model trading was Heber Securities Trading Ltd ('Heber'), a Maltese company of Mr O'Sullivan's, rather than Salgado, which therefore acted as a matched-principal broker and custodian only. His case was that the Dublin discussion resulted in agreement for Messrs Kenning and Bergeron to participate in the Klar Model strategy through USPFs they were in a position to establish, and for Mr O'Sullivan to participate as the short seller for all Klar Model trades.

367. Mr Klar disclosed no documents evidencing any involvement of Heber in Klar Model trading. His disclosed documents evidence only trading by Salgado with Europa, Khajuraho, and the Blue Ocean and Cole USPFs, with Salgado acting as custodian, broker, short seller and stock borrower / stock re-purchaser, and no external brokers, intermediaries or additional counterparties. However, the buyer-facing transaction records generated at Salgado would be the same whether it was backing the trades with Heber, as matched-principal broker, or trading for its own account. Mr Klar explained the absence of documents showing Heber's back-to-back involvement thus:

(i) Salgado ceased activity after SKAT stopped paying claims in 2015, and was struck off in November 2016;

(ii) Mr Klar did not consider that he had any separate need to retain records of Heber's trading with or through Salgado, so he asked Mr O'Sullivan if he wanted the records Mr Klar had;

(iii) Mr O'Sullivan told Mr Klar that he had the records he needed, so Mr Klar disposed of what records he had.

368. In Mr Klar's criminal trial in Denmark, he and Kevin Robinson, a solicitor, gave evidence that indeed Heber acted as short seller, while Messrs O'Sullivan and Kenning gave evidence that Mr O'Sullivan merely acted as introducer, to Salgado, of Blue Ocean and Cole (meaning, in practical terms, Messrs Kenning and Bergeron). Neither version of events is without difficulty. Heber was only incorporated in May 2014, so it could not have been trading as a short seller from 2013. On the other hand, there was no reason for Mr O'Sullivan to be given (through Heber or otherwise) a 30% profit share (or, it may have been, a 33.3% share) of tax refund claim proceeds achieved by the Blue Ocean and Cole USPFs, let alone such a share also of those proceeds achieved by Europa and Khajuraho, as an introducer's fee. Mr Klar knew Mr Kenning already, they having worked together at ABN Amro, along with Mr O'Sullivan.

369. Mr Klar was in my judgment wrong to suggest there was no such profit share, and likewise he was wrong to suggest that no profit sharing was agreed with Messrs Kenning and Bergeron to split the balance of tax refund proceeds net of fees and Mr O'Sullivan's share. His evidence in that regard was part of his misguided attempt, effectively abandoned during cross-examination, to claim that the purpose of the Klar Model trading was not to generate successful tax refund claims as the only source of (realisable) profit for any participant. The absence of documentary records, and the lack of complete consistency of the testimony variously given by those involved, in these proceedings and elsewhere, means I cannot make a clear finding as to the agreed profit share percentages. I consider it possible that there was, as SKAT asked me to find, a simple, even, three-way split, between Salgado, Blue Ocean/Cole, and Heber; but Heber's share may have been only 30%, not 33.3%, leaving 70% rather than 66.7% split between Salgado and Blue Ocean/Cole.

370. On balance, and although it involves rejecting Mr Klar's evidence on the profit sharing arrangements, I believed and am prepared to accept Mr Klar's evidence that Mr O'Sullivan joined in the Klar Model activity so as to act, and did act, as the short seller on the opposite side of Klar Model trades from 2013, and that he did so acting through a corporate identity of 'Heber'. The unavailability to Mr Klar now of a full documentary record makes it a mystery on which I am not in a position to make any finding that Heber, the Maltese entity, came into existence only in May 2014. Logical possibilities include the existence prior to that date of a different 'Heber' entity (and after Mr Klar's cross-examination, SKAT did locate evidence that a BVI company called Heber Trading Ltd had existed since 1 September 2009), or the use of the 'Heber' name by Mr O'Sullivan for Klar Model trading prior to having incorporated (the Maltese) Heber as a separate legal entity (and in response to the additional evidence located by SKAT, Mr Klar has insisted that Heber, i.e. a company by the name of Heber Securities Trading Ltd, was onboarded by him at Salgado before 2013 trading in reliance on what appeared to be corporate constitution documents for it as an extant entity).

371. As appears from Appendix 3, Mr Klar's transaction model, in both of its iterations, had an elegant simplicity that might be said to have taken the ideas behind all of the Solo Model trading variants, or for that matter the Maple Point Model trading, to a logical conclusion. If they worked, in the sense of generating tax refund entitlements, why not also Mr Klar's simple 'buy and lend' or 'buy and re-sell' ideas for trading between parties that had neither assets nor funding?

372. For its part, SKAT adopted that logic for an argument that made its way back up the chain of reasoning. Mr Klar's trading, SKAT said, involved the idea that two entities without assets or funding could conjure out of thin air an entitlement to payments by SKAT, by trading with each other on Mr Klar's laptop, entering into mutually offsetting contracts with each other and having them settle against each other by book entries at a custodian that held neither shares nor cash for either of them. SKAT argued that any claim to an honest belief that that worked could not be credible, let alone a claim of honest belief on the part of an experienced financial professional. But then, SKAT contended, likewise any claim to an honest belief that Solo Model trading or Maple Point Model trading worked, because by design those Models achieved nothing of substance different to or more than Mr Klar's simplified version.

373. If that reasoning were sound, it would not entitle SKAT to judgment on any claim that was before this court, because that required SKAT to prove, for any given claim, not some generalised allegation of dishonesty, but the necessary ingredients of the claim, as pleaded. On that aspect, SKAT did not suggest that the facilitation or arrangement of invalid Danish tax refund claims gave it any cause of action, even if those involved did what they did knowing or believing that they were causing SKAT to pay invalid claims.

374. In any event, one must not rush to accept that sort of reasoning, powerful though it can be. Staying in Denmark, Hans Christian Andersen was familiar, as is any judge, with the capacity of the mind for delusion. Some of the courtiers and townsfolk in *The Emperor's New Clothes*, perhaps many or even most of them, persuaded themselves, so as to have an honest belief, that they were seeing the finest of new imperial robes, until the young child, free from the persuasive influences in play, pointed out the objectively evident truth.

375. At the centre of Hans Christian Andersen's tale lay con men posing as fine clothmakers who busied themselves pretending to conjure robes out of thin air. Whether any analogy with *The Emperor's New Clothes* extends that far depends on whether SKAT established on the evidence not just dishonest behaviour of one or more kinds in and about the Solo Model, Maple Point Model and/or Klar Model cum-ex trading businesses, but the particular deceit it alleged by its pleadings in these proceedings.

D. Trial Witnesses

D.1 Factual Witnesses

376. The principal events out of which SKAT's claims arose occurred between 9 and 12 years before the Main Trial. They have been litigated heavily and more or less continuously for much of the period since SKAT temporarily suspended all WHT reclaim payments in late 2015, bringing an end to all Solo Model, Maple Point Model and Klar Model trading activity. That litigation has included these proceedings and civil proceedings of various kinds in other jurisdictions, and criminal proceedings in a number of jurisdictions, including criminal cases in Denmark against some of the trial defendants. By the time of the Main Trial, Sanjay Shah, Mr Patterson and Mr Klar were all in custody in Denmark, although Mr Patterson was transferred during the course of the trial to a prison in this jurisdiction to complete his sentence here.

377. Mr Klar was convicted after a contested Danish criminal trial. Mr Patterson was convicted on his guilty plea entered at the start of what was to be a joint trial of the charges against him and the charges against Sanjay Shah. Mr Shah spent about 18 months in custody in Dubai fighting extradition to Denmark before being taken to Denmark in early December 2023. He contested the charges against him there, and his criminal trial proceeded in parallel, for him, to the Main Trial here. The conditions in which Mr Shah was held in Dubai were so restrictive as to make effective involvement by him in his defence of SKAT's claims here all but impossible. The conditions of his detention in custody in Denmark were incomparably different, such that, thankfully, he was able to participate effectively in the final months prior to, and during, the Main Trial here. Given that, and his freedom to engage in the defence of the claims against him prior to May 2022, I was satisfied that the process overall was fair to him, the difficulties of his being in custody notwithstanding, and no application was ever made asserting otherwise so as to seek a dismissal, stay or adjournment of the proceedings against him or any part of them. Mr Shah was found guilty of the criminal charges pursued against him in Denmark, and was sentenced by the Danish criminal court, in early December 2024. He has appealed against that conviction and at the date of this judgment there has been no decision on that appeal.

378. The Danish criminal proceedings, then, explain why Sanjay Shah and Mr Klar gave evidence at trial remotely, from custody in Denmark. Had Mr Patterson given evidence at trial, that would have applied to him too. The threat of Danish criminal proceedings against the DWF Ds underlay their application, which I granted, to give their evidence at trial remotely from Dubai. At the first pre-trial review for the Main Trial, I refused their primary application which was that for the period scheduled for their factual evidence I should adjourn the trial and take evidence from them in Dubai, as a special examiner having appointed myself to that role for that purpose: *SKAT (Sitting in Dubai)* [2024] EWHC 19 (Comm).

379. Rajen Shah spent some time in custody in Dubai, partly on the initiative of the Danish authorities, very shortly before he was due to give evidence in the Main Trial. He was taken into custody in Dubai again just before oral closing argument, with a view to possible extradition to Denmark. Mr Head KC voiced understandable concerns over the fact and timing of both periods of remand in Dubai (the second of which continues at the date of this judgment), and the first resulted in an adjustment to the trial timetable in the interests of fairness to Rajen Shah. As in the case of Sanjay Shah, however, I was satisfied that the process overall remained fair, and no application was made asserting otherwise so as to seek a dismissal, stay or adjournment of the proceedings or any part of them.

380. In assessing the factual witness evidence, and what conclusions to draw from it, I had well in mind the strong likelihood that recollections may be faulty, both generally but particularly as to matters of detail: see *Gestmin SGPS SA v Credit Suisse (UK) Ltd et al.* [2013] EWHC 3560 (Comm) and many cases since. That said, in this case much turned more on why things were done, or not done, and in particular with what understanding (if any) of the legal effects of transactions or the workings of Danish tax law. Factual witness testimony as an element of assessing attitudes, working practices, or comprehension, had the capacity to be valuable, therefore, notwithstanding the fallibility of human memory.

381. I also found helpful, and adopted, the approach to judging a circumstantial case explained by Bryan J in *JSC BM Bank v Kekhman et al.* [2018] EWHC 791 (Comm) at [78]-[79], citing and in part developing what Teare J said in *JSC BTA Bank v Ablyazov* [2013] EWHC 510 (Comm) at [197]-[198]. It was also necessary in this case, when applying that approach, and generally, to bear in mind, and I did so, that disreputable though any dishonesty is, business people may engage in dishonest conduct for any number of reasons, and witnesses may fail to tell the whole truth, or may tell lies in their evidence, for different reasons. Contemporaneous dishonesty, or subsequent forensic dishonesty, does not necessarily come from, so as indirectly to evidence, awareness of the truth of some allegation made in legal proceedings; and in any event a finding of dishonesty, of contemporaneous conduct or in the witness box, is likely to be one of many elements in any given case, and does not reverse the burden of proof.

382. Having made those introductory comments in the main body of this judgment, I have indicated what I made of the factual witnesses who gave oral evidence at trial in Appendix 6, below, taking them in the order in which they were called. In Appendix 6, where I refer to trustworthiness, I refer to the assessment I made of whether, or how far, what was given to the court as their factual witness evidence at trial was an honest account of what the witnesses perceived, when giving evidence, to be their recollection (or lack of recollection) of matters of fact, including, where relevant, matters of their knowledge, understanding, belief, intention or thinking in the past. When judging the facts on the evidence as a whole, in the usual way I have borne well in mind that the testimony of a witness who was trustworthy, in that sense, still may be unreliable in whole or in part; the testimony of a witness who was generally trustworthy, in that sense, may nonetheless have been untrustworthy in certain respects, or in relation to particular topics; and the testimony of an entirely or generally untrustworthy witness may nonetheless be accurate (in whole or in part), respectively trustworthy, on some points.

383. In the case of some witnesses, what I say in Appendix 6 led me naturally into recording there, rather than only when I consider the factual case alleged against them in Appendix 7, my findings as to their contemporaneous knowledge or understanding of certain matters.

384. I should also say, for completeness, that when I refer in Appendix 6 to witnesses having adopted their witness statements as their evidence in chief, I mean to refer to their witness statements as may have been clarified or corrected orally in chief.

385. There was also written factual witness evidence from:

(i) Helen Sørensen of VPS, adduced by SKAT. Ms Sørensen's evidence was not challenged by any party, so she was not called to give oral evidence at trial. It did not go to any contentious issue in the case, but merely confirmed that so far as can be ascertained from VPS's records, none of the entities that acted as buyers, short sellers, stock lenders or custodians in the trading with which I am concerned was ever recorded by name at VPS as an owner of shares in any OMX C20 company at any time in 2012 to 2015 (inclusive).

(ii) Michael Amstrup, the Danish lawyer through whom, in June 2015, Mr Bains sought to tip SKAT off about the impact of Solo Model trading. Mr Amstrup provided a signed witness statement dated 2 February 2024 and Mr Bains

adduced it under a hearsay notice dated 6 March 2024, in respect of which I granted permission and relief from sanctions for lateness. Mr Amstrup's evidence was challenged, and if called as a witness at trial he would have been cross-examined. In his statement, Mr Amstrup asserted that he felt a moral obligation to provide it but did not wish to give oral evidence at trial. Mr Bains gave evidence contradicting that, saying that Mr Amstrup had been willing to give oral evidence and be cross-examined but claiming that he (Mr Bains) could not afford to cover expenses for Mr Amstrup to travel to London and stay for a few days to do so. I do not accept that evidence. In my judgment, there is no reason not to accept Mr Amstrup's statement on the point and the truth is that Mr Bains simply took him at his word as unwilling. That is why no request was made or even considered, by or on behalf of Mr Bains, for any direction to enable Mr Amstrup to give oral evidence at trial (for example, most obviously, that he give his evidence from Denmark).

D.2 Expert Evidence

386. There was expert evidence at trial on Danish public law, concerning SKAT's identity and capacity to bring the proceedings, from a forensic accountant, analysing payments made by SKAT and the flow of funds resulting from them, and on matters of market practice. There was scheduled to be expert evidence on Danish private law, but the need for that evidence fell away (see paragraph 42 above).

387. On Danish public law, the only evidence was that of Prof. Waage by his expert report, which was unchallenged and so was adduced without the need for SKAT to call him at trial (see paragraphs 14 to 16 above). Similarly, only SKAT put in expert evidence from a forensic accountant, Mr Jens Ringbæk of Deloitte Denmark, whose evidence was also unchallenged. Pending my having read his report, time was reserved in the trial timetable for him to be called, in case I needed to ask him questions to ensure I understood what the report was saying. In the event, I did not identify any such questions, and so for Mr Ringbæk also, his report was adduced at trial and SKAT did not call him.

388. On market practice, SKAT, the DWF Ds and the Shah Ds instructed experts who prepared reports, a joint memorandum, and supplementary reports. All were called at trial and cross-examined. SKAT and the DWF Ds called Mr Graham Wade and Mr Paul Sharma, respectively, as they did at the Validity Trial. The Shah Ds called Mr Simon Bird, who was not an expert witness at the Validity Trial, but was not new to the wider litigation, having an involvement as an expert witness instructed by various defendants in related proceedings in other jurisdictions.

389. In brief summary, no doubt not doing justice to their CVs, their primary careers, entitling them to be considered expert witnesses as to relevant market practice, were as follows:

    (i) Mr Wade qualified as a chartered accountant after a maths degree and spent most of a 24-year structured finance career in, and latterly leading, Barclays Capital's Structured Capital Markets team. His responsibilities included the setting, supervision and promulgation of guidelines for equity finance transactions with tax risk, directorship of Barclays Capital Securities Limited, the principal UK Barclays Group broker-dealer, and membership of Barclays'

Markets Management and Global Partnership Committees. Mr Wade has been an independent consultant since leaving Barclays in 2014, but has continued to have some direct involvement in the financial services industry, including as co-owner and joint CIO of a regulated investment fund, and in financial technology businesses.

(ii) Like Mr Wade, Mr Sharma read maths at university and qualified as a chartered accountant. He went on to qualify as an actuary and gained 20 years' working experience as a financial services regulator in the UK and EU. He has been a director of the UK Financial Services Authority (as it was at the time), Deputy Head of the UK Prudential Regulation Authority, and an Executive Director of the Bank of England. He is now a consultant and expert adviser as a Managing Director of Alvarez & Marsal in the UK, and co-head of its Regulatory Advisory Services practice in London.

(iii) Mr Bird has worked in the financial services sector for 37 years. He is a Fellow of the Chartered Institute for Securities and Investment and a qualified Traded Options Market Maker, and holds a Securities Institute Diploma. He has worked at Nat West Markets, Bear Stearns, City Index and his own consultancy company, Objectivus Financial Consulting. His roles have included being an equity market maker, derivatives specialist, board member and chief operating officer, a regulatory, compliance and risk management advisor, and a non-executive board member.

390. The case management directions for the Main Trial permitted expert evidence as to market practice on the following issues:

"*18A. To the extent (if at all) that it involves expertise to identify, what trading structures and/or series of transactions were (purportedly) constituted or provided for by the Sample Trades?*

18B. To what extent were the Sample Trades consistent with any standard market practice?

19. With respect to each of the Sample Trades, did the Custodians hold any Danish shares in their custody accounts, in the custody accounts of any sub-custodians, or with VP Securities (for themselves or on behalf of any of the participants in the transactions purportedly carried out under the relevant models)?

20. With respect to each of the Sample Trades, did the Custodians receive any payments in the amount of dividends declared by Danish companies?"

391. With hindsight, expert issues 19 and 20 perhaps should have been qualified in the same way as issue 18A, i.e. "*To the extent (if at all) that it involves expertise to identify …*". Having said that, such a qualification is implicit in any question upon which expert evidence is permitted; and in the present case I am confident that failing to spell it out in expert issues 19 and 20 did not make any difference to how the experts went about their reports. They included in their reports full, lengthy and detailed discussions of expert issues 18A, 19 and 20, although (as I now see it) none of them required consideration of matters of market practice on which expert evidence might have been of assistance.

392. As regards expert issue 18A, the work the experts did was useful nonetheless. Their reports served as a convenient vehicle for setting out detailed descriptions of the transactions involved in the Sample Trades and how they were operated. By the edited versions of the expert reports that were ultimately adopted as evidence in chief, that material was not adduced as expert evidence at trial. However, much of it was effectively adopted as trial material, as a convenient way of presenting the primary facts to the court. For example, it informed, and was cross-referenced in, the Sample Trades Summary agreed between SKAT, the Shah Ds and the DWF Ds that was helpful for Appendix 3 to this judgment.

393. As regards expert issues 19 and 20, the straightforward answer in each case is 'No'. By design, the Sample Trades involved no Danish shares being held by any custodian or participant at any time. It follows inevitably, and was the case as a matter of fact, that no custodian ever received a payment in any dividend amount. If there is a qualification to that, it is only that a debit entry in a short seller's account at a custodian, for simultaneous crediting to a buyer's account at that custodian as a dividend compensation payment to the buyer, might be said to involve the custodian receiving and making matching 'payments in the amount of dividends declared'. But that adds nothing for present purposes, that is to say for concluding that market practice expertise is not involved in or required to answer expert issue 20.

394. The focus of the edited versions of the expert reports adopted as evidence in chief was therefore expert issue 18B.

395. At the Validity Trial, on the matters dealt with and the evidence I heard then, I concluded that Mr Wade and Mr Sharma (and Dr Collier, the expert called by the Shah Ds at that trial) gave, in general, "*carefully considered, honest opinions as to matters they had been asked to address, to the extent they could do so within their … expertise*", and that their evidence had been "*helpful, interesting, and obviously expert*" (*SKAT (Validity Issues)*, *supra*, at [43]). I found that, on the issues addressed by them for the Validity Trial, there was "*very little in the way of relevant but different opinion between them*" (*ibid* at [51]), and that "*their differences of background and perspective mean … that Mr Sharma was better placed to deal with matters of market structure and operation, and regulation, whereas Mr Wade was better placed to deal with matters of market practices and understanding*" (*ibid* at [52]).

396. On the matters covered by the experts for the Main Trial, and the greater depth with which some of those matters were explored, I would revise that last assessment slightly to say that Mr Sharma was at least as well placed as Mr Wade to deal with matters of market practice and understanding, although their backgrounds still mean their perspective on points may be different without that necessarily meaning, on its own, that the view of either deserves to be accorded greater weight than that of the other. On that aspect – the ability in general to give well-informed and obviously expert opinions to assist the court – I consider that Mr Bird was also well placed.

397. All three experts, in differing ways, did not provide properly balanced written reports, uninfluenced by the fact that they were instructed, respectively, by SKAT (Mr Wade), the DWF Ds (Mr Sharma), and the Shah Ds (Mr Bird). This was most evident in the case of Mr Wade, much of whose written work was argument rather than expert evidence. Regrettably, in my view he carried into his oral evidence the same tendency and approach, to think first of how he should be putting the case for SKAT. I concluded,

with regret, that he has become compromised by the nature and extent of his involvement for SKAT in its global litigation effort, such that he finds it difficult not to think and express himself as an advocate for SKAT's position. He has, I think, lost detachment from the partisan interests of SKAT as his instructing client, and that left me unhappy to accept views of his that, on analysis, were genuinely matters of expert opinion where his views were not shared by at least one of Mr Sharma or Mr Bird.

398. In Mr Sharma's case, my concern was less pronounced. There was in his case an unwelcome tendency, in writing, to fail to express qualifications or set out a complete expression of his view, such that the absence, or narrowness, of any real difference of expert opinion between him and Mr Wade was obscured, and the impression might have been gained from reading his reports that there was nothing at all unusual or contrary to typical market practice about the Maple Point Model trading (which was Mr Sharma's focus). That exposed Mr Sharma to a cross-examination that should have been largely unnecessary to confirm the extent to which, in substance, he agrees with a range of matters on which SKAT relied. However, he dealt with the resulting questions impressively, fairly (with balance), and with an obvious depth of thought and expertise. I was not left with any general concern about according weight to Mr Sharma's expert views.

399. My difficulty with Mr Bird's written work was the extent to which it consisted of or included his views on contentious matters of primary fact; but that was largely, if not entirely, overcome by the edited versions of his reports that were adduced as his evidence in chief at trial. Like Mr Sharma, in my view Mr Bird dealt thoughtfully and fairly with questions put to him in cross-examination and questions from the court to clarify his evidence. In general, and so long as I took care to filter out remaining instances where Mr Bird continued to express views on matters of primary fact that were not for him, I was not troubled about placing reliance on Mr Bird's expert views.

400. However, on the question of terminology to which I refer immediately below, Mr Bird put forward a view on the normal market use of the terms 'market claim' and 'manufactured dividend' that I concluded had not been his view at any material time. It was inconsistent with the views he had expressed in writing, including in his primary expert report in these proceedings, to which he had to proffer alterations when called to give his oral evidence to advance the different view. In my judgment, the evidence as given at trial by Mr Bird on this aspect did him no credit and was advanced by him for no good reason, but rather only because he had appreciated that his actual views coincided with Mr Wade's on the point and so would be said by SKAT to assist its case. As it happens, the point is not central, and my finding on it is not an unqualified acceptance of SKAT's position anyway. That does not make it acceptable for Mr Bird to have approached his oral evidence on it as he did.

401. That point concerns what I said in *SKAT (Validity Issues)* at [53], namely (now with some added numbering) that:

"*On the most important points considered by the market experts [for the Validity Trial], they were in any event agreed. For example, they agreed that [(i)] market participants would understand a dividend (or 'real dividend') to be a distribution from a share issuer to its shareholders, and [(ii)] to be different from a 'manufactured dividend', [(iii)] viz. a contractual payment representing a dividend but arising under a contract for the sale or other transfer of securities as compensation for a dividend forgone; they*

agreed that [(iv)] depending on the context the word 'dividend' on its own might be used in the market so as to encompass manufactured dividends as well as real dividends; and they agreed that [(v)] in any event what 'dividend' might mean for Danish tax law, and what were the requirements for there to be dividend tax liability or dividend tax refund entitlement under Danish law, [(v)(a)] would be understood to be a matter of Danish tax law on which [(v)(b)] a market participant, if interested, would take specialist advice."

402. A point arose at the Main Trial on the definition of a 'manufactured dividend' that I gave at [53(iii)], *viz.* a "*contractual payment representing a dividend but arising under a contract for the sale or other transfer of securities as compensation for a dividend forgone*". I touched on this at paragraphs 87 to 91 above.

403. On the factual and expert evidence at the Main Trial, it was tolerably clear, and I find, that there was no fixed or uniform market usage concerning the meaning of 'manufactured dividend'. I should be clear that the market in question here is a global equity trading and equity finance market relating to European equities, most pertinently Danish equities. Within that global market, there might be specific practices peculiar to a particular jurisdiction, be that the jurisdiction of the equities in question or the jurisdiction of the participant in question (for example, that of a custodian or that of the equity buyer). They might include practices to meet specific local legal or regulatory rules. Something of that sort could affect the use of terminology in particular contexts, but there was no suggestion by any party, or evidence, that any specific market practice existed at the material time concerning the nature or content of documentation generated in the context of Danish dividend tax and any possible tax refund claim made to SKAT.

404. Leaving aside any usage derived from or tailored to some jurisdiction-specific circumstance, in the market generally, as in part I noted at paragraph 87 above, some might not refer to what I am calling a dividend compensation payment as a 'manufactured dividend', because some would give the latter term a narrower scope than I gave it in *SKAT (Validity Issues)*. In particular, they might refer to a dividend compensation payment as a (type of) 'market claim', even if more commonly that term would be used in a meaning that would match the CAJWG definition, or be intended to refer to it. On all of that, I prefer and accept Mr Sharma's expert evidence to the extent that it differed from Mr Wade's or Mr Bird's (if it truly did, once their evidence had been explored at trial).

405. That variability of terminology was illustrated by a handout put together by Freshfields in March 2012 summarising and explaining legal issues concerning div-arb opportunities across Europe. Freshfields, it seems, put on seminars from time to time for commercial parties interested in the field. Rajen Shah and Mr Horn went to one, probably in early 2011 (since it led to some advice being taken from Freshfields in May 2011, in connection with Belgium), and Mr Shah remembers taking away from it what may have been a similar handout or at any rate a document containing similar commentary.

406. The 2012 Freshfields handout discussed *inter alia* the tax treatment of dividends and related payments in a range of different jurisdictions; it seems evident that the section of the document for any given jurisdiction will have been prepared by or under the supervision of the named Freshfields partner practising there, as identified at the end of

the document as the point of contact for that jurisdiction. In relation to some jurisdictions, the document covered cum-ex trades. Where that was so, it was not consistent in its use of terminology for what I am calling dividend compensation payments under such trades. For example, in the French and Belgian sections, they were referred to as market claims, but in the section for the UK it was said to be a "*difficult question … whether [the] compensation payment is just an accounting for the real dividend that is treated as belonging to the buyer, or … is a manufactured dividend, or … should be viewed for UK tax purposes as simply an adjustment to the contracted sale price*". The DWF Ds also drew attention, in closing, to an email from Freshfields in November 2011, seen at the time by Sanjay Shah, Rajen Shah, Mr Horn and Mr Klar, referring to a cum-ex buyer's dividend compensation entitlement as a market claim. (SKAT relied on indications in the Freshfields handout that they may not have been contemplating cum-ex trades where the seller was and always remained short. That does not affect the current point, which concerns the use of the term 'market claim'. It would be relevant to whether the Freshfields handout could be taken to express a view that a dividend compensation payment in the case of a short cum-ex sale of Belgian shares that was settled without any share transfer would give the buyer a valid Belgian tax refund claim.)

407. Those who would give manufactured dividend the fuller meaning I gave it in *SKAT (Validity Issues)* would be likely, as Mr Wade does and Mr Bird did prior to his unsatisfactory oral evidence on this point, to use the term 'market claim', as reflected and influenced by the CAJWG definition, to refer to the process by which a real dividend payment received through a custody chain is redistributed to a party contractually entitled to that payment.

408. Except for the specific point mentioned next, none of that would cause me to revisit anything I said in *SKAT (Validity Issues)*, so long as it is borne in mind when reading it that my use of the term 'manufactured dividend', as I defined it in that judgment, is not a usage that was fixed in the market at the time. For completeness only, therefore, I would now re-state *SKAT (Validity Issues)* at [53] as follows:

"*[(i)] market participants would understand a dividend (or 'real dividend') to be a distribution from a share issuer to its shareholders, and [(ii)] to be different from a contractual payment representing a dividend but arising under a contract for the sale or other transfer of securities as compensation for a dividend forgone, [(iii)] to which in this judgment I refer as a 'manufactured dividend', although that was not a fixed market usage; … [(iv)] depending on the context the word 'dividend' on its own might be used in the market so as to encompass manufactured dividends as well as real dividends; and … [(v)] in any event what 'dividend' might mean for Danish tax law, and what were the requirements for there to be dividend tax liability or dividend tax refund entitlement under Danish law, [(v)(a)] would be understood to be a matter of Danish tax law on which [(v)(b)] a market participant, if interested, would take specialist advice.*"

409. That brings me to the further, specific point noted in passing at paragraph 91 above, which is more important to the case than the point on terminology that I have just revisited above. In *SKAT (Validity Issues)* at [269], I said that the experts at the Validity Trial had agreed in the joint memorandum, as they had, that it was the general practice of custodians to draw a distinction, in any CANs or tax vouchers they generated, between real and manufactured dividends. The context for that paragraph was a

hypothetical example where a custodian holding 100 shares for Client A lent 40 to Client B so it could settle a short sale to a third party. I made the point that, other things being equal, in those circumstances any 'dividend' payment received by Client A during the stock loan term would be payment of a 'real dividend' on 60 shares and of a 'manufactured dividend' on 40 shares. I noted that in cross-examination Mr Sharma had said the practice of distinguishing between real and manufactured dividends in documents issued was limited to UK custodians in tax vouchers for possible submission to HMRC in relation to UK tax, but I rejected that evidence in the light of the unqualified joint memorandum opinion to which Mr Sharma had subscribed that, in the example given, "*The market practice was that if [Client] A was provided with a confirmation of the amount withheld or a tax voucher, it would distinguish that A had received 60 dividends (net of withholding tax where relevant) and 40 manufactured dividends.*"

410. At one stage it appeared that SKAT might contend that an issue estoppel arose from that, to the effect that the general practice of custodians was to draw a distinction in CANs between real and manufactured dividends (for that purpose, including dividend compensation payments, since that is how I was then using that term). It was not obvious how that might be correct, since nothing decided at the Validity Trial depended on that finding. I could set out additional analysis, but it suffices to say that the material decision, as reflected in the formal answers given to Validity Issues 10(a) to 10(d) in the Appendix to *SKAT (Validity Issues)*, was that matters of market practice or understanding did not affect the relevant content of Danish tax law. In the event, an opportunity arose during the cross-examination of Mr Wade to check the position, and Mr Goldsmith KC for SKAT confirmed that no argument of issue estoppel was pursued.

411. That means I am free to consider the point afresh. Doing so, on the factual and expert evidence adduced at the Main Trial, I can see that Mr Sharma was in fact right to qualify what he had agreed for the Validity Trial. The way his attempt to do so came out at the Validity Trial was influential at the time; but that is now history. Naturally, his evidence on this point was tested at the Main Trial by reference *inter alia* to that history. I was persuaded by the cross-examination only to the view that Mr Sharma had done himself a disservice by aligning himself in the Validity Trial joint memorandum to an unqualified view that did not represent his full opinion. I am satisfied that in fact Mr Sharma was only ever aware of CANs or tax vouchers explicitly drawing the distinction, by describing income items as manufactured dividends, in the context of specific HMRC requirements to do so for UK tax purposes, that he was not aware of any practice of doing so outside that context, and that in fact his view always was that there was no general practice of doing so. The tenor of Mr Bird's evidence was that there was no general market practice on the point, and now that Mr Wade had to defend his restated contrary opinion under cross-examination, I was not satisfied that he had any real basis for it. Tellingly, the CANs issued by Merrill Lynch under the Broadgate transaction, used by Solo as the template for CANs issued by SCP when Solo Model trading commenced, did not explicitly draw the distinction Mr Wade had in mind, yet they also concerned dividend compensation payments under a short selling cum-ex trading structure focused on facilitating a tax refund claim in Germany.

412. On the whole of the evidence I have now received, the true position, I find, is that there was no market standard for or general practice as to the form, format or content of a CAN. In particular, there was no established or general practice for CANs of expressing

any distinction between real dividends and dividend compensation payments. The only rule of practice, in truth, was the obvious one that in issuing a CAN, if it did, a custodian should report accurately to its client the dividend-related credit it had booked to the client's account. The fact that a CAN used the word 'dividend', and not the words 'manufactured dividend', would not convey that what was being reported was a real dividend payment rather then, for example, a dividend compensation payment.

413. Whether the CANs in this case merely reported accurately to their addressee clients dividend-related credits booked to their accounts, and if not why not, is an aspect of whether SKAT was misled, as it alleges, into making the payments it made in response to the tax refund claims that are the subject of these proceedings, to which I turn from paragraph 424 below. If a CAN, properly read, made a statement that was falsified by the fact that the payment credit reported was only a dividend compensation payment, then it will have been a misleading document in a way that could have been avoided by drawing the distinction explicitly. In terms of market practice, though, that will mean simply that the CAN failed to conform to the golden rule of factual accuracy, not that it failed to conform to a specific market practice about what words should be used to achieve it.

E. Sham Trading?

414. It was not always clear in the litigation what SKAT was alleging, in saying as it did that the trading activity in the case was 'sham', or why it was saying it. SKAT ultimately accepted that though it would still contend, if required, that what it said about that activity, if accurate, would make it proper to say that the trading transactions were shams, whether that was correct or not, a matter of the legal characterisation of the transactions, was not itself relevant to the claims it pursued in the litigation. What mattered was whether what SKAT said about the trading activity was true, and if so (where relevant) what state of knowledge or understanding any given individual had of that at the time, as part (and only part) of determining whether, if SKAT was misled, relevant individuals knew, believed or intended that to be the case. I shall therefore deal with this more shortly than I might have done if the question of characterisation (sham or not sham) was itself critical.

415. Taking what is for my purposes the most pertinent aspect, to illustrate the point about relevance, consider the equity purchase trade in each instance. Then:

(i) judged solely on the trading emails, it appeared to be a share purchase contract requiring ordinary DVP settlement, cash vs. shares;

(ii) it was not settled in that way, but was treated by the custodian as having settled through a share-less settlement loop, rather than as having failed to settle because of the absence of shares to deliver;

(iii) none of the terms of business used by the custodians entitled the custodian to settle the trade in that way;

(iv) there might be questions, therefore, whether relevant parties realised that, or whether any, and if so which, of the parties involved, other than the custodian itself, knew in advance about how the custodian was going to treat the trade as

settling, or knew after the fact of what the custodian had done so as to treat the trade as having settled;

(v) a further question might arise, whether documenting the trade by emails that, taken on their own, would make it look like a simple share purchase requiring ordinary DVP settlement, was a deliberate tactic, and if so on whose part, to hide the share-less nature of the full trading model as known to at least the custodian;

(vi) the answers to questions such as those identified in (iv) and (v) above, and possibly others, could be relevant to elements of SKAT's pleaded claims, and could also be relevant to whether the equity purchase was sham, and if so in what sense or to what extent, but the decision on that legal characterisation of the trade would add nothing, nor take anything away, when working through the elements of the pleaded claims.

416. In closing, SKAT referred to *Chitty on Contracts*, 35th Edition, for a submission that English law would use the language of sham in two situations: firstly, where parties "*create a document that purports to show a contract between them when in fact there was none*" (*ibid* at 4-213, giving as examples the sham charterparty in *The Good Helmsman, Harmony Shipping Co SA v Saudi-Europe Line Ltd* [1981] 1 Lloyd's Rep 377, and the sham ownership transfer in *The Ocean Enterprise, Glatzer v Bradston Ltd* [1997] 1 Lloyd's Rep 449); secondly, where a document "*is a sham in the sense of being designed by parties to give "[to] third parties or [to] the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations … which the parties intend to create" [where] the parties do not intend the sham document to bind them, but they do intend to be bound by the "actual" agreement.*" (*ibid* at 4-214, quoting *Snook v West Riding Investments Ltd* [1967] 2 QB 786, *per* Diplock LJ at 802D). *Chitty* acknowledges that on the facts of a given case, a correct characterisation might be that of collateral contract, at all events where there is no joint intention to give false appearances to third parties (*ibid*, at n.964, citing *Coleman v Mundell* [2020] EWHC 2852 (QB)).

417. SKAT submitted that distinct concepts are not involved, but rather in both of those situations the same general principle is applied, namely that there is a sham where there is a "*common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating*": *Snook*, *supra*, *per* Diplock LJ at 802E; and see *Antoniades v Villiers et al.* [1990] 1 AC 417 (HL), in which one of the agreements purported to be a licence, with a view to evading the Rent Acts given that in truth a lease was agreed between the parties, and purported to reserve to the freeholder a right to place others into the property when no such agreement had been reached.

418. As Diplock LJ made clear in the same passage in *Snook*, *supra*, all parties to the relevant allegedly sham transaction must have the common intention to create a false appearance: "*No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived.*" (*ibid*, at 802F). There was an express finding in *Snook* that the defendants knew nothing of the matters said to render sham the transactions they had concluded for the hire-purchase refinancing of a car, so the contention that they were a sham failed.

419. SKAT then submitted, in writing, that it alleged sham trading "*in support of its case that various Defendants knew that they were participating in a scheme to defraud SKAT and/or in response to the Defendants' allegations that they were acting honestly at all times*". However, on analysis – hence, ultimately, SKAT's concession referred to in paragraph 414 above – SKAT was not relying on its allegation of sham trading for that purpose, rather it was relying on matters that might (also) support such an allegation (for example their case that parties other than custodians appreciated that no Danish shares were being or had ever been transferred) that either had significance for the claims being pursued or not, as the case may be, irrespective of whether they (also) led to a conclusion that one or more of the transactions was or were sham.

420. It may be unnecessary in the circumstances to say anything more about SKAT's allegation that this was sham trading. However, I consider I should make clear that I do not accept it in its most extreme form. That is to say, I reject the claim, to the extent made, that any of the parties involved was engaged in a total charade, pretending to enter into contracts but not intending what they were doing to have legal effect, doing so simply as pretext for generating CANs that could be presented to SKAT to support tax refund claims.

421. I am satisfied that that is *not* what the architects of any of the trading models involved were doing. They were, all of them (Sanjay Shah, Mr Horn, Rajen Shah, Mr Klar), engaged in what was for them an evolutionary process in which they developed trading models previously used to the point reached where, they thought, real share purchases (i.e. contracts) could be settled in the absence of real shares. Whether they took on board the full implications of the synthetic trading systems they created (*The Emperor's New Clothes* point perhaps) may be relevant to whether they believed that they generated or might generate valid tax refund claims or to their understanding of whether false statements were or would be made to SKAT when tax refund claims were submitted. However, I was left in no doubt but that they all considered and intended the transactions involved in the respective trading models to be real trades (binding contracts) between the parties to them.

422. All the more so, I am clear, those not in command of the closed trading ecosystems that the Solo Model and Maple Point Model trading created – the non-Solo custodians, the equity buyers, the short sellers, the stock loan and forward counterparties – intended to enter into, and will have thought they were entering into, legally binding trading transactions. That is so even if (which for the most part I do not accept anyway) those outside participants appreciated that their trades were being settled by the self-fulfilling, share-less loop method that was in fact being used. The Klar Model involved far fewer outside participants (just Blue Ocean, Cole and (possibly) Heber), in respect of whom there was very little evidence before me beyond Mr Klar's own evidence. I do not accept it was shown by SKAT that any of them, to the extent they were involved at all, were merely pretending to trade in the sense I am considering now (paragraph 420 above).

423. The fact that the architects of the scheme, and others involved if they knew of that method, either realised or should have realised that no shares were being transferred, so that it might be at least questionable whether valid tax refund claims were generated, does not mean their trades were not real trades at all.

F. Was SKAT Misled?

424. As I noted in paragraph 105 above, SKAT alleged that it was induced to pay the 4,170 tax reclaims giving rise to these proceedings by misrepresentations made to it, in each instance, by the content of the documents it received, given that they were submitted so as to request from it, as the Danish national tax authority, a refund of Danish dividend tax. SKAT put the case on the basis that:

(i) the core requirement upon a claimant alleging deceit is to prove that it was induced to take action (or refrain from taking action) in reliance on misrepresentations made to it, resulting in loss. A claim in deceit may then lie if the representor or other party responsible for the representation was acting fraudulently;

(ii) the question whether a claimant has been induced by misrepresentation is a question of fact that "*goes to the issue of causation. The way in which a fraudulent misrepresentation may cause the representee to act to his detriment will depend on the circumstances*": *Zurich Insurance Co plc v Hayward* [2016] UK SC 48, [2017] AC 142, *per* Lord Toulson JSC at [71] (see also *per* Lord Clarke of Stone-cum-Ebony JSC at [25]).

425. The law on what a claimant must show, concerning the effect upon it of a false statement, for a deceit claim to be capable of succeeding (subject to considering the defendant's state of mind), is currently summarised in *Clerk & Lindsell on Torts* as follows (24th Edition at 17-36 to 17-37, omitting immaterial footnotes):

"*17-36 ... a claimant ... must show that he[176] acted (or in a suitable case refrained from acting) in reliance on the defendant's misrepresentation. If he would have done the same thing even in the absence of it, he will fail. What is relevant here is what the claimant would have done had no representation at all been made. In particular, if the making of the representation in fact influenced the claimant, it is not open to the defendant to argue that the claimant might have acted in the same way had the representation been true.[181] ...*

[176] Or a machine, such as a computer, under his control: see Renault UK Ltd v Fleetpro Technical Services [2007] EWHC 2541 (QB) ... at [122] (defendants causing to be inserted into computer orders for cars with a fleet discount to which they knew they were not entitled).

[181] See Downs v Chappell [1997] 1 W.L.R. 426 at 433; Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi VE Pazarlama AS [2009] EWHC 1276 (Ch) ... at [1005]; OMV Petrom SA v Glencore International AG [2016] EWCA Civ 778 ... (Romanian state oil buyer deceived on an industrial scale with regard to what oil it was buying: nothing to the point, even if true, that it was so desperate for oil it would have bought in any case) (discussed in A. Summers, "Deceit, difference in value and date of assessment" (2017) 133 L.Q.R. 41). Note, however, that the point was left studiedly open by Males J in Leni Gas & Oil Investments Ltd v Malta Oil Pty Ltd [2014] EWHC 893 (Comm) at [20].

17-37 There is some issue whether a person can be said to have acted in reliance on an implicit misrepresentation about an issue that was never present to his mind at the time. In Leeds City Council v Barclays Bank Plc,[185] Cockerill J gave a negative answer to the question, thus discounting a plea by a local authority that it had entered into a swaps contract with a bank on the basis of an implied representation that the bank had not engaged in dishonest interest rate manipulation. At the time the prospect of such manipulation had not been in the authority's contemplation at all; it therefore

could not say that it had known about, let alone relied on, any representations about it. With respect, however, this must be open to some doubt. Such a holding seems inconsistent with the jurisprudence on half-truths and misrepresentation by deliberate concealment;[186] *furthermore, there seems nothing incoherent in the idea of a party holding, and acting upon, an implicit if subconscious belief that there is nothing unusual or untoward about a given transaction.*[187]

[185] *[2021] EWHC 363 (Comm); [2021] Q.B. 1027. See too Marme Inversiones 2007 SL v Natwest Markets Plc [2019] EWHC 366 (Comm) at [286], where Picken J had said, obiter, that a showing of reliance required proof that the representee had "given some contemporaneous conscious thought to the fact that some representations were being impliedly made"; Groen v Heath [2024] EWHC 1654 (Ch) at [37]. Note also ACL Netherlands BV v Hewlett-Packard The Hague BV [2022] EWHC 1178 (Ch) at [505]-[506] and Allianz Funds Multi-Strategy Trust v Barclays Plc [2024] EWHC 2710 (Ch) (cases under the Financial Services and Markets Act 2000, s.90A and Sch.10A Pt 2, respectively; same rule applied). On the other hand, for the rule in the Barclays case to apply the statement must be implied; an express statement that nothing is wrong, if brought to the attention of the representee or his agent, will potentially engage liability. See Patarkatsishvili v Woodward-Fisher* [2025] EWHC 265 (Ch) at [86]-[103].

[186] *See cases such as Schneider v Heath (1813) 3 Camp. 506 and Gordon v Selico Ltd (1986) 18 H.L.R. 219, where liability in deceit arose from acts intended precisely to hide the fact that any issue arose on which a representation could be made. This point was adverted to by Waksman J in the later Crossley v Volkswagen AG [2021] EWHC 3444 (QB) at [76] … .*

[187] *See Crossley … at [46]-[97]. There, in a claim arising out of the alleged concealment of untoward emission test results on cars, Waksman J declined despite the Leeds case to strike out a claim in deceit by purchasers claiming to have been duped; and this even though the purchasers presumably had never dreamt that anything might be wrong on the emissions front.*"

426. Some care is needed to understand the reference in 17-036, at f.n.181, to a counterfactual of whether "*the representation had been true*". That might be thought to posit a case where that which was represented had been true rather than false (as it must have been for there to be a question of liability for deceit). Reference to the authorities cited in f.n.181 makes clear, however, that the case posited is, rather, one in which the representee was told that which was in fact true, concerning the subject matter of the representation. For example, the statement of principle by Hobhouse LJ (as he was then) in *Downs v Chappell* [1997] 1 WLR 426 at 433D, which *Clerk & Lindsell* cite as the primary source for their proposition, is that the trial judge in that case "*was wrong to ask how [the plaintiffs] would have acted <u>if they had been told the truth</u>*" (my emphasis, i.e. <u>not</u> "*… if that which they were told had been true*").

427. The currently fashionable controversy referred to by *Clerk & Lindsell* at 17-37 was the subject of argument in this case. SKAT contended that there was no general requirement of contemporaneous conscious awareness of the kind mentioned by Picken J in *Marme Inversiones* (see *Clerk & Lindsell* at f.n.185). There were submissions about that case, about *Leeds City Council* (Cockerill J) and *Crossley* (Waksman J), and about more recent cases, especially *Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd* [2023] EWHC 2759 (Comm) (Cockerill J, adhering *obiter* to the view she expressed in *Leeds* notwithstanding *Crossley*) and *Farol Holdings Ltd v Clydesdale Bank Ltd* [2024] EWHC 593 (Ch) (Zacaroli J, as he was then, also *obiter* on this point).

428. In the last of those, Zacaroli J noted at [221] that the issue with which the earlier judgments had been grappling is that "*sometimes the court has found that a misrepresentation was relied on, apparently without a finding that the representee gave*

conscious or active thought to the representation (see for example the cases … summarised at §380 of Loreley). An extreme example (discussed from §105 of Leeds) is the representation by a diner at a restaurant, made by the conduct of ordering a meal, that they have an intention to pay for it (see DPP v Ray [1974] AC 370 …). It is highly unlikely that the waiter who took the order gave any thought to whether such an implied representation was being made."

429. Zacaroli J doubted "*the utility (as did Cockerill J) of breaking down this causation question into distinct elements and seeking to find a single universally applicable test for those elements. It is essential to keep in mind that in every case it is necessary to show, as a matter of fact, that the claimant's decision to take the action (or refrain from taking action) which caused it loss must have been caused by the representation made by the defendant. The evidence required to satisfy the requirement will differ greatly depending on where on the spectrum the case lies (from "it goes without saying", at one end, to a complex representation said to be implied from conduct and statements, at the other)*" (*ibid* at [223]).

430. It is not necessary in this case to resolve this contemporaneous consciousness controversy (which may be more apparent than real anyway). There is a danger, I think, that the recent judgments considering it veer towards over-complication. I see force in the observation quoted immediately above (although I would say "*was caused*" rather than "*must have been caused*"), and in the fact that Zacaroli J set the controversy in the causation context of "*[the] identification of the appropriate counterfactual if the statement had not been made*", a question of fact (*ibid*, at [218]) that falls to be considered because "*[the] relevant question … is whether the claimant would have [acted as it did] if the representation had not been made …*" (*ibid*, at [217], which I have generalised from "*entered into the contract*", *per* Zacaroli J, which was the action alleged to have been induced in *Farol Holdings*).

431. The intent to pay that in *DPP v Ray* the House of Lords judged to be represented implicitly, if diners order a meal at a restaurant without confessing that they do not intend to pay, realistically can only not be conveyed (assessing the matter objectively) if the confession is made. To ask whether the apparent intent to pay influenced the waiter in putting the order through to the kitchen, for the purpose of a misrepresentation claim, is therefore, ultimately, to ask what would have happened if when ordering the meal the diners had said the like of, "*oh, by the way, we don't intend to pay*". Echoing the Editors of *Clerk & Lindsell*, *supra*, there would be nothing incoherent about concluding that there was reliance by the waiter on the representation regarded by the court as implicit if the answer was that the waiter would have refused to serve the table and asked the party to leave, or would have served the table further only if reassured that they were joking about not intending to pay, or would have called the restaurant manager over to deal with the situation. If the evidence revealed instead a disloyal waiter who loathed the restaurant and would have served the table anyway, taking pleasure in the prospect of the restaurant losing out, then other causes of action might exist, but a claim requiring proof that the impliedly represented intent to pay caused loss should fail.

F.1 Misrepresentations?

432. As to whether any representations were made, and if so what representations, it was uncontentious at trial that in law a representation is a statement made to the representee

on which it is intended and entitled to rely as a positive assertion by the representor that the matter stated is true. That means a question can arise as to the *characterisation* of a statement, not just as to its *meaning*: "*Until one has decided that, in the circumstances of the particular case, [a] statement should be treated as a representation rather than, say, a contention or argument, any question of liability for misrepresentation cannot arise*" (*per* Neuberger LJ, as he was then, in *Kyle Bay Ltd t/a Astons Nightclub v Underwriters* [2007] EWCA Civ 57, at [32]).

433. SKAT put its case on the basis that the representations it alleged were made by the documents submitted to it, construed objectively in their context, for which purpose the question to be asked was what impact the content of the documents, given their context, might be expected to have upon a reasonable representee in the position and with the known characteristics of the actual representee (applying the test stated in *Casa di Risparmio della Republica di San Marino SpA v Barclays Bank Ltd* [2011] EWHC 484 (Comm), *per* Hamblen J, as he was then, at [215]). In the present context of claims, using the Form Scheme, to be paid a refund of Danish dividend tax, the only possible putative representee was SKAT itself. It is thus convenient (and shorter) to speak simply of SKAT, acting reasonably, rather than of the reasonable representee in the position and with the known characteristics of the actual representee, namely SKAT.

434. A representation may be implied where although no statement to the effect of the representation is made expressly nonetheless clear words and/or conduct on the part of the representor convey such a statement in the equivalent objective sense, namely (here) that SKAT, acting reasonably, would be expected to take from what was said and/or done that something was being stated to it on the truth of which it was intended to rely as a positive assertion of the truth of the matter stated. I gave a very brief summary of the law as to that in *SKAT v Goal Taxback* [2020] EWHC 1624 (Comm), [2020] 4 WLR 98, at [114]-[115]. There were submissions in closing argument by reference to, among others, *DPP v Ray*, *supra*, *Gordon v Selico* [1985] 2 EGLR 79, *Spice Girls Ltd v Aprilia World Service BV* [2002] EWCA Civ 15, *Property Alliance Group Ltd v Royal Bank of Scotland plc* [2018] EWCA Civ 355, [2018] 1 WLR 3529, *The C Challenger, SK Shipping Europe Ltd v Capital VLCC 3 Corp et al* [2022] EWCA Civ 231, and various first instance cases considering implied representations alleged in the context of banking transactions. In my judgment, those submissions did not affect the accuracy or sufficiency for present purposes of my short summary.

435. SKAT pleaded that the representations it alleged were "*partly express and partly implied*", but the only conduct on which SKAT relied was the submitting of the documents so as to make, as SKAT put it, "*an application for the refund of tax supposedly withheld from dividends supposedly received on the Danish shares identified in the application*". It was plainly the case in each instance that a claim was being made, by the submitted Form and supporting materials, for a refund of Danish dividend tax; and that is the pleaded context in which those documents fall to be construed. As a result, there is no meaningful distinction here between asking what the documents would have conveyed to SKAT, acting reasonably, given their terms and the context, and what was impliedly stated to SKAT by submitting a dividend tax refund claim with those documents in support, by way (in either case) of a positive statement as to the truth of some matter upon which it was intended that SKAT should rely.

436. There can be liability in deceit where a statement is made, intending thereby to convey a falsity that, on that objective approach, would not be said to have been conveyed. No

such case was pleaded here, however, and it was accepted by SKAT that if, objectively, the tax reclaim documents submitted to it did not convey the falsities it alleged, then all of its pleaded claims failed. Specifically, SKAT accepted in closing argument that on the case pleaded and pursued at trial, each claim it pressed against each trial defendant (a) required it to establish one or more of the pleaded representations, and therefore (b) failed *in limine* if, objectively, none of the pleaded representations was made. The first part of that is true because the many causes of action other than for damages for deceit that were pursued by SKAT all required deceit to have been committed, as alleged by SKAT, save only that there was a claim against Lindisfarne for damages for negligent misstatement, but that was still founded upon the same set of alleged representations said to have been made to SKAT (or a sub-set of them). For example (as to the general point, not the specific point about Lindisfarne), unjust enrichment claims were pressed, but only on the basis that SKAT had paid claims under a mistake induced by the fraud it alleged, if it proved that fraud; or again, knowing receipt, dishonest assistance and proprietary claims were made based on alleged constructive trusts, but the trusts alleged were trusts said to arise in respect of the proceeds of the fraud SKAT alleged, if it proved that fraud.

437. I noted at paragraph 104(ii) above that almost all of the 4,170 tax reclaims in the case were made on Form 06.003, the then current form published by SKAT for the purpose. To the extent SKAT pleaded reliance on the contents of the Form, it did so by reference only to Form 06.003. It would not be appropriate to entertain a case that any of the pleaded representations was made when Form 06.008 was used, if it was not made when Form 06.003 was used. Furthermore, if a pleaded representation was made when Form 06.003 was used, but only because of language in that Form that was not in Form 06.008, in my view any claim based on that representation in the Form 06.008 cases should be dismissed even though the equivalent claim for Form 06.003 cases would not fail *in limine* in that way.

F.1.1 Context

438. Form 06.003 was entitled "*Claim to Relief from Danish Dividend Tax*". That reflects, indeed it states, the nature of the process. Each instance involved a claim to receive a payment from public funds, made to an organ of the state with responsibility for those funds whose decision whether to meet a claim was final, unless a challenge to that decision was put before a Danish Tax Tribunal by a party with standing to challenge it under Danish law. It was not a negotiation or discussion, and it was for SKAT to choose what information it required to be provided and the basis upon which any decision whether to pay would be made.

439. When it was signed and submitted by a Tax Agent, as was always the position here, the simple statement made by Form 06.003 was that on behalf of a "*beneficial owner*" identified on the Form, the Tax Agent as applicant made a claim "*for refund of Danish dividend tax*" in an amount stated in DKK. That did not represent to SKAT that the Tax Agent's named client was entitled to such a refund; nor did SKAT allege such a representation. It was SKAT's function to decide for itself upon what basis it would accept and pay Danish dividend tax refund claims. The Form did not require the named client or the Tax Agent on its behalf to certify entitlement, or belief in entitlement. In the absence of any such requirement in its specified Form, SKAT could not reasonably have understood that the Tax Agent was making a statement to it, intending it to rely on the statement, that the named client was (or believed itself to be) entitled.

440. Likewise, SKAT did not allege a representation that the Tax Agent's named client had incurred, or believed it had incurred, liability to Danish dividend tax. There may be room for the view that an assertion of tax liability was implicit in the making of a refund claim or claim for relief. However, if that view were taken, there would then be an important issue whether that was again in the nature of a contention by the Tax Agent on behalf of its client, rather than a statement that SKAT could reasonably have thought was being made to it as a positive assertion, on which it was intended to rely, of the true position under Danish tax law. These matters were not explored at trial since an implied representation of tax liability (or belief as to tax liability) was not how SKAT put the case.

441. None of the representations alleged by SKAT was stated in terms in the Form or in any CAN. The submission for SKAT was, in substance, that it would reasonably be expected to be looking only to pay where there was entitlement to be paid, and therefore things said in the Form or a CAN should reasonably be taken to have conveyed that which would have to be the case for there to be an entitlement. I do not accept the premise, and in any event the conclusion does not follow: "*I claim a Danish dividend tax refund*" does not translate as or imply "*I hereby state to you that the requirements of Danish tax law for entitlement to the tax refund sought are satisfied*", or "*I hereby state to you that the facts are [whatever the facts have to be for there to be entitlement]*".

442. SKAT's contrary argument was set out for closing as follows:

"*76. A reasonable tax authority in SKAT's position would naturally have only wished to pay 'refunds' of withheld dividend tax where the requirements under its national tax law for a valid WHT refund application were in fact satisfied.*

77. ... the Court has held in the Validity Issues Judgment that, in order to be entitled to a refund of withheld dividend tax from SKAT under Danish tax law:

77.1 The WHT Client must have been entitled to a dividend when declared by a Danish company;

77.2 By virtue of being a shareholder (for tax purposes) of the relevant Danish company when the dividend was declared;

77.3 Such that the WHT Client suffered a withholding of tax on such dividends by the Danish company.

78. The background to each WHT Application was that:

78.1 a reasonable representee in SKAT's position would be expecting that that Application and the documents supporting it would be informing SKAT that the WHT Client was entitled to a dividend on shares held in a Danish company and had suffered a withholding of tax on such dividend, of which a 'refund' was being sought; and

78.2 any person applying for a refund would wish to represent and demonstrate those matters to SKAT.

79. This is the context in which the statements relied on by SKAT in the documents comprising the WHT Applications … fall to be interpreted, including:

79.1 The Tax Refund Form which identified the amount of tax withheld of which a "refund" was sought on behalf of a named WHT Client;

79.2 The DCAs which specified the number of shares on which the gross dividend had been declared, the net dividend paid to that WHT Client, and a figure for tax or tax withheld.

80. Moreover, the meaning of shares, dividends and tax in the context of a WHT Application is necessarily driven by the meaning of those concepts in Danish tax law. That is how a reasonable representee in SKAT's position would have understood them as a tax authority in the context of an application for a refund of withheld Danish dividend tax."

443. SKAT's paragraph 76 was a baldly asserted conclusion for which no evidence was cited that might justify it as a finding of background fact. It is the premise to which I referred in paragraph 441 above. I found in *SKAT (Validity Issues)* that even if SKAT had established what might otherwise be an administrative practice, as known to Danish public law, it could not have bound itself to pay tax refund claims in circumstances where the requirements of s.69B(1) of the Danish Withholding Tax Act, as I found them to be, were not satisfied (*ibid*, at [97] to [101]; and the Appendix at [9]). That means that if SKAT had adopted a continuous and consistent course of deliberate conduct by which it accepted and paid tax refund claims where one or more of those requirements was not met, it always remained open to SKAT to refuse any such claim. It does not mean that SKAT must reasonably be taken not to have made policy choices about when it would accept and pay that might involve it paying claims where it knew that the requirements of s.69B(1) were not all met, or the information available to it did not establish that those requirements were met.

444. There was evidence that a policy approach of that kind was known to be taken by the Belgian tax authority at the time. SKAT noted that the known approach in Belgium did not extend to treating dividend compensation payments as taxable dividend income if they were payments made between parties neither of whom ever acquired any shares, but that does not prevent the Belgian example from undermining SKAT's bald general assertion as to the approach it should be assumed a national tax authority would be taking when construing tax refund claim documents to identify what, if any, representations were made by them to that authority.

445. Similarly, SKAT's Legal Guide, taken at face value since SKAT proffered no other evidence on the point, evidences a choice by SKAT to treat as irrelevant whether trading giving rise to a tax refund claim involved short selling or stock lending (see paragraph 293 above). That also contradicts SKAT's bald assertion about context, and again that is so even though SKAT was correct to submit that the Legal Guide did not provide reason to think, more specifically, that the share-less trading involved in this case might generate a valid tax refund claim (see paragraph 296 above).

446. SKAT's paragraph 78 likewise was a bare argument unsupported by evidence. It also proves too much. If true, the conclusion would be that a representation of entitlement was made by the submission of a tax refund claim. The reality is that SKAT asked for

its Form 06.003 to be used, and therefore would reasonably expect to receive, neither more nor less, whatever use of that Form would mean it received, and a person making a tax refund claim using the Form would be expecting to provide to SKAT whatever the Form required it to provide, neither more nor less.

447. I also disagree with SKAT's paragraph 80, to the extent it was meant as a submission that words used in Form 06.003 or in CANs submitted to SKAT should be read as having specialist Danish tax law meanings. To assess whether a tax refund claim met the strict requirements of s.69B(1), if that had been its approach, SKAT would have needed to consider whether the claim had been made by or on behalf of a shareholder for Danish dividend tax purposes when the dividend in question was declared. It does not follow that if the tax refund Form asked for information about the named client's position, SKAT could reasonably think that the user of the Form would intend their language to have specialist Danish tax law meanings if that was not explained by SKAT in the Form, or in notes or guidance for completing it. For example:

(i) if the Form required the Tax Agent to state whether its named client was or had been a shareholder in the referenced Danish company, in my view SKAT could not reasonably consider that an affirmative answer had a specialist Danish tax law meaning if it did not explain that that is what it was asking for;

(ii) likewise if the Form then asked, in respect of an affirmative answer to the first question, (a) when the named client acquired its shareholding and/or (b) whether and if so when the named client had disposed of it.

In relation to (ii), as it happens on the facts there might then have been room for an interesting argument as to whether SKAT's Legal Guide, published only in Danish and not referred to in the Form, served sufficiently as guidance on the Form, or a note to it, for it to be said SKAT might reasonably take the answer as referring to the date on which the named client contracted to acquire or dispose of the shareholding it was said they had had rather than the date on which the shareholding was transferred to or by it, respectively. For SKAT's paragraph 80, what matters is that to my mind the issue would obviously arise, and need careful thought, in the example given. The answer to it would not just be given, without more, by the fact that the Form was a tax refund claim form.

448. I was therefore not persuaded that SKAT's specific submissions about context had any force. It can be said, as a more general statement as to context, that when considering communications to SKAT from a Tax Agent on behalf of a client, relating to a particular type of income tax collected by it, SKAT might reasonably be expected to be interested in information about income of that type earned and/or received. That could influence how what was submitted to SKAT might reasonably be expected to be understood by it. However:

(i) that cannot replace or supersede the need to look carefully at what the documents submitted did or did not actually say; and

(ii) it is important to keep in mind that the question is whether SKAT has made good the representations it alleged, not some more open-ended question about what the documents might have been thought to convey. SKAT did not allege, for example, that a CAN represented that the Tax Agent's client had earned income

in the gross dividend amount stated, or (as noted previously) that it had incurred, or believed it had incurred, a Danish dividend tax liability.

449. That answers SKAT's reliance on the well-known "*helpful test*" articulated by Colman J in *Geest plc v Fyffes plc* [1999] 1 All ER (Comm) 672 at 683B of considering "*whether a reasonable representee would naturally assume that the true state of facts did not exist and that, if it did, he would necessarily have been informed of it*". In oral closing argument in reply on this part of the case, Mr Graham KC put that reliance as follows on Day 82:

"*We say that a reasonable Danish Tax Authority would expect that if a named client did not own any Danish shares and had not received any dividends from a Danish company and had not suffered any withholding of any dividend tax, then they would not be submitting a DCA in the form they did as part of an application for a refund of withheld dividend tax. ...*

On any view, ... against the background of that conduct [the submission of a claim] and those words [the content of a DCA] a reasonable tax authority would expect to be told if there were no shares, no dividend and no withholding of tax."

That argument, if well founded, might perhaps lead to a conclusion that there was an implied representation that the Tax Agent's client had owned shares on which it had earned a dividend on which it had been taxed. However, SKAT alleged different representations, and as Mr Head KC put it in a submission for the DWF Ds, the trial would have been a different trial if it had been about materially different alleged representations.

450. Submissions by defendants as to context focused on the fact that a national tax authority does not operate in an ivory tower or a vacuum, and I agree. It would reasonably be expected to have a general knowledge of the international legal and market environment in which any WHT refund scheme operated by it sat. Thus, SKAT would reasonably be expected to be aware that DTTs on the OECD model used a Treaty notion of the 'beneficial owner' of dividends, not tied to or based on the legal concepts of any national system of law, to locate possible entitlement to tax relief. Such DTTs did not stipulate, in terms, for such an entitlement. They imposed Treaty obligations not to levy tax on dividends, either at all or above a specified maximum tax rate, where the 'beneficial owner' of the dividends was within a relevant Treaty category. The entitlement to relief therefore needed to be provided if Denmark was to comply in substance with those Treaty obligations, since (so far as material) it taxed dividends at source by a general withholding tax obligation imposed on the company and attaching to the dividend declaration.

451. It was also to be expected that SKAT, acting reasonably, would be aware of the information and guidance it had published concerning Danish dividend tax and the availability of tax relief on the basis of DTTs. I dealt with that as part of setting out the basic facts, at paragraphs 286 to 296 above, and referred to it also at paragraph 445 above. SKAT would also be expected to be aware that it could require further information from those seeking tax refunds from it, including if it considered that to be necessary to ensure (if this was its aim) that it only paid where there was a refund entitlement under Danish tax law.

452. As a national tax authority collecting dividend tax on a withholding basis and operating a process for dividend tax refund claims to be made to and paid by it, SKAT reasonably would have been expected to be aware and to have a general understanding of common equity trading practices. In receiving and processing dividend tax refund claims during the relevant period, SKAT would reasonably have been expected to be aware, therefore, of stock lending, short selling, deferred settlement, and (in outline at least) div-arb, including tax arbitrage and cum-ex, as practices engaged in by parties trading in equities markets.

453. SKAT reasonably would have been expected to be aware as a result that, as was in fact the position:

(i) parties other than shareholders might receive payments under their trading transactions that were calculated by reference to dividends declared;

(ii) such payments might include (whether or not known to SKAT by these labels) market claim payments (as defined in the CAJWG Standards), manufactured dividend payments under stock loans or repos, and what I am calling dividend compensation payments;

(iii) all such payments might be referred to as 'dividend' income or just 'dividends';

(iv) custodians might issue credit advices in respect of such payments, and there was no general practice of differentiating in such advices between different types of such payment; and

(v) SKAT had not itself imposed any requirements as to form or content in respect of any such advices submitted in support of dividend tax refund claims, either at all or by way in particular of a 'tax voucher' system (such as it would be expected to be aware had been adopted in, for example, Germany and Switzerland) under which the tax status or consequence of stated earnings or payments was effectively certified by the institution issuing the document.

454. Finally, SKAT would reasonably have been expected to be aware that a shareholder in principle entitled to dividend income from a Danish company (it may be via a chain of custody) might in various ways transfer that entitlement or its benefit to another, so that even the receipt of real dividend income was not always tied to share ownership. Indeed, that was implicitly recognised in the beneficial ownership element of DTTs, the Treaty obligation being not to tax (or not to tax above a certain rate) where the beneficial owner *of the dividend* qualified under the DTT. It was also recognised explicitly by SKAT itself in Form 06.008, use of which it still accepted, in that it allowed for claims by owners or usufructuaries. (I have said it would be inappropriate to allow SKAT to rely on wording in Form 06.008 to found any of its alleged representations, having pleaded no such reliance. That does not mean I should ignore this evidential value of the Form on a matter going to context.)

F.1.2 The Core Representations Alleged

455. The pleading of the representations that SKAT says were made to it by each of the tax refund claims submitted to it was complex. Care was needed to bear in mind not only the primary pleading, alleging the representations, but also both a preparatory plea in

the Particulars of Claim and important Further Information provided by SKAT pursuant to a Request for Further Information served by the DWF Ds after the Validity Trial.

456. The preparatory plea, paragraph 17(c) of the Particulars of Claim, was that each CAN, so SKAT alleged, "*purported to record that:*"

(i) "*a specific number of shares in a specific Danish company were held for the named [client] (in most cases, specifying [an] "ex-date" ...)*";

(ii) "*a specific payment representing the dividend had been received for the account of the named [client] (in most cases, specifying [a] "payment date" ...)*"; and

(iii) "*such payment of dividend had been received by the [named client] net of a specific amount of tax that had been withheld by the named Danish company*".

457. Reading together paragraph 19 of the Particulars of Claim and the Further Information clarifying and confining SKAT's case, the plea by SKAT was that, given certain of the content of the tax reclaim documents submitted to it and the fact that they were being submitted so as to make a tax refund claim in respect of Danish dividend tax, the Tax Agent, by submitting the claim, represented to SKAT that:

(i) the Tax Agent's named client was the owner of the shares in the Danish company described in the CAN as a matter of Danish tax law as at the date on which the referenced dividend was declared (the 'tax ownership representation');

(ii) the Tax Agent's named client had received the dividend described in the CAN for Danish tax law purposes by being the shareholder for tax purposes on the dividend declaration date (the 'dividend entitlement representation');

(iii) the Tax Agent's named client had received a payment, net of tax, in respect of that entitlement to a dividend either as a legal shareholder on the dividend record date or as the recipient, directly or indirectly, of a payment by such a shareholder (the 'dividend payment representation'); and

(iv) the Danish company had withheld the tax described in the CAN so that the payment received by the Tax Agent's named client in respect of the referenced dividend was paid net of the tax withheld (the 'tax representation').

458. The dividend entitlement representation and dividend payment representation are set out above as separate representations. There is some convenience in that when considering whether the pleaded representations were made. However, they were pleaded as a single, composite representation, *viz.* (in the basic plea, before building in the Further Information) that "*[the named client] had received the dividend, and in due course payments representing the dividends, net of tax, described in the Credit Advice Note (on the "payment date" recorded therein)*". The Further Information clarified that the pleaded case was of a representation of entitlement *as a matter of Danish tax law* and the receipt of a payment in respect of *that* entitlement. Therefore, the allegation of the dividend payment representation was not freestanding and it falls away if the dividend entitlement representation, as alleged, was not made.

459. Each of those core representations is detailed and specific. Nothing like any of them was stated expressly in any of the documents submitted to SKAT, as SKAT recognised by its plea that the representations were not made expressly, but "*partly expressly and partly impliedly*", the sense of which I considered in paragraph 435 above and have sought to capture in the opening words of paragraph 457 above.

460. For closing argument, SKAT sought to recast the pleaded representations by a "*Restatement of Alleged Representations*" which drew a distinction, for each, between the representation pleaded and what was said to be the representation "*in substance*" alleged. I did not find that helpful. If the suggested 'substance' differed materially from the pleading, the 'Restatement', if pressed, would have been an objectionable attempt to amend beyond the eleventh hour; if it did not differ materially from the pleading, it would have been unobjectionable, in the final analysis, but an unwelcome, unnecessary distraction nonetheless. In fact, the Restatement did articulate a 'substance', in my view, that differed materially from the pleading.

461. After closing argument, there was no real dispute but that an understanding of the material essence of a representation suffices where the tort of deceit requires awareness or understanding that the representation was being or had been made. It therefore does not matter if an individual whose awareness or understanding falls to be considered might not have articulated their thinking in terms that match precisely those in which the court chooses to articulate the representation, or those in which it may have been pleaded. Moreover, the variety and flexibility of language mean that in any given case, there may be room for articulations that look quite different on the page but convey, in truth, essentially the same message. When applying that principle, however, what matters is the essence of the pleaded representation, not therefore, in this case, the materially different 'substance' in SKAT's Restatement document. This judgment determines the claims pleaded by SKAT, and I consider that paragraph 457 above sets out accurately the core representations pleaded.

462. In oral closing argument, Mr Graham KC accepted the force of concerns expressed about the Restatement document, and rested SKAT's case on the core representations as pleaded, so long as the 'material essence' principle applied, as in my judgment it did. He also provided an articulation of the material essence of those pleaded representations, as SKAT would have it for the purpose of applying that principle. I consider those articulations when dealing with each of the pleaded representations in turn, below.

463. Returning to the formulation of the core representations in paragraph 457 above, there was an issue as to whether the tax ownership representation, as pleaded, was, even more specifically, an alleged representation that in respect of the shares described in the CAN, the Tax Agent's named client was either (a) a dividend date shareholder who was not to be treated by Danish tax law as having disposed of those shares prior to the dividend declaration, or (b) a party, when the dividend was declared, to whom a dividend date shareholding was to be treated by Danish tax law as having been disposed and by whom that shareholding was not to be treated by Danish tax law as having been disposed, those being the categories of legal person that the Validity Trial determined to be shareholders when a dividend was declared, in the eyes of Danish tax law, subject therefore to Danish dividend tax liability on the declared dividend.

464. That issue arose because in the Further Information that I have said needs to be taken into account, as regards the tax ownership representation SKAT:-

(i) clarified that the pleaded representation was "*that, at the time of the dividend declaration by the relevant Danish company, the [Tax Agent's named clients] were the owners of the shares specified in the relevant [CAN(s)] as a matter of Danish tax law*"; and

(ii) immediately followed that, as a continuation of the same RFI Response, with, "*The requirements for ownership under Danish tax law are set out in the Validity Issues Judgment*", from which the DWF Ds derived the submission that the alleged representation was, in terms, a representation as to satisfaction of those requirements, as summarised in paragraph 463 above.

465. That continuation also said (in line with paragraph 17(c)(i) of the Particulars of Claim (see paragraph 456 above)) that, so SKAT alleged, each CAN recorded that *on the date of the CAN* there was a settled positive balance of shares in the referenced Danish company held by the custodian for the Tax Agent's named client, from which the Shah Ds derived a submission that the tax ownership representation, as pleaded, was also defined, and confined, by that.

466. In my judgment, the sense of the relevant RFI Response was *not* that SKAT was alleging a representation quite as specific and detailed as those submissions would have it. SKAT's reference to the requirements for Danish tax law share ownership as determined by *SKAT (Validity Issues)* was not part of the pleaded representation. It was a plea making clear what SKAT said it would take for the pleaded representation to have been true, *viz.* that those requirements would need to have been satisfied. It is like an allegation that a job applicant represented by their c.v. that they had achieved a particular award (say, a Gold Duke of Edinburgh's Award). If that were followed by a plea stating, as alleged by the claimant, the requirements for achieving that award, one would not naturally interpret that as alleging, as such, a representation or set of representations that the applicant had satisfied each of those requirements. The supplemental plea would be likely to be taken to identify the criteria by reference to which, according to the claimant, the truth or falsity of the pleaded representation that the applicant had a Gold DofE Award fell to be judged.

467. The plea in the Further Information harking back to the preparatory plea about the contents of CANs was a reiteration of one of the alleged planks upon which SKAT claimed that the tax ownership representation fell to be constructed. That involved an unhelpful jumbling of pleaded points; but it is not a sensible reading of the pleaded case as a whole, I think, to say that SKAT was confining itself to a representation of tax ownership on the dividend declaration date, in respect of a settled balance of shares on the date of the CAN. A CAN reported a payment, and was therefore issued on or after a payment date. On any view, it did not say or imply anything about the existence of a settled balance of shares on the date of the CAN.

468. There was also a question, raised by Mr Jones KC for the Shah Ds, over the formulation of the dividend entitlement representation, as pleaded, in paragraph 457(ii) above. Was the representation, as alleged by SKAT, that the client had been (as I have it there) the shareholder for tax purposes on the dividend declaration date, or that it had been the dividend date shareholder (as I defined that term in *SKAT (Validity Issues)* at [166])?

469. That arose because in the same Further Information, SKAT clarified that the pleaded representation that the Tax Agent's client "*had received the dividend*" was a representation, as alleged by SKAT, of "*receipt [by that client] of a dividend for tax law purposes by the owner of the shares on the dividend declaration date (as explained at paragraph 179 of the Validity Issues Judgment)*". *SKAT (Validity Issues)* at [179] completed and summarised my "*conclusions as to the accrual and transferability of the right to dividends under Danish company law*" (*ibid* at [183]) and did not concern Danish tax law. The cross-reference to [179] in SKAT's Further Information was potentially confusing, therefore, although if there was any confusion the root cause may have been that in framing the relevant RFI Request, the DWF Ds said that [179] set out a conclusion of Danish tax law. Be that as it may, the only way to make sense of SKAT's Response is if the cross-reference to [179] relates to and qualifies only the words "*dividend declaration date*". That is to say, the Further Information clarified that the dividend entitlement representation, as pleaded, was defined as and confined to a representation that the Tax Agent's client had received a dividend entitlement by being the relevant owner, i.e. the shareholder in the eyes of Danish tax law, at the relevant time, i.e. at market close on the dividend declaration date.

470. Finally as to the articulation of the alleged representations in paragraph 457 above, Mr Head KC queried in oral closing argument whether, as pleaded, the tax representation referred to (payment in respect of) the dividend declared by the referenced company, rather than the referenced dividend (as I have it in paragraph 457(iv) above). I was during argument and remain unable to discern any meaningful difference between the two.

F.1.3 Other Representations Alleged

471. SKAT also alleged that each CAN itself made to SKAT the core representations set out in paragraph 457 above, plus an implied representation that the CAN was an honest and accurate statement by the custodian issuing it of the facts set out in it (the 'honest custodian representation'). The Further Information clarified that the honest custodian representation alleged by SKAT was in fact only, and more narrowly, a representation that the custodian had issued the CAN with an honest belief as to the truth of the core representations as (allegedly) made by the CAN. In final argument, having reviewed the trial transcripts, SKAT withdrew reliance on the honest custodian representation against Mr Horn, because in Mr Horn's case Mr Graham KC said that he had not dealt with it sufficiently in cross-examination.

472. In my judgment, it was a misguided and unnecessary complication for SKAT to plead representations made to SKAT by CANs as some separate or additional case. It was always said by SKAT, rightly so, that any representations made to it as a result of what was stated in a CAN were made because of the content of the CAN, interpreted as a document received by SKAT in support of a claim for a Danish dividend tax refund. A question might arise whether a custodian issuing a CAN could have a primary liability arising from what it stated to its equity buyer client by issuing a CAN to it, if the CAN was submitted to SKAT. But that does not mean that focusing on a CAN, to the exclusion of the tax reclaim form with which it was submitted, is a worthwhile exercise when considering what, if any, representations were made to and relied on by SKAT. In my judgment, it is not, indeed it is not in truth a meaningful exercise. As the DWF Ds put it in their written closing submissions, "*It makes no sense to speak of any representation to SKAT that could arise from a [CAN] other than as part of a WHT*

Application, given that each [CAN] was only ever received and read by SKAT together with the other WHT Application documents that accompanied it".

473. SKAT also pleaded implied representations that the Tax Agent's named client had an honest belief as to the truth of the core representations, as (allegedly) made by the tax refund claim documentation, and that the signatory of a CAN (where the CAN was signed) believed the representations (allegedly) made by the CAN to be true (including the alleged honest custodian representation). In its written closing submissions, SKAT withdrew reliance on either of those as a representation said to found any cause of action. It was said that SKAT did not concede that those further alleged representations were not made, or could not have founded a claim, but considered that they could not add anything. I make no comment on that. All that matters for my purposes is that the further alleged representations were not pressed in closing, so I do not need to deal with them.

F.1.4 The Tax Reclaim Documents

474. Nothing turns on the documents provided to SKAT with the subject tax refund claims that confirmed the tax status in their respective home jurisdictions of the Tax Agent's named clients, for example U.S. Form 6166s by which the IRS certified that, to the best of its knowledge, USPFs qualified under section 401(a) of the U.S. Internal Revenue Code to be exempt from taxation in the U.S. under section 501(a). Likewise, the Powers of Attorney by which the Tax Agents evidenced their authority to submit claims on behalf of their clients.

475. Therefore, the tax refund claim documents for each claim were, so far as might be material, the Tax Agent's cover letter, a completed Form 06.003 (or, in the few cases where it was used, Form 06.008), and a CAN.

476. In its pleadings and argument, SKAT relied on particular turns of phrase used by the Tax Agents in their cover letters, in support of the submission that the core representations were made to it. For example, Goal's cover letters described CANs as "*evidence of payment and tax deduction paid on the client's securities*", or again Syntax's and Koi's cover letters described the claim being made as a claim for a "*refund of Danish Dividend Tax that was previously withheld in relation to their investments*".

477. However, Mr Nielsen's evidence left me in no doubt but that he paid no regard at all to what was said in the cover letters when processing any of the tax refund claims. There was no evidence, or reason to suppose, that anyone at SKAT other than Mr Nielsen paid any attention to the cover letters, save that in the few cases where Form 06.008 was used, someone may have had to take the Tax Agent's bank details for payment from the cover letter as those details were not asked for in the Form itself, as they were in Form 06.003, and the Tax Agent may or may not have thought to enter them onto the Form. In reality, SKAT, through Mr Nielsen, received and processed tax refund claims as claims consisting of the completed Form, supported by a CAN or CANs and the documents referred to in paragraph 474 above. The cover letters may as well have said just, "*Please find herewith completed Form 06.003 [or 06.008] for consideration*" (and, where Form 06.008 was used, "*Bank details for any payment as follows: …*", if the Tax Agent had not added those details to the Form). They would have been processed by Mr Nielsen, and paid by SKAT, exactly as they were in fact.

478. It follows that if, considering the matter objectively, one of the representations alleged by SKAT was conveyed by the tax refund claim documents only due to something said in the cover letter, it did not induce Mr Nielsen's approval of the claim, and any claim founded on that representation fails for that reason.

479. The documents submitted to SKAT did not refer to or provide any information about any particular trade or trading structure to which the Tax Agent's named client had been or was privy. SKAT did not require any such information to be provided. That needs to be taken into account when considering the objective purport of those documents, such as might give rise to a representation made to SKAT. The question is what would the documents convey to SKAT, acting reasonably, bearing in mind *inter alia* that they did not say anything about any trades or trading structures involved.

480. Finally before considering each representation in turn, I deal with SKAT's preparatory plea about CANs (paragraph 456 above). That was a plea as to what, SKAT says, the CANs were, and what they conveyed, as documents issued by a custodian to a client, which may inform any consideration of whether the tax refund claim documents conveyed the pleaded representations to SKAT, given that each claim was supported by a CAN.

481. Examples of the different forms of CAN, it will be recalled, appear in Appendix 5, below. It was variously contended both by SKAT and also by defendants that the content and connotations of the different forms of CAN were materially similar. However, each of those contentions was made as part of an argument that the representations alleged by SKAT were made (according to SKAT) or were not made (according to defendants). The rival submissions about similarity cannot be put together to say that it was common ground that the CANs were materially similar in purport. Neither submission was a concession that the case on which, if any, of the pleaded representations was made stands or falls uniformly across all custodians. I therefore reject attempts that were made, on occasion, on either side, to pair a submission about one form of CAN with the opposing side's submission as to similarity, for an argument that if the former was persuasive, its conclusion could be applied across the board. SKAT's preparatory plea, as to the purport of CANs in themselves, and then its claim that the representations it alleged were made to it, must be judged separately, in my view, for each form of CAN.

482. SKAT alleged, firstly, that each CAN purported to record that a stated number of shares in a named Danish company was held for the client to whom the CAN was issued (paragraph 456(i) above). In my judgment, that was not true for any of the CANs, although for the NCB CANs it may be that is so only because SKAT made clear, by the Further Information to which I have been making repeated reference, that the allegation was, more specifically, that CANs reported share ownership as a matter of Danish tax law on and before the ex-date.

483. A CAN issued by SCP advised the addressee that SCP had credited its account and that "*This payment represents the dividend as shown below:*", under which details were set out of dividend income that it might meaningfully be said that a payment credit represented, namely dividend income, net of withholding tax, on a stated number of shares in an identified Danish company (also identifying, in early versions of the SCP CAN, the "*Pay Date*" for the referenced dividend, and in later versions also the "*Ex Date*" and the "*Record Date*"). None of that purports to record any holding of shares

by the custodian for the addressee. It is a cash account credit advice, not a custody statement setting out securities holdings. The receipt of a payment referable to a dividend declared by a listed company did not imply that the recipient had a shareholding in that company (see paragraph 453(i) above). An SCP CAN was entitled "*DIVIDEND CREDIT ADVICE*", but that does not change the limited substance of what it stated, and the use of the word 'dividend' in a CAN did not mean or imply that there had been an entitlement to a real dividend (see paragraph 453(iii) above).

484. I noted in paragraph 411 above that the SCP CAN was modelled on the CANs issued by Merrill Lynch in connection with the Broadgate transaction. I am not trying any claim or issue concerning that transaction, which related to German shares and German tax and was not investigated in depth at the Main Trial. I cannot make any firm finding as to this, therefore, but it seems plausible that the language may have been chosen by Merrill Lynch to ensure that it should not be taken to suggest dividend income earned on a shareholding rather than a more derivative type of income indirectly reflecting or relating to dividends that had been declared.

485. An Old Park Lane CAN contained no narrative statement as to what it was reporting. It was entitled "*INCOME ADVICE*", above the name and address of a client as addressee, and did not refer to or give information about any account of the client's at Old Park Lane. It thus took the form of a report of income, rather than that of a credit advice reporting the crediting of a payment to an account. By way of content, then, it tabulated details of a Danish share security, the "*Ex-dividend Date*", "*Record Date*" and "*Payment Date*" for a "*Dividend*" declared on that security, and "*Payment details*" identifying a "*Dividend Per Share*", a "*No. of shares*", and "*Gross*", "*Tax*" and "*Net*" amounts.

486. Read sensibly, as a report of income by a financial services firm to its client, in my judgment an Old Park Lane CAN thus conveyed that the client had received payment on the stated "*Payment Date*" of the "*Net*" amount shown, and how that was calculated from the referenced dividend. The CAN did not say anything about the nature of or basis for any entitlement the client may have had to such an income payment; and the receipt of such a payment does not imply that the recipient had a shareholding (see paragraphs 453 and 454 above). In particular, in the context of the referenced Danish share security, it was a given that the only party that would ever deduct anything from a 'dividend' payment made by it would be the Danish company itself, when paying VPS. In a payment credit advice remote from the company, and given the matters referred to in paragraph 453(i) to 453(iv) above, those "*Payment details*" in an Old Park Lane CAN did not, in my judgment, purport to confirm anything more than how the reported income had been calculated.

487. A West Point CAN was entitled "*DIVIDEND CREDIT ADVICE*", above a date and a "*Tran Ref*" (presumably 'transaction reference', not explained further), all above the name and address of the client as addressee. Like the Old Park Lane form of CAN, a West Point CAN contained no narrative sentence identifying what it was reporting. It likewise did not refer to or give any detail of any account of the client's at West Point; however, the document title identified that it was advising the client that West Point had credited a 'dividend' payment to the client, implying (I think) the existence of such an account. The West Point CAN content was materially the same as, albeit formatted marginally differently from, that of an Old Park CAN. As before, the receipt of a 'dividend' credit does not mean or imply the existence of any shareholding, and in my

view a West Point CAN therefore conveyed materially the same information and message as was conveyed by an Old Park CAN, plus (only) the (implicit) statement that the relevant payment had been credited to an account of the client's at West Point.

488. A Telesto CAN was entitled simply "*CREDIT ADVICE*", above a date and "*ID*" number (not explained further), all above the name and address of the client as addressee. By way of content, it identified a "*Security*" (always a Danish share issue, identified by name and ISIN), an "*Ex Date*", "*Record Date*" and "*Pay Date*" relating to that security, and then data for "*Dividend Per Share*", "*No of Shares*", "*Gross Dividend*", "*Withholding tax deducted*" and "*Net Dividend*", without any sub-heading. In my judgment, the purport of a Telesto CAN was the same as that of an Old Park CAN, for the same reasons, plus (as with the West Point form of CAN) an implicit statement that the payment being reported had been credited to an account of the client's at Telesto.

489. Indigo and Lindisfarne CANs were materially identical to Old Park Lane CANs, except that an Indigo CAN was entitled "*CREDIT ADVICE – DIVIDEND*" and a Lindisfarne CAN was entitled "*DIVIDEND CREDIT ADVICE*", rather than the Old Park Lane CAN's "*INCOME ADVICE*". Again, therefore, no statement was made or implied that shares were held; and in my judgment Indigo and Lindisfarne CANs conveyed the same information and message as did Old Park Lane CANs, plus (implicitly) the information that the reported payment credit was to an account of the client's at Indigo or Lindisfarne, respectively.

490. A Salgado CAN was entitled "*CREDIT ADVICE*", and set out information relating to a security and dividend from which, it is evident, "*Due dividend payment details*" of a "*Due payment amount*" and "*Due payment date*" had been derived. That purported to do no more than explain the calculation of the amount of the credit being reported, and did not make or imply any statement about shares being held for the client. The client's name was entered against "*Name of beneficial owner*", which (if anything) reinforces the view that the CAN could *not* be read as purporting to record any shareholding (*cf* paragraph 454 above).

491. The CANs issued by NCB in the Maple Point Model were materially different in form and content. They purported to record "*Dividend income*" in respect of "*Holdings as at*" a stated date (always in fact the dividend declaration date) of a stated number of Danish shares. In my view, that could only reasonably be read as confirmation that the client held the shares referred to, on the dividend declaration date, and was being credited with a 'dividend' income payment, calculated net of tax deducted at source, on that holding. The fact that similar content, as to a 'dividend' payment, might not by itself imply anything about shareholding does not detract from the clear sense of the express "*Holdings as at*" statement that an NCB CAN made.

492. An NCB CAN stated on its face that it was "*Not a tax certificate*". That meant NCB made no statement, and the CAN was not to be relied on, as to whether tax had been deducted at source, or otherwise as to the tax consequences of the "*Actual payment*" to the client of the amount stated. In my view, that did not negative or qualify the "*Holdings as at*" statement, which was not a statement concerning the tax status or consequences of the reported holding. Nor did anything in the small print on the second page of an NCB CAN serve to negative or qualify the "*Holdings as at*" statement (so long as it is not taken to say anything about tax status or treatment).

493. It is not an answer, as was submitted on behalf of the DWF Ds in respect of the objective purport of an NCB CAN, that NCB used transaction recording and reporting software used by a number of German banks so that its CANs were what that software package generated from the inputs it was given on Maple Point Model trades. The evidence at trial disclosed no reason to suppose that whatever inputs the software required were not drawn accurately from the Maple Point trades as executed. Equally, however, on the evidence, I cannot say whether the required inputs would have 'told' the software that there were no shares, yet it generated the "*Holdings as at*" statement nonetheless, or whether the software in effect wrongly assumed that any share trade settlement will have been DVP, i.e. will have involved the transfer of a shareholding. Either way, the Maple Point Model, it seems, exposed a weakness in the software, as the plain fact is that it generated CANs purporting to record shareholdings where there had been none.

494. That brings me to the point arising from SKAT's Further Information. Asked to clarify what SKAT meant by alleging that CANs purported to record "*shares … held*", the Response was "*that the shares specified in the [CAN] (i) were owned (as a matter of Danish tax law) on and before the Ex-Date …; and (ii) by the time the [CAN] was produced constituted a settled positive balance of shares …*". In my view, there is no warrant for reading anything like that into the NCB CANs, or any of the CANs for that matter, none of them having stated anything like it expressly. Furthermore, in the case of an NCB CAN, the claim that it made a statement about Danish tax law ownership *is* directly negatived by the disclaimer that the CAN was "*Not a tax certificate*".

495. Secondly, SKAT alleged that each CAN purported to record that a specific payment representing a dividend had been received for the account of the client to whom the CAN was issued (paragraph 456(ii) above). I do not agree. Each CAN reported to the client that the custodian had credited it with an amount reflecting or based on the dividend identified, or (in the case of an Old Park CAN) that the client had received an income payment in such an amount. None stated that the custodian had "*received for your account …*", or similar, or had to be based on a receipt by the custodian so that some such statement might be implied.

496. Thirdly, then, by the final part of its preparatory plea concerning the purport of the CANs themselves, SKAT alleged that they purported to record that "*such payment of dividend*" had been received by the client "*net of a specific amount of tax that had been withheld by the … Danish company*" (paragraph 456(iii) above). The subject matter ("*such payment …*") is the payment received by the custodian for the client's account that CANs reported, according to SKAT. But as I have just stated, in my judgment CANs did not make such a report.

497. I therefore do not accept any part of SKAT's preparatory plea at paragraph 17(c) of the Particulars of Claim, quoted in paragraph 456 above, as clarified by its Further Information, concerning the purport of CANs, as issued to custodians' clients.

F.1.5 The Alleged Tax Ownership Representation:

that the Tax Agent's named client was the owner of the shares in the Danish company described in the CAN, as a matter of Danish tax law, as at the date on which the referenced dividend was declared

498. Mr Graham KC articulated the essence (see paragraph 462 above) as being an allegation that SKAT was told that "*the named client was the Danish tax law owner of the shares when the dividend was declared*". That is to the same effect but uses fewer words, so there could be no objection to considering the case by reference to it.

499. There was no express statement to that or any similar specific effect in any of the tax reclaim documents. The argument for SKAT was that it was nonetheless conveyed by them, so that on an objective assessment the alleged representation was made to it, because:

(i) CANs referred to a specific number of "*shares*" or "*securities*", and in the case of NCB CANs "*Holdings*" of the reference securities as at a stated date.

That is true, but it does not mean any statement to the effect of the tax ownership representation was made (see paragraphs 481 to 494 above).

(ii) Since the reclaim documents "*represented that the [Tax Agent's client] had received dividends from the Danish company net of tax withheld*", references to "*shares*" or "*securities*" in a CAN filed in support of a dividend tax refund claim "*objectively represented that … shares were owned (for the purposes of Danish tax law) … at the time of the dividend declaration …*". (The references in Salgado CANs to the Tax Agent's client being a "*beneficial*" owner added nothing for present purposes, it was said, since SKAT's case did not rely on the additional requirement of beneficial ownership under the applicable DTT.)

I find that convoluted and confused. Submitting a CAN in support of a tax refund claim could not change, or be reasonably thought by SKAT to change, what the CAN itself, a document issued by a custodian to its client, purported to record. That exposes the argument as being, in truth, an argument that because a tax refund was being sought, and ownership of shares for tax purposes was a requirement of any entitlement to a refund, it must have been being stated to SKAT that there was ownership of shares for tax purposes. That is flawed logic I have rejected already (see paragraph 441 above). Further, the premise assumed the existence of a different representation, *viz.* that the client had "*received dividends from the Danish company net of tax withheld*". If that referred to receipt of dividends in the eyes of Danish tax law, it would seem to be assuming in SKAT's favour that the alleged dividend representations were made; but my conclusion is that they were not (see below). If it did not refer to receipt of dividends for Danish tax purposes, then it would not imply anything about share ownership for Danish tax purposes; and anyway it would then involve an attempt to rely in closing on an unpleaded representation for the purpose of trying to establish the pleaded tax ownership representation, which would not be fair.

(iii) Form 06.008, where used, referred to a "*no. of securities*" of which the identified client was the "*shareholder*".

I am not allowing SKAT to place unpleaded reliance on the language of Form 06.008 (see paragraph 437 above). The submission was wrong in any event, because Form 06.008 identified the client as having been the "*owner/usufructuary*" of the shares identified. By a footnote, the Form required the deletion of whichever of those was inapplicable, but that requirement was not followed.

(iv) The statement by Form 06.003 that the Tax Agent was claiming on behalf of a named "*beneficial owner*" implied that the named client owned Danish shares, else there was nothing of which it could have been the beneficial owner. This was particularly so, it was said, when coupled with the various references to the receipt of dividends to which there could only have been entitlement if there was share ownership on the dividend declaration date.

This is another strained argument. It is also flawed, in that (as I noted in paragraph 454 above), references to being a 'beneficial owner' would naturally be thought, in context, to relate to the DTT concept, which did not require share ownership. The proposed 'coupling' repeats the attempt I rejected in (ii) above to assume the existence of a dividend entitlement representation.

500. For those reasons, I am not persuaded that the tax ownership representation was made to SKAT as it alleged.

501. As will be clear from paragraph 499 above, SKAT placed no reliance in closing argument on the language of any of the Tax Agent's cover letters. There was pleaded reliance, in support of the tax ownership representation, on the fact that Goal's letters stated that they enclosed "*a tax reclaim form together with evidence of ... tax deduction paid on the above client's securities*", and that Acupay's, Syntax's and Koi's letters referred to a "*reclaim application*" from a "*qualifying*" entity for a "*refund of Danish Dividend Tax that was previously withheld in relation to their investments*". Those introductory words do not in my judgment amount to or convey a statement to the detailed and specific effect of the alleged tax ownership representation, or anything like it.

F.1.6 The Alleged Dividend Representations:

the Tax Agent's named client had (a) received the dividend described in the CAN (for Danish tax law purposes) by being the shareholder (for tax purposes) on the dividend declaration date, and (b) received a payment, net of tax, in respect of that entitlement to a dividend, either as a legal shareholder on the dividend record date or as the recipient, directly or indirectly, of a payment by such a shareholder

502. The essence of that was said by Mr Graham KC to be that SKAT was told that "*the named client (a) was entitled as a matter of Danish tax law to the dividend referred to in the CAN and (b) had received directly or indirectly from the Danish company a payment net of tax in respect of that entitlement*". Part (a) of that is to the same essential effect as part (a) of my longer formulation, above, distilled from the pleadings. I agree with the submission that was made, in explaining the formulation I have just quoted,

that part (b) is also essentially the same: the primary element is still the receipt of a payment, net of tax, in respect of the entitlement referred to in part (a); the additional detail is essentially the same, although quite different words are used, because the fuller formulation reproduced in the heading above merely spells out how it is that dividend payments from the dividend declaring company are distributed.

503. I agree with a submission by Mr Head KC that there is a mis-match between part (a) and part (b). Depending on the detail of their transactions: on the one hand, a party in receipt, directly or indirectly, of a dividend payment from the company, might or might not have been the shareholder entitled to the dividend in the eyes of Danish tax law; and on the other hand, that shareholder might or might not receive such a payment. That incongruence is relevant to whether the alleged representations were made, but it is not a reason to reject Mr Graham KC's simplified formulation as in any way unfair or materially inaccurate as an encapsulation of the essence of the pleaded case.

504. I did not find SKAT's argument that the dividend entitlement representation was conveyed by the tax reclaim documents persuasive. The main flaw, once again, was its reliance on the *non sequitur* I identified in paragraph 441 above. SKAT submitted that:

(i) It was receipt of a dividend on the declaration date, in the sense understood by Danish tax law, which gave rise to a liability to taxation in respect of which Danish companies were required to withhold tax. Accordingly, the only people who could have a right to relief from Danish dividend tax were those people who had received dividends as a matter of Danish tax law.

(ii) By asserting a right to relief from Danish dividend tax, and seeking a refund of such tax "*in the context and based on the documents*" that were submitted, each tax reclaim "*expressly or impliedly represented that the [Tax Agent's client] was entitled to such a dividend*".

505. The key point, once again, is that the making of a claim, or even the assertion by one party to another of a right against them, is not by nature a representation. Even if there might be situations where that does not hold, it is in my view true of the presentations of claims here, to SKAT as a national tax authority with responsibility for deciding for itself on what basis or bases it was willing to recognise a claim, and what information or evidence it required to receive in order to make a decision. If SKAT meant, by its reference to "*asserting a right*", a statement by the Tax Agent to the effect that "*our named client is entitled to a tax refund*", the simple fact is that SKAT did not ask for or receive any statement of that kind, and did not allege that a representation to that effect was made to it.

506. SKAT developed, or unpacked, that basic submission, as set out below, but did not improve it by doing so. In what follows, I have removed reliance SKAT sought to make in closing upon specific aspects of the language of Form 06.008 not found in Form 06.003 (see again paragraph 437 above):

(i) "*90.1 The Tax Refund Forms asserted a right to "[R]elief from Danish [D]ividend [T]ax" … . Since the tax in question was withheld in respect of dividends it was implicit that anyone who had suffered such withholding of dividend tax must have received dividends within the meaning of Danish tax law, which (as a matter of Danish tax law) required that the person on whose*

behalf a WHT 'refund' was sought was entitled, as against the dividend-declaring Danish company, to the dividend when it was declared."

That again, in terms, is the false logic of saying that to make a claim is to make a representation to the recipient that the claim is sound and, therefore, an implied representation that whatever facts would have to exist for it to be a sound claim do indeed exist.

(ii) "*90.2 This was reinforced by the "obligatory" requirement stated on … Form 06.003 that a "dividend advice" be enclosed (as to which see the next paragraph) … .*

90.3 It was further reinforced by the cover letters, …, for example, the cover letters from Acupay, Koi and Syntax that referred to enclosing a "Claim to Relief from Danish Dividend Tax Form" and "Dividend Credit Advices" (emphasis added)."

It obviously adds nothing, to a claim submitted by a Form entitled "*Claim to Relief from Danish Dividend Tax*", to mention in the covering letter that such a Form is enclosed; and likewise it adds nothing to enclosing with the claim a CAN, where the Form says that a "*dividend advice*" is required, to mention in the covering letter that a "*Dividend Credit Advice*" is enclosed. The additional point raised by SKAT, therefore, was just that for each reclaim, SKAT would naturally be expected to understand that the CAN had been submitted as the "*dividend advice*" called for by Form 06.003. Given the matters of context summarised in paragraphs 453 and 454 above, in my view it reads far too much into that label to say that a statement to the complex effect of the dividend entitlement representation was made by use of it.

(iii) "*91.1 The DCAs issued by SCP were titled "Dividend Credit Advice". They stated that "we have credited your account" with a specific payment which "represents the dividend" and gave details of the "Gross Dividend" and "Net Dividend" on a stated "No of shares" in a named Danish company. From 2014, SCP DCAs also stated the "Ex Date", being the date on and from which shares traded no longer carried any right to a dividend.*

91.2 The DCAs issued by OPL, WPD, Telesto, Lindisfarne and Indigo referred to a "Dividend per Share" on a stated "No. of Shares" or "Number of Securities" in the named Danish company (specifying an "Ex-date" or "Ex-dividend Date"), producing a "Gross" and "Net" total dividend. WPD and Lindisfarne DCAs were titled "Dividend Credit Advice", Indigo DCAs were titled "Credit Advice – Dividend", Telesto DCAs were titled "Credit Advice" and OPL DCAs were titled "Income Advice".

91.3 The DCAs issued by NCB were titled "Dividend credit for non-resident taxpayer status". They stated an amount of "Dividend income" on a stated number of shares in a named Danish company, corresponding to a "Dividend per unit" on those shares. The NCB DCAs also stated the "Holdings as at" the Declaration Date, being the date shares needed to be owned under Danish tax law in order to be entitled to a dividend (which was prior to the "Ex-date" which was also stated separately).

91.4 The DCAs issued by Salgado referred to a "DPS" (i.e. dividend per share) on a stated "Number of shares" in a named Danish company as well as a "Gross dividend" and "Net dividend", and the "Ex-date"."

Those paragraphs summarise accurately certain features of the various forms of CAN in the case. But SKAT's own case as to what CANs purported to state was not that they purported to make the dividend entitlement representation (see paragraph 17(c)(ii) of the Particulars of Claim, quoted in paragraph 456(ii) above). I did not accept even that case, and not because I concluded instead that CANs made some statement about Danish tax law entitlement (see paragraph 495 above). In my view, the CANs themselves indeed did not make a statement to the effect that the client had received the dividend described, for Danish tax law purposes, by being the shareholder for tax purposes on the dividend declaration date, or any statement similar to that.

(iv) "*92. In the circumstances, each WHT Application – and each DCA – represented expressly or impliedly that the WHT Client was entitled, as against the Danish company identified in the DCA, to the dividend described in the DCA when it was declared and therefore had "received" the dividend as a matter of Danish tax law.*"

This states the conclusion that may have followed if the preceding points put forward by SKAT had merit. As I have explained above, however, in my view they did not; and the conclusion was not justified.

507. For those reasons, in my judgment the dividend entitlement representation was not made to SKAT as it alleged. For completeness, it should be clear from my reasoning, above, that SKAT's reliance on the contents of the Tax Agent's cover letters in the argument for the dividend entitlement representation did not affect the conclusion.

508. The dividend payment representation, as alleged, supplemented the dividend entitlement representation, if made, and could not stand alone. It therefore falls away, as I explained in paragraph 458 above. For completeness only, I add that even if the dividend entitlement representation had been made, I would have rejected the argument that the dividend payment representation followed. It did not, because of the mis-match correctly identified by Mr Head KC (paragraph 503 above).

F.1.7 The Alleged Tax Representation:

that the Danish company had withheld the tax described in the CAN so that the payment received by the Tax Agent's named client in respect of the referenced dividend was paid net of the tax withheld

509. Mr Graham KC shortened that, in his oral argument as to the essence of the representations alleged by SKAT, to a case that SKAT was told that "*the Danish company had withheld the tax identified in the CAN from the dividend paid to the named client*". There can be no objection to that paraphrase of the pleaded case, as long as care is taken to keep in mind what must be meant by the notion of the Danish company withholding tax from a payment made to the Tax Agent's client.

510. Mr Graham KC's paraphrase was close to the primary pleading, at paragraph 19(c) of the Particulars of Claim: "*The Danish company had withheld the tax described in the [CAN] from that payment*". SKAT was asked to make clear what it meant by that, and in particular whether the representation alleged was to the effect that (i) the Danish company had withheld dividend tax when paying VPS, (ii) the Danish company had withheld dividend tax from a payment made directly to the Tax Agent's client, or (iii) something else. In response, SKAT said that it alleged a representation "*to the effect that the Danish company which had declared the dividend had withheld the amount of tax identified in the [CAN] so that the payment received by the [Tax Agent's client] was paid net of the tax withheld*" (my emphasis).

511. That was an important clarification. The basic pleading might have been taken to allege a statement that the Danish company had deducted tax from a dividend payment made by it to the Tax Agent's client. The words I have emphasised made clear that SKAT was not alleging a statement to that effect. Rather, the statement alleged was to the effect that the Danish company had withheld tax *with the result that* the payment received by the Tax Agent's named client was *net of that withheld tax*. In my view, it is only meaningful to speak of a payment received remotely from the Danish company (such as by one of the Tax Agents' clients here) as having been received net of tax that had been withheld by the Danish company, if the payment was at the end of some kind of payment chain starting with the Danish company.

512. I am therefore content to adopt Mr Graham KC's formulation of the essence of the tax representation for the purpose of considering the claim, but always bearing in mind that clarification as to what it means. The tax representation, as alleged, thus depended on the notion, pleaded by SKAT in its preparatory plea about CANs, that a CAN purported to record the receipt by a custodian of a payment for the account of the client. The tax representation plea was that, more particularly, a CAN reported the receipt by the custodian, for the client's account, of a payment net of tax at the end of a payment chain originating with the Danish company.

513. I did not accept the claim that a CAN stated or implied the receipt of a payment for the client's account, or therefore the more particular claim, similar perhaps to the allegation that the tax representation was made, that a CAN reported a receipt by the custodian net of tax withheld by the company (see paragraphs 495 and 496 above). In my view, that is fatal to the claim that the tax representation was made.

514. The argument for the tax representation was put by SKAT as follows (again removing reference to language in Form 06.008 that does not appear in Form 06.003 (see paragraph 437 above)):

(i) "*86.1 … the Tax Refund Forms referred to a "[C]laim for [R]elief from Danish [D]ividend [T]ax" on behalf of the WHT Client that sought a "refund" of a specific amount of "Danish dividend tax" … .*"

That is true, but it did no more than identify the claim being made. It made no relevant representation to SKAT.

(ii) "*86.2 … Form [06.003] also emphasised that it was "obligatory" to enclose a "dividend advice". All of the WHT Applications were in fact supported by DCAs from Custodians. The purpose of such DCA was to evidence*

the WHT Client's receipt of a dividend from which tax had been withheld. In this context:

a) … the DCAs issued by NCB expressly stated an amount of "Dividend income", an amount of "Overseas tax deducted at source 27%" on the "dividend subject to withholding tax" and then an "Actual payment" amount being the difference in amount between the two.

b) The Telesto and [West Point] DCAs referred to a specific amount of "Withholding Tax Deducted" as well as "Gross dividend" and "Net dividend" amounts.

c) The Salgado DCAs referred to a "Withholding rate" of "27%" as well as a specific "Tax amount" and "Gross dividend" and "Net dividend" amounts.

d) All other DCAs referred to a specific amount of "Tax" as well as specific amounts of "Gross dividend" and "Net dividend" (the difference between the two being the amount of "Tax").

e) In each case, it was the figure for "tax" or "tax deducted" / "withholding tax deducted" in the DCA that was the amount of "Danish dividend tax" of which a refund was sought in the Tax Refund Form."

The purpose of a CAN was not to evidence the client's receipt of a dividend from which tax had been withheld, in the sense asserted by SKAT (paragraphs 511 and 512 above). A CAN might or might not, by its content, purport to evidence such a receipt, depending on what exactly it said, but its purpose was simply to advise the client of a dividend-related credit posted to its account by the custodian, i.e. a payment to the client by the custodian. Subject again to the content of any particular CAN, such a credit might or might not have been or resulted from anything received by the custodian indirectly from the company, via a custody chain: see generally paragraphs 453, 454, 495 and 496 above.

In those paragraphs, I concluded that the CANs here, by their content, *did not* purport to evidence a receipt by the custodian out of which it might be possible to construct something like the tax representation. The question therefore becomes whether *by submitting it in support of a dividend tax refund claim* (the Form having required a "*dividend advice(s)*" to be enclosed, if Form 06.003 was used), the Tax Agent was telling SKAT something not conveyed by the CAN itself. In my judgment, that reads too much into that conduct. There is no reason why SKAT, acting reasonably, should take the CAN to say or mean more than it would say or mean, as issued to the custodian's client, merely because it was submitted as part of a dividend tax refund claim.

(iii) "*86.3 The cover letters sent by Goal referred to the "tax reclaim form" together with evidence of "payment and tax deduction" "on the above client's securities". The cover letters sent by Acupay stated that they attached a reclaim application "to obtain a full refund of Danish dividend tax". The cover letters sent by both Koi and Syntax referred to an application "for a complete refund*

of Danish Dividend Tax that was previously withheld in relation to their investments" (emphasis added)."

The language used by Acupay and relied on here by SKAT added nothing to the bare fact that a tax refund claim was being made. However, I agree with SKAT that Goal's, Koi's and Syntax's language could be read as conveying that the claim related to tax that had been withheld from a payment received by the client, in the sense alleged by SKAT. I have concluded that the CANs in themselves made no such statement. However, they did not rule it out, and taking the cover letters into account, therefore, in my view the tax refund claims submitted by Goal, Syntax and Koi, considered as a whole, might have been considered to make the tax representation to SKAT.

(iv) "*86.4 In accordance with s65(1) WHT Act, Danish dividend tax is withheld by a Danish company from dividends declared by it on account – and in discharge – of its shareholders' liability to tax in respect of such declared dividends.*"

That is an accurate summary statement of the Danish dividend tax rule. It does not affect what was or was not said by CANs, given their respective contents, and therefore takes the argument for the tax representation no further either way.

(v) "*87. At the heart of each WHT Application submitted to SKAT – and each DCA – was therefore an express or implied representation in the form of the Tax Representation i.e. that the Danish company which declared the dividend had withheld the stated amount of "tax" described in the DCA in respect of the WHT Client's entitlement to a dividend so that the dividend payment received by the WHT Client was net of tax.*

88. In other words, the WHT Applications – and the DCAs – represented, in substance, that tax had been withheld from the dividends paid to the WHT Clients."

For the reasons I have given, above, when considering one by one the premises upon which SKAT put those conclusions, in my judgment they might be well-founded conclusions for tax reclaims submitted by Goal, Syntax and Koi, but only because of statements made by those Tax Agents in their cover letters, not because of the tax reclaim documents themselves, that is to say (so far as material) the Form plus the CAN submitted with it. Those conclusions are not well founded for tax reclaims submitted by Acupay, and would not be well founded for tax reclaims submitted by the other Tax Agents in the absence of the gratuitous comments they added, referred to in sub-paragraph (iii) above.

515. My findings, therefore, considering the matter objectively as called for by the way SKAT put the case, are that:

(i) the tax representation *was not* made to SKAT through the submission to SKAT, without more, of the Form and a CAN in any of the formats used here, in support of a tax refund claim;

(ii) however, where the Tax Agent was Goal, Syntax or Koi, the tax reclaim documents read as a whole may have made the tax representation to SKAT, because of the description given by the Tax Agent in their cover letter of what the submitted evidence showed;

(iii) therefore, in the case of the tax representation, where the Tax Agent was Goal, Syntax or Koi, the cover letters might make a difference to whether the representation was made.

F.1.8 The Alleged Honest Custodian Representation

that the custodian had issued the CAN with an honest belief as to the truth of the core representations, as made by the CAN

516. As SKAT rightly submitted, a representation of fact may carry with it an implied representation that the representor honestly believes the fact to be true. In other cases, it may be that what is claimed to have been a representation of fact is held not to have been, because the representee would not reasonably be expected to take the representor to be speaking to the truth of the matter (see paragraph 432 above for the basic concept of a representation, which was not contentious in this case). In such cases, there might nonetheless be (instead) an implied representation that the representor honestly believed the fact stated to be true, or (perhaps) had no reason to think it not true.

517. SKAT submitted that the honest custodian representation was implied here on that basis, and that the 'helpful test' in *Geest v Fyffes* was met (paragraph 449 above). According to that argument, "*a reasonable representee [in SKAT's position] would have naturally assumed that the true state of facts did not exist (i.e. that the Custodians did not honestly believe the statements made in the relevant documents) and that if that were the true position they would have been informed of it or the DCAs would not have been issued in the first place.*"

518. That argument, however, misunderstands and misapplies Colman J's idea. The key point here, in each instance, is that the tax refund claim was being made by the Tax Agent, expressly acting on behalf of its named client, and not by or on behalf of the custodian that had issued the CAN. Any representation to SKAT was a representation by the Tax Agent, acting in that capacity. Any implied representation as to the belief of the representor would be a representation about the Tax Agent's belief, or (perhaps) about its named client's belief, not a representation about the custodian's belief. Applied to the present case, Colman J's *dictum* would invite consideration of whether SKAT naturally would assume that if the custodian did not believe the core representations (if they were made by the CAN), SKAT would have been told as much *by the Tax Agent*.

519. The short answer, in my judgment, is no. There might be room for saying that it would naturally be taken as implicit that, so far as the Tax Agent (perhaps also its client) was aware, the custodian was acting honestly in issuing the CAN, or that the Tax Agent (again, perhaps also its client) had no reason to suppose the custodian was not acting honestly. There might also, or instead, be room for the view that a representation of some kind was implicit that the CAN was genuine, i.e. had been issued by the custodian to the client in respect of an account held by the client with the custodian. However, SKAT would have no reason to suppose and could not reasonably expect or naturally

assume that the Tax Agent (or its client) would *know*, if this were the case, that the custodian was not acting honestly. The Tax Agent's conduct in submitting the tax refund claim could not reasonably be thought to convey, as a statement of fact made to SKAT, that the custodian *was* acting honestly.

520. I find therefore that the honest custodian representation alleged by SKAT was *not* made.

F.1.9 Conclusion on Alleged Misrepresentations

521. The result, and my decision, is that of the various representations alleged by SKAT and pursued by it in closing argument, considering in the first instance only whether they were made at all in the objective sense that SKAT accepted was a threshold requirement for all of its claims:

(i) the tax representation was not made by the tax reclaim documents themselves, that is to say (so far as material) the Form and the CAN submitted with it;

(ii) the tax representation may have been made, however, where the Tax Agent was Goal, Syntax or Koi, because of what those Tax Agents said in their cover letters about the tax reclaims they submitted;

(iii) none of the other representations was made.

522. SKAT's claims concerning tax refund claims submitted by Acupay therefore fail *in limine*. There were 1,232 such claims (out of the 4,170 with which I am dealing), seeking payment in aggregate of DKK3,543,799,028.53, which was paid by SKAT.

523. SKAT's claims concerning the other 2,938 tax refund claims, on which it paid in aggregate DKK8,547,045,919.80, also fail *in limine* to the extent they were founded on alleged representations other than the tax representation. If the tax representation was made in those claims, because of the Tax Agents' cover letters, it was always a misrepresentation. The dividend compensation payment that had been credited to the Tax Agent's named client, and which therefore was the subject of the CAN submitted to SKAT, was not a payment from which tax had been withheld by the Danish company in question in the sense conveyed by the representation.

F.2 Inducement?

F.2.1 General

524. Having mentioned this already in passing at paragraph 478 above, I can say immediately that the tax representation, if thus made (considering the matter objectively), did *not* induce SKAT in any way. In those instances, it could only be said that the representation was made at all, taking an objective approach, because that approach effectively assumes that attention would be paid to the Tax Agent's cover letter, potentially influencing what might be gleaned from the documents sent to SKAT, taken as a whole. But SKAT's process, as implemented by Mr Nielsen, treated the cover letter as irrelevant; and Mr Nielsen in fact paid what was or was not said in the cover letter no attention at all. As I said in paragraph 477 above, my finding is that if the cover letter had just said, "*Herewith completed Form 06.003, for your attention*", the tax

refund claim would have been treated in exactly the same way. What each Tax Agent chose to say in its cover letter had no influence at all on what occurred.

525. The result is that SKAT's claims in these proceedings all fail, without the need to explore in any greater detail how it dealt with tax refund claims during the relevant period and whether, therefore, its case on inducement was made out at trial. I deal with that fully nonetheless, below, to explain why I concluded that indeed SKAT's case on inducement was not made out.

526. I made some initial observations about the requirement of inducement when introducing this main section of the judgment (paragraphs 424 to 431 above). I consider that Zacaroli J stated the legal test accurately, and sufficiently for the present case, when he said as follows in *Farol Holdings* at [216] (but, again, I generalise it from the particular case of inducing entry into a contract):

"*... the representee must in fact have been induced to take action ... in reliance on the representation. The misrepresentation need not be the only reason for the representee's decision to [act as it did], but the representee will have no cause of action if it would have [acted as it did] even if the representation had not been made. If it is proved that a false statement is made which was material – in the sense that it was likely to induce [the action said to have been induced] – then there is an evidential presumption (of fact, not law) that the representee was so induced. The presumption is stronger if the representation was made fraudulently.*"

527. Of the strength of the presumption of inducement where a representation has been made fraudulently, i.e. where the representor (or party responsible for a representation made through another) intended the representation to induce the claimant to act and knew the representation to be false (or was reckless as to its falsity, not caring whether it was true or false), it has been said that:

(i) "*the authorities ... support the conclusion that it is very difficult to rebut ...*", *per* Lord Clarke of Stone-cum-Ebony in *Zurich Insurance*, *supra*, at [37], a formulation adopted and applied in *BV Nederlandse Industrie van Eiprodukten v Rembrandt Enterprises Inc* [2019] EWCA Civ 596, [2020] QB 551, *per* Longmore LJ at [32] and [43]-[45] as to the law, and at [46]-[49] as to the facts in that case; and

(ii) "*there is the most powerful inference that the fraudsman achieved his objective, at least to the limited extent required by the law, namely that his fraud was actively in the mind of the recipient when the contract came to be made*", *per* Briggs J (as he was then) in *Ross River Ltd v Cambridge City Football Club Ltd* [2007] EWHC 2115 (Ch) at [241].

528. The existence and strength of the presumption explains why it has long been recognised that there is no rule of law that the relevant decision-maker(s) must be called to give evidence and swear that they acted upon the inducement: see *Smith v Chadwick* (1889) 9 App Cas 187 (HL), in which, at 196, Lord Blackburn explained (again generalising away from the particular case of inducing entry into a contract) that "*... if it is proved that the defendants with a view to induce the plaintiff to [act] made a statement to the plaintiff of such a nature as would be likely to induce a person to [act in that way], and it is proved that the plaintiff did [so act], it is a fair inference of fact that he was induced*

to do so by the statement." The present case does not give rise to any issue about how close a match there must be between the (type of) action likely to be induced and the action in fact taken by the claimant. The case concerns the approval by SKAT, and therefore payment, of the submitted tax refund claim in each instance; and if representations were made with intent to induce SKAT to act, obviously that was the intended outcome.

529. Powerful though the presumption is, it remains a factual presumption only, not reversing the burden of proof, and the evidence in any given case may paint a sufficiently clear picture of how a decision was made, or why some action was taken (or not taken), that the finding is that a misrepresentation, though material, and even if fraudulently made, in fact had no influence, and the same decision would have been made, the same action would have been taken (or not taken), without it.

530. That is the position, and my finding, in the present case, for the reasons set out in the remainder of this part of the judgment.

531. Before turning to the facts, I should mention one other aspect of the law, namely that it recognises the possibility of mechanistic or automatic reliance that may be sufficient, so that there is inducement, although the making of the individual decision said to have been induced does not involve thought being applied by any human mind to what is or is not being conveyed by the words and/or conduct constituting or giving rise to the representation. In that regard, SKAT referred me to: *Renault v Fleetpro* (*Renault UK Ltd v Fleetpro Technical Services* [2007] EWHC 2541 (QB), noted by *Clerk & Lindsell* at f.n.176 in the passage quoted at paragraph 425 above; Grant & Mumford, "*Civil Fraud: Law, Practice & Procedure*", 1st Supplement (2022) to the 1st Edition (2018), at 1-133A; de Verneuil Smith & Day, "*Reliance: a comparison between the common law and s90A FSMA*" (2021) 6 JIBFL 389 at 291; and Day, "*Recent travails of fraudulent misrepresentation*" [2021] LMCLQ 636 at 644.

532. Those references all consider the possible conundrum of machine (computer) processing, and conclude (rightly, in my view) that there is no real conundrum, so that, for example and as SKAT submitted, if within an online application a box is ticked such that (objectively speaking) a representation is made by the applicant, and the system is coded to reject any application in which that box is not ticked, it would only be "*an orthodox view of the law*" (*per* Day, *supra*) to conclude that the representation induced the (computerised) acceptance of the application. The point of principle (if rightly described as such) is that an output generated by the routine operation of a system that produces such outputs in response to inputs obtained from another may properly be held to have been induced by a representation by that other, made by the provision of those inputs with a view to obtaining the output, if the system was designed to deliver that output from those inputs *because the view was taken that the provider of the inputs would make that representation by providing them*. The system design, on the basis of that view, can be seen as anticipatory reliance on representations that will be made, which is completed to create an individual instance of actual reliance when a particular application is routinely processed.

533. Furthermore, if documents required to be submitted for a payment claim to be processed by the party to whom it is made will necessarily make a representation material to a decision whether to pay the claim (interpreting the purport of the documents objectively, in context), and evidence shows that individual claims are processed more

or less unthinkingly through some automated system, it may be no more than an orthodox application of the presumption of inducement in the particular case to say that the representation is likely to have induced the claim payment. The inevitability that a material representation will be made may render it inherently likely that the system was designed to respond as it does on the view that the representation would be so made.

534. The logic of paragraphs 531 to 533 above is not confined to machine processing, in my view. Suppose in the example posed by SKAT, the application checking was not automated but was nonetheless a mechanistic clerical exercise that did not require the checker to apply their mind to (the meaning of) the contents of the completed form, but rather required them just to verify that a certain set of boxes was ticked. If the application would have been rejected if the box had been left unticked that, by being ticked, created the representation (speaking objectively), again it would be orthodox to say that the representation induced the (clerical, mechanistic) acceptance of the application. Moreover, that would be so, other things being equal, even if the checker was called to give evidence and said, as might be expected, that they gave no thought to what the completed form said. Indeed, that would still be so, other things being equal, if the checker gave evidence that they *did* give thought to that and, having done so, understood the completed form to be saying something that bore no relation to the representation objectively made by it, perhaps even that it was saying something quite inconsistent with the representation objectively made.

535. That is all so because, in the adapted example: (i) the checker's understanding, if they had any, of what was conveyed by the completed form *is irrelevant to the approval of the application*; and (ii) other things in the case being equal would result in the drawing of a fair inference that those who designed the process made the ticking of the box in question a pre-requisite *because* by ticking it the applicant would be stating that which, objectively speaking, ticking it would be taken to represent. In the nature of such a presumptive inference as to the facts, other evidence in the case might rebut it. For example, suppose, in the most extreme version of the example, the checker's evidence was that their (objectively wild) understanding of what the completed form conveyed came from what they had been told by a more senior person, who set the system up, that the online form was designed to elicit from the applicant.

536. I therefore do not accept submissions that were made by defendants that there can only be systemic reliance (to give it a convenient label) of the type found in *Renault v Fleetpro*, *supra*, in the context of machine processing or decision-making. For example, the DWF Ds submitted that the representations alleged here "*are not wholly express, simple or clear and are not the result of specific questions asked. They require interpretation by a human mind to discern their meaning alleged to be implicit in the words used and which on any realistic view are not the only potential interpretation of the (limited) words used.*" I agree with all of that. It followed, the DWF Ds submitted, that *Renault v Fleetpro* and the commentators' views on this point were irrelevant, incapable of application. I do not agree with that. All must depend on the facts; but I see no difficulty in principle in a finding of inducement based on, say, evidence that the view was taken by those with authority over the matter that documents such as those routinely submitted *did* involve pertinent statements being made, which they regarded as required to justify a payment being made, and that is why a clerical process involving a document checker who did not have to think about such things was adopted and

regarded as acceptable, or (in a suitable case) based ultimately on a conclusion that a presumption of inducement was not rebutted.

537. That is also why, in particular, it does not without more defeat a case of systemic reliance, as the DWF Ds argued, if the document checker does in fact read the documents and make something, in their own mind, of what they read. If that had a bearing on whether they processed the documents as approved, that would drive the court away from the possibility of systemic reliance and the focus would be on whether the way in which their interpretation of the material affected their actions established that they had been induced by an alleged misrepresentation; but if it had no bearing on their relevant conduct, then causally speaking that internal consideration of what the documents were saying may as well not have happened and, as it seems to me in principle, systemic reliance would be capable of being found if justified by the evidence taken in the round.

538. The sufficiency in law of systemic reliance mattered in the present case because, on the evidence of Mr Nielsen and Ms Rømer, I find that Mr Nielsen was tasked with and performed a mechanistic clerical task of the kind I have just discussed. He was billed by SKAT's pleadings, and by the witness statement he adopted as his evidence in chief, as a man whose job it was to consider what, if anything, was conveyed by the tax reclaim documents he processed, as regards the factual basis upon which tax refund claims were being made, who performed that job, and who concluded that the documents conveyed that the Tax Agent's clients had been shareholders for Danish tax purposes on the dividend declaration date who by virtue thereof had received dividends for the purposes of Danish tax law, and a payment net of tax in respect of that entitlement, and that the payments by reference to which claims were made had been received by the Tax Agent's clients net of tax withheld by the respective Danish companies, in the sense contended for by SKAT in its pleading of the tax representation. In my judgment, that bears no relation to the reality of Mr Nielsen's role or approach.

F.2.2 The Pleaded Case

539. Before dealing further with the facts, I now summarise how SKAT's case as to inducement was pleaded. References in what follows are to the Particulars of Claim unless otherwise indicated.

540. At paragraph 20, it was alleged that "*... SKAT in fact understood ... the [core representations] to have been made, given: (i) the terms of the ... Form completed by the Agents ...; (ii) the terms of the covering letter provided by the Agents ...; and (iii) the terms of the [CAN(s)] provided with the ... Form ...; and (iv) the fact that such documents were being submitted to SKAT as part of [an application] seeking to reclaim WHT deducted by a Danish company in respect of a dividend purportedly received by the [named client].*" Paragraph 22 added (so far as material) a plea that SKAT in fact understood the honest custodian representation to have been made in each instance, given the terms of the CAN(s) and the fact that the CAN(s) "*were being produced for the purpose of being submitted to SKAT as part of [an application] seeking to reclaim WHT deducted by a Danish company from a dividend purportedly received by the [named client] on shares owned by it.*"

541. In respect of both of those pleas, in the Further Information to which I referred when considering whether, objectively, the representations were made, SKAT pleaded thus,

as to whether its case was that any natural person at SKAT "*was actively aware*" of the representations alleged: "*It is SKAT's case that Mr Sven Nielsen was actively aware of the representations at the material times.*" In a different set of Further Information Responses, in answer to a Request served by the SSDs, SKAT said its case was that Mr Nielsen at the time had a conscious understanding that the CANs he dealt with conveyed what SKAT alleged that they conveyed (by the preparatory plea quoted in paragraph 456 above). The RFIs anticipated argument at trial over whether liability for deceit requires contemporary conscious awareness on the part of the claimant of the allegedly deceitful misrepresentation; so they did not ask in simpler, more traditional terms, by whom (which individual(s)) SKAT alleged that it "*in fact understood*" at the time that each representation was being made. Nonetheless, the Responses left no doubt that SKAT's case that it in fact understood the representations to be being made was confined to a case that Mr Nielsen had that understanding, and the trial was conducted on that basis.

542. At paragraph 25, it was alleged that, "*In reliance on the [representations alleged] (and acting under a mistake of fact induced thereby), SKAT paid DKK12.091 billion, which it would not otherwise have done*", with brief particulars breaking the figure down into the aggregate amounts respectively paid to each of the four Tax Agents (DKK4.282bn to Goal, DKK3.043bn to Syntax, DKK1.22bn to Koi, and DKK3.544bn to Acupay). At paragraph 63, it was said that the fraudulent misrepresentations made to it (as SKAT alleged) "*were material and were likely to induce, and in fact induced, SKAT to pay DKK9.025 billion … in respect of the Solo WHT Scheme, DKK2.745 billion … in respect of the Maple Point WHT Scheme, and DKK321 million … in respect of the Klar WHT Scheme, which it would not otherwise have done. Paragraph 25 above is repeated.*"

543. SKAT was asked by the DWF Ds to clarify the plea at paragraph 63 by giving "*full particulars of the allegation that [the alleged] misrepresentations [and each of them] [(i)] were "material"; and [(ii)] "in fact induced" SKAT to make the payments alleged.*" In response, SKAT pleaded, respectively, that:

(i) "*The allegations that the representations were "material" is a matter of law, to be the subject of submissions in due course.*"

(ii) "*The representations caused SKAT to make the payments alleged, which it would not otherwise have done. This will be addressed further in evidence.*"

544. The case opened by SKAT at the Main Trial was that:

(i) the ultimate question was whether any representations, if proved, caused SKAT to make payments in response to tax refund claims;

(ii) they "*evidently did*" since the tax reclaim process required documents that made those representations to be submitted to SKAT and, "*Quite simply, SKAT would not have made the payments but for the signed and completed [Forms] supported by CANs containing the [representations] … . Further, if Mr Nielsen had been told that the [Tax Agent's clients] did not own the shares, receive the dividends or suffer the withholding of tax in the WHT Applications, he would have rejected them.*";

(iii) if there is a requirement of conscious awareness of a representation:

(a) the representations SKAT alleged were actively present in Mr Nielsen's mind and materially influenced his decision to accept the tax refund claims;

(b) Mr Nielsen relied on those representations by taking information from the completed Form and supporting CAN(s) and entering it into the 3S system at SKAT for it to generate a report that resulted in payment of the claim;

(c) alternatively, Mr Nielsen relied on the representations in a "*quasi-automatic*" sense (i.e. subconsciously) as contemplated by Cockerill J in *Leeds City Council*, *supra*, at [113], [148], and in *Loreley*, *supra*, at [388];

(d) if necessary, there was reliance by SKAT through Mr Nielsen's claim processing activity even if that was purely mechanistic. Although SKAT did not spell this out, that was of necessity an alternative case of conscious design, an allegation that the *ex hypothesi* mechanistic and unthinking task delegated to Mr Nielsen (unthinking, that is, so far as concerns the issue at hand) was the means by which SKAT chose to deal with tax refund claims under the Form Scheme *because* the view was taken that a correctly completed Form, if supported by a CAN, would make to SKAT the representations alleged.

545. SKAT thus opened four alternative cases:

(i) a primary case that in substance simply invoked the presumption of inducement (paragraph 544(ii) above), but polluted slightly by positing what would have happened if Mr Nielsen had been given full disclosure of the true position rather than what would have happened if there had been no representation;

(ii) a first alternative case that, consciously aware of them as representations made by the reclaim documents, Mr Nielsen relied on them each time he decided to put a claim through the 3S system so it would be paid (paragraph 544(iii)(a)/(b) above);

(iii) a second alternative case that Mr Nielsen could be said to have relied on the representations subconsciously, putting together the fact that they were made by the documents (objectively considered) and Mr Nielsen's understanding of what gave rise to an entitlement to a tax refund (paragraph 544(iii)(c) above);

(iv) a third alternative case of systemic reliance, completed by Mr Nielsen's mechanistic processing (paragraph 544(iii)(d) above).

F.2.3 Reliance by Mr Nielsen?

546. I reject the first and second alternative cases because in my judgment Mr Nielsen's job was indeed, in relevant respect, mechanistic and unthinking.

547. So far as Ms Rømer was concerned, if there was a correctly completed Form and the documentation it asked for was provided, Accounting II's function, and therefore Mr Nielsen's job, was to process the claim as approved, meaning it would be paid by SKAT. It follows, and this was in any event the clear tenor of her and Mr Nielsen's oral evidence overall, that it was no part of Accounting II's function, or of Mr Nielsen's job, to have an opinion about, or think about, what (if anything) a properly completed Form accompanied by a CAN said about the factual or legal circumstances of the claim being processed. SKAT submitted that Mr Nielsen was "*a thoughtful man who did his job with care [and who] understood the essential requirements for a valid refund and … relied on the Core Representations in processing the WHT Applications.*" In my view, it was not an exaggeration for Mr Jones KC to submit, as he did during closing argument on Day 80, that this made it appear that SKAT's representatives had attended a different trial. I respectfully agree with Mr Jones, continuing, that:

"*… Mr Nielsen was, with respect to him, a man who operated at the most basic level of document processing, considering up to 80 applications a day or thereabouts, based on out-of-date training which had occurred 30 years earlier, whose dedication to his employer was such as to lead him to steal from that employer over a lengthy period of time, and fail to cooperate with that employer when they wanted to investigate how he had done his job.*"

(I would add, though, that Mr Nielsen's involvement in 'stealing' from SKAT was his participation in a fraud against SKAT unrelated to cum-ex trading or any of the parties involved in it, and was only peripherally relevant as possibly going to credit.)

548. I summarise the management structure of SKAT at paragraphs 568 to 571 below. As a result of it, Ms Rømer had no effective supervision from any of her superiors in relation to dividend tax. For his part, in practice Mr Nielsen had no real supervision even from Ms Rømer. The retirements of Ms Rømer and Mr Cramer made no difference to Mr Nielsen or his work, as he had been doing it alone for a long time. He never met Ms Held and had no need to contact Ms Madsen in the course of his work. (Mr Cramer, Ms Held and Ms Madsen are all mentioned below.)

549. Mr Nielsen joined SKAT in about October 1970, after four years in shipping, without academic, professional or vocational training or background in finance, law or tax. He began dealing with dividend tax reclaims in around 1985-1986 with only very basic training, given informally by his then manager, Mr Boding, from whom he learned on the job by being told what he had to do to process a claim. Mr Boding gave Mr Nielsen a rudimentary notion that an applicant was supposed to have owned shares in the relevant company, received a dividend and paid too much tax. However, he was given no instruction as to what share ownership meant, either at all or as a matter of Danish tax law, on what was required to establish share ownership, or on what it meant to say that a dividend had been received. If it had been any part of the job to consider and assess, as a matter of fact, general law and/or tax law, the conformity of dividend tax refund claims against criteria for eligibility, Mr Nielsen would have needed proper training in those matters. There is no reason to suppose he would not then have been given it. He was not given it, I infer, because it was not part of the job to consider such matters.

550. As a result, Mr Nielsen had no knowledge of equity lending, short selling, omnibus accounting, the existence or possible impact of trading around a dividend date or of

different settlement periods, or the possibility that a payment credited by a custodian in respect of a dividend might not involve the custodian passing on cash received (indirectly) from the company declaring the dividend. Whether such things might occur was, for Mr Nielsen, a technical matter that it was not necessary for him to know about or understand to carry out his job. He had no notion even that what mattered for tax purposes was a right to a dividend and not a payment.

551. Mr Nielsen's witness statement asserted that, although he was not a lawyer, he was aware of the requirements which governed whether or not a claimant was entitled to a refund of dividend tax. His oral evidence confirmed that he had in truth no real notion at all about those requirements, nor needed one to do his job. He was not even aware that SKAT published a legal guide on its website, and had never read it.

552. By the relevant period, and for many years before, Mr Nielsen was processing dividend tax reclaims alone and with minimal (and no effective) supervision. Two new employees or trainees, Ms Bidstrup and Ms Fridberg, processed a limited number of tax reclaims under Mr Nielsen's supervision, to gain a general awareness of the work; so it is impossible to say whether Mr Nielsen alone processed every one of the 4,170 reclaims with which I am concerned. But that might have been the case in fact, and anyway it might as well have been the case since he certainly processed personally well over 90% of the dividend tax refund claims received by SKAT under the Form Scheme during the relevant period, and Ms Bidstrup and Ms Fridberg will only have been replicating Mr Nielsen's process if they did deal with any of the reclaims that are now before me.

553. The volume and value of tax reclaims submitted to SKAT under the Form Scheme, and therefore processed by Mr Nielsen (or possibly in a few cases under his supervision), grew hugely during the relevant period:

YEAR*	2010	2011	2012	2013	2014	2015
NO.	6,019	7,129	10,302	12,765	16,374	11,644
PAID (DKK)	223M	310M	408M	1,476M	4,131M	6,350M

* Data from a SKAT Internal Audit report dated 24 September 2015 assessing a number of matters in connection with what by then SKAT was treating as "*presumed fraud aimed at the scheme for refund of dividend tax withheld in Denmark*". The yearly claim numbers are ordered by the date of the claim and so are directly pertinent to the assessment immediately below of Mr Nielsen's growing workload; and the figure of 11,644 for 2015 is for January-August only. The audit report does not make clear how the yearly totals paid out are ordered (the two sets of data in my table, above, are taken from different tables in the report). They might be ordered by payment date, or by reclaim date, or by dividend declaration date, so the two rows of data might not correlate exactly (e.g. some of the '2014' DKK4.131bn paid might be from '2013' claims, and so on). The "Paid" total for 2015 is for January-June only, and understates the total paid by SKAT: the DKK6.35bn shown is not limited to claims generated by the Solo, Maple Point and Klar Models; and in 2015 those Models in fact generated between them DKK7.65bn paid by SKAT (DKK5.71bn, DKK1.75bn and DKK0.19bn, respectively).

554. Assuming (say) 46 working weeks (230 days), processing 6,000-7,000 claims would mean averaging c.25-30 a day; 10,000 would be 44 per day on average (and indeed Mr

Nielsen agreed in evidence that by 2012 he was processing 40-50 reclaims a day); 16,000 would be an average of 70 per day (and again, to the best of his recollection, Mr Nielsen said he thought that 70-80 reclaims a day by 2015 was about right).

555. That rate of processing was possible because the task was purely clerical. Accounting II was operating a simple bookkeeping, data recording function, not any kind of claims assessment or claims control function. If a function of that kind was carried out, it had to have been elsewhere within SKAT, and in truth SKAT adduced no evidence that it was being carried out at all during the relevant period. My conclusion, below, when considering SKAT's alternative case of systemic reliance is that, at the time, SKAT was simply not enquiring whether what was reported by claimants as net dividend amounts received by them was connected in any way to any tax withheld by the Danish company in question.

556. Mr Nielsen's introduction to the job by Mr Boding in the mid-1980s left him with a simple notion that dividends are paid to shareholders and therefore only a shareholder would receive a document like a CAN. But that was not relevant to the job he performed at SKAT. It had no influence on whether, why or how he processed claims, so that they came to be paid by SKAT. Furthermore, I am satisfied that he did *not* think at the time, as the witness statement he adopted as his evidence in chief claimed, that a CAN said anything about share ownership, or about the basis upon which the dividend-related payment reported by it had been made to the client to whom it was addressed.

557. Mr Nielsen gave evidence in cross-examination about what he would have understood example CANs to convey. Some of it was not even of superficial assistance to SKAT. For example, in one answer he said of an ex-date stated in a CAN, "*We didn't use that information. What was important to us was the year because that was the relevant tax year*" (by which he meant the financial year of the Danish company in respect of which the referenced dividend was declared). Or again, he said of the example NCB CAN reproduced in Appendix 5, below, that he would not have understood it to be conveying any information about ownership of shares (even though in fact the NCB form of CAN *did* say something about that, albeit it did not make the tax ownership representation alleged by SKAT).

558. Other answers Mr Nielsen gave were more superficially helpful to SKAT. For example, he said of that NCB CAN that he *would* have understood it to be conveying information about the withholding of tax from the dividend the subject of the CAN: "*What I see here is that the amount has been distributed as dividends to Grace Bay and that 27% has been withheld in tax.*" On that point, Mr Nielsen's evidence was less clear and possibly less seemingly helpful to SKAT in relation to other forms of CAN, although there was also more than a touch of general confusion on his part about it. For example, he agreed of a Lindisfarne CAN that he did not understand it to be talking about any payment so far as Danish tax law was concerned, and said of an Indigo CAN that he saw it no differently, but then also gave these answers about that Indigo CAN:

"*Q: You didn't understand this one to be making any statement to you about the deduction of tax from this particular credit?*

A: That appears from the numbers.

Q: But again you don't understand this to be making any statement about the Danish company withholding the tax described in this particular advice?

A: It doesn't appear that tax has been withheld, but at some point in time the custodian has received dividends and has -- has received the net dividends.

Q: You are not suggesting – sorry, you did not understand at the time that this credit advice showed the receipt of a dividend from the company itself?

A: We know which company distributed dividends but of course they did not distribute dividends directly to DWM Pension Plan [the client named in the CAN he was being shown].

Q: ... to clarify ... an answer you gave earlier ... when we [were] looking at [an SCP CAN] ...:

> *"Question: So you did not understand this dividend credit advice to be making statements to SKAT about the withholding of tax or the payment of dividend, did you?"*
>
> *And your answer was:*
>
> *"Answer: He received it from his custodian and tax had been withheld."*

... It is right, isn't it, that you didn't understand the [SCP] credit advice to be making statements about the withholding of tax from the credit identified in the statement?

A: If it appears from the CAN the tax has been withheld, we had to trust that.

Q: You didn't understand the [SCP] credit advice to be talking about the payment or receipt of the dividend, did you?

A: As I remember it, it shows the distributing company and what has been withheld in taxes."

559. My assessment was that, for the most part when giving evidence about all of this, Mr Nielsen was engaging in a mental exercise he did not undertake at the time, and that it is not realistic to try to disentangle from within his various answers how much, if any, of them might be recollection of contemporaneous thought. Most pertinently, I am clear that that exercise, if or to whatever extent undertaken by him at the time, was *irrelevant* to Mr Nielsen's task during the relevant period. If the correct Form had been used (and even that has to be qualified by the continued acceptance of a misuse of the outdated Form), and there was a document calling itself a 'dividend credit advice' or similar recording that the applicant (or its client if the applicant was a Tax Agent) had been credited with a payment referable to a dividend, being a dividend from which tax would have been withheld by the company, Mr Nielsen's job was simply to process the claim by checking the consistency of the figures and that there was evidence of the tax favoured status of the payee in a jurisdiction covered by a Danish DTT (and a power of attorney, if the Form had been submitted by a Tax Agent).

560. That is why the Tax Agent's cover letters are irrelevant. It was not part of Mr Nielsen's task to consider their content, so he did not do so; and it was not part of his task to

consider their content because it was not part of his task to give thought to what the tax reclaim documents submitted to SKAT did or did not communicate. His was a clerical task in a bookkeeping department whose functions and responsibilities did not extend to deciding, or even knowing, the criteria upon which SKAT considered that tax refund claims should be paid, or assessing whether those criteria were met, claim by claim, or at all. If asked at the time, he would have said he had a general understanding that shareholders received dividend payments and it they were tax favoured foreign shareholders they might be entitled to a partial or total refund based on a DTT; but that was irrelevant to, and played no part in, the job he was charged with doing and did. If he had had a more sophisticated, or just different, or no, understanding about those matters, his job and the outcome on the facts of the case would have been the same.

561. I therefore reject the claim that Mr Nielsen relied on any of the representations alleged by SKAT to have been made by the documents submitted to it.

F.2.4 Systemic Reliance?

562. Turning then to SKAT's final alternative case of systemic reliance, the first thing to say is that the cover letters remain irrelevant. SKAT's system did not require a cover letter at all, let alone a cover letter with some specified content about which a view might have been taken that if that content was present, some material representation would result. SKAT recognised this in closing, as the argument on this last alternative was put exclusively on the basis of a systemic requirement of Form plus CAN.

563. SKAT opened no factual case and led no evidence on the design of the Form Scheme generally, or as to the information it was intended or thought that a completed Form and CAN would convey in particular. SKAT's positive case was essentially an optimistic submission that the presumption of inducement would suffice, on an argument of the type identified in paragraph 533 above: Form plus CAN was required; Form plus CAN could not fail to make the representations alleged (considering the matter objectively); therefore the court should conclude that the system was "*designed to ensure that a successful application made the Core Representations, which corresponded to the essential elements of a valid WHT refund application under Danish tax law. Indeed, it is hard to see that less could have been represented to SKAT by the required documents filed in support of a claim for the refund of withheld Danish dividend tax. Further, the requirement of a DCA from the relevant custodian was designed to ensure that applications were made honestly and therefore necessarily made the [honest custodian representation] to SKAT.*" It is no coincidence that SKAT cited no evidence in support of those contentions about system design. It was not asking for a finding of fact derived from witness testimony or documentary evidence that SKAT had in fact designed the system with those intentions or understandings as to what it was doing. SKAT was in substance contending that the presumption arose, and resting on that.

564. As a result, defendants were left to make the running as best they could from the documentary evidence in the case, cross-examination of SKAT's witnesses (none of whom could speak to system design first hand), and expert evidence. In the event, that running was done mostly by the Shah Ds and the DWF Ds, especially the latter.

565. The DWF Ds submitted that in a governmental authority of SKAT's size and status, there must have been senior individuals who could have provided the court with full

and informed explanations of SKAT's policy decisions in the design and operation of the Danish dividend WHT and tax refund claim system during the relevant period. I agree. The DWF Ds said that SKAT's failure to provide such evidence in a case of such large dimensions was disrespectful to the court. That is not a characterisation I would adopt. I am not exercising any public law jurisdiction (not that I would have any in relation to SKAT). SKAT owed the court no duty of candour in respect of the evidence it chose to lead. However, SKAT's failure to call evidence it must have been in a position to obtain, if so advised, properly weighs against it in judging whether on the evidence as a whole inducement is not established, even having had due regard to the existence and strength of the presumption of inducement weighing in SKAT's favour.

566. Ms Rømer said in her evidence that Form 06.003 was created by SKAT's Legal Department and approved by Head Office, but I make no finding to that effect. I accept it as a statement of what Ms Rømer thinks likely to be true, but I do not think she knows now, or knew at the time, anything more than that the design and approval of the Form, likewise any policy decisions involved (explicit or implicit) were not matters for Accounting II, let alone for her personally.

567. Ms Rømer also said (both at this trial and in a deposition for the proceedings before Judge Kaplan in New York) that it was a Danish government priority to encourage foreign investors to invest in Denmark, and the tax system had been made as simple and user-friendly as possible to serve that purpose. Ms Rømer extended that thought, when asked about SKAT's failure to supplement its process by requiring information about underlying trading, by saying that "*it might be that the government chooses not to introduce matters or to change matters that might prove complex.*" That was speculation, an example of Ms Rømer's willingness to say things she imagined might be true, thinking that to be helpful. It seems to me a plausible possibility, but it was not evidence of fact (except in so far as it evidenced indirectly Ms Rømer's perspective at the time, corroborating her and Mr Nielsen's evidence generally that the processing and approval of tax refund claims by Accounting II did not involve consideration of whether they were valid claims as a matter of fact and Danish tax law).

568. Before 2002, dividend tax had been dealt with in a regional office of SKAT. In 2002, various departments merged to form a new Dividend Tax Department, led by Ms Rømer, which was the first time she had any involvement with dividend tax. The scope of work and the reporting lines were continuous thereafter, although in 2009 the Dividend Tax Department became part of the Accounting Department under the name Accounting II. Ms Rømer continued as head until she retired in December 2013. She was succeeded by Dorthe Pannerup Madsen (or possibly first by Hanne Held and soon thereafter by Ms Madsen, which was Mr Nielsen's recollection). I did not have any evidence from Ms Madsen or Ms Held, or from Laurits Cramer, who was immediately senior to Mr Nielsen, reporting to Ms Rømer. Mr Cramer worked with Mr Nielsen in the development of SKAT's 3S data system, into which Mr Nielsen entered details of the tax refund claims he approved, but he was not involved in the processing of individual claims.

569. The head of the Accounting Department was Lars Nørding, then René Frahm Jørgensen (from the end of 2012), from neither of whom I had any evidence. Ms Rømer told the court she had little contact with either of them.

570. The Accounting Department was one of four departments that in turn reported to SKAT's director for Central Jutland, Mr Sørensen. He was part of a senior level of management, referred to informally within SKAT as "*Head Office*" (or strictly, I assume, some Danish equivalent), which sat above what Ms Rømer described as the day-to-day "*production*" level of "*departments dealing with the work*", like Accounting II, but still below the top tier of management within SKAT, the "*Board*", above which again sat the "*Department*", i.e. the Danish Ministry of Taxation. Until 2012 or 2013, Mr Sørensen reported to Board directors Ole Kjær and Steffen Normann Hansen (Mr Kjær being the "*top director*" responsible for SKAT as a whole), neither of whom gave evidence. From 2012 or 2013 onwards he reported to a new "*top director*" Jesper Rønnow Simonsen, who did not give evidence.

571. Mr Sørensen had remarkably little knowledge of the work of Accounting II or the administration of dividend tax. He had no contact with Mr Nielsen and no knowledge of what he did, or of the tax reclaim Form or how it was prepared or processed. He never discussed dividend tax even with Ms Rømer, although she had meetings with him. He had no responsibility for dividend tax matters prior to 2009, and thereafter nothing was reported to him about it (aside from periodic internal accounting reports), and he had no involvement with it, prior to the summer of 2015. From 2013 he was almost wholly focussed on developing an IT system within SKAT that had nothing to do with dividend tax; and dividend tax was simply not a priority of his.

572. When considering the context in which SKAT's dividend tax reclaim system was set, I identified in paragraphs 450 to 454 above various matters that SKAT would reasonably have been expected to appreciate. Even though SKAT did not provide evidence from the senior individuals who must exist who could have spoken directly to this, I was satisfied from the documents and Ms Rømer's evidence (where she was able to assist) that SKAT was aware of all of those matters during the relevant period.

573. SKAT knew share trading could be complex and might affect tax refund entitlements. It knew about stock lending, short selling and deferred settlement as widespread practices. SKAT knew that it could require those seeking refunds to provide information about their trading, or documentary evidence of it, if it wanted to assess their entitlement, and that it did not do so under the Form Scheme. That was not just an audit weakness of failing to interrogate or check, or seek better evidence of, information provided by the documents required by and routinely submitted under the Form Scheme. It extended to an appreciation by SKAT that what it required, and received, under that Scheme, did not give it information that, if accurate, established entitlement. SKAT was aware, in short, that a completed Form 06.003 accompanied by a CAN did *not* involve the Tax Agent stating to SKAT that the client had been a shareholder as a matter of Danish tax law (or at all) on the dividend declaration date (or on any other date), or that the client had, for Danish tax law purposes, received a dividend by being the tax law shareholder on the dividend declaration date (or a payment, net of tax, in respect of such an entitlement), or that the Danish company had withheld tax from a payment received by the client (in the sense relevant to SKAT's claims (paragraphs 509 to 512 above)).

574. In closing argument, it was submitted that SKAT adopted a general trust-based approach, believing that those who claimed to be taxpayers, or to be acting on behalf of taxpayers, would "*do the right thing*". There was some support for that in SKAT's witness evidence. Mr Sørensen said in his witness statement that SKAT's approach, in

general, was "*to inform the taxpayer about how to do things right, and then trust the taxpayers to do things right.*" Ms Rømer said in hers that SKAT "*trusted the applicants, as verified by the banks*" (by which she meant the "*bank or institution that had provided the dividend advice*"). In a deceit claim, generalised ideas like those are no substitute for reliance on the particular representations alleged in the claim. (It was not alleged that there was any implied, general representation of honesty.)

575. In any event, I do not consider that witness evidence to be a reliable guide to SKAT's approach. In the relevant passage of her witness statement, Ms Rømer said that at the time her approach was that: "*If the bank confirmed that the amount claimed was all true and accurate, we were instructed by Head Office to process the payment to the applicant. If we thought the bank might have made a mistake, we could ask the bank that had provided the dividend advice about it; if the bank said that the information was correct, we accepted that the application was valid and had to pay. … If the applicant did not own shares or did not receive a dividend, they were not entitled to a refund of withheld dividend tax and should not have been applying to SKAT for a refund in the first place. If the form and the dividend advice said that the applicant owned the shares, had received the dividend and was certified as resident in a country that had a DTA giving the applicant the right to a reduced rate of tax, then we trusted those documents and took the view that the applicant was entitled to a refund of withheld dividend tax.*" (my emphasis). In fact, as I find, Accounting II (and Ms Rømer personally) did not have that approach. The Form Scheme did not call for, and SKAT routinely did not receive, any confirmation from a bank or other financial institution of information that, if accurate, would establish any tax refund entitlement. There was no instruction from Head Office to the effect suggested by Ms Rømer. It was no part of Accounting II's function to consider whether a Form and CAN, as received by SKAT, said that the applicant (strictly, the applicant's client, where the applicant was a Tax Agent) owned shares and had received the dividend, and Mr Nielsen did not do so, not that a statement that the client "*owned the shares [and] received the dividend*" would translate to the representations alleged by SKAT anyway.

576. Mr Sørensen had no knowledge of SKAT's approach to dividend tax refund claims (and should not have suggested otherwise, as he did in his witness statement). He may have been senior enough to be able to speak to a general approach to things at SKAT, expressed at the high level of abstraction of his comment quoted in paragraph 574 above. If so, particularly when read with the sentence from Ms Rømer emphasised in paragraph 575 above, that only revealed that SKAT's claims pursued at trial lacked substance. If SKAT's approach was to assume that a Tax Agent's client was entitled to a refund, because otherwise the Tax Agent would not be putting in a claim, that might have assisted if the claim was of reliance on a representation, express or implied, of entitlement; but no representation to that effect was alleged by SKAT.

577. Furthermore, on the evidence as a whole, in my judgment it was clear that SKAT was *not* operating a dividend tax reclaim process on a trust-based approach like that suggested by Ms Rømer and Mr Sørensen. Rather, it was operating a system well knowing that it did not involve the provision to SKAT, in any form, of evidence that, taken at face value, established entitlement; and appreciating as a result that it was very likely accepting and paying claims where there was no entitlement, to an extent and value it was not in a position to assess. That is why I said in paragraph 573 above that this was not just an audit weakness. It was a more fundamental tax control weakness

that was apt to be exploited, and came to be exploited at great cost to SKAT during the relevant period.

578. Those conclusions are, in particular, the only sensible way to explain the striking matters established by the evidence summarised in the remainder of this section of the judgment.

579. The sheer volume, and value, of claims approved and paid by SKAT during the relevant period is remarkable. I summarised some of the available data on that in paragraphs 553 to 555 above. That summary is already striking, and telling as to the nature of Mr Nielsen's task. But in addition:

(i) The claims I am dealing with, being only a sub-set of the total body of claims processed by Mr Nielsen, generated tax refund claims approved by him and paid by SKAT equal to 48.7% of the total tax on Carlsberg's 2014 dividend, rising to 75% for the 2015 dividend; and the numbers were similarly extraordinary for Danske Bank and TDC in both years, and also for FLSmidth and Vestas Wind Systems for 2015.

(ii) That reflected a very marked shift in the balance of claims made to SKAT. I said in paragraph 103 above that the Form Scheme was one of several dividend tax refund schemes operated by SKAT. The other main scheme, the 'Banks Scheme', paid out against spreadsheets of data submitted periodically by certain Danish Banks, which was later held to have been unlawful as a matter of Danish public law because it effectively involved an impermissible delegation of decision-making authority in respect of tax refund claims. The yearly totals paid out by SKAT, for comparison, were:

YEAR	2010	2011	2012	2013	2014	2015*
FORM	223M	310M	408M	1,476M	4,131M	6,350M
BANKS	457M	814M	1,044M	1,318M	1,932M	2,379M

* January-June only, as before

580. There is no evidence that SKAT monitored what was happening at Accounting II such that features and trends of that kind were identified. The point is not that SKAT in fact identified them prior to September 2015 (I could not find that it did), nor is it a question of criticising SKAT for failing to do so, since it is no defence to a deceit claim to show that the victim should have spotted the fraud, if there was one. Rather the point is a specific factual one for this case. Those extraordinary outcomes are explicable only on the basis that SKAT's approval and payment of claims simply did not have reference to, and so was not influenced at all by, the matters about which it claimed in this litigation that the tax reclaims made representations. In my judgment it is impossible that SKAT's processes could have resulted in those outcomes if those processes were looking for tax ownership of shares, tax entitlement to dividends, or a transmission of the burden of the tax deduction at source, before paying out.

581. SKAT was well aware during the relevant period that 'dividend' advices were issued, in form and content indistinguishable *inter se*, to parties who might or might not have been shareholders (either at all, or from the perspective of Danish tax law in particular).

582. Telling evidence on that came from SKAT's disclosure concerning an episode in 2006-2007 in which Ms Rømer had an involvement, so that she was able to assist the court in relation to it in cross-examination although she had not been asked by SKAT to say anything about it in chief. Bankers Trust Opera Trading SA ('BT Opera'), a French entity in some way associated with Deutsche Bank (London), sought and ultimately obtained from SKAT a dividend tax refund relating to dividends declared by TDC (at the time still called TeleDenmark). In the course of dealing with the BT Opera claim, SKAT recognised and discussed at senior levels:

(i) the impact on possible entitlement to a dividend tax refund of trading close to the dividend date;

(ii) the need therefore to have information about any trading involving the tax refund claimant in order to assess entitlement;

(iii) the fact that trading practices included the use of structures designed to "*use*" DTTs to obtain a refund, possibly using (in particular) stock loans and/or short selling; and

(iv) that the materials normally submitted to SKAT did not identify or enable SKAT to understand underlying trading, or say anything about the nature or basis of receipt of the 'dividends' the claimant was claiming to have received, so that if SKAT wished to have information about such matters it would need to be sought in addition.

583. SKAT did not redesign or tighten up its system, for example by amending the Form to require statements to be made, or evidence to be provided, about share ownership, dividend entitlement, or related trading. In fact, it did the opposite, simplifying from Form 06.008 to Form 06.003, dropping the requirement for the Danish company to certify tax deduction, and stipulating nothing about the material to be provided (so far as might be pertinent) except that there be a 'dividend advice'. The BT Opera episode, and other evidence, showed that SKAT appreciated when doing so that the 'Form + CAN' document set it would thus normally receive *would not* make statements to it of the kind alleged in the litigation to have been representations always made.

584. For present purposes, the BT Opera episode begins with an internal memo dated 29 September 2006 prepared by Ms Rømer. On BT Opera's behalf, Deutsche Bank had claimed just over DKK405m from SKAT in connection with TDC's dividend of c.DKK2.576bn on which TDC had withheld c.DKK721m by way of dividend tax (the WHT rate was 28% at the time). Ms Rømer had noted that this meant BT Opera was seeking payment equal to more than 50% of the total tax due on the dividend. She noted that given the lack of visibility over foreign shareholders, and the use of cross-border share lending and nominee accounts, SKAT could not say from the information provided whether the refund, if paid, would be going to the dividend recipient, and it could be that it would "*thereby secure a refund that is not really in accordance with the [DTT] and the legislation*". Her initial proposal was to pay the claim anyway, in view of the then requirement on SKAT to pay within 30 days (rather than 6 months as during

the relevant period), "*but that a similar situation be prevented by making changes to the relevant regulatory framework*".

585. Ms Rømer's concerns were escalated, and on 17 October 2006, Leif Jeppesen, a Legal Services Director at Head Office, passed her memo to colleagues in an email expressing concern about speculating on Danish shares by moving them between jurisdictions for short periods, for example by a purchase and next-day sale, around the dividend date, so as to use the France-Denmark DTT to obtain a refund. He considered it possible that there was trading that would be considered *pro forma* under Danish law: see *SKAT (Validity Issues)*, *supra*, at [83], [225]. I could not say that Mr Jeppesen had in mind a doctrine articulated exactly similarly; his later correspondence suggests that he viewed as *pro forma* a purchase just before the dividend date, with sale back immediately after, and that he was troubled, given the language of Form 06.008 (then current) that perhaps BT Opera had "*simply 'bought' the dividend right without any connection to the right of ownership*". Ms Rømer rightly took him, on any view, to be concerned that there may have been a structured trade or series of trades intended to bring about a particular consequence, trading around the dividend date in an artificial way simply to generate a tax refund claim.

586. Mr Jeppesen suggested that underlying documents should be checked; and Ms Rømer agreed that the only way SKAT could learn what the trading had been was to ask for the detail, and so further documents were sought from BT Opera and Danske Bank. Mr Jeppesen noted that according to TDC's website, Nordic Telephone Co ApS at the time owned 88.2% of TDC's shares (which obviously rendered it *prima facie* implausible that BT Opera had a 56% shareholding).

587. Ms Rømer's first request for additional documents was in fact very limited. On 30 November 2006, by email she asked Deutsche Bank for "*a signed letter from the beneficial owner*" (stating what, she did not say), and "*the dividend note issued by the paying bank along with the payment of the dividend*". She told Deutsche Bank that would "*satisfy the Danish Tax Authorities and refund will be prosecuted*". In cross-examination, Ms Rømer said that was not her decision, it was what she had been told to do by Head Office.

588. On 20 December 2006, SKAT received a "*Month-to-Date Cash Statement*" as of 28 April 2006 for an account of BT Opera's at Deutsche Bank (London), showing credit entries apparently referable to dividends declared by TDC; and on 12 January 2007 SKAT received a declaration of beneficial ownership "*of the underlying Danish equities at the time of the entitlement to the relevant dividend*" from BT Opera, Deutsche Bank having given a similar confirmation on behalf of BT Opera in its letter enclosing the cash account statement.

589. On 16 January 2007, Ms Rømer wrote to Mr Jeppesen (among others) proposing that SKAT now could not refuse to pay the claim; but he disagreed, protesting that to follow the transactions SKAT should have asked for "*both purchase and sale documents, copies of settlements for purchases and sales and detailed explanations of the terms and conditions*". He noted that the declaration of beneficial ownership said nothing about the basis of the claimed interest (including whether it was under Danish, German or French law), or for how long any interest was held, and considered that varying treatments of stock lending in different jurisdictions might be relevant.

590. On 18 January 2007 Mr Jeppesen followed up internally by email, attaching a draft early warning notice in relation to stock lending and suggesting disclosure of documents going to beneficial ownership and stock loans. It discussed the tax treatment of stock loans, the possibilities of stock lending without the knowledge of the owner in the custody chain and of multiple holdings of the same shares, and the need to review the form and content of claim forms "*so that it is clear what requirements we have for ownership, etc. and documentation for this in order to get a refund of dividend tax*". In reply, on 19 January 2007, Ms Rømer agreed that stock loans were "*a serious problem*" and said that the BT Opera claim met "*the requirements we set out in our forms*" and that those forms "*have been sought to be changed for several years as they are insufficient*". (On the basis of Ms Rømer's oral evidence, I find that even prior to the BT Opera episode, SKAT had identified that the declarations made to SKAT by tax refund claimants were inadequate, that there were discussions and working groups, but that no change of process so as to require informative declarations by claimants was ever made. She said her efforts in that regard were not always well received by Head Office or SKAT's Legal Department, and that even Mr Jeppesen's suggestions for systematic change were resisted.)

591. The documentary evidence now available about the BT Opera claim is more limited thereafter. By early July 2007, Mr Jeppesen appears to have relinquished responsibility for the unit dealing with the case; and SKAT eventually received what was described internally within SKAT as "*comprehensive documentation*" that included "*further documentation regarding BT Opera Trading's purchase of shares*", following which, on 7 August 2007, SKAT decided to pay out. Ms Rømer was unable to help as to what the further documentation showed, or was thought by SKAT at the time to show, that unlocked the payment.

592. Ms Rømer's oral evidence also showed that SKAT was aware, during the relevant period, of key matters of market practice in the context of which tax refund claims might be made to it, and that they meant that statements of the type SKAT has wished to say in the litigation were made to it simply were not made by the basic Form 06.003 plus CAN document sets that SKAT received. I accept Ms Rømer's evidence on those aspects, despite my concerns about her as a witness, because it was all plausible, in the light of the expert evidence, it was adverse to SKAT in the case, and SKAT adduced no contrary evidence from any potentially more reliable source, e.g. contemporaneous documents or witness evidence from better informed, more senior personnel. Thus:

(i) SKAT appreciated that stock lending and short selling were widespread and of significance to dividend tax refund entitlement. Ms Rømer had discussions on those topics within SKAT, and was involved with an (ultimately fruitless) OECD initiative to introduce a 'TRACE' scheme under which tax authorities would receive information from banks about clients' shareholdings. She attended TRACE meetings in 2011-2012 in Paris on behalf of SKAT, discussing with counterparts aspects of equity trading that might impact the work of dividend tax departments, such as stock lending, short selling, settlement periods and trading around the dividend date. She reported on these discussions to Mr Nørding.

(ii) Correspondence in October and November 2011 between Ms Rømer and Andreas Bo Larsen at the Ministry of Taxation and Jette Zester at SKAT's Head Office showed that she, likewise SKAT, was well aware of the possibility that

short selling and stock lending were connected, in that short sellers would be likely to use stock borrowing to enable them to settle trades; and that settlement periods and dates were of importance if the trading was around the dividend date.

(iii) In the context of an exchange of emails in January 2013 between Ms Rømer and Kjeld Christensen at VPS concerning the treatment of "*a case of sale and purchase on the same day as the adoption of the distribution*", Ms Rømer acknowledged that she was aware that trading around dividend declaration dates might be significant and that such trading would be a potential feature underlying any tax refund claim made to SKAT under the Form Scheme. She knew that parties might have agreed longer (non-standard) settlement dates, and although she was not familiar with 'market claims' or 'compensation payments' as particular terms, she appreciated that in any given instance a dividend-related payment might or might not have come from the Danish company via VPS and the chain of custody.

593. In mid-February 2012, just as Mr Klar was preparing to engage in the earliest Klar Model trading in respect of Danish shares, which came first in time out of all the trading with which I am directly concerned, and as Sanjay Shah, Mr Horn and Rajen Shah were working up the first iteration of Solo Model trading, Ms Zester emailed Ms Rømer, in the context of possible reform of financial reporting, to get her best estimate of the financial impact in relation to dividend tax administration. In Ms Rømer's absence, Ms Zester asked Mr Cramer to respond, and he replied that ongoing reporting would provide "*better opportunities to ensure that refund applications are from dividend recipients who have had dividend tax withheld at a percentage that entitles them to reimbursement. I dare not quantify our losses from reimbursement to unjustified refund applications*" (my emphasis).

594. Mr Nielsen confirmed that it had been Mr Cramer's view, voiced at SKAT at the time, that indeed SKAT must be paying out unjustified claims to an extent he could not quantify. Ms Rømer said she did not recall the particular exchange of emails or, therefore, that particular example of Mr Cramer expressing concern, but volunteered that "*we had been concerned for a long time*", it had been discussed many times whether SKAT could or should seek further documentation or information about underlying trading, and that the decision at a top level (she could not say by whom exactly) had been to wait for what the OECD came up with (which, in the event, was nothing, during the relevant period). In that passage of evidence, Ms Rømer also referred to SKAT standing on the "*three legs*" of "*the declaration, the signature of the tax authorities, and the justification from the bank*". However, that was argumentative. Ms Rømer knew that no relevant 'declaration' was made by or on behalf of the claimant, the only tax authority signature received concerned the tax status of the claimant in its home jurisdiction, and a CAN in typical form was not a 'justification' of anything. Pressed to agree that she understood at the time that the terms of the underlying trading might mean the claimant was not entitled, Ms Rømer said, "*I prefer to think that people are doing what is right, but of course there is a risk that it is not the case*", which was still a touch argumentative but in my judgment contained within it a possible grain of truth, namely that she may perhaps have imagined that refund claims would only be made by those who thought themselves entitled. If that was her view at the time, it had no influence on any of the decisions Mr Nielsen made to approve the tax reclaims with

which I am concerned; and it would not have been evidence of reliance on any of the representations alleged by SKAT, even if it had influenced anything.

595. In my judgment, in the light of the matters of context of which SKAT was well aware, and the BT Opera episode a few years previously, the matters summarised above did not evidence trusting reliance on statements being made to SKAT of the kind from which SKAT sought to construct its claims in this litigation (or anything similar). Rather, it demonstrated or confirmed awareness within SKAT that statements of that kind *were not made*, that it *therefore* had no idea whether they would or might be true or false for any given tax reclaim, and that its system, by design and in practice, paid out anyway.

596. That is illustrated (and further confirmed) for the tax ownership representation in particular by a draft report circulated within SKAT (but not to anyone who gave evidence) at the end of September 2015, on the handling of dividend tax refund claims. It concluded generally that control (as regards whether only valid claims were paid) was flimsy. It suggested that SKAT had no real possibility to check whether the refund claimant was the rightful owner other than by asking that claimant. I do not agree with that, but what matters for present purposes is that the report recommended that refund claimants be required to declare that they were shareholders when the dividend was distributed, in substance on the basis that no such statement was being made to SKAT under the system as it stood.

597. In closing, SKAT argued that the core representations were so simple as to go without saying, such that it was impossible to make a tax refund claim without making them. It submitted the Form Scheme was "*designed to ensure that a successful application made the Core Representations*", so they could not have been missed by SKAT. Defendants submitted to the contrary; by way of example, the DWF Ds suggested that "*This ambitious argument is to equate the Core Representations … with examples of very straightforward implied representations mentioned in the authorities, e.g. … bidders at auction or diners in a restaurant who impliedly represent that they have funds to pay. It rests on an unrealistic reading of the authorities and in any event has no sensible application to the present facts.*" Save that it is unnecessary to pass comment on whether SKAT was misreading the case-law, I agree with the DWF Ds.

598. SKAT's final alternative case on reliance, a case of systemic reliance, therefore also fails on the facts.

599. That conclusion on systemic reliance is further reinforced, although it would have been my conclusion without this, by the indifference of SKAT's process, as designed and as then duly operated by Mr Nielsen, to any narrative language in the reclaim documents. It would be very surprising if a system designed to be influenced by statements made by Tax Agents in support of tax refund claims did not require those operating the system to pay close attention to what was said in those Agents' covering letters, or to notice narrative wording such as in the SCP CANs. I found, above, that the Tax Agents' cover letters may as well have said nothing. Further than that, however, I was satisfied on the evidence as a whole that it would have made no difference if those letters had said "*Please find attached a claim relating to a dividend compensation payment* [or *manufactured dividend* or *payment in lieu of dividend*] *received by our client*", or if a CAN *had* stated, in terms, that it concerned such a receipt.

600. Having rejected the suggested case of systemic reliance on the facts, although I took the view that such a case could be sound in principle (paragraphs 531 to 535 above), it is not necessary to deal with an argument developed by Mr Jones KC on behalf of the Shah Ds that it was not fairly open to SKAT to ask for liability to be found on the basis of systemic reliance, because of the way it had pleaded its case on inducement.

F.2.5 Conclusion on Inducement

601. The evidence allowed me to find that, and in truth left me in no real doubt but that, "*(i) Mr Nielsen processed the WHT Applications as a straightforward clerical matter without regard to the matters alleged to form the content of the Core Representations; and (ii) no-one within SKAT instructed or understood him (or … the documents submitted to SKAT) to be collecting information confirming the content of the alleged Core Representations*", which is how the DWF Ds put it in their written closing submissions.

602. The examination of SKAT's claim process afforded by the Main Trial in my judgment demonstrated that SKAT's approval and payment of the tax refund claims at issue in these proceedings was not influenced in any way by any of the representations that SKAT alleged. That is so even if the presumption of inducement here is the strong presumption, not easily rebutted, that fraudulent misrepresentations are likely to hit their mark, i.e. have an influential impact as intended. I had that presumption well in mind when considering the matters summarised above. I recall it now, separately, as the foundation of SKAT's primary case, as opened at trial (see paragraph 545 above). The strength of the evidence overcomes by a clear margin the very strong inherent likelihood, other things being equal, that an intended fraud will have had some operative impact.

603. Mr Jones KC submitted that it was not open to SKAT to fall back on the presumption, having pleaded and particularised as its positive case that the alleged representations were relied on by Mr Nielsen, in the sense that he was consciously aware of them as communicated by the tax reclaim documents and they influenced his decision in each case to process the reclaim so that it would be paid by SKAT. Whether or not an argument of that kind might work in a given case, I do not accept it in this case. SKAT did not admit in its pleadings any requirement in law for there to have been contemporaneous conscious awareness; and it could be coherent for a claimant to fail to establish that some identified individual(s) relied, as alleged by way of primary case or at any rate particularised positive factual case, without the plausible inherent likelihood of reliance being decisively negatived.

604. On the evidence concerning SKAT's approach to and understanding of the tax refund claim system it was operating, in practice through the clerical processing efforts of Mr Nielsen, however, the notion that there was reliance on (anything like) the representations alleged by SKAT *was*, in my judgment, decisively negatived.

605. I was referred to judicial dicta critical of lawyer-led constructs concerning what it might be said had been represented, for example in *Farol Holdings*, *supra*, *per* Zacaroli J at [409]-[410]:

"*Although, chronologically, the pleading comes before witness statements, it is an essential prerequisite of a claim in implied representation … that it is based on the*

evidence of the relevant representees that they understood the implied representations to have been made to them. … Legal ingenuity might establish that all sorts of other statements are to be implied from the words and conduct of the representor, but unless the representee was led to the same conclusions at the time, a claim in misrepresentation cannot be made out" (*Farol Holdings*, *supra*, *per* Zacaroli J at [409]-[410]).

I do not mean now to open the issue I have not needed to resolve of whether or when there must be contemporaneous conscious awareness that a representation has been or is being made. The presently pertinent sting of observations such as Zacaroli J's is that a litigation claim that harmful action (or a harmful failure to act) was induced by misrepresentation should be driven by an understanding, and realistic assessment, of why in fact the harmful action was taken (or why action was not taken, such that harm resulted from the failure to act). SKAT's case indeed had the opposite appearance, as defendants submitted, of a lawyer-led case as to what representations, objectively, it might be said were made, in the absence of anything simple like a representation of entitlement to a refund or a representation that tax liability had been incurred, onto which the fitting of a case as to inducement then had to be attempted.

606. Mr Nielsen's witness statement, if accepted uncritically, might have seemed up to that task; but in substance he failed to come up to proof, in the modern fashion that cross-examination showed he should not have given that seemingly supportive evidence by adopting his witness statement as his evidence in chief, rather than in the stricter or old-fashioned sense of a witness failing to say in chief what they had been billed as able to say. I am satisfied that if simply asked to give an account of how he did his job, and why (to the extent he can remember and articulate) he processed all these tax refund claims for payment by SKAT, and if there were no implicit pressure to be helpful to SKAT by his answers, Mr Nielsen could not honestly have given an answer that might have led to a plea that he relied on the representations alleged by SKAT, or anything like them. An absence of reliance by Mr Nielsen would not in itself make the pleaded claims impossible, because in principle there might have been a provable case of systemic reliance, or the presumption of inducement might have done enough for SKAT. In the event, however, as I have said, the facts revealed by the trial process demonstrated the contrary.

607. That conclusion may have the consequence that SKAT's dividend tax refund control was, at the time, so flimsy as to be wide open to what might be seen as exploitation, and that, at all events when claim volumes and values were ramped up in 2014, the Solo and Maple Point Models in particular exploited it ruthlessly (especially the fully automated Solo Model in 2015). In fact that is what, in my judgment, Sanjay Shah, for one, thought he was doing at the time. I think his 2021 television soundbite was candid and revealing (paragraph 2 above): "*If there's a big sign on the street saying, "please help yourself", then me or somebody else would go and help themselves*." I consider that Mr Bains saw it that way too. He accurately assessed it to be Sanjay Shah's thinking, when he said in December 2014, in his email to a personal counsellor to which I referred in paragraph 227 above, that in his view the reason Sanjay Shah had made him a substantial offer to re-join Solo, an offer that Mr Bains had refused, was that "*he [Sanjay] only ever wanted to keep me out of the market so he could bleed dry an innocent Nordic country next year [2015]*".

608. In my judgment, however, even bearing that also well in mind, it remains the case that on the evidence, there was no need for any of the representations alleged by SKAT to be made for SKAT to pay out on tax refund claims submitted under the Form Scheme, through the flimsy system it had put in place (and as it happens, my conclusion, in substance, is that they were not made, given the irrelevance in practice of the Tax Agents' cover letters). The evidence made it very clear to me that SKAT knew that representations of that sort were *not* being made to it, and that it was paying claims anyway. SKAT was not induced to act, at all, by the representations it alleged in these proceedings.

609. For completeness only in the present context, I would add in relation to the remarks quoted in paragraph 607 above that I do not judge them to evidence a view at the time that SKAT was being deceived into paying Solo Model tax refund claims, i.e. tricked into paying by falsehoods told to it. Neither Mr Shah nor Mr Bains thought that at the time, I conclude, although they both had come to realise that Solo had hit upon a way to take advantage of what had to be a very slack process at SKAT that would be enormously lucrative so long as it continued. Mr Shah was comfortable to play that advantage as long as it lasted; Mr Bains was more conflicted, initially making a play to profit substantially from it at Arunvill, but rendered uncomfortable when Arunvill's reaction was to think it must amount in some way to fraud, and then feeling that because of the scale to which Mr Shah was taking things at Solo, SKAT should be tipped off to look into what was happening.

G. Result (except SKAT vs. Syntax)

610. Syntax is in a different position to all other trial defendants, because in its case liability to SKAT stands established by a default judgment (see paragraph 615*ff* below).

611. In relation to all trial defendants other than Syntax, the result of the conclusions set out above is that, in summary, and subject to paragraph 612 below:

(i) the 4,170 tax refund claims that are the subject matter of claims brought by SKAT in these proceedings were all invalid claims under Danish tax law, in the sense that in each case the Tax Agent's named client on whose behalf the Tax Agent submitted the claim was not entitled to any tax refund from SKAT, and SKAT had no obligation to pay the claim;

(ii) SKAT paid those claims, however, without being influenced by any of the representations that it alleged were made to it, such that it was not induced by any such representations, which (effectively speaking) were not made to it anyway;

(iii) since (as SKAT rightly accepted) every cause of action pursued through closing argument at trial is a cause of action governed by English law that requires SKAT to have proved that it was induced to pay claims by one or more of the misrepresentations it alleged, all of SKAT's claims fail and stand to be dismissed;

(iv) whatever view might be taken of the rights or wrongs of what happened, assessed against some other benchmark, the only question for decision in this court was whether any of the particular causes of action that SKAT asserted in

this litigation, to the extent finally pursued at trial, was well founded, and my decision is that none of them was.

612. That all has to be qualified, however, because of the present non-existence of some of the SSDs. As noted in Appendix 1 below and paragraph 38 above, at the date of this judgment Ampersand, Elysium Properties, Skyfall, Skyfall Holdings, Woodfields, and Woodfields Holdings all stand struck off in their respective jurisdictions of incorporation. That was the position throughout the Main Trial, and indeed since before the Validity Trial in January/February 2023. That means in turn that although I have referred to them as trial defendants, strictly none of them is before the court and I cannot make, and am not making, any decision affecting them. Moreover, the position may be complicated further by the fact that they were struck off after my decision, but before the Court of Appeal's decision, on the Revenue Rule Trial.

613. The upshot is that there will now be judgment dismissing all of SKAT's claims against all trial defendants listed in Appendix 1 other than (i) Syntax, dealt with immediately below, and (ii) the six corporate SSDs listed immediately above. I shall ask for the assistance of counsel for SKAT, and counsel for the SSDs (if they consider it possible and proper to make any submissions), as to what, if anything, the court can or should now do in relation to those six SSDs. I shall also require assistance in relation to defendants who were not trial defendants but who are still parties to the proceedings against whom they have not yet been finally determined (for example defendants, if there are any, against whom stays are in place that will now come to an end or be affected in some other way by the handing down of this judgment).

614. In that circumstance, I have not lengthened the main body of this judgment by setting out conditional conclusions of fact and law that might have determined, trial defendant by trial defendant, whether any (and if so which) of SKAT's claims would have succeeded, had SKAT established the major premise for all of them, *viz.* that in each case it was induced to pay the invalid tax refund claim(s) the subject matter of the claim by one or more of the misrepresentations it alleged. I have done that to a certain extent in Appendix 7, below, principally to identify findings of fact as to trial defendants' knowledge or understanding at the time, but more briefly than I would have done had the points considered been decisive, in case what I would have found may be said by any party to matter in relation to costs or any other consequential matter that may now arise.

H. SKAT vs. Syntax

615. Judgment in default was entered by SKAT against a number of corporate defendants, so that what was left for each of those defendants was only a need to measure damages or determine to what other remedies, if any, SKAT might be entitled under its relevant default judgment. The proceedings against all but one of the default judgment defendants were later stayed, leaving the question of remedies for determination at the Main Trial, and now by this judgment, only against Syntax. For these purposes (see paragraph 30 above and Appendix 1, below), Syntax was the 22nd defendant to the Second Claim, in which the default judgment was entered against it on 10 May 2019.

616. I do not know whether Syntax has any assets such that any judgment as to remedies and consequent relief to which SKAT may be entitled will be of any practical value. It is also an unusual case in that the conclusions now reached after trial, on liability issues

that would have been common, mean that Syntax would have had a good defence to the claims pleaded against it. However, SKAT stood on its entitlement under a properly entered default judgment, and there was no application on behalf of Syntax seeking the exercise of a discretion to set it aside, nor any appearance for Syntax for any other purpose.

617. The effect of the default judgment is that liability on the claims pleaded by SKAT against Syntax stands established and my conclusions on liability issues as between SKAT and other trial defendants are irrelevant to Syntax's position (subject, in both respects, to the complication noted at the end of paragraph 626 below).

618. SKAT has recovered substantial sums from various parties under settlements or through legal process of one kind or another. It prepared a detailed spreadsheet together with an explanatory 'Note on Recoveries' setting out how it offered to give credit for its recoveries to date. SKAT sought thereby to allocate amounts recovered in a logical manner, taking into account the source of the recovery and any particular terms on which the recovery was made that might affect how it should be allocated across the tax refund claims giving rise to the litigation claims.

619. The vast majority by value of what SKAT has recovered to date has been under settlements with confidentiality terms as to the paying parties, and as to how much each of them would pay. SKAT's spreadsheet and the Note on Recoveries explained SKAT's approach to allocation, and presented the detailed figures, in such a way as not to infringe that confidentiality. It was not necessary, for the purpose of judging the fitness for purpose of SKAT's approach, to require SKAT to reveal more, and no trial defendant sought any such order. In summary, SKAT has recovered to date:

(i) DKK662,528,342 in cash from 17 sources fully disclosed in the spreadsheet, c.84% of which came from the DKK400m judgment against Bech-Bruun (see paragraph 345(ii) above) and a settlement payment of c.DKK158m relating to SKAT's claims in these proceedings against Priyan Shah, Mr O'Callaghan and corporate entities of theirs;

(ii) DKK2,973,583,477 in cash from sources not individually identified in the spreadsheet due to confidentiality terms, but which, on SKAT's logical approach to allocation, broke down as follows by custodian and year (in which, to be clear, 'Solo' covers all the Solo Model custodians, not just SCP):

(a) Solo 2012, DKK29,946,769;

(b) Solo 2013, DKK359,268,185;

(c) Solo 2014, DKK653,268,432;

(d) Solo 2015, DKK1,049,330,374;

(e) Indigo 2014, DKK181,832,463;

(f) NCB 2014, DKK131,665,532;

(g) NCB 2015, DKK306,792,241;

(h) Lindisfarne, DKK261,479,481;

(iii) 579,571 shares in Varengold Bank, recovered by SKAT *in specie* and now held by it.

620. There was no obvious error in SKAT's approach that might have caused me to reject it in the absence of any active objection to it. I would therefore have relied on SKAT's analysis and the detailed accounting in the spreadsheet in respect of any trial defendant, had the question of giving credit for recoveries arisen as a result of some claim against that defendant having succeeded. In the event, the point now arises only as part of quantifying relief under the default judgment against Syntax.

621. In quantifying SKAT's entitlement to damages, or assessing its entitlement to any other form of relief, under the default judgment, SKAT is entitled to rely on its primary pleaded case as to the causes of action available to it. Its primary pleaded case, on an allegation that Mr Shah took over effective control of Syntax on 19 September 2014, was that Syntax was liable for damages for deceit and/or unlawful means conspiracy in respect of tax refund claims submitted in respect of Solo Model trading on or after that date. In oral closing argument, however, that claim was abandoned, and Ms Nanchahal rested SKAT's request for quantified relief on the alternative pleaded case of liability for deceit and/or conspiracy in respect of Solo Model tax refund claims submitted *by Syntax* on or after that date.

622. Under the default judgment, therefore, the only proof required of SKAT for its common law damages claim was proof of the amount it paid on Solo Model tax refund claims submitted by Syntax on or after 19 September 2014. At trial, SKAT proved that amount to have been DKK2,763,859,045.79.

623. Credit for recoveries by SKAT to date has to be given against that total. The recoveries spreadsheet gave credit of DKK1,264,918,064.76 for recoveries referable to losses allegedly caused by Syntax. However, that was on the basis of the primary case not pursued in closing of liability for the total paid by SKAT on all Solo Model tax refund claims submitted on or after 19 September 2014, which at trial SKAT proved to have been DKK5,960,889,149.91. A revised version of the spreadsheet now identifies that recoveries allocated against Syntax reclaims, rather than all Solo Model reclaims, submitted on or after 19 September 2014 amount to DKK316,998,798.95. As a result, the loss suffered by SKAT and recoverable as damages from Syntax under the default judgment is DKK2,446,860,246.84, subject to the point in paragraph 625 below.

624. On the basis of the liability case pleaded, Syntax was unjustly enriched through the payment to it, by SKAT, of Solo Model tax refund claims submitted to it on or after 19 September 2014. At trial, as I have just stated, SKAT proved that amount to have been DKK2,763,859.045.79. The question of apportionment of recoveries already made by SKAT again arises, reducing the claim to DKK2,446,860,246.84.

625. The question will need to be addressed whether SKAT can ask for judgment to be entered for substantial damages if it asks for judgment for payment by way of restitution in respect of unjust enrichment. In *Pisante v Logothetis (no.2)* [2022] EWHC 2575 (Comm), for example, I concluded that entering judgment, by way of restitution consequent upon rescission of an investment transaction, that required Libra to pay Swindon the full value of the consideration it had paid for the rescinded transaction,

some US$8,991,250, left Libra with a nominal damages liability only for fraud, since Swindon's only pleaded damages claim was for the loss it suffered by way of paying that consideration and I refused an application to amend. I reasoned that there should be no substantial damages judgment, because "*with the dismissal of the amendment application there is neither claim nor proof of loss beyond the US$8,991,250 that … Libra will have been ordered to restore to Swindon consequent upon rescission*" (*ibid*, at [78]). The position was different as against Mr Logothetis personally, as there was no restitutionary claim against him, so that in his case an undischarged judgment against Libra could not be said to have reduced Swindon's loss or to give rise to any logical difficulty over an award of damages in respect of that loss.

626. There was a proprietary claim pleaded against Syntax, on which at trial SKAT asked for hypothetical declaratory relief, i.e. a declaration that if Syntax had retained sums paid to it by SKAT, or their traceable proceeds, then it held the same on trust for SKAT. At trial, SKAT made no attempt that I could identify to prove that Syntax *has* retained anything traceable to sums paid to it by SKAT now some 10 years or so ago. I am not satisfied that it is appropriate to grant declaratory relief in those circumstances. That makes it unnecessary to consider a possible complication I identified in preparing this judgment, but which was not addressed at trial, namely that the default judgment in any event was only for an amount to be determined by the court in respect of SKAT's claims for monetary relief. It was obtained upon an application by SKAT supported by a solicitors' witness statement that made no mention of the claims for declaratory relief. If I might otherwise have contemplated granting any declaration, I would have given SKAT an opportunity to address that complication before making a final decision.

627. Finally, as well as being the subject of that default judgment in the Second Claim, Syntax was also a defendant to the First Claim (see paragraph 30 above, and Appendix 1 below). Judgment in default was entered against Syntax in the First Claim on 31 August 2018, but by a Consent Order dated 6 February 2024 all further proceedings against Syntax in that Claim were stayed, with no order as to costs. I shall ask counsel for SKAT to assist me as to whether any further order needs to be or should be made now in respect of the First Claim as against Syntax.

Appendix 1 – Trial Defendants and Defendant Groups

Trial Defendant Groups[1]

Sanjay Shah Ds / SSDs:-

Sanjay Shah, 34th Defendant to First Claim, husband of Usha Shah, no relation of Rajen Shah or Priyan Shah (who was a defendant in these proceedings, but is not a trial defendant)

AESA Sarl ('AESA'), 30th Defendant to First Claim

Ampersand Capital Ltd ('Ampersand'), 51st Defendant to First Claim, struck off on 25 August 2021

Araya Holdings Ltd ('Araya'), 50th Defendant to First Claim

Bellview Financial Ltd ('Bellview'), 6th Defendant to First Claim

Colbrook Ltd ('Colbrook'), 45th Defendant to First Claim, struck off on 31 October 2022, but restored to the register in the Cayman Islands with effect from 5 June 2025

Elysium Global (Dubai) Ltd ('Elysium Dubai'), previously called Solo Capital (Dubai) Ltd (name change on 9 April 2014), 35th Defendant to First Claim

Elysium Global Ltd ('Elysium Global'), 48th Defendant to First Claim

Elysium Global Trading Ltd ('Elysium Trading'), previously called Elysium Trading One Ltd (name change on 26 June 2015), 49th Defendant to First Claim

Elysium Properties Ltd ('Elysium Properties'), 70th Defendant to First Claim, struck off on 21 August 2021

Elysium Property Holdings Ltd ('Elysium Property Holdings'), 8th Defendant to Second Claim

FGC Elysium Holdings Ltd ('Elysium Holdings'), 21st Defendant to Second Claim

Ganymede Cayman Ltd ('Ganymede'), 46th Defendant to First Claim, struck off on 31 October 2022, but restored to the register in the Cayman Islands with effect from 13 May 2025

Honey Jersey Ltd ('Honey Jersey'), 4th Defendant to Second Claim

Hooloomooloo Holdings Ltd ('Hooloomooloo'), 47th Defendant to First Claim

PCM Capital Ltd ('PCM'), 9th Defendant to First Claim

Skyfall Financial Ltd ('Skyfall'), 56th Defendant to First Claim, struck off on 25 August 2021

[1] Referring to the grouping of trial defendants for the litigation, not to corporate groups.

Skyfall Holdings Ltd ('Skyfall Holdings'), 57th Defendant to First Claim, struck off on 26 May 2021

T&S Capital Ltd ('T&S'), 44th Defendant to First Claim, struck off on 31 October 2022, but restored to the register in the Cayman Islands with effect from 5 June 2025

Treefrog Capital Ltd ('Treefrog'), 19th Defendant to Second Claim

Trillium Capital Sarl ('Trillium'), 32nd Defendant to First Claim

Trillium Holdings (BVI) Ltd ('Trillium Holdings'), 53rd Defendant to First Claim

Woodfields Financial Ltd ('Woodfields'), 55th Defendant to First Claim, struck off on 25 August 2021

Woodfields Holdings Capital Ltd ('Woodfields Holdings'), 54th Defendant to First Claim, struck off on 25 August 2021

Usha Shah / Mrs Shah:-

Usha Shah, 36th Defendant to First Claim, wife of Sanjay Shah

Shah Ds:-

SSDs plus Usha Shah

DWF Ds:-

Rajen Shah, 25th Defendant to Second Claim, no relation of Sanjay Shah or Priyan Shah (who was a defendant in these proceedings, but is not a trial defendant)

Anupe Dhorajiwala, 20th Defendant to Second Claim

Graham Horn, 15th Defendant to Second Claim and 2nd Defendant to Third Claim

Lindisfarne:-

Lindisfarne LLP, 2nd Defendant to Second Claim

Mr Klar:-

Guenther Klar, 9th Defendant to Second Claim and 2nd Defendant to Fourth Claim

Mr Patterson:-

Mark Patterson, 5th Defendant to First Claim

Mr Bains:-

Jas Bains, 40th Defendant to First Claim

Ms Bhudia:-

Daksha Bhudia, 39th Defendant to First Claim

Mr Devonshire:-

John Devonshire, 1st Defendant to Fifth Claim

Mr Fletcher:-

Daniel Fletcher, 6th Defendant to Second Claim and 1st Defendant to Fourth Claim

Godson Ds:-

Jonathan Godson, 5th Defendant to Second Claim and 6th Defendant to Fourth Claim

The Godson Consulting LLC 401K Plan ('Godson 401K'), 10th Defendant to Second Claim and 6th Defendant to Fourth Claim

The Idea Guy LLC 401K Plan ('Idea Guy 401K'), 12th Defendant to Second Claim and 7th Defendant to Fourth Claim

The Lawler Noble 401K Plan ('Lawler 401K'), 11th Defendant to Second Claim and 8th Defendant to Fourth Claim

The Watts Street Capital LLC 401K Plan ('Watts St 401K'), 13th Defendant to Second Claim and 9th Defendant to Fourth Claim

Jain Ds:-

Mankash Jain, 37th Defendant to First Claim

Eris Investments Ltd ('Eris'), 10th Defendant to First Claim

Oberix International Corporation ('Oberix'), 52nd Defendant to First Claim

Double Two Holdings Ltd ('Double Two'), 60th Defendant to First Claim

Double Two Investments Ltd ('Double Two Investments'), 61st Defendant to First Claim

Körner Ds:-

Alexander Körner, 6th Defendant to Fifth Claim

Körner Unternehmensgruppe GmbH ('Körner GmbH'), previously called CEKA Invest GmbH, 7th Defendant to Fifth Claim

Mr Murphy:-

Michael (Mike) Murphy, 3rd Defendant to Third Claim, no relation to Tim Murphy

Oakley/Mitchell Ds:-

Paul Oakley, 3rd Defendant to Fifth Claim

Owen Mitchell, 4th Defendant to Fifth Claim

Orca Investments Ltd ('Orca'), 5th Defendant to Fifth Claim

Mr Preston:-

Paul Preston, 38th Defendant to First Claim

Mr Smith:-

Martin Smith, 63rd Defendant to First Claim

Other Solo Model Ds:-

Ms Bhudia, Mr Devonshire, Mr Fletcher, the Godson Ds, the Jain Ds, the Körner Ds, Mr Murphy, the Oakley/Mitchell Ds, Mr Preston and Mr Smith

Mr Knott:-

Charles Knott, 6th Defendant to Third Claim

Mr Hoogewerf:-

James Hoogewerf, 7th Defendant to Third Claim

Default Judgment D:-

Syntax GIS Ltd ('Syntax'), 22nd Defendant to Second Claim (and 68th Defendant to First Claim, but in that capacity subject to a stay of the proceedings)

Trial Defendants Alphabetically

Individuals

Mr Bains	Jas Bains
Ms Bhudia	Daksha Bhudia, one of the Other Solo Model Ds
Mr Devonshire	John Devonshire, one of the Other Solo Model Ds
Mr Dhorajiwala	Anupe Dhorajiwala, a DWF D
Mr Fletcher	Daniel Fletcher, one of the Other Solo Model Ds
Mr Godson	Jonathan Godson, a Godson D and one of the Other Solo Model Ds
Mr Hoogewerf	James Hoogewerf
Mr Horn	Graham Horn, a DWF D
Mr Jain	Mankash Jain, a Jain D and one of the Other Solo Model Ds
Mr Klar	Guenther Klar
Mr Körner	Alexander Körner, a Körner D and one of the Other Solo Model Ds
Mr Knott	Charles Knott
Mr Mitchell	Owen Mitchell, an Oakley/Mitchell D and one of the Other Solo Model Ds
Mr Murphy	Michael (Mike) Murphy, one of the Other Solo Model Ds
Mr Oakley	Paul Oakley, an Oakley/Mitchell D and one of the Other Solo Model Ds
Mr Patterson	Mark Patterson
Mr Preston	Paul Preston, one of the Other Solo Model Ds
Mrs Shah	Usha Shah, a Shah D
Rajen Shah	Rajen Shah, a DWF D, no relation to Sanjay Shah
Sanjay Shah	Sanjay Shah, a Sanjay Shah D
Mr Smith	Martin Smith, one of the Other Solo Model Ds

Corporate Entities

AESA	AESA Sarl, a Sanjay Shah D
Ampersand	Ampersand Capital Ltd, a Sanjay Shah D
Araya	Araya Holdings Ltd, a Sanjay Shah D
Bellview	Bellview Financial Ltd, a Sanjay Shah D
Colbrook	Colbrook Ltd, a Sanjay Shah D
Double Two	Double Two Holdings Ltd, a Jain D and one of the Other Solo Model Ds
Double Two Investments	Double Two Investments Ltd, a Jain D and one of the Other Solo Model Ds
Elysium Dubai	Elysium Global (Dubai) Ltd, a Sanjay Shah D
Elysium Global	Elysium Global Ltd, a Sanjay Shah D
Elysium Holdings	FGC Elysium Holdings Ltd, a Sanjay Shah D
Elysium Trading	Elysium Global Trading Ltd, a Sanjay Shah D
Elysium Properties	Elysium Properties Ltd, a Sanjay Shah D
Elysium Property Holdings	Elysium Property Holdings Ltd, a Sanjay Shah D
Eris	Eris Investments Ltd, a Jain D and one of the Other Solo Model Ds
Ganymede	Ganymede Cayman Ltd, a Sanjay Shah D
Godson 401K	The Godson Consulting LLC 401K Plan, a Godson D and one of the Other Solo Model Ds
Honey Jersey	Honey Jersey Ltd, a Sanjay Shah D
Hooloomooloo	Hooloomooloo Holdings Ltd, a Sanjay Shah D
Idea Guy 401K	The Idea Guy LLC 401K Plan, a Godson D and one of the Other Solo Model Ds
Körner GmbH	Körner Unternehmensgruppe GmbH, a Körner D and one of the Other Solo Model Ds

Lawler 401K	The Lawler Noble 401K Plan, a Godson D and one of the Other Solo Model Ds
Lindisfarne	Lindisfarne LLP
Oberix	Oberix International Corporation, a Jain D and one of the Other Solo Model Ds
Orca	Orca Investments Ltd, an Oakley/Mitchell D and one of the Other Solo Model Ds
PCM	PCM Capital Ltd, a Sanjay Shah D
Skyfall	Skyfall Financial Ltd, a Sanjay Shah D
Skyfall Holdings	Skyfall Holdings Ltd, a Sanjay Shah D
Syntax	Syntax GIS Ltd, the Default Judgment D
T&S	T&S Capital Ltd, a Sanjay Shah D
Treefrog	Treefrog Capital Ltd, a Sanjay Shah D
Trillium	Trillium Capital Sarl, a Sanjay Shah D
Trillium Holdings	Trillium Holdings (BVI) Ltd, a Sanjay Shah D
Watts St 401K	The Watts Street Capital LLC 401K Plan, a Godson D and one of the Other Solo Model Ds
Woodfields	Woodfields Financial Ltd, a Sanjay Shah D
Woodfields Holdings	Woodfields Holdings Capital Ltd, a Sanjay Shah D

Appendix 2 – Causes of Action Pursued

This Appendix gives only a summary description of the types of liability alleged against the various trial defendants, as pursued by SKAT in closing argument. It does not attempt to set out, or even summarise, the factual basis, as pleaded, upon which SKAT claimed that any liability arose, and it does not refer to other or alternative bases of liability pleaded by SKAT but not pursued in closing.

Sanjay Shah Ds

1. SKAT alleged that each of the SSDs was liable under English law for (a) deceit, (b) conspiracy to injure by unlawful means, (c) dishonest assistance, (d) knowing receipt, and (e) unjust enrichment (by reason of mistake of fact induced by fraud), save that:

    (i) SKAT did not say that Hooloomoloo was liable for dishonest assistance;

    (ii) SKAT did not say that any of Honey Jersey, Elysium Holdings, Elysium Property Holdings and Elysium Properties was liable for deceit or dishonest assistance; and

    (iii) SKAT did not say that Skyfall Holdings was liable for knowing receipt or unjust enrichment.

2. Declarations and other relief were also sought against the SSDs on the basis of proprietary claims, i.e. allegations by SKAT that it had an equitable ownership interest in assets held by defendants.

3. SKAT's claims against the SSDs are governed by English law, as a result of the procedural orders made in the litigation, because they did not plead a case for trial that any other system of law applies.

DWF Ds

4. SKAT alleged that each of the DWF Ds was liable under English law for (a) deceit, (b) conspiracy to injure by unlawful means, (c) dishonest assistance, (d) knowing receipt, and (e) unjust enrichment (by reason of mistake of fact induced by fraud).

5. Declarations and other relief were also sought against the DWF Ds on the basis of alleged proprietary claims.

6. SKAT's claims against the DWF Ds are governed by English law, as a result of the procedural orders made in the litigation, because they did not plead a case for trial that any other system of law applies.

Lindisfarne

7. SKAT alleged that Lindisfarne was liable under English law for (a) deceit, (b) negligent misrepresentation, and (c) unjust enrichment (by reason of mistake of fact induced by fraud).

8. SKAT's claims against Lindisfarne are governed by English law, as a result of the procedural orders made in the litigation, because it did not plead a case for trial that any other system of law applies.

Ms Bhudia, Mr Devonshire, Mr Hoogewerf, Mr Klar, Mr Knott, Körner Ds, Mr Murphy, Oakley/Mitchell Ds, Mr Patterson, Mr Preston, Mr Smith

9. SKAT alleged that each of these trial defendants was liable under English law for (a) deceit, (b) conspiracy to injure by unlawful means, (c) dishonest assistance, (d) knowing receipt, and (e) unjust enrichment (by reason of mistake of fact induced by fraud).

10. Declarations and other relief were also sought against each of these defendants on the basis of alleged proprietary claim.

11. SKAT's claims against these defendants are governed by English law, as a result of the procedural orders made in the litigation, because they did not plead a case for trial that any other system of law applies, except in the cases of Mr Murphy, whose Defence accepted in terms that SKAT's claims against him are governed by English law, and Messrs Knott and Hoogewerf, whose written opening for trial (as clarified by solicitors' correspondence in relation to it) withdrew any case for the application of a different system of law and agreed that the claims against them should be determined under English law.

Jain Ds

12. SKAT alleged that each of the Jain Ds was liable under English law for (a) deceit, (b) conspiracy to injure by unlawful means, (c) dishonest assistance, (d) knowing receipt, and (e) unjust enrichment (by reason of mistake of fact induced by fraud).

13. Declarations and other relief were also sought against the Jain Ds on the basis of alleged proprietary claims, under English law.

14. The Jain Ds contended that the claims against them are governed by Danish law, alternatively the law of Labuan, Malaysia. However, they pleaded no case as to the content of the law of Labuan and did not seek permission to adduce or seek in fact to adduce any evidence of that law. They abandoned and withdrew their plea as to Danish law prior to any expert evidence of Danish law being called at trial, and agreed to the determination of SKAT's claims against them on the basis of English law. In consequence SKAT's claims under Danish law, pleaded strictly in the alternative, fell away.

Godson Ds, Mr Fletcher

15. SKAT alleged that each of the Godson Ds and Mr Fletcher was liable under English law for (a) deceit, (b) conspiracy to injure by unlawful means, (c) dishonest assistance, (d) knowing receipt, and (e) unjust enrichment (by reason of mistake of fact induced by fraud).

16. Declarations and other relief were also sought against the Godson Ds and Mr Fletcher on the basis of alleged proprietary claims, under English law.

17. The Godson Ds and Mr Fletcher contended that the claims against them are governed by Danish law, alternatively New York law. However, they pleaded no case as to the content of New York law and did not seek permission to adduce or seek in fact to adduce any evidence of that law. Like the Jain Ds, Mr Fletcher and the Godson Ds abandoned and withdrew their plea as to Danish law prior to any expert evidence of Danish law being called at trial, and agreed to the determination of SKAT's claims against them on the basis of English law. For them also, therefore, SKAT's claims under Danish law, pleaded strictly in the alternative, fell away.

Mr Bains

18. SKAT alleged that Mr Bains was liable under English law for (a) deceit, (b) conspiracy to injure by unlawful means, (c) dishonest assistance, (d) knowing receipt, and (e) unjust enrichment (by reason of mistake of fact induced by fraud).

19. Declarations and other relief were also sought against Mr Bains on the basis of alleged proprietary claims.

20. It was common ground on the pleadings between SKAT and Mr Bains that SKAT's claims against Mr Bains are to be determined under English law.

Usha Shah

21. SKAT alleged that Mrs Shah was liable under English law for (a) unlawful means conspiracy, (b) dishonest assistance, (c) knowing receipt, and (d) unjust enrichment (by reason of mistake of fact induced by fraud).

22. Declarations and other relief were also sought against Mrs Shah on the basis of alleged proprietary claims.

23. SKAT's claims against Mrs Shah are governed by English law, as a result of the procedural orders made in the litigation, because she did not plead a case for trial that any other system of law applies.

Appendix 3 – Sample Trades Summary

1. Of the 25 Sample Trades, (a) 15 trades related to Solo Model trading, (b) 7 trades related to Maple Point Model trading, and (c) 3 trades were Klar Model trades. By the case management order referred to in paragraph 101 of the main body of this judgment, they were directed to be treated as representative of trading under the three trading models, as follows:

Trading Model	**Sub-Category**	**Sample Trades**
Solo Model 12/13		Solo 1, Solo 2, Solo 3, Solo 9
Solo Model 14/15	n/a Sub-Variant 1 Sub-Variant 2	Solo 4, Solo 5, Solo 6, Solo 7, Solo 8 Solo 10, Solo 11, Solo 12, Solo 13 Solo 14, Solo 15
Maple Point Model 2014	Indigo NCB	Indigo 1, Indigo 2 NCB 3
Maple Point Model 2015	NCB Lindisfarne	NCB 1, NCB 2 Lindisfarne 1, Lindisfarne 2
Klar Model		Salgado 1, Salgado 2, Salgado 3

SOLO MODEL TRADES

2. The Sample Trades for Solo Model trading drew a distinction between:

- **Solo Model 2012/2013**: Sample Trades Solo 1 to Solo 3, and Solo 9, all took place in the period 2012-2013 and are representative of the trading in the Solo Model in that period. Each of those trades led to a refund claim on behalf of a USPF supported by a CAN issued by SCP; and

- **Solo Model 2014/2015**: Sample Trades Solo 4 to Solo 8, and Solo 10 to Solo 15, all took place in the period 2014-2015 and are representative of the trading in the Solo Model in that period. Each of those trades led to a refund claim on behalf of a USPF or a LabCo supported by a CAN issued by one of the four Solo custodians (SCP, Telesto, West Point and Old Park Lane).

Solo Model 2012/2013 (Solo 1 to Solo 3, Solo 9)

3. **Equity Trades:** on the dividend declaration date for a Danish company, (a) a short seller sold a certain quantity of shares in the company, via a broker, for settlement on the dividend payment date, the day after the dividend record date, and (b) the broker, acting either as matched principal or agent, sold the same quantity of shares in the company for the same price and on the same terms to a USPF buyer.

4. **Futures:** on the same day as the Equity Trades, (a) via a broker, the USPF buyer entered into a listed futures contract to sell the same quantity of the same shares with an expiry date a number of weeks or months after the record date, and (b) the short seller, via the same broker, entered into a listed futures contract on the same terms to buy the same quantity of the same shares. That matching pair of crossed single-stock futures was sent to a futures clearer and netted off without the need for the futures clearer to trade them on the exchange.

5. **Stock Loans:** on the dividend record date, (a) the USPF buyer agreed to lend the same quantity of shares in the same Danish company to a stock lender in return for cash collateral equal to the sale price under the Equity Trades, for settlement on the dividend payment date, matching the settlement date under the Equity Trades, and (b) that stock lender entered into a stock loan agreement on the same terms to lend the same quantity of shares in the same Danish company to the short seller.

6. **Give-Ups:** prior to settlement the broker on the Equity Trades gave them up to SCP under give-up agreements, novating the obligations thereunder to SCP.

7. **Unwind:** several weeks later the traded positions were unwound through reverse trades, i.e.: (a) the USPF buyer would sell the same quantity of shares in the same Danish company to a broker who would sell to the short seller; (b) the USPF buyer would buy and the short seller would sell matched futures through a futures broker, with expiry matching that of the original Futures; and (c) the lenders would recall the full volume of shares under the Stock Loans with the collateral balance under the stock loans being returned at the same time.

Example (Solo Model 2012/2013):

Solo 3 (AOI Pension Plan (**AOI**) - TDC A/S - August 2013)

Declaration Date: Wednesday 7 August 2013 (DKK1.50 per share)
Ex-date: Thursday 8 August 2013
Record Date: Monday 12 August 2013
Payment Date: Tuesday 13 August 2013

8. **Equity Trades:** on 7 August 2013, a TDC dividend declaration date, Rock Capital Private Fund Ltd (**Rock**) agreed to sell 4,500,000 shares in TDC to AOI at a price of DKK47.3850 through Novus as broker for settlement on 13 August 2013, the dividend payment date. SCP approved the sale by Rock of 4,500,000 shares in TDC through Novus as broker, subject to liquidity, at a price of DKK47.3850, with a settlement date of 13 August; and SCP approved the purchase by AOI of 4,500,000 shares in TDC also through Novus as broker, subject to liquidity, at a price of 47.3850, with a settlement date of 13 August.

9. **Futures**: also on 7 August, AOI agreed to sell and Rock agreed to buy, again through Novus as broker, 45,000 Flexible Futures (in 100k lots) in respect of TDC shares at a price of DKK46.4600 with an expiry date of 21 March 2014. SCP approved the sale by AOI of TKF (i.e. TDC Futures) Flexible Futures through Novus as broker, subject to liquidity, at a price of DKK46.4600, with an expiry date of 21 March 2014; and SCP approved the purchase by Rock of TKF Flexible Futures through Novus as broker, subject to liquidity, at a price of DKK46.4600, with an expiry date of 21 March 2014.

10. **Stock Loans**: on 12 August 2013, being the dividend record date, AOI agreed to lend 4,500,000 TDC shares to Colbrook and Colbrook agreed to lend 4,500,000 TDC shares to

Rock, in both cases for collateral of DKK47.3850 per share, the price under the Equity Trades, for settlement on 13 August 2013, the same date as under the Equity Trades, being the dividend payment date. SCP confirmed a loan by AOI of 4,500,000 TDC shares to Colbrook at a price of DKK47.3850 for settlement on 13 August 2013 and a loan by Colbrook of 4,500,000 TDC shares to Rock at a price of 47.3850 for settlement on 13 August 2013.

11. **Credit Advice Note**: SCP issued a CAN dated 13 August 2013 reflecting a credit to AOI's account referable to the 7 August 2013 TDC dividend for a quantity of 4,500,000 shares, referring to a "*Gross Dividend*" amount of DKK6,750,000, a "*Tax*" amount of DKK1,822,500, and a "*Net Dividend*" amount of DKK4,927,500.

12. **Book Keeping**: within account records at SCP:

    - an amount equal to the dividend amount for that quantity of TDC shares, net of WHT, was debited from Rock, which by the nature of cash accounting entries (if there was nothing on account to cover the debt) effectively amounted to SCP lending that amount to Rock so it could be paid to AOI (or, which is in fact the same thing, SCP treating Rock as owing it that amount because it was being paid by SCP to AOI in discharge of Rock's obligation to pay);

    - an equal amount was credited to AOI; and

    - adjustments were made to accounting records relating to the futures and the stock loan collateral, the net effect of which was to reduce AOI's credit balance and Rock's debit balance by an amount equal, or very nearly equal, to the net dividend amount, in effect indirectly funding the payment of that amount by Rock to AOI via SCP.

13. **Tax Refund Claim**: on 28 August 2013, Goal submitted a tax refund claim to SKAT for DKK1,822,500, supported by the SCP CAN, and that amount was paid by SKAT.

14. **Cancelling futures:** on 11 December 2013, Rock and AOI entered into Flexible Futures trades through West Point Derivatives reversing the positions under the futures contracts previously entered into on 12 August 2013. SCP approved the sale by Rock of 45,000 TKF Flexible Futures through West Point Derivatives at a price of DKK50.45 with an expiry date of 21 March 2014; and SCP approved the sale by AOI of 45,000 TKF Flexible Futures through West Point Derivatives at a price of DKK50.45 with an expiry date of 21 March 2014.

15. **Return Equity Trades:** on the same day, 11 December 2013, AOI sold and Rock bought 4,500,000 TDC shares at a price of DKK50.4101 through FGC Securities LLC (**FGC**) as broker, for settlement on 16 December 2013. SCP approved the sale by AOI of 4,500,000 TDC shares at a price of DKK50.4101 through FGC with a settlement date of 16 December 2013; and SCP approved the purchase by Rock of 4,500,000 TDC shares at a price of DKK50.4101 through FGC with a settlement date of 16 December 2013.

16. **Stock Loan Recalls**: the next day, 12 December 2013, AOI and Colbrook recalled the Stock Loans at the same price as the Return Equity Trades. SCP approved the recall by AOI of the loan to Colbrook at a price of DKK50.4101 with a settlement date of 16 December 2013; and SCP approved the recall by Colbrook of the loan to Rock at a price of DKK50.4101 with a settlement date of 16 December 2013.

Solo Model 2014/2015 (Solo 4 to Solo 8, Solo 10 to Solo 15)

Overview

17. The Solo Model trading in its second phase in 2014/2015 followed the same core pattern as in 2012/2013 but with the following different features:

- there were LabCos as well as USPFs as buyers on whose behalf Tax Agents made refund claims to SKAT;
- there was a change in the type of derivative used, from exchange-listed futures to OTC forwards that did not require external bank clearing;
- the settlement loops involved additional parties and (in some cases) sub-variants which added complexity:
    - instead of loops involving a sole broker, stock lender and forward counterparty between the short seller and buyer, there were two brokers, two stock lenders and two forward counterparties, each entering into matching, generally back-to-back transactions, of which Sample Trades Solo 4 to Solo 8 are representative examples. The trading by the forward counterparties was not completely back-to-back because the forwards traded between them had longer expiry dates than those traded by each of them with either the short seller or the buyer;
    - some trades (of which Sample Trades Solo 10 to Solo 12 are representative examples) involved multiple buyers and multiple short sellers trading between them (through the same brokers, forward counterparties and stock lenders) share volumes that matched in aggregate (**Sub-Variant 1**);
    - in some trades (of which Sample Trades Solo 13 to Solo 15 are representative examples), there was a single buyer whose traded volume was matched to the aggregate of sales by more than one short seller (**Sub-Variant 2**);
- in some trades (of which Sample Trades Solo 6 and Solo 7 are representative examples), the forwards traded in conjunction with the initial equity purchase were later extended (rolled over) by the conclusion of a further set of forwards, closing out the original positions and establishing new positions with a later expiry, shortly after which the new positions were in turn closed out by a yet further set of forward trades. That final close-out was still timed, the intervening extra complexity notwithstanding, to coincide with the unwind of the equity purchase and stock lending.

Example (Solo Model 2014/2015):

Solo 4 (Ellbell Capital Limited (**Ellbell**) - Carlsberg A/S (B) - March 2015)

Declaration Date: Wednesday 26 March 2015 (DKK9.00 per share)
Ex-date: Thursday 27 March 2015
Record Date: Monday 30 March 2015
Payment Date: Tuesday 31 March 2015

18. **Equity Trades:** on 26 March 2015, a Carlsberg dividend declaration date, Ellbell agreed to buy and short seller JBJB International Ltd (**JBJB**) agreed to sell 538,827 Carlsberg B

shares at a price per share of DKK571.50 through two brokers, the TJM Partnership Ltd (**TJM**) and Arian Financial, for settlement on 31 March 2015, the dividend payment date. Old Park Lane approved all three Trades.

19. **Forwards:** also on 26 March 2015, Ellbell entered into a forward contract whereby it agreed to sell 538,827 Carlsberg B shares to North Capital Group Limited (**North**) at a price per share of DKK564.9372 with an expiration date of 19 June 2015, North entered into an otherwise identical forward contract with T & S Capital (**T&S**), but with expiration 18 September 2015, and T&S entered into an otherwise identical forward contract with JBJB, with expiration 19 June 2015. Old Park Lane confirmed the details of all three forwards.

20. **Stock Loans:** the following Monday, 30 March 2015, being the dividend record date, Ellbell agreed to lend 538,827 Carlsberg B shares to RVT Consult, RVT Consult agreed to lend 538,827 Carlsberg B shares to Colbrook, and Colbrook agreed to lend 538,827 Carlsberg B shares to JBJB, in all three cases for collateral equal to the price under the Equity Trades and for settlement also to match, on 31 March 2015. At 7:27:44 pm, Old Park Lane confirmed a loan by RVT Consult to JBJB, at 7:32:04 pm, Old Park Lane confirmed a loan by Colbrook to RVT Consult, and at 7:41:43 pm, Old Park Lane confirmed a loan by Ellbell to Colbrook, all for next day settlement.

21. **Credit Advice Note**: Old Park Lane issued a CAN dated 7 April 2015 reflecting a credit to Ellbell's account referable to the 26 March 2015 Carlsberg B dividend for a quantity of 538,827 Carlsberg B shares, referring to a "*Gross*" amount of DKK4,849,443, a "*Tax*" amount of DKK1,309,349.61, and a "*Net*" amount of DKK3,540,093.39.

22. **Book Keeping**: within account records at Old Park Lane:

    - an amount equal to the dividend amount for that quantity of Carlsberg B shares, net of WHT, was debited from JBJB (as to which, the logic of paragraph 12 above, first bullet point, again applies);

    - an equal amount was credited to Ellbell; and

    - there were adjustments relating to the futures and stock loan collateral the effect of which, indirectly, was to fund that dividend compensation payment (as in paragraph 12 above, third bullet point, but this time with three, not two, back-to-back stock loans to adjust).

23. **Tax Refund Claim**: on 1 May 2015, Acupay submitted a tax refund claim to SKAT for DKK9,776.044.52, supported by 7 Old Park Lane CANs including the Carlsberg B CAN referred to above, and the refund claim was paid in full by SKAT.

24. **Reversal of Forwards:** on 2 June 2015, JBJB entered into a forward contract whereby it agreed to sell 538,827 Carlsberg B shares to T&S at a price per share of DKK619.2061 with an expiration date of 19 June 2015, the same expiration date as the original (opposite) Forward between them, T&S entered into an otherwise identical forward with North, but with expiration 18 September 2015 (matching their original (opposite) Forward), and North entered into an otherwise identical forward with Ellbell, with expiration 19 June 2015 as per their original (opposite) Forward.

25. **Return Equity Trades**: on the same day, 2 June 2015, Ellbell sold, and JBJB bought, 538,827 Carlsberg B shares, at a price of DKK619.50 per share, for settlement on 4 June 2015, through Sunrise Brokers and Sapien Capital. Old Park Lane approved sales by Ellbell to Sunrise Brokers, by Sunrise Brokers to Sapien Capital, and by Sapien Capital to JBJB.

26. **Stock Loan Recalls**: also on 2 June 2015, for settlement on 4 June 2015, Ellbell (at 4:10:02 pm), RVT Consult (at 4:09:52 pm) and Colbrook (at 4:07:14 pm) recalled their stock loans at the same price as the Return Equity Trades.

Example (Solo Model 2014/2015, Sub-Variant 1):

Solo 10 (Godson Consulting LLC 401K Plan (the **Godson Plan**) - TDC - March 2014)

Declaration Date: Thursday 6 March 2014 (DKK2 per share)
Ex-date: Friday 7 March 204
Record Date: Tuesday 11 March 2014
Payment Date: Wednesday 12 March 2014

27. Three different Short Sellers owned by Rajeev Davé were used: Abra Holdings (**Abra**), SPK 23 (Cayman) Inc (**SPK 23**) and A Squared Investments FZE (**A^2**). Otherwise, the parties to the trading loops were identical in all respects. Aside from the fact that the intermediaries were trading the same shares with multiple Short Sellers and multiple Buyers/WHT Applicants, each individual trading loop was similar to Solo 4 in its fundamental structure, as illustrated by Solo 10.

28. **Initial Trades:** on a TDC dividend declaration date, 6 March 2014, for settlement on the dividend payment date, 12 March 2014:

    (i) the three short sellers, Abra, SPK 23 and A^2, between them sold through TJM as broker some 116,290,778 shares in TDC,

    (ii) TJM sold that same aggregate quantity through Mako as broker by some 29 sales,

    (iii) each of TJM's short sales was matched by Mako to a purchase by a single USPF, one of which was the Godson Plan, buying 4,637,723 shares such that it was matched through the brokers with A^2 as short seller.

    Also on 6 March 2014, each buyer entered into a forward, as seller, with Amalthea Enterprises Ltd, which matched that forward buying commitment by entering into forwards, as seller, with LDW Consultants Ltd, which matched that forward buying commitment by entering into forwards, as seller, with the short sellers, such that each of them bought forward a volume matching their short selling commitment, but (as in Solo 4, above), there was a mismatch of expiration dates, with the buyer-Amalthea and LDW-short seller forwards expiring on 20 June 2014, but the intermediate Amalthea-LDW forwards expiring on 19 September 2014. For each party, the price on the forward they entered into matched the price on the sale to which one of them was privy.

29. **Stock Loans:** on the dividend record date, 11 March 2014, the Godson Plan, likewise each of the other buyers, agreed to lend the volume of shares it had bought, to Neoteric Ltd, Neoteric agreed to lend to Relative Value Trading GmbH, and Relative Value agreed to lend to one of the short sellers, all loans being for settlement the following day, i.e. the

dividend payment date, matching the Equity Trades, with collateral also to match (meaning that each buyer contracted to receive collateral equal to the purchase price on its Equity Trade, and each short seller contracted to provide collateral equal to the purchase price on its Equity Trade).

30. **Credit Advice Note:** SCP produced Credit Advice Notes dated 12 March 2014, each addressed to one of the buyers to reflect a credit to that buyer's account referable to the 6 March 2014 TDC dividend for a quantity matching that buyer's Equity Trade. In the case of the Godson Plan, for example, the CAN referred to the traded share volume of 4,637,723 shares, and to a "*Gross Dividend*" amount of DKK10,202,990.60, a "*Tax*" amount of DKK2,754,807.46, and a "*Net Dividend*" amount of DKK7,448,183.14.

31. **Book Keeping**: within account records at SCP, materially equivalent debit and credit entries were made, matching all of the individual transaction terms, to those described above in relation to Solo 4. For the Godson Plan, by way of example, therefore, an amount equal to the "*Net Dividend*" amount in the CAN issued to it by SCP was credited to it by SCP and debited from A^2 in respect of the share volume on which the Godson Plan and A^2 had been effectively matched through the brokers.

32. **Tax Refund Claim:** on 2 May 2014, Goal submitted a tax refund claim to SKAT on behalf of the Godson Plan for a total DKK32,428,184.25, supported by 8 SCP CANs including the TDC CAN referred to above, and the refund claim was paid in full by SKAT.

33. **Unwind:** the traded positions were subsequently unwound through Return Equity Trades through different brokers, Bastion Capital London Ltd and Ballygate Capital Ltd, Reverse Forwards with the same Forward counterparties, and Stock Loan Recalls.

Example (Solo Model 2014/2015, Sub-Variant 2):

Solo 15 (Westport Advisors LLC 401K Plan (**Westport**)) - Pandora A/S - March 2015)

Declaration Date: Wednesday 18 March 2015 (DKK9 per share)
Ex-date: Thursday 19 March 2015
Record Date: Friday 20 March 2015
Payment Date: Monday 23 March 2015

34. **Equity Trades:** on 18 March 2015, a Pandora dividend declaration date, Westport bought 491,203 Pandora shares through TJM as broker, which matched that with two purchases through Mako as broker, one for 465,243 shares and one for 25,960 shares. Mako in turn matched those sales with purchases of 465,243 Pandora shares from SPK Consultants Ltd (**SPK**) and 25,960 Pandora shares from Nisus Financial Ltd (**Nisus**). All those Equity Trades were at the same price of DKK614.50 per share, for settlement on 23 March 2015 i.e. the dividend payment date.

35. **Forwards:** also on 18 March 2015, Westport agreed to a forward sale of 491,203 Pandora shares to Allitsen Asset Ltd (**Allitsen**), which agreed to forward sales to Ystwyth Trading Limited (**Ystwyth**) of 465,243 and 25,960 Pandora shares, and Ystwyth agreed to forward sales to SPK, of 465,243 Pandora shares, and to Nisus, of 25,960 Pandora shares. The Westport-Allitsen, Ystwyth-SPL and Ystwith-Nisus Forwards all expired on 19 June 2015, but the intermediate Allitsen-Ystwyth Forwards expired on 18 September 2015.

36. **Stock Loans:** on the dividend record date, 20 March 2015, Westport agreed to lend 491,203 Pandora shares to Trance, which agreed to lend 465,243 Pandora shares and a further 25,960 Pandora shares to Tehvah Global Limited (**Tehvah**), and Tehvah agreed to lend 465,243 Pandora shares to SPK and 25,960 Pandora shares to Nisus, all stock lending to be in return for collateral of DKK614.50 per share, matching the price under the Equity Trades, for settlement on 23 March 2015, matching the settlement date of the Equity Trades, being the dividend payment date.

37. **Unwind:** the trades were subsequently unwound by reverse Equity Sales by SPK and Nisus to Sapien, by Sapien to Bastion, and by Bastion to Westport, by Stock Loan Recalls, and by Return Forward Trades.

38. **CAN etc:** this Sample Trade can be seen as creating two settlement loops, one for 465,243 shares in Pandora with SPK as short seller, the other for 25,960 shares with Nisus as short seller, supporting at Westport's 'end' single-transaction trading in the aggregate volume, 491,203 shares, such that a single CAN (in this case issued by West Point) was generated, referring to a "*Gross Dividend*" amount of DKK4,420,827.00, a "*Witholding tax deducted*" amount of DKK1,193,623.29, and a "*Net Dividend*" amount of DKK3,227,203.71. A refund claim was submitted to SKAT by Syntax, supported by West Point CANs including that one, for an aggregate total of DKK27,510,060.32, which was paid in full by SKAT.

Example (Solo Model 2014-2015, Sub-Variant 2):

Solo 14 (The Shapiro Blue Management LLC 401K Plan (**Shapiro**) - DSV - March 2015)

Declaration Date: Thursday 12 March 2015 (DKK2 per share)
Ex-date: Friday 13 March 2015
Record Date: Monday 16 March 2015
Payment Date: Tuesday 17 March 2015

39. Solo 14 illustrates a marginally more complex version of Sub-Variant 2.

40. At the buyer's and short sellers' ends, it was materially identical to Solo 15: a single buyer, Shapiro, buying, selling forward, then lending to feed the settlement loop, a single volume (here, 670,959 shares in DSV); two short sellers, JBJB and Rhaltall Ltd (**Rhaltall**), each selling, buying forward, then borrowing as part of the settlement loop, a single volume matching Shapiro's volume in aggregate (JBJB selling 130,676 shares, Rhaltall 540,283 shares); all via the same broking chain on the Equity Trades (here, short sellers selling to Mako, Mako selling to Bastion, Bastion selling to Shapiro).

41. Also as with Solo 15, the buyer's Forward and Stock Loan counterparties, here Gartside and Diverse Vision respectively, matched their commitments to the buyer through two transactions, in a split matching the short selling end of the structure. However, in Solo 14, that was where in the structure there was also a split of counterparties, rather than that occurring only at the short sellers' end. Thus, Gartside's matching Forwards were with Rheidol Trading Ltd, for 130,676 shares, and Rheidol in turn sold that volume forward to JBJB, and DTS Capital Ltd, for 540,283 shares, DTS Capital in turn selling that volume forward to Rhaltall. Similarly, Diverse Vision lent 130,676 shares to Esengi Ltd, which lent that volume to JBJB, and 540,283 shares to RVT Consult, which lent that volume to Rhaltall.

MAPLE POINT TRADES

Overview

42. The Maple Point Scheme involved tax refund claims between May 2014 and July 2015 based on underlying trading between March 2014 and May 2015.

43. The trading under the Maple Point Model was mostly the same as under the Solo Model 2012/2013 described above, save that the Maple Point Model involved OTC forwards, not exchange-traded futures, and the stock loans were entered into on the dividend payment date, for same day settlement, rather than on the record date for next day settlement. As noted at paragraph 255 of the main body of this judgment, the wrinkle on the cash side was ironed out through the use of breakage fees so that all cashflows netted to zero around the loop (save for the payment of participation fees to stock lenders, forward counterparties and short sellers).

44. In addition, the imperfect implementation in the Solo Model of the intention that the dividend compensation payment be 'funded' by the stock loan collateral was perfected. The stock loan confirmations included a term noting that the collateral might be reduced by the stock lender "*advancing monies to [the stock borrower]*" and that it was "*expected that it will do so with regard to the net dividend received in relation to the last dividend ex-date prior to this stock loan trade*". Account entries were duly made giving effect to that expectation every time, leaving the stock lender with effectively reduced collateral.

45. That was all quite artificial. The dividend in question should have been irrelevant to a simple ex-div stock loan. Further, since stock loan cash collateral is functionally a loan to the stock lender from the stock borrower, for the stock lender immediately to lend a (proportionately) small sum to the stock borrower is, in substance, simply to agree the reduced (net) collateral in the first place. As the stock loan intermediary always traded on fully matched, back-to-back terms, other things being equal, one might expect them to propose that the traded stock loan terms should reflect the economic reality by fixing the cash collateral at the reduced amount. However, a receipt by the buyer as stock lender of the gross collateral amount was required or the Equity Trade would fail to settle for want of funds to complete it. The rather strained concept being used, therefore, was that of the stock loan and the Equity Trade settling first (feeding each other in a share-less settlement loop), *following which* (but on the same day) a dividend compensation payment and partial reduction in collateral could settle (also feeding each other in a self-fulfilling, net zero loop).

46. A distinction was drawn, in selecting Sample Trades, between Maple Point trading in 2014 and in 2015. There are differences between the two years as to which parties were involved, for example Indigo was a custodian only for 2014 trading and Lindisfarne only for 2015 trading, whereas NCB was a custodian for both years. However, there were only very minor differences in the transaction structures, and none of any substance relevant to the issues in the litigation:

    - In Indigo trades, the stock lender and the forward counterparty were different.

    - In NCB trades: the stock lender and forward counterparty was always the same entity, Sherwood, owned by Mr Klar; and additional cash loan transactions were added to the structure, at NCB's initiative. That additional element involved back-to-back cash

loans, entered into as an adjunct to the Equity Trades, by which the short seller would promise to lend to Sherwood, and Sherwood would promise to lend to the USPF, the full Equity Trade purchase price, for settlement on the same date as the Equity Trade. Those loans were cancelled and recalled on the settlement date, as an adjunct to the stock loans entered into on that date, since the synthetic funding created by the stock loans was then used for the internalised settlement of the Equity Trade in NCB's books, so the cash loans were not required and did not need to settle. A materially equivalent element, in the opposite direction, was also added by NCB for the short seller's notional funding gap between the trade date and settlement date of the unwind phase.

- In Lindisfarne trades, the stock lender was always the same entity as the forward counterparty, e.g. Potala in Lindisfarne 1.

Maple Point Model 2014 (Indigo 1, Indigo 2, NCB 3)

Example (Maple Point Model 2014):

Indigo 2 - (Smokey Mountain Ventures Pension Plan (**SMV**)) - Novo Nordisk A/S B Shares - March 2014)

Declaration Date: Thursday 20 March 2014 (DKK4.50 per share)
Ex-date: Friday 21 March 2014
Record Date: Tuesday 25 March 2014
Payment Date: Wednesday 26 March 2014

47. **Equity Trades:** on a Novo Nordisk dividend declaration date, 20 March 2014, a short seller, Palila Assets Ltd (**Palila**), sold and SMV bought, via E-Brokers (UK) LLP (**E-Brokers**) as broker, 11,500,000 Novo-Nordisk B Shares at a price of DKK248.10 per share, for settlement on 26 March 2014, the dividend payment date.

48. **Forwards:** also on the dividend declaration date, SMV entered into a forward contract with Evimer to sell 11,500,000 Novo-Nordisk B Shares at DKK245.44 per share, with an expiry date of 19 September 2014; and Evimer entered into an otherwise identical forward contract with Palila.

49. **Stock Loans:** on the dividend payment date, 26 March, SMV agreed to lend 11,500,000 Novo-Nordisk B Shares to Potala with collateral of DKK248.10 per share, the same as the price under the Equity Trades, to settle the same day; and Potala agreed a matching stock loan to Palila. Both stock loans included the term for reduction of collateral "*with regard to*" the 20 March 2014 dividend.

50. **Unwind:** as under the Solo Model 2012/2013, the traded positions were subsequently unwound using the same parties:

    - on 19 August 2014, SMV sold, and Palila bought, through E-Brokers UK, the same volume, 11,500,000 Novo-Nordisk B shares, at a price of DKK251.45 per share, for settlement on 22 August 2014;

    - on the same day, Palila agreed to sell a forward position in 11,500,000 Novo-Nordisk B shares to Evimer at a price of DKK251.56648 per share and Evimer entered into an otherwise identical contract with SMV;

- the Stock Loans were recalled, for settlement also on 22 August 2014.

51. **Credit Advice Note:** Indigo issued a CAN dated 26 March 2014 reflecting a credit to SMV's account referable to the 20 March 2014 Nov-Nordisk B share dividend for a quantity of 11,500,000 shares, referring to a "*Gross Dividend*" amount of DKK51,750,000, a "*Tax*" amount of DKK13,972,500, and a "*Net Dividend*" amount of DKK37,777,500.

52. **Book Keeping:** within account records at Indigo:

    - that "*Net Dividend*" amount was debited from Palila;
    - the same amount was credited to SMV; and
    - the stock loan collateral was reduced by the same amount, creating a balancing 'cash flow'.

53. **Tax Refund Claim:** on 13 May 2014, Goal submitted a tax refund claim to SKAT, including for the amount of DKK13,972,500 stated in, and supported by, that Indigo CAN, and SKAT paid in full.

Maple Point 2015 (NCB 1, NCB 2, Lindisfarne 1, Lindisfarne 2)

Example (Maple Point 2015):

Lindisfarne 2 - (Phovea Pension Plan (**Phovea**) - Coloplast A/S B Shares - May 2015)

Declaration Date: Wednesday 6 May 2015 (DKK4.50 per share)
Ex-date: Thursday 7 May 2015
Record Date: Friday 8 May 2015
Payment Date: Monday 11 May 2015

54. **Equity Trades:** on 6 May 2015, a Coloplast dividend declaration date, a short seller, Vistamax General Trading Inc (**Vistamax**), sold and Phovea bought 985,200 Coloplast B shares at a price of DKK523.50 per share, for settlement on 11 May 2015, the dividend payment date, through E-Brokers UK acting as agent.

55. **Forwards:** also on that date, Phovea entered into a forward contract with Interine Investment Limited (**Interine**), and Interine entered into an otherwise identical forward contract with Vistamax, to sell 985,200 Coloplast B shares at DKK521.12509 per share with a maturity date of 18 September 2015.

56. **Stock Loans:** on the dividend payment date, 11 May 2015, Phovea agreed to lend 985,200 Coloplast B shares to Interine with collateral of DKK515,752,200 (i.e. DKK523.50 per share, the same as the price under the Equity Trades), to settle the same day, and Interine agreed the same with Vistamax, in each case with the dividend-related collateral reduction term.

57. **Unwind:** the traded positions were later unwound using the same parties:

    - on 11 August 2015, Phovea sold and Vistamix bought, through E-Brokers UK, 985,200 Coloplast B shares at DKK483.70 per share, for settlement on 13 August 2015;

- on the same day, Vistamix agreed to sell a forward position in 985,200 Coloplast B shares to Interine at a price of DKK483.95260 per share and Interine entered into an otherwise identical contract with Phovea;

- the Stock Loans were recalled, also for settlement on 13 August 2015.

58. **Credit Advice Note**: Lindisfarne issued a CAN dated 11 May 2015 reflecting a credit to Phovea's account referable to the 6 May 2015 Coloplast B share dividend for a quantity of 985,200 shares, referring to a "*Gross Dividend*" amount of DKK4,433,400, a "*Tax*" amount of DKK1,197,018, and a "*Net Dividend*" amount of DKK3,236,382.

59. **Book Keeping:** within account records at Lindisfarne:

    - DKK3,236,382 was debited from Vistamax;

    - an equal amount was credited to Phovea; and

    - the stock loan collateral was reduced by the same amount, generating a 'cash flow' that balanced exactly with those entries.

60. **Tax Refund Claim:** on 26 May 2015, Goal submitted a tax refund claim to SKAT for DKK1,197,018 supported by that CAN, and SKAT paid in full.

KLAR MODEL

Overview

61. The Klar Model involved tax refund claims made between December 2012 and May 2015 based on underlying trading between March 2012 and March 2015, all supported by CANs issued by Salgado as custodian. The Klar Model was simpler than the other Models, stripping the structure to a minimum and using no price hedging transactions. There were two variants:

    - in the original variant ('buy and lend'), a buyer would buy cum-ex from, and lend on the settlement date to, a short seller, with purchase price and stock loan collateral matching, and the traded position would later be unwound by reverse transactions, the buyer selling to the short seller and recalling the stock loan;

    - in the later variant ('buy and re-sell'), a buyer would buy cum-ex from and sell ex-div to a short seller, for settlement on the same date, and there would later be a reverse pair of trades, all ex-div (relative to the dividend around the ex-date of which the original cum-ex purchase was structured).

    The buy and lend variant was used in trading around ex-dates between March 2012 and August 2013 (inclusive); the buy and re-sell variant was used in trading around ex-dates between November 2013 and March 2015.

62. The buyers were either: (a) one of two entities owned by Mr Klar, Europa Executive Pension Scheme and Khajuraho Trading SARL; or (b) USPFs owned by Kevin Kenning

and Todd Bergeron, Blue Ocean Equity LLC Retirement Plan & Trust and Cole Enterprises USA Retirement Plan & Trust.

63. In the buy and lend variant in 2012, the short seller and stock borrower was always Salgado itself, the custodian. Mr Klar said that a different entity, Heber Securities Trading Ltd, was the short seller / stock borrower in that variant in 2013 and the short seller / repurchaser in the buy and re-sell variant. That issue is dealt with in the main body of this judgment.

64. The lack of any equity price hedge was deliberate, and it distinguished the thinking behind the Klar Model from that of the Solo Model or Maple Point Model. In those Models, the idea was that *everything* settled to zero, on the terms traded between all of the parties, leaving the tax refund claim as, even on paper, the only profit for anyone in the structure (subject to the wrinkle for the Solo Model referred to in paragraphs 74 and 156-157 of the main body of this judgment). Klar Model trading being unhedged meant that, on paper, the initial and unwind phases, taken as a whole, and ignoring the tax reclaim, would be profitable for one or other side of the structure (the long or the short), trade by trade. Mr Klar explained his thinking in cross-examination, and I accept this evidence, so far as it goes. It was that a 'sweet spot' might exist where, over time, the aggregate outturn, on paper, was a profit for the short and corresponding loss for the long that fell between zero and the aggregate of the successful tax refund claims (net of Tax Agents' fees) made on behalf of the long.

65. That profit for the short and loss for the long would then be, in effect, the means by which the buyer and short seller shared in the success of the tax refund claims. The short seller had no means to fund any overall trading profit generated for the buyer, if there was one; and the buyer had no means to fund any overall trading profit generated for the short seller, if it exceeded the net realised value of its (the buyer's) tax refund claims. The whole concept therefore still relied on the success of the facilitated tax refund claims and would collapse without it.

Example (Klar Model):

Salgado 1 - (Europa LLP Executive Pension Scheme (**Europa**) - Carlsberg A/S (B) - March 2013)

Declaration Date: Thursday 22 March 2012 (DKK5.50 per share)
Ex-date: Friday 23 March 2012
Record Date: Tuesday 27 March 2012
Payment Date: Wednesday 28 March 2012

66. **Equity Trade:** on a Carlsberg dividend declaration date, 22 March 2012, Europa bought 1,000,000 Carlsberg B shares from Salgado at DKK465 per share for settlement on 28 March 2012, the dividend payment date, and Carlsberg declared a dividend of DKK5.50 per share, 73% of which is DKK4.015 per share.

67. **Stock Loan:** on 28 March 2012, the dividend payment date, Europa agreed to lend Salgado 1,000,000 Carlsberg B shares against collateral of DKK465 per share, for same day settlement.

68. **Unwind:** on 23 April 2012, Europa sold 1,000,000 Carlsberg B shares to Salgado at a price of DKK475.50 per share for settlement on 26 April 2012; and on 26 April 2012, the stock

loan was recalled at DKK465 per share with same day settlement. That unwind, on paper and if taken in isolation, was profitable for Europa and loss-making for Salgado to the tune of DKK10,500,000.

69. **Book Keeping:** in account records at Salgado, where the currency of account for Europa was GBP:

- £453,004.28, then equivalent to DKK4,015,000, was credited to Europa on 28 March 2012 by a book entry with a descriptor of "Dividend", as one of a number of book entries referable to the Carlsberg cum-ex trade;

- that will have contributed to the net trading profit or loss, on paper, from this Sample Trade, within a running aggregate net balance of account generated by all of Europa's trades taken together, meaning that a net aggregate trading loss was recorded as a negative running account balance, i.e. a debt owed by Europa to Salgado, and a net aggregate trading profit was recorded as a positive running account balance, i.e. a debt owed by Salgado to Europa; but

- reflecting Mr Klar's 'sweet spot' idea, no such overall trading profit recorded as a debt owed by Salgado to Europa would ever be paid by Salgado, and any such overall trading loss recorded as a debt owed by Europa to Salgado could only ever be met by Europa up to the total in tax refunds it received (net of Tax Agents' fees) from SKAT and other national tax authorities on tax refund applications made on its behalf.

70. **Trading Profit/Loss:** subject to the complexity dealt with in the next paragraph, the overall trading profit or loss for Europa, on paper, of this Sample Trade, Salgado 1 (Carlsberg B, 1,000,000 shares, ex-date 23 March 2012), would have been the net effect of the following book entries in Europa's running account at Salgado:

    a. on the initial trade date of 22 March 2012, debits of £651.37 and £30.00 for "Commission on execution" and "Clearing & Settlement Charges";

    b. on the initial settlement date of 28 March 2012, an "Equity Settlement" debit of £52,109,966.15 and a "Stock Loan Settlement" credit of the same amount (being the GBP equivalent on that date of the matching equity trade price and stock loan collateral of DKK465,000,000);

    c. also on that initial settlement date, the "Dividend" credit of £453,004.28;

    d. from that date until the settlement date of the unwind phase, accruing daily, a "Stock Lending Fee" credit and an "Interest on Stock Loan Cash Pool" debit, based on the terms of the stock loan transaction confirmation. As of the unwind settlement date, when the stock loan terminated, ending those accruals, they came to £4,197.75 and £14,731.20, respectively;

    e. on the unwind trade date, a "Clearing & Settlement Charge" debit of £29.40;

    f. on the unwind settlement date, an "Equity Settlement" credit of £52,191,831 (being the GBP equivalent then of the unwind sale price, DKK475,500,000) and a "Stock Loan Settlement" debit of £52,109,966.15, which is at first blush an oddity that Mr Klar was unable to explain as a matter of recollection (the oddity being that it

equalled the GBP credit treated as cash collateral at the start of the stock loan, but although the transaction amounts were the same (DKK465,000,000), the exchange rate had changed – at the exchange rate used for the unwind settlement, a notional return of cash collateral of DKK465,000,000 should have 'cost' Europa less, namely £51,039,330);

g. that is to say, a trading profit (in this instance) for Europa, on paper, of £523,624.91 (which would have been £1,594,261.06 if the correct exchange rate had been used for the stock loan cash collateral return).

71. **Stock Loan MTM:** subject to the exchange rate oddity referred to above, recalling the stock loan against a return of cash collateral of DKK465,000,000 treats the cash collateral as fixed at that amount for the duration of the loan, so that all of it needed to be returned at the end. However, in the monthly "Cash" statements that Mr Klar created for Europa, there was also an aggregate "Stock Loan Cash Collateral Pool" item. The contribution to that item from any given trade was derived from a mark-to-market valuation on the statement date of the stock supposedly lent on that trade, if the stock loan was still running. So in this instance, in Europa's "Cash" statement for 5 April 2012, with the stock loan running, the value of 1,000,000 Carlsberg B shares was marked at £50,340,267.64, meaning that Europa was notionally over-collateralised by £1,769,698.51 (having been credited at the start with collateral of £52,109,966.15).

72. Taken with mark-to-market differences on the other open stock loans shown on Europa's account, that contributed to a debit entry in the 5 April 2012 "Cash" account of £7,430,521.25. The effect of that was to treat Europa as returning £1,769,698.51 of the collateral on the Carlsberg stock loan. It is not apparent what DKK:GBP exchange rate was being used for account entries on 5 April 2012, but at (say) 9:1, £1,769,698.51 would have been close to DKK16 million, meaning that, in effect, the cash collateral on Sample Trade Salgado 1 was reduced on 5 April 2012 to c.DKK449 per share. In cross-examination, Mr Klar could not see the impact it might be thought this should have had on any stock loan recall price for the unwind phase. He correctly articulated that the provision of cash collateral under a stock loan is functionally like a cash loan, but failed to grasp that his mark-to-market check, once it was translated into a cash debit from Europa, functioned as a part repayment that *prima facie* should have reduced the cash obligation when the stock loan was recalled.

73. It was evident to me that Mr Klar does not now recall at this level of detail how he dealt with the book entry accounting on these trades (and indeed he said as much). Furthermore, his cross-examination on the point by Mr Rabinowitz KC for SKAT was not informed by a complete analysis of the available accounting records:

a. the 5 April 2012 statements were the first to be produced after the settlement date of any Klar Model trades;

b. in later monthly statements, the "Stock Loan Cash Collateral Pool" item may have sought to aggregate: (i) stock loan mark-to-market differences on the new statement date for any stock loans then running; (ii) a reversal (in effect) of the prior month's mark-to-market adjustment; and (iii) an exchange rate adjustment to balance what would otherwise be a foreign exchange gain or loss caused by returning, on stock loans that had been unwound since the previous monthly statement, the GBP value

treated as originally received by way of collateral rather than the GBP value on the unwind settlement date of the obligation to return a non-GBP collateral amount;

c. thus, for example, in the 5 May 2012 statements, marking open stock loans to market showed Europa to be notionally over-collateralised to the tune of £4,015,377.85, but the "Stock Loan Cash Collateral Pool" item was a *credit* entry of £6,751,779.50, a difference in Europa's favour of £10,767,157.40;

d. that difference may have been the aggregate of (i) the reversal of the 5 April debit of £7,430,521.25 and (ii) what would otherwise have been an FX gain for Salgado (and loss for Europa) through not booking the unwind collateral return on stock loans at then current GBP values.

74. If that is how Mr Klar was accounting for things, then the effective trading outturn for Europa, on paper, of the Salgado 1 Sample Trade may have been the second of the two figures referred to in paragraph 70.g above. SKAT drew attention, in a written note provided at my request after Mr Klar had given evidence, to some possible problems with that explanation. Overall, I was left sufficiently unclear as to be unable to make a finding as to how exactly, acting for Salgado, Mr Klar was accounting for transaction cash flows and, in consequence, Klar Model parties' profits or losses on paper other than tax refund claim receipts.

75. **Credit Advice Note:** on 29 November 2012, Salgado issued a CAN in respect of Europa's account, referring to a "*Gross dividend*" amount of DKK5,500,000, a "*Tax amount*" of DKK1,485,000, a "*Withholding rate*" of 27%, and a "*Net dividend*" amount of DKK4,015,000.

76. **Tax Refund Claim:** on 21 December 2012, Goal submitted a refund claim to SKAT that included a claim supported by that Salgado CAN, and in respect of that claim SKAT made a payment of DKK660,000, equal to 12% of the gross dividend amount referred to in the CAN, the difference between the Danish WHT rate of 27% and the maximum dividend tax rate promised by the UK-Denmark DTT of 15%.

Appendix 4 – The Tax Reclaim Forms

Form 06.003

54-15-357-2352

SKAT

Claim to Relief from Danish Dividend Tax

[ ] In my capacity as beneficial owner [X] On behalf of the beneficial owner

Claim is made for refund of Danish dividend tax, in total DKK: 9,776,044.52

Beneficial Owner

Full name
Ellbell Capital Limited (TIN: C/OBA: 0010231)

Full address
1st Floor, Lot 39
Brumby Centre, Jalan Muhibbah
87011 Labuan F.T. Malaysia

E-mail
reclaims@acupay.com attention to Elsie Pappoe (+44.207.382.0340)

Signature
Beneficial owner/applicant
[redacted], Acupay System LLC
01/05/2015

If the claim is made on behalf of the beneficial owner the applicant's power of attorney shall be enclosed

As documentation is enclosed dividend advice(s), number: 7

(This documentation is obligatory)

Financial institution

The amount is requested to be paid to:

Name and address
DEXIA BANQUE INTERNATIONALE A LUXEMBOURG S.A
69 route d'Esch, Office PLM +446A, L 2953 Luxembourg
name of the account holder: Acupay System LLC

Reg. no	Account no	
	0022 1819 0790 5700	
SWIFT	BLZ	IBAN
BILLLULL		LU38 0022 1819 0790 5700

Certification of the competent authority

It is hereby certified that the beneficial owner is covered by the Double Taxation Convention concluded between Denmark and

.....

Date Official stamp and signature

When signed to be forwarded to:

Skattecenter Høje-Taastrup
Postboks 60
DK-2630 Taastrup

2010.07 (gl.nr. U 20x)
06.003 ENG

SKSK00000492-0002

Form 06.008

54-23-07-050

TOLD SKAT

Andragende om fritagelse for dansk udbytteskat (1)
Claim to Relief from Danish Dividend Tax(1)

Der skal indgives særskilt ansøgning for hvert enkelt selskab.
Include only one company on each form.

Eksemplar 2
(Til de udenlandske skattemyndigheder)
Copy 2
(For the Foreing Tax Authorities)

Hermed andrager

Kun for selskaber / ***Corporate shareholders only***

i min egenskab af
in my capacity as

for selskabet
of the company Europa LLP Executive Pension Scheme

der er hjemmehørende (fulde adresse)
which is a resident of (full address) Pension Practitioner.com,Daws House, 33-35 Daws Lane London,NW7 4SD,UNITED KINGDOM

undertegnede (fulde navn)
I the undersigned (full name)

der har bopæl (fulde adresse)
a resident of (full address)

om fritagelse for dansk beskatning af de nedennævnte udbytter af aktier eller andele
hereby claim relief from Danish taxation on the dividends from shares or participations as specified below

i (selskabets navn)
issued by (name of company) CARLSBERG AS-B

af hvilke værdipapirer jeg/selskabet (2) er ejer/udbytteberettiget (2)
as the owner/usufructuary (2) of the said shares or participations

Værdipapirets art (3) / *Nature of security (3)*	Antal / *No. of securities*	Pålydende i DKK pr. aktie / *Nominal value in DKK per share*	Udbyttets forfaldsdato og -år (4) / *Maturity date and year of dividend (4)*	Antal kuponer / *Number of coupons*	Kuponens beløb i DKK / *Dividend per coupon in DKK*	Samlet udbytte i DKK / *Total dividends in DKK*	Procent for fritagelse / *Percentage refund claimed*	Beløb, der søges tilbagebetalt, i DKK / *Refund claimed in DKK*
1	2	3	4	5	6	7	8	9
	1000000		28-Mar-2012		5.500000	5500000.00		
					I alt / *total*	5500000.00	12.00	660000.00

Attestation / ***Certification***

Attestation for udbetaling af udbytte (5)
Det attesteres, at det i kolonne 7 anførte udbytte er udbetalt efter fradrag af en udbytteskat på DKK:
Certification for payment of dividends (5)
This is to certify that the dividends stated in column 7 were paid after deduction of dividend tax at the amount of DKK: 1485000.00

sted: / *place:* | dato: / *date:* . . .

stempel og underskrift
stamp and signature:

sted: / *place:* Croydon | dato: / *date:* 04 . 12 . 12

underskrift
signature

Please Pay Refund to:-
NatWest Bank, High Street BranchCroydon
Bank IBAN Number :- IBAN GB88NWBK60730134015159
A/C Number 34015159 A/C Name Goal TaxBack Ltd
Please Quote Reference :- 007 DK 5

(1) Ansøgningen oprettes i 3 eksemplarer.
The claim must be made in triplicate.
(2) Det ikke gældende overstreges.
Delete whichever is inapplicable.
(3) Aktier eller andelsbeviser, hvad enten de er udstedt på navn eller til ihændehaveren.
Registered or bearer shares.
(4) I kolonne 4 skal altid anføres, fra hvilken dato og år udbyttet tidligst kunne hæves.
In column 4 should always be stated the first date and year on which the dividend has been payable.
(5) Attestation skal afgives af det selskab, pengeinstitut eller anden institution, der udbetaler det i kolonne 7 anførte udbytte.
Certification shall be given by the company, financial institution or any other institution paying the dividends stated in column, 7.

96.01 (gl.nr. U 20b)
06.003

SKSK00000518-0002

54-13-195-124

Andragende om fritagelse for dansk udbytteskat (1)
Claim to Relief from Danish Dividend Tax(1)

TOLD SKAT

Der skal indgives særskilt ansøgning for hvert enkelt selskab.
Include only one company on each form.

Eksemplar 1
(Til de danske skattemyndigheder)
Copy 1
(For the Danish Tax Authorities)

Hermed andrager

Kun for selskaber ***Corporate shareholders only***

i min egenskab af
In my capacity as

for selskabet RJM Capital Pension Plan
of the company

Employer id.no. .....

der er hjemmehørende (fulde adresse) 40 West 57th Street - 20th Floor, New York, NY 10019, USA,
which is a resident of (full address)

undertegnede (fulde navn)
I the undersigned (full name)

U.S. Soc. Sec.no. .....

der har bopæl (fulde adresse)
a resident of (full address)

om fritagelse for dansk beskatning af de nedennævnte udbytter af aktier eller andele
hereby claim relief from Danish taxation on the dividends from shares or participations as specified below

i (selskabets navn)
issued by (name of company) CARLSBERG A/S - B SHARE

af hvilke værdipapirer jeg/selskabet er ejer/udbytteberettiget (2)
as the owner/usufructuary of the said shares or participations (2)

Værdipapirets art (3) *Nature of security (3)*	Antal *No. of securities*	Pålydende i DKK pr. aktie *Nominal value in DKK per share*	Udbyttets forfaldsdato og -år (4) *Maturity date and year of dividend (4)*	Antal kuponer *Number of coupons*	Kuponens beløb i DKK *Dividend per coupon in DKK*	Samlet udbytte i DKK *Total dividends in DKK*	Procent for fritagelse *Percentage refund claimed*	Beløb, der søges tilbagebetalt, i DKK *Refund claimed in DKK*
1	2	3	4	5	6	7	8	9
	640000	6.000000	27-Mar-2013			3840000.00		
I alt *total*						3840000.00	27.00	1036800.00

Attestation ***Certification***

Certificate of deduction tax (5)
I hereby certify that the dividends shown in column 7 were paid under deduction of dividend tax, which amounted in total to DKK: 0.00

sted: *place:* | dato: *date:*
stempel og underskrift
stamp and signature:

GOAL TaxBack Limited, 7TH Floor, 69 Park Lane,, CROYDON, CR9 1BG, United

sted: *place:* Kopa | dato: *date:* 04.08.13
underskrift
signature

goal group

***On Refund Please Quote:** 000 30 DK 46-1910855

(1) Ansøgningen oprettes i 3 eksemplarer.
The claim must be made in triplicate.
(2) Det ikke gældende overstreges.
Delete whichever is inapplicable.
(3) Aktier eller andelsbeviser, hvad enten de er udstedt på navn eller til ihændehaveren.
Registered or bearer shares.
(4) Hvis aktierne ikke bærer kuponer, skal i kolonne 4 angives den dag, da udbyttet tidligst kunne hæves, og i kolonne 6 udbyttet pr. aktie.
If the share is not accompanied by coupons state in column 4 the first date on which the dividend is payable, and in column 6 the amount of dividend per share.
(5) Attestation for tilbageholdt udbytteskat skal gives af det selskab eller bank, som udbetaler det i kolonne 7 angivne beløb.
The certificate of deduction of dividend tax is to be given by the company, financial institution or other institution paying the dividends shown in column 7.

94.09 (gl.nr. U.33)
06.008

foursolo

SKSK00001072-0002

Appendix 5 – The CANs

SCP CAN (1st Version)

54-13-713-347

Solo Capital

4 Throgmorton Avenue
London EC2N 2DL

DIVIDEND CREDIT ADVICE
Issue Date: 3rd December 2012, Issue No: 0091

Mill River Capital Management Pension Plan
40 West 57th Street,
Floor 20,
New York, NY 10019,
United States of America

Date: 3rd December, 2012

Dear Sirs,

Please be advised that we have credited your account MIL01 – Mill River Capital Management Pension Plan for the value date 3rd December, 2012. This payment represents the dividend as shown below:

Security Name:	**CHR Hansen Holding A/S**
Sedol:	B573M11
ISIN:	DK0060227585
Pay Date:	3rd December, 2012
No of Shares:	1,000,000
Gross Dividend:	DKK 2,900,000
Tax:	DKK 783,000
Net Dividend:	DKK 2,117,000

Name: GRAHAM HORN
Solo Capital Partners LLP

Solo Capital Partners LLP is a limited liability partnership registered in England & Wales and is authorised and regulated by the Financial Services Authority of the United Kingdom.
(FSA Registration Number 566533, LLP Registration Number OC367979, VAT Registration Number 123 3462 46)

SKSK00000845-0003

SCP CAN (2nd Version)

54-15-357-2014

Solo Capital

10 Exchange Square,
Primrose Street, London, EC2A 2EN

DIVIDEND CREDIT ADVICE

Issue Date: 31-03-2015, Issue No: 3,742

The Oaks Group Pension Plan
10 Throckmorton Avenue
West Long Branch
New Jersey
07764
United States of America

Date: 31-03-2015

Dear Sirs,

Please be advised that we have credited your account OAK01, for the value date of 31-03-2015. This payment represents the dividend as shown below:

Security Name:	**FLSMIDTH & CO A/S**
Sedol:	**5263574**
ISIN:	**DK0010234467**
Ex Date:	27-03-2015
Record Date:	30-03-2015
Pay Date:	31-03-2015
Dividend Per Share:	DKK 9.00
No of Shares:	400,182
Gross Dividend:	DKK 3,601,638.00
Tax:	DKK 972,442.26
Net Dividend:	DKK 2,629,195.74

Solo Capital Partners LLP is authorised and regulated by the Financial Conduct Authority of the United Kingdom
(FCA Registration Number 566533, Company Number OC367979, VAT Registration Number 123 3462 46)

Old Park Lane CAN

54-15-357-2353

OLD PARK LANE CAPITAL PLC+

Date: 07-04-2015
Ref: 4,202

INCOME ADVICE

Ellbell Capital Limited, 1st Floor, Lot 39 , Brumby Centre , Jalan Muhibbah , 87011 Labuan F.T , Malaysia

VESTAS WIND SYSTEMS A/S

Ticker	ISIN
VWS	DK0010268606

Dividend

Ex-dividend Date	Record Date	Payment Date
31-03-2015	01-04-2015	07-04-2015

Payment details

Dividend Per Share	No. of shares	Gross	Tax	Net
DKK 3.90	1,119,572	DKK 4,366,330.80	DKK 1,178,909.32	DKK 3,187,421.48

Old Park Lane Capital plc
49 BERKELEY SQUARE, LONDON W1J 5AZ
T: +44(0)20 7493 8188 F: +44(0)20 7493 3576
W: www.oldplc.com
Old Park Lane Capital Plc is a member of the London Stock Exchange
and Authorised and Regulated by the Financial Conduct Authority (Firm no. 477870).
Registered in England no. 06440879. Registered Office: 49 Berkeley Square, London W1J 5AZ

Telesto CAN

54-15-356-1860

27 Old Gloucester Street
London
WC1N 3AX

CREDIT ADVICE

Date: 07-04-2015 ID: 4,353

Shayka Consultancy Limited,
Lot 119 Lazenda Villa 5,
Kampung Lajau,
87000 Labuan F.T. Labuan,
Malaysia,

Security: AP MOELLER-MAERSK A/S-B ISIN: DK0010244508

Ex Date: 31-03-2015 **Record Date:** 01-04-2015 **Pay Date:** 07-04-2015

Dividend Per Share: DKK 1,971.00

No of Shares: 8,071

Gross Dividend: DKK 15,907,941.00

Withholding tax deducted: DKK 4,295,144.07

Net Dividend: DKK 11,612,796.93

Telesto Markets LLP is a limited liability partnership incorporated under the laws of England and Wales and is authorised and regulated by the Financial Conduct Authority of the United Kingdom. Its registered office address is 27 Old Gloucester Street, London WC1N 3AX
(FCA Registration Number 609226; Company Number OC388442)

SKSK00001127-0003

West Point CAN

54-15-402-4831

WEST POINT

71-75 Shelton Street
Covent Garden
London
WC2H 9JQ
Tel +44 (0)207 382 4953

DIVIDEND CREDIT ADVICE
07-04-2015
Tran Ref: 4,521

The Westport Advisors LLC 401k Plan
420 West End Ave
New York NY 10024
United States of America

AP MOELLER-MAERSK A/S-B

ISIN

DK0010244508

Ex Date:	Record Date:	Pay Date:
31-03-2015	01-04-2015	07-04-2015

Dividend Per Share:	No of Shares:
DKK 1,971.00	8,064

Payment Details

Gross Dividend:	Withholding tax deducted:	Net Dividend:
DKK 15,894,144.00	DKK 4,291,418.88	DKK 11,602,725.12

West Point Derivatives Ltd is a limited company incorporated under the laws of England and Wales and is authorised and regulated by the Financial Conduct Authority of the United Kingdom. Its registered office address is 71-75 Shelton Street, Covent Garden, London, WC2H 9JQ.
(FCA Registration Number 430967; Company Number 04990389)

SKSK00001520-0003

Indigo CAN

54-24-372-938

INDIGO
SECURITIES

CREDIT ADVICE – DIVIDEND
Production Date: 26 March 2014

Smokey Mountains Ventures Pension Plan
11 Regents Park
Ladera Ranch
California 92694
United States of America

Account Name : Smokey Mountains Ventures Pension Plan
Account No : SMO01

Security Description:	CARLSBERG AS-B
ISIN:	DK0010181759
Ex-date:	21-March-2014
Payment Date:	26-March-2014
Dividend Per Share:	DKK 8.00
Number of Securities:	475,000
Gross Dividend:	DKK 3,800,000.00
Tax:	DKK 1,026,000.00
Net Dividend:	DKK 2,774,000.00

Indigo Securities Limited

Company Reg. No. 06656125
INDIGO SECURITIES LIMITED
FCA Reg. No. 489448

Indigo Securities Ltd, 30 Crown Place, London, EC2A 4EB
T +44 (0)20 7965 4740 F +44 (0)20 7965 4741 E info@indigo-securities.com
Company Registration No: 06656125. Authorised and Regulated in the U.K. by the Financial Conduct Authority FCA Registration No 489448

SKSK00001141-0003

Lindisfarne CAN

54-25-441-1263

Lindisfarne Partners

Lindisfarne Partners LLP
1 Tudor Street
London, EC4Y 0AH

Client Account No. bal00144

Trade Ref No. b0014450

Date. 10 March 2015

DIVIDEND CREDIT ADVICE

Babine Pension Plan
141 Heather Drive
New Hope, PA 18938
USA

Security Description. TDC A/S Ticker. TDC DC ISIN. DK0060228559

Ex-Date 06 March 2015

Payment Date. 10 March 2015

Dividend per Share.	DKK 1.00
No. of Shares.	5,811,500
Gross Dividend.	DKK 5,811,500.00
Tax.	DKK 1,569,105.00
Net Dividend.	DKK 4,242,395.00

Lindisfarne Partners LLP is authorised and regulated by the Financial Conduct Authority.
(FCA Registration Number 583157, VAT Registration Number 988 0323 91)

NCB CAN

54-25-389-871

North Channel Bank
Privatbank seit 1924

North Channel Bank GmbH & Co. KG · Erthalstr 1 · Turm B · 55118 Mainz

Grace Bay Ventures Pension Plan
575 West End Avenue Apt. 3 D
New York, NY, 10024
USA

Sec. account No.	**70230979**
Client no.	23097900
	Grace Bay Ventures Pension Plan
Trade no.	56128307830
Date	02.03.2015

11695448 00930/0133 0000006 03.03.2015 00003/69

Dividend credit
for non-resident tax payer status

Par value no.	Security description	ISIN	(WKN)
Share 1,293,100	NOVOZYMES A/S NAVNE-AKTIER B DK 2	DK0060336014	(A1JP9Y)

Payment date	02.03.2015	Dividend per unit	3.00 DKK
Holdings as at	25.02.2015	Country of origin	Denmark
Ex-date	26.02.2015		
Financial year	01.01.2014 - 31.12.2014		
Exchange rate	EUR / DKK 7.4836		

Dividend income	**3,879,300.00**	**DKK**	**518,373.51+ EUR**
Conversion in EUR	518,373.51	EUR	
Overseas tax deducted at source 27 % on 3,879,300.00 DKK			139,960.85- EUR
Dividend subject to withholding tax	518,373.51	EUR	1.047411
Actual payment			**378,412.66+ EUR**

We will credit the amount with value date 04.03.2015 to the account no. 230979 (IBAN DE88 1003 0600 0000 2309 79), BLZ 100 306 00 (BIC GENODEF1OGK).

Not a tax certificate.

0105 0350/0102.5000012ER01

This note is valid without signature.
Please pay attention to the back side.

North Channel Bank GmbH & Co. KG
Erthalstraße 1
Bonifaziusturm B
55118 Mainz
Telefon: +49 6131 6693-0
Fax: +49 6131 6693-200

Amtsgericht: Mainz
HRA 41054

BLZ: 100 306 00
BIC: GENODEF1OGK
Ust.-ID DE 135932601

Persönlich haftende Gesellschafterin:
North Channel GmbH
Amtsgericht Mainz
HRB 42622

www.northchannelbank.de

Geschäftsführer:
Volker Bellmann
Uwe Jablonka

Salgado CAN

54-23-07-052

Salgado Capital

CREDIT ADVICE

Name of beneficial owner:	Europa LLP Executive Pension Scheme
Full address:	Daws House, 33-35 Daws Road, London, NW7 4SD, United Kingdom

Security details:

Issuer of the security:	Carlsberg A/S	Record date:	27/03/2012
Name of the security:	B shares	Ex-date:	23/03/2012
Security code (ISIN):	DK0010181759	Payment date:	28/03/2012
Number of shares:	1,000,000	DPS:	DKK5.50

Dividend details:

Gross dividend:	DKK5,500,000.00	Withholding rate:	27%
Tax amount:	DKK1,485,000.00	Currency:	DKK
Net dividend:	DKK4,015,000.00		

Due dividend payment details:

Due payment amount:	DKK4,015,000.00	Due payment date:	28/03/2012

Authorised Signature

Andrew Moray Stuart, Director
Name & Title

Mauritius, November 29th 2012
Place & Date

THE AUTONOMOUS ISLAND OF ANJOUAN UNION OF COMOROS
SALGADO CAPITAL
Company number 10994

Company Stamp

Suite 1239, BP 303, Mutsamudu, Anjouan, Union of Comoros
Tel: +269 336 9496 Fax: +269 771 1815 Email: mail@salgadocapital.com Web: www.salgadocapital.com
Incorporated in Anjouan (Company number: 10994)
Regulated & supervised by the Offshore Finance Authority of Anjouan with licence to operate as a Securities Broker & Custodian

Appendix 6 – The Factual Witnesses

SKAT's Factual Witnesses

Christian Ekstrand

1. Mr Ekstrand was a Project Manager in a unit within SKAT with responsibility for investigating and dealing with complex cases of fraud or possible fraud. He was the lead investigator at SKAT into the possibility that it had been the victim of fraud, reporting to superiors within SKAT, following the tip-off in June 2015 by Mr Amstrup on behalf of an anonymous client (in fact, Mr Bains) and the more substantial and detailed notification of possible fraud sent to SKAT by HMRC in July 2015. I assessed Mr Ekstrand to be a careful, honest and open witness of fact giving trustworthy evidence to the court.

Sven Nielsen

2. Mr Nielsen was the sole SKAT employee with responsibility for the processing of WHT refund claims using the Form Scheme, including the 4,170 claims with which I am concerned. He committed an unrelated fraud against SKAT, for which he served a prison sentence in Denmark; and I considered that he was not truthful with the court in evidence he gave during cross-examination about what were evidently studied attempts on his part to avoid Mr Ekstrand's enquiries when the matters the subject of these proceedings were under investigation. That topic aside, however, I judged that he was being straightforward, open and as helpful as he could be in cross-examination, and I consider that he was being generally trustworthy in his oral evidence at trial. Its principal value was in demonstrating the gulf between, on the one hand, SKAT's pleaded case on reliance and the witness statement evidence Mr Nielsen signed and adopted as his evidence in chief, which could have been taken to support that case, and the reality, on the other hand, of the very limited processing task he performed.

Lisbeth Rømer

3. Ms Rømer was the head of Accounting II, the section of SKAT's Accounting Department concerned with dividend tax, from 2009 until her retirement on 1 December 2013. She had a good working knowledge of the function performed by Mr Nielsen, who reported indirectly to her; but she had no responsibility at any time either for carrying out that function or for deciding that it should be as limited as it was. I found her feisty, argumentative and defensive, and I was not comfortable that she gave evidence motivated simply by a desire to relate what she believes she remembers of contemporaneous events or matters of which she has or would ever have had first-hand knowledge or understanding. Rather, it seemed to me, she focused primarily on trying to work out where questions were going, so as to give, if she could, answers she thought would be helpful to SKAT's case, or exculpatory of blame for her or her team in relation to what has been a significant public scandal in Denmark. She made some important concessions that were inevitable in the face of the contemporaneous documents. Without saying that her evidence was wholly unsatisfactory, I do not consider that Ms Rømer gave what I can regard as generally trustworthy testimony.

Jens Sørensen

4. Mr Sørensen was a regional director at SKAT from 2009. Through its vice-director, to whom Ms Rømer reported (Lars Nørding until late 2013, then René Frahm Jørgensen), the Accounting Department reported to Mr Sørensen. He had neither knowledge of nor interest in the process undertaken by Mr Nielsen, no issues or problems having ever been brought to his (Mr Sørensen's) attention in relation to it; and any decisions over what should be done, if anything, to check the entitlement of those claiming dividend tax refunds were not within his or the Accounting Department's remit. Mr Sørensen was in my view a straightforward and trustworthy witness; but he was a witness with no relevant knowledge or involvement capable of assisting the court on any of the issues in the case. I found it a little baffling that SKAT asked him to be a witness at all.

Defendants

Sanjay Shah

5. In my judgment, Sanjay Shah was not a trustworthy witness. His circumstances in the two years prior to giving oral evidence at the Main Trial were far from ideal as regards his ability to participate fully and give detailed instructions in his defence of SKAT's claims against him (see paragraph 377 of the main body of this judgment). They will also have been very stressful and uncomfortable for Mr Shah generally. It would not be appropriate to take that thought too far absent evidence of any specific impact upon Mr Shah's physical or mental health, and though those circumstances are no doubt not ones Mr Shah would have chosen, they did give him time and space to reflect, without the memory-corrupting influences of conducting the litigation, especially those of reading and thinking about documentary evidence he did not see at the time and forensic documents that did not exist at the time.

6. There was therefore room for the possibility that Mr Shah might have been, if anything, *better* placed as a result of his relative isolation from the forensic process for two years to give a reasonably unvarnished account, as best he could, of what he perceives to be recollection of contemporaneous events and thought processes. Even then, of course, it would have been testimony liable to have been rendered unreliable by the passage of time and Mr Shah's more active involvement in litigating the case prior to May 2022.

7. Regrettably, but without any hesitation, I concluded that by his voluminous and detailed witness statements, adopted as his evidence in chief, and in his cross-examination, Sanjay Shah did not attempt to give an unvarnished account, as best he can, of what he thinks he can remember. In my judgment, his evidence of 'fact' on contentious issues was for the most part argument, taking and attempting to defend positions he thought helpful to his defence, or clever, or both. One of Mr Shah's shortcomings, in my judgment, is a smugness about what he did that is closely allied to a belief that he is a lot cleverer than he is.

8. His testimony, as a result, was riddled not so much with the ordinary errors of unreliable recollection that one might expect, although no doubt there were such errors too, but rather more with implausible claims and obvious lies. I do not consider it safe, in general, to treat anything Mr Shah says for himself or about the Danish dividend tax refund factory he created as reliable evidence of fact. So far as contested points of fact are concerned, his lengthy witness statements are in my view largely worthless, and his

oral evidence on numerous occasions, during a long cross-examination, consisted of saying what it occurred to him to say to try to dodge or wriggle out of possible difficulties or giving argumentative answers he thought, in the moment, might best serve a line of defence. The primary attitude was to deny whatever SKAT alleged, because SKAT alleged it, and provide attempted justifications for the denial, rather than to give simple factual recollection (if he had any). The result was a large number of attempted explanations of contemporaneous events that were mostly unsatisfactory, often nonsensical, incoherent or inconsistent.

9. Most starkly – and I linger on this now because it was not only a major theme in Sanjay Shah's testimony, but a pervasive feature of the case on the defence side – the Danish dividend tax refund business created by Sanjay Shah and those working for or with him (and likewise the Maple Point and Klar versions in which Sanjay Shah had no involvement) involved extensive and deliberate pretence, obfuscation and collateral dishonesty. However, instead of accepting that, Mr Shah made and maintained, for the most part, implausible claims that everything was done transparently and in honest fashion such that there was no behaviour that might be considered questionable and nothing that might call for explanation.

10. Behaviour like that, it has been said, is 'a badge of fraud', but generalities of that kind are no substitute for a balanced decision, on the whole of the evidence, as to whether any particular cause of action asserted by a claimant has been made out. The stand-out feature of the share trading activity in this case is that it did not involve meaningful independent decision-making by the participating entities, apart from an initial decision whether or not to sign up to the scheme. It was trading with the sole commercial purpose of generating a Danish dividend tax refund claim to be submitted on behalf of the tax advantaged buyer, supported by a CAN issued to it on the basis of the trading, where the exact terms of every transaction entered into were in reality set for the parties by those running the scheme. That I consider to be what Sanjay Shah wanted to keep hidden, and engaged in dishonesty to hide. He, likewise Mr Horn and Rajen Shah, thought that SKAT would or might well dispute claims, if aware of those full facts, and if SKAT had taken the view that claims based on contrived trading of that kind would not be paid, and had queried or scrutinised claims on that basis, rejected claims would not have been pressed (which, in practice, would have required a case to be taken to a Danish Tax Tribunal). Those scheme architects also, in my judgment, envisaged that the FCA (as regulator of the custodians and brokers involved) might disapprove of the activity, and were willing to be untruthful about what it involved in order to avoid that disapproval.

11. However, in the event SKAT did not allege that the contrived nature of the trading, in itself, rendered the resulting dividend tax refund claims invalid, or otherwise gave rise to any cause of action. It was relied on in support of SKAT's allegation that the trading was entirely sham, i.e. that the parties were not trading at all, rather they were all just pretending to trade as a pretext for the generation of a CAN whereby to dupe SKAT into making payments. It was also said to undermine claims by some of the defendants that they were not aware at the time that the trading scheme involved share-less settlement loops. The sham trading allegation, in my judgment, encouraged Sanjay Shah (and some others) to adopt and maintain indefensible positions that the trading was not contrived, or that there was not, as I have just described it, pretence, obfuscation and collateral dishonesty designed to conceal the contrivance from SKAT. It does Mr

Shah (and those others) no credit to have responded in that way; but that does not prove SKAT's case, although of course I took it into account as capable of lending some support to it.

Graham Horn

12. Mr Horn is evidently clever, articulate and knowledgeable. In my judgment, his evidence on significant contentious matters was not straightforward factual testimony. Rather, in my view, he was advancing carefully constructed attempts to explain what went on in a way that might persuade the court to find that nothing at all untoward occurred, and that he had a seriously researched, reasonable belief at the time that the Solo Model and Maple Point Model trading in fact generated Danish dividend tax refund entitlements. Although Mr Horn's evidence was more measured and coherent than Sanjay Shah's, inevitably it came unstuck on numerous points because so many aspects of those schemes just cannot be spun innocently as Mr Horn was trying to spin them. The result is that I assessed Mr Horn to be generally untrustworthy as a witness on contentious matters of fact.

Anupe Dhorajiwala

13. I found Mr Dhorajiwala, in his oral evidence, generally intelligent, careful, measured, responsive and straightforward. He was in my judgment a credible witness giving generally trustworthy evidence. That is not to say his testimony was satisfactory on every point. There were some difficulties with it, but not such as to give me any general concern about his honesty as a witness.

14. SKAT invited me to find that Mr Dhorajiwala was an evasive and non-responsive witness, who engaged in time-wasting, speculation and speech-making, and who had come to court "*to portray a false narrative that he played only a limited role … and that as such, he was not responsible for tax reclaims that were made*". I consider that submission to have been by some distance wide of the mark, and that in the case of Mr Dhorajiwala, SKAT largely proceeded upon an assumption that since he, Mr Horn and Rajen Shah were to a significant extent a team within Solo during the life of the Solo Model in 2012 and the first half of 2013, and then outside Solo working together for the Maple Point Model trading in 2014, his knowledge, understanding and thinking on points that are now said to matter can be taken to have been the same as or similar to that of Mr Horn and Rajen Shah. I do not think that assumption was justified, and I was satisfied that the account given by Mr Dhorajiwala as to his role and the extent to which, therefore, he did or did not have responsibility for or knowledge of the matters on which he was pressed at trial was not a false narrative put forward to deflect, as SKAT would have it, but a truthful account of the reality, so far as he now believes he can remember it.

Rajen Shah

15. Rajen Shah was a difficult witness. That was and is my conclusion even bearing well in mind the unwelcome disturbance inflicted upon him of being taken into custody in Dubai just as the Main Trial timetable was moving towards his scheduled appearance to give evidence (see paragraph 379 of the main body of this judgment). He often failed to answer questions straightforwardly or simply; he was unreasonably cagey, even allowing that some caginess might be natural given the case pursued against him;

overall, I judged that he was on guard to tailor his answers, at all times, to where he was worried that questions might be going (which he may or may not have been identifying accurately).

16. Those concerns essentially related to Rajen Shah's evidence about his thinking, understanding and motivations at the time. As regards matters of that kind, I do not consider him to have been a trustworthy witness.

17. By contrast, as to the detailed basic facts of what did or did not happen, I found Rajen Shah to be open and fair, a witness who satisfactorily sought to identify what he did or did not recall, and gave credible evidence based on his original participation in events as to what was or was not likely to have been the factual position, where he was not able to answer as a matter of recollection.

Guenther Klar

18. In my judgment, as regards the basic facts of what did and did not take place, Mr Klar was straightforward – open, fair and factual – in his oral evidence, including as to what he could or could not say as a matter of perceived recollection. As regards his thinking at the time, including his understanding as to whether, and if so why, Klar Model trading generated valid tax refund claims, likewise I assessed Mr Klar to be a trustworthy witness. I regard it as surprising that Mr Klar thought some of the things he says he thought at the time, and did not see that they led to what might be thought extraordinary consequences that might have caused him to question whether what he thought could be correct. But I am satisfied that that is what happened, so that Mr Klar had an honest view, albeit a mistaken one, indeed a misguided and unreasonable view, that his Klar Model trading produced sound tax refund claims.

19. Mr Klar's witness statement, adopted by him as his evidence in chief, was more problematic. Most significantly, Mr Klar there sought to spin his 'sweet spot' idea (Appendix 3, above, at paragraphs 64-65) into a claim that "*The receipt of WHT reclaims was a form of by-product of my trading, but I was not motivated to trade in order to get WHT reclaims. In fact, in terms of contributing to trading profit, WHT refunds were by no means the most significant generator of income.*" That was stupid spin that was bound to come apart when tested, and it did Mr Klar no credit that he attempted it; but when the inevitable challenge came, in cross-examination, Mr Klar accepted reasonably readily that anything that might look like profit in his trading model was unrealisable except if and to the extent that WHT reclaims succeeded in amounts sufficient to cover it so that, and in any event, the generation of successful WHT reclaims was in fact the entire purpose of the Klar Model, not just a 'by-product'.

Arthur Hogarth

20. Mr Hogarth evidently came to the witness box itching for a fight and adopted feistiness and awkwardness as his default mode, rather than having any patience with the process. In the content of his evidence, he was frankly a bit all over the place. He was patently unreliable in his recollections of significant matters and insignificant detail alike. He acknowledged having a "*terrible memory*" yet simultaneously felt happy to express firm and certain matters of recollection, demonstrating overall a very limited self-awareness, unattractively bolstered by persistent argumentativeness.

21. All in all, I therefore found Mr Hogarth an unsatisfactory witness upon whose testimony, written or oral, I do not consider it is safe to rely on any contentious point that might matter. That does not mean he was dishonest, at the time or with the court; and I do not find that he was. Rather, my conclusion is that Mr Hogarth had limited grasp of, or ability to grasp, any of the points that matter to the claim now made against Lindisfarne. This was exemplified by evidence he gave during cross-examination by Mr Graham KC for SKAT about whether tax was withheld from the dividend compensation payments booked by Lindisfarne in respect of Maple Point Model trades:

"*Q. ... because the contractual payment involves the debit of the short and the crediting of the long, there is no tax that has been withheld from that payment, is there?*

A. The debit of the short comes from cash flow 1, which is the summation of all the cash flows. That cash flow the market is assuming is 73% of the gross dividend, therefore there is tax -- no one has taken -- the market has turned round and said: this is what we are pricing.

Q. Is it your evidence to this court that with the contractual payment involving the accounting entries debit short, credit long, that tax has been withheld from that payment; is that your evidence?

A. Tax has not been withheld -- well, actually, all dividends, if you go back to dividends, tax is withheld at source. Has that payment -- payment reflects tax has been held at source, but I don't think it says that the payment has been taken off there and given to SKAT.

Q. I will ask one more time. If you could answer the question, I would be grateful.

A. If I could understand it, it would help.

Q. Is it your evidence to this court that with the contractual payment involving debit short, credit long, that tax has been withheld from that payment? Is that your evidence?

A. Okay, withheld by who?

Q. Anyone, Mr Hogarth.

A. Okay, in that case, it is the market telling me that that cash flow is 73% of the gross dividend.

MR JUSTICE ANDREW BAKER: That tells me that the amount that is to be treated as a payment to be made to somebody is to be calculated in that way, but does that mean that anybody has withheld tax from anything? Or do you not see –

A. Yes, I am just trying to clear it in my head. If the market is saying that this is the price of the equity and inside of that is just the 73% cash flows and we know that the tax is withheld at source~... I'm having difficulty with the link. I think in my mind the market is saying it has been taken off here, because it has been taken off at source, therefore I'm pricing this set of cash flows at 73% of the gross dividend.

MR JUSTICE ANDREW BAKER: I think I understand that. I may be introducing an unnecessarily homely example that later on somebody may say is completely incomparable, but if you imagine for a moment that I have an employee and I pay that employee after deducting PAYE, so what they see in their pay packet is, whatever, 80% of their gross income entitlement, I think most of us would say one would recognise that they have had 20% tax taken off their pay when they receive that, whatever amount it is that they actually get into their bank account. If Mr Graham entered into some contract with Mr Head where there is a cash flow item that happens to be calculated by reference to the PAYE net entitlement of my employee, and therefore Mr Graham pays Mr Head an amount of money that happens to equal the net pay receipt of my employee, would one say that when Mr Graham makes that payment to Mr Head anybody has taken tax off it? I think that's the sort of example that Mr Graham may -- or that may underlie a way of thinking that Mr Graham is inviting you to think about in pressing you as to whether you would say that tax has been withheld, and there may be a separate question as to whether you thought about it in that way at the time?

A. If I was one of your employees, my Lord, I would certainly think someone has taken 20% tax off me. But if that tax went into your firm, you might not pay that off because something could be happening tax-wise inside your firm which meant you didn't have to pay to HMRC every amount. So is Mr Graham asking me, saying that it has to be directly traceable back to SKAT or is he just saying that -- I don't know what he is saying. I apologise, Mr Graham. I am just not getting this."

22. In my judgment, that was the honest confusion and lack of understanding of an unsophisticated individual, not any kind of dishonest evasion.

Paul Baker

23. Mr Baker gave generally fair and straightforward evidence. There were some errors in his chronology, but none that would cause concern as to whether he was doing his honest best to say what he could or could not remember. He was the first of what became a number of witnesses with whom, unfairly, points were pursued by SKAT in cross-examination that, if they mattered, should have been put to witnesses who had come before. For example, he was taken to task as to when he first met Mr Horn, when Mr Horn's evidence on the point had been the same as Mr Baker's and went unchallenged; and a new suggestion was put to Mr Baker that a drinks evening he attended in May 2015 was to celebrate the first receipts by Koi of tax reclaim amounts though no such suggestion was made either to Mr Horn or even to Mr Hogarth, cross-examined just the previous day and by the same cross-examiner.

24. I consider that Mr Baker was in general a trustworthy witness. There were two significant points, however, on which I am not comfortable he was being honest with the court. Firstly, he was, to his discredit, unwilling to accept even though it is perfectly obvious on the documents that he understood at the time that the sole purpose of the Lindisfarne CANs was to support a tax refund claim to be made by the buyer under the Maple Point Model trades in which Lindisfarne was involved. I am satisfied that he and Mr Hogarth, and therefore Lindisfarne as an entity, were well aware of that purpose and realised that their CANs would be and were being sent to SKAT in support of such claims.

25. Secondly, Mr Baker sought to defend the indefensible rather than admit what was in fact obvious dishonesty in one of his contemporaneous actions. In early November 2015, he was asked to help one of the Maple Point Model buyers respond to a demand from SKAT (which had by then stopped paying claims), in relation to a dividend tax refund claim by the buyer referencing shares in TDC, for evidence of the buyer's "*ownership of the shares on the date, where the amount of the dividend was decided by [TDC]*". The evidence demanded was: "*original purchase receipts*"; bank statements proving payment of the purchase price; a "*Statement of holdings that show, you own the shares on [that] date*"; and a copy of any shareholder loan agreement relating to the shareholding. SKAT was plainly interrogating the refund claim in question to see when and how, if at all, the buyer had acquired a shareholding in TDC. But of course, the buyer had never acquired any such shareholding, as Mr Baker knew. Instead of saying that he could not help, given that there had been no shares, Mr Baker created a bespoke document to be provided to SKAT entitled "*Proof of Purchase Custodian Statement*" and designed falsely to suggest that by the settlement on 12 August 2015 of a trade executed on 7 August 2015, the buyer had acquired 4,630,000 TDC shares.

Martin Smith

26. I found Mr Smith to be generally straightforward, candid, direct and fair. His evidence was mostly credible, in my view. He was unnecessarily defensive in places, and my assessment was that he has allowed the pressure of SKAT's offensive against him to get to him so that at times he too sought to defend the indefensible. That was disappointing, and not to his credit, but understandable. It was not such as to cause me to have general concerns about Mr Smith's trustworthiness as a witness, or to conclude that his overall testimony was not essentially honest.

27. The one potentially significant untruth Mr Smith allowed himself to put forward was that in his witness statement, adopted as his evidence in chief, he pretended that his fees as a stock lender in the Solo Model trading were not simply fixed percentages of the relevant dividends (as in fact and to his knowledge they were) and thus, indirectly, a share of the proceeds of tax refund claims if successful.

Michael Murphy

28. As a witness, Mr Murphy was also straightforward and fair, candid as to basic facts and open as to his knowledge or understanding of what was happening at the time. That very candidness demonstrated a casual and routine willingness to operate on a dishonest basis, at least as regards what he was asked to do by Sanjay Shah. He is one of a number of cogs in the successful machine that the Solo Model trading became who gave no real thought at the time to what that trading actually was or involved, or how therefore it was generating the huge returns it was generating. Nonetheless, I accept that indeed he did not give that any real thought, and as a result he did not at the time realise that he was helping Sanjay Shah with a scheme for 'settling' share transactions without the use of shares so as, in substance, to conjure up money (in the form of tax refund claims paid by SKAT) out of nothing.

Usha Shah

29. I am satisfied that Mrs Shah came to court to tell the truth and did so as best she could, given how long ago most of the facts occurred. I consider that she was a trustworthy

witness. If Sanjay Shah generated what became their huge wealth by fraudulent means, I have no doubt that Mrs Shah had no notion of that at the time. In particular, I reject a submission by SKAT that "*Mrs Shah often sought to avoid engaging with difficult questions [in cross-examination], seeking refuge in the refrains: 'I was following instructions' or 'I trusted my husband and his staff*'." In my judgment, those were not 'refrains' and Mrs Shah was not 'seeking refuge'. She was just being honest with the court.

Paul Preston

30. Mr Preston had no experience or knowledge of equity trading markets, let alone sophisticated aspects such as div-arb, cum-ex, or tax-structured trading. He was a professional golfer first, then a property consultant working for IPG so that Sanjay Shah became a client of his as a result of Mr Shah's extensive portfolio of property investments. He became involved as part of the Malaysian extension of the Solo Model activity. A real difficulty in cross-examination was that many important questions rather assumed at least a basic understanding of what a dividend is, and what therefore a withholding tax is or might be, that I do not consider Mr Preston has now or ever had.

31. Mr Preston's essential case throughout is that he trusted that Solo / GSS, the employed trader (Rebecca Robson for 2014 trading, Niall O'Carroll in 2015), and his co-venturers Garry Hope and Tim Murphy (especially the former) knew what they were doing and therefore collated and provided whatever was needed for the making of a tax refund claim to SKAT. That meant that he gave no thought to how Danish tax law worked, to what would be being said to the Danish tax authority in or by the making of tax refund claims, or to what CANs said or might be taken to mean. In Mr Preston's case, I find that case to be credible and true.

32. Mr Preston was, in my view, mostly trustworthy in his evidence. He was essentially straightforward, clear and candid. If he did not remember things, he said so rather than pretending otherwise. The way he was questioned sometimes meant that took a while to come out, but I consider that not to be his fault. As with every other participant in Solo Model trading, Mr Preston was party to pretence, obfuscation and collateral dishonesty in connection with the trading activity, or when dealing with the profits from it. He was generally unwilling to accept that there was anything wrong with those aspects of what he did; and that did him no credit. There were also some confused elements to his factual account, and a few that I assessed him to be inventing in the witness box. Some caution is therefore required not too readily to treat what Mr Preston said for himself as honest testimony; but, stated generally, I do not consider that he was untrustworthy in his evidence.

Jonathan Godson

33. Mr Godson was very cagey and nervous, but generally careful and fair, not evasive or difficult as a witness. However, in my judgment he is evidently an individual so affected by the burdens of this litigation as to have lost any ability he might ever have had to separate what he did or did not know or understand at the time, or indeed whether on any given point he now has any relevant recollection at all, from what he believes today, or thinks he understands, about what happened or may have happened. That spilled over into repeated difficulty in answering questions asked or even maintaining focus on them. That made Mr Godson appear evasive, but in my judgment that would not be a

true assessment. I consider, rather, that he is an unsophisticated individual overwhelmed by the juggernaut of this litigation.

34. The upshot is that whilst I judge that Mr Godson was trying his best to give proper factual witness evidence, whether in his witness statement as adopted by him to be his evidence in chief, or in his oral evidence, his best was really very inadequate. Great caution must be taken before accepting anything Mr Godson may have said on important points as potentially reliable, honest though he will have been in putting it forward as what he imagined to be an answer to a relevant question.

Mankash Jain

35. As a factual witness, Mr Jain's general approach was, in my view, to try to be clever. I assessed him to consider himself smarter than he is, with a tendency to be smug about what he perceived to be clever lines of defence or responses to points of fact on which SKAT relies against him (whether rightly or wrongly as regards the inherent strength or weakness of those points). As a result, though his manner as a witness was good – he seemed mostly responsive, clear and fair – as to the content of what he said in evidence Mr Jain adhered to a succession of bad points. He also engaged more than once in outright invention as his cross-examination progressed.

36. Overall, I was satisfied that Mr Jain came to the witness box to argue a case, not to give, as best he could, straightforward factual evidence, leaving argument for closing submissions. That rendered him an untrustworthy witness on whose evidence on any contentious points of importance it would be unsafe generally to place reliance.

Daniel Fletcher

37. Mr Fletcher was fair, careful, helpful and straightforward in his oral evidence. In writing, through his witness statement adopted as his evidence in chief, he allied himself to a number of the bad points that Mr Jain sought to maintain and justify in his evidence. At all significant stages in the litigation, Messrs Fletcher, Godson and Jain coordinated their efforts in the defence of SKAT's respective claims against each of them. In doing so, they used common legal and expert advisors, but without ceasing to be litigants in person (the legal advisors not being qualified in this jurisdiction) and without calling any expert evidence. It was not evident that the involvement of those advisors had provided meaningful assistance to Messrs Fletcher, Godson or Jain. Indeed my sense was, to the contrary, that it had been unhelpful to them without their realising as much.

38. In Mr Fletcher's case, significant caution must be attached before placing any significant weight on his evidence in chief, affected adversely as I consider it was by being the product of misdirected team effort. But when free to be himself in the witness box, in my judgment Mr Fletcher was honest with the court at trial, and a reliable witness as to his contemporaneous thinking, motivations and understanding. As usual with anyone becoming involved in the Solo Model trading activity, Mr Fletcher was privy to elements of the incidental dishonesty that surrounded it. This was no more attractive in Mr Fletcher's case than in the case of others; but it was indeed incidental and though it does Mr Fletcher no credit that he engaged in it, it did not cause me to doubt his honesty when it came to his oral evidence either as to what did and did not happen, to the extent that was in issue, or as to what he knew or understood, or his thinking, at the time.

John Devonshire

39. In my judgment, Mr Devonshire was totally out of his depth as regards every aspect of this litigation. There was demonstrable error in various aspects of his witness evidence, but I was satisfied that he gave that evidence honestly, trying his best to relate what he believes he can recall. His involvement was sufficiently limited, and his recollection so evidently faulty, that I do not think it would be safe to think that Mr Devonshire might be reliable as to matters of fact at any level of detail below the most basic or superficial. I have borne that in mind when considering what weight to place on his witness evidence; but I regard that evidence as trustworthy, i.e. honestly given, nonetheless.

Charles Knott

40. I found Mr Knott to be frank and candid as a witness. He was careful, a little pedantic at times, and somewhat defensive, but not to an extent that gave me concern he might not be doing his honest best to give true factual testimony. A heavy touch of defensiveness is almost inevitable in Mr Knott's position in the litigation, as it seems to me. I consider that he was a trustworthy witness.

41. His candour in the witness box extended to accepting points that were apt to be relied on against him in argument as suggesting appreciation of wrongdoing at Solo, as I am sure Mr Knott appreciated. That reinforced his credibility, in my view. Critically, given Mr Knott's background, experience and seniority at Solo when he joined, he was absolutely crystal clear – and I accept this evidence – that he had a whistleblowing duty to report to the FCA knowledge or suspicion that there was or might be unlawful or fraudulent activity at SCP or Old Park Lane (the Solo businesses in relation to which Mr Knott had responsibilities). In my judgment, Mr Knott was being truthful in relation to that when he said that no bonus or forgivable loan, whether of £2,000,000 or of any other amount, would have stopped him from blowing the whistle.

James Hoogewerf

42. Mr Hoogewerf, not unlike Mr Hogarth (see paragraph 20 above), did himself no favours in the witness box. He was wound up by the process, and discomfort from a dental issue he was suffering may not have helped. As a result, he was in general rather argumentative and diffuse. He was also affected by what I judged to be a tendency to say something that might sound like an answer without pause or the application of much thought. As his cross-examination progressed, he became unwilling to the point of obtuseness to agree anything that was not evident in a document, and sometimes even to agree something that was evident. In my view, he was suffering from a "*Deny everything, Baldrick!*" state of mind engendered by the pressures of the litigation.

43. That obtuseness was at its peak when Mr Hoogewerf would not agree that it was evident to him at the time that the Solo Model trading was centrally driven and directed by GSS, so that it did not involve independent trading decisions by any of the participants. It is obvious on the documents that that was indeed evident to Mr Hoogewerf at the time. Moreover, in my judgment Mr Hoogewerf would not have allowed any broking operation for which he was responsible to have even the limited involvement in the GSS trading that his broking operation at Solo had, and later that West Point had when he was CEO, unless it had been explained to him that it was a structured trade, pre-

arranged, coordinated and balanced by the GSS team to ensure that there was no meaningful market or counterparty risk.

44. However, it does not follow from that that Mr Hoogewerf was told, or otherwise appreciated, that the settlement model being used was the share-less loop model that I have described, let alone that the entire business was constructed as a means by which to practise fraud upon SKAT (and other tax authorities), if that was the reality. Like Mr Knott, I am confident that Mr Hoogewerf was aware at the time of his duties to report to the FCA if he had any suspicion at the time that the GSS trading was or might be unlawful or a means for committing fraud. The unsatisfactory nature of much of Mr Hoogewerf's oral evidence is explained, in my view, by how the pressures of the litigation had got to him by the time he came to give that evidence. It did not cause me to doubt Mr Hoogewerf's integrity; and I accept his evidence that he would have reported any suspicion he had that Solo was engaged in a fraud.

Jas Bains

45. Mr Bains is a man of substantial academic ability, qualifying as a solicitor in September 2002 after a first class law degree and two years as a trainee solicitor at Freshfields. He stayed at Freshfields, as an associate solicitor in International Finance, until the end of 2004. From there he moved in house to the Structured Finance Department of ING Bank NV, which he left in about July 2007 to join Barclays Capital's Structured Capital Markets team. In February 2009, Mr Bains moved from Barclays Capital to the London office of an Icelandic law firm, to work there as a senior associate solicitor. He moved from there to Solo in late 2010, where he was both Head of Legal and Head of Compliance until Gary Pitts was later appointed to be a separate Head of Compliance. When SCP was formed as an LLP, Mr Bains became a founding member of the partnership, and until he left Solo he was the *de facto* COO of SCP in London.

46. In re-examination, Mr Choo asked Mr Bains about some oddities of behaviour during cross-examination. Mr Choo drew attention to what had appeared to be difficulty in focusing on and answering simple questions, and frequent instances of talking to himself. In response, Mr Bains identified as neurodiverse, with a self-talking habit, a mild form of ADHD, and mild autism (with obsessive compulsive tendencies rather than a deficiency in social skills). There was no evidence of any formal diagnosis of ADHD or ASD, nor did Mr Bains suggest there had been any, although the suggestions of mild ADHD and mild autism had come, he said, from a qualified psychiatrist with whom he had lived for a time when he was in London. Mr Bains said that he had always seen those traits as making him "*just a little bit eccentric*" with a tendency to "*lose focus quite easily, quite often*".

47. That would not be a sufficient basis for a finding of fact, on the balance of probabilities, that Mr Bains is affected by a particular neurodiversity condition; but any relevant burden of proof here is on SKAT, and in my view what Mr Bains said for himself, assessed with the benefit of the court's general experience of dealing with mental health issues as they arise in civil and criminal litigation, makes it appropriate to give Mr Bains the benefit of doubt, so that (i) I treated the self-talking behaviour witnessed in court as normal for Mr Bains, irrelevant to any assessment of the honesty or quality of his evidence, and (ii) I have exercised special caution before taking non-responsive answers, digressions, or other failures to deal adequately with questions, as evasiveness or unwillingness to give straight answers.

48. Bearing all of that in mind in Mr Bains' favour, I regret to say that I did not find him very satisfactory as a witness. There was a distinct pattern of clear, helpful and careful answers to easy or non-contentious points, and argumentative or non-responsive answers when questions moved towards sensitive, contentious matters, particularly from the start of the second day of cross-examination – Mr Bains was cross-examined for Days 64, 65 and 66, and the morning of Day 67, of the Main Trial. This built to a number of inventions – so obvious as to be, frankly, a bit shameless and embarrassing – including that: he thought CANs were trade confirmations, not payment credit advices; Sanjay Shah had told him that the cum-ex net settlement model discussed and developed at Solo in early 2012 had not been implemented and he (Mr Bains) did not realise that the CANs he signed (of which there were 189) related to trading under that model; he would not have been able to understand a Danish tax law opinion on the validity or invalidity of the tax refund claims the Solo Model trading was set up to generate; and he asked for but was refused a copy of Hannes Snellman's opinion (the truth on that being, I am confident, that he never asked for it).

49. Overall, in my judgment Mr Bains has become, and presented as, compromised. SCP's principal business under Mr Bains' stewardship as Head of Legal, the Solo Model trading, was founded upon two basic premises that I would expect a qualified lawyer instinctively to think at least doubtful, namely that (a) DVP share transfer obligations could be performed by self-fulfilling settlement loops constructed amongst parties none of whom ever had or had access to any shares to deliver or funds with which to pay for them, and (b) a buyer who thus never at any time acquired any shares or, therefore, any right to a dividend, might be entitled (if tax advantaged) to a dividend tax refund. SCP could have done with an independent-minded, serious and impartial Head of Legal, to raise that doubt, and to query and (if necessary) challenge GSS as a business unit as to what they were doing and why they thought it worked or might work. I do not think Mr Bains was that person. That is so whether or not the GSS business resulted in the deceit SKAT alleged, or Mr Bains should have realised as much, which are different questions. In particular, the fact that, as I have concluded, the Solo Model trading indeed did *not* generate valid tax refund entitlements, does not prove fraud, let alone that Mr Bains identified any fraud at the time.

50. My assessment was that Mr Bains knows that he did not test the business as he should have tested it, and his evidence was heavily influenced by a strong desire to deflect possible blame away from himself and by a wrong-headed sense of grievance that he is a co-defendant in this civil litigation having not been made the subject of criminal proceedings in Denmark after he was part of the whistle being blown on Solo's activities in the summer of 2015.

Paul Oakley

51. Mr Oakley was not a trustworthy witness. In my judgment, he was another who was willing to deny, and repeatedly denied, anything he thought that SKAT wanted to use against him, without reference to whether the suggested matter of fact was accurate and/or known to Mr Oakley at the time. He also cloaked much of his oral evidence by a slightly farcical adherence to jargon about what he was doing as a short seller in the Solo Model trading world. His approach to giving evidence, allied to an evident unreliability of recollection given the passage of time, rendered his testimony, in my judgment, of no material value to the court. It was not my assessment of Mr Oakley, however, that he was trying to cover for a contemporaneous awareness that he is

unwilling now to admit that deceit was being practised upon SKAT through the Solo div-arb model in which he and Mr Mitchell were participating.

Owen Mitchell

52. The final witness of fact at the Main Trial, Mr Mitchell, was a peculiar mix in giving evidence. Most of the time, and allowing properly for some occasional difficulty he had in dealing with questions put as hypotheticals, Mr Mitchell gave straightforward, simple, candid answers, in which he was fair and credible about what the facts had been, including his own knowledge or understanding at the time, and about his current lack of detailed recollection, where that was the position. However, his evidence became generally defensive nonsense when asked about the centrally coordinated nature of the trading, such that he and Mr Oakley were not making, in any meaningful sense, their own trading decisions. His evidence about the obfuscatory dishonesty involved in the invoicing and payment of his and Mr Oakley's fees for acting as short sellers in Solo Model trading was also a risible attempt to defend the indefensible.

53. In both of those unsatisfactory respects, as with other witnesses, it did Mr Mitchell no credit generally that he gave such evidence. That led me to exercise some real caution about his evidence as a whole. However, the point over which I lingered when considering Sanjay Shah arises again (see paragraphs 9 to 11 above). In my judgment, Mr Mitchell knew, at the time and when giving evidence, that all Solo Model trading was directed in every way by the Solo GSS team, so that short sellers like himself and Mr Oakley, likewise the other participants (equity buyers, stock lenders and forward counterparties), simply traded what they were told by GSS to trade; and he appreciated at the time that Sanjay Shah wanted that central direction and coordination to be obscured.

54. That does not mean that he or Mr Oakley realised at the time that they were involved in share-less share trading, let alone in fraud being practised on SKAT (if it was). I am satisfied in both respects that Mr Mitchell did *not* realise that; and I do not think there is any reason to suppose that Mr Oakley knew more than Mr Mitchell or understood things differently at the time. The unsatisfactory elements of his evidence notwithstanding, I accept as truthful and reliable Mr Mitchell's evidence that:

    (i) when he and Mr Oakley were briefly on the 'long' side of the Solo Model through their pension fund, trading around Austrian ex-dates, and made an Austrian dividend tax refund claim, via Acupay, he did so without forming any positive view one way or the other as to whether there was a refund entitlement, because he did not see that as necessary, but rather "*… we just tested, we didn't take any advice, we just tested the trade, it didn't work and that was it. We didn't take any legal or tax advice or anything like that*", his reference to the trade not working being to the fact that the Austrian tax authority rejected the tax refund claim;

    (ii) when he and Mr Oakley were on the 'short' side of the Solo Model, which was their substantial involvement in Solo Model trading and their only involvement as regards trading around Danish ex-dates, he did not think at the time about anything more than their parts of the trading, not because he was closing his eyes to a suspicion he had that there was something untoward going on, but

simply because he did not think it relevant or necessary to worry about the wider structure;

(iii) he sees now how what he knew of the trading at the time might indicate that Solo had set things up such that there was or could be a settlement loop amongst buyers, sellers and stock lenders; but

(iv) he did not at the time scrutinise the trading or think it through like that, he did not at the time realise that Solo was in fact operating a share-less settlement model, and as to that:

(a) "*in all my trading career at the time there has to be some shares, whether [viz., 'even if'] it is a smaller amount and you can put it through different cycles to get to the right amount, you always have to have some shares*";

(b) his reference there to 'cycling' was to something that was "*hardly ever done*" but was known to him as a possible way of solving a settlement issue, namely using a single parcel of shares to settle multiple trades on the same day, through settlement cycles at different times of the day; and

(c) had he been told that Solo was operating the settlement loop methodology that in fact it was, he would have said that none of the parties ever had any shares, but also that "*I didn't realise you could actually do that*", and "*I would have said we're not doing the trade, we would need to have the shares*".

Appendix 7 – SKAT vs. Defendants other than Syntax

General Points **[1]**

Deceit – Primary Liability [2]

Deceit – Accessory Liability [24]

Constructive Trusts (Proceeds of Fraud) [27]

Unlawful Means Conspiracy [35]

Unjust Enrichment [40]

SKAT'S Factual Cases **[46]**

SKAT vs. Sanjay Shah **[51]**

Understanding of the Alleged Representations [61]

Awareness of the Tax Reclaim Documents [61]

The Core Representations [64]

The Honest Custodian Representation [82]

Conclusion [83]

Knowledge of Falsity [84]

Core Representations [84]

Honest Custodian Representation [91]

Intention to Induce Reliance by SKAT [93]

Attribution of Responsibility [94]

True Principal [103]

Deliberate Deceit Scheme [110]

Accessory Liability for Deceit [112]

Unlawful Means Conspiracy [127]

Other Claims [129]

SKAT vs. Other SSDs **[131]**

SKAT vs. DWF Ds **[136]**

Understanding of the Alleged Representations [142]

Awareness of the Tax Reclaim Documents [142]

The Core Representations [145]

The Honest Custodian Representation [155]

Conclusion [156]

Knowledge of Falsity [157]

Core Representations [157]

Honest Custodian Representation [161]

Intention to Induce Reliance by SKAT [162]

Attribution of Responsibility [166]

Solo Model [166]

Maple Point Model [167]

Accessory Liability for Deceit [170]

Unlawful Means Conspiracy and Other Claims [174]

SKAT vs. Lindisfarne **[175]**

Deceit [175]

Unjust Enrichment [195]

Negligence [196]

SKAT vs. Mr Klar **[222]**

Deceit [230]

Primary Liability [240]

Accessory Liability [244]

Unlawful Means Conspiracy and Other Claims [248]

SKAT vs. Messrs Patterson & Bains **[249]**

Deceit [259]

Unlawful Means Conspiracy and Other Claims [272]

SKAT vs. Other Solo Model Ds [273]

Deceit [288]

Trading Counterparties (Ms Bhudia and Messrs Körner, Mitchell, Murphy, Oakley & Smith) [291]

Introducers / Equity Buyers (Messrs Devonshire, Fletcher, Godson, Jain & Preston) [313]

Unlawful Means Conspiracy and Other Claims [342]

SKAT vs. Messrs Knott & Hoogewerf [343]

SKAT vs. Usha Shah [368]

Recoveries by SKAT [380]

General Points

1. A number of points of principle arose concerning the ingredients of causes of action that SKAT pursued against multiple trial defendants. I deal with some of those in this first section of this Appendix, to identify how I would have directed myself as to those ingredients if those causes of action had not failed for the reasons given in the main body of this judgment, or in certain cases just so as to record points that were taken that I have not needed to deal with.

Deceit – Primary Liability

2. In *Pisante v Logothetis* [2022] EWHC 161 (Comm) at [5], I identified a point of principle, "*whether it is sufficient for the tort of deceit that the representor make a statement that is liable to convey and does convey to the representee a matter of fact the representor knows to be untrue, reckless (not giving any thought) as to what he was conveying by what he said, i.e. reckless as to the meaning of what he was saying rather than reckless as to (not caring about) the truth or falsity of something he (the representor) realised that he was communicating*".

3. In the event, I did not need to decide the point, and I said that it would merit a fuller consideration of the authorities and more fully considered and developed submissions than I had had in that case (*ibid* at [15]). Subject to that important *caveat*, I expressed a tentative conclusion, *obiter*, that "*there is much to be said for [the] proposition … that where a statement of fact is made, with a view to inducing a contract, indifferent as to what the statement will convey, so it can be said that the representor was recklessly indifferent as to whether he was misleading the representee, that is deceit (if the statement be untrue)*" (*ibid* at [35]). I emphasised at the start of my discussion of the

point that I was only concerned with a case where a representor has said that which they appreciate has the character of a representation (*ibid* at [16]), and I put the force of the argument for saying that there can be deceit where there is reckless indifference as to meaning in these terms (*ibid* at [22]):

> "*The representor who says something it occurs to him to say [I add, for clarity, intending by doing so to induce the representee to act on what is said], which in fact conveys that which the representor knows full well to be untrue, and whose only defence to a charge that he knowingly spoke an untruth is to say he did not because he did not care what his words might be taken by the representee to mean deserves no better treatment under the law, it might be thought, than the representor who understands that his words will convey what in fact they convey and does not care whether, in that meaning, they are words of truth.*"

4. In the present case, any analysis of SKAT's claims in deceit has the complexity throughout that any representations were made by the Tax Agents as part of tax refund claims they submitted to SKAT on behalf of named clients. SKAT did not allege that the Tax Agents acted fraudulently (except in the case of Syntax, after it came into Sanjay Shah's ownership and control). I return to that, below, for other issues to which it gave rise at trial. The consequence for the present point is that a claim of deceit through reckless indifference as to the meaning of a representation, if it is to be recognised at all, could not be formulated in this case as I formulated it in *Pisante*, which concerned statements made directly by Mr Logothetis to Mr Pisante to induce Mr Pisante to invest, as he then did.

5. I consider that such a case was open to SKAT on the pleadings. In Schedule 5B to the Particulars of Claim, within the pleading of its case against Sanjay Shah, for example, SKAT alleged at paragraph 7C, so far as is now material, that:

> "*... Sanjay Shah knew, or was reckless as to whether it was the case, that:*
>
> *7C(a) The [equity buyers] in the Solo Model would and did make [claims] to SKAT for the "refund" of dividend withholding tax that included representations to SKAT in the form of [the core representations and the honest custodian representation].*"
>
> (my emphasis)

Equivalent allegations were made against other parties said to have a primary liability for deceit.

6. Objection was taken in closing argument, however, that it had become unfair for SKAT to ask the court to consider possible liability on that basis, because of the way the trial had unfolded. On Day 108, I upheld that objection, with the possible exception of SKAT's case against Lindisfarne. As I made clear in my ruling, that was not a decision that a case of reckless indifference as to meaning *did* remain fairly open to SKAT against Lindisfarne; it was a decision to reserve judgment about that. It is not now, therefore, a point affecting multiple trial defendants, so I only summarise here the circumstances that led me to make that ruling:

(i) SKAT mentioned the point in its written opening, citing *Pisante* within an exposition of general principles. It was said to be a third possible qualification to a rule that if a representation is ambiguous, liability in deceit requires the representor to have understood that he was making the representation held by the court to have been made. That is wrong, in my view. The limited discussion in *Pisante* makes reference to the law on ambiguous representations, but not so as to limit the scope of any possible liability for reckless indifference to such cases.

(ii) In response, SKAT was challenged by defendants, in opening, to provide a full and properly developed submission (of the sort that in *Pisante* I said I thought would be needed), if it intended to contend for liability on the basis of reckless indifference as to meaning. SKAT did not rise to that challenge, and nothing further was said about the point until closing argument.

(iii) No case of reckless indifference as to meaning was opened on the facts against or put in cross-examination to any of the trial defendants alleged to be liable in deceit, except perhaps, as regards cross-examination, Lindisfarne (although the potentially relevant cross-examination even in its case was a single question put only to Mr Hogarth, not to Mr Baker).

(iv) The passing general reference to *Pisante* from SKAT's written opening was repeated in SKAT's written closing submissions, again only as a point possibly relevant to a case of ambiguous representations. However, no factual case of reckless indifference as to meaning was mentioned, let alone set out in any detail, against any trial defendant, except that it was said of Lindisfarne, as an alternative case, that "*Lindisfarne was at best reckless or indifferent to the statements [its CANs] would convey to third parties*". In oral argument, no legal argument or factual submission was developed for SKAT, or (therefore) responded to by defendants.

(v) In an exchange with the court in SKAT's oral reply submissions on the facts against the SSDs on Day 91, prompted by looking (for a different purpose) at how SKAT's factual case had been pleaded, Mr Goldsmith KC for SKAT said that the recklessness case pleaded within (e.g.) paragraph 7C(a) of the pleading against Sanjay Shah was pursued by SKAT, if it needed it, leading to the objection I upheld on Day 108 that it was no longer fairly open to SKAT to pursue that case.

7. The main impact of the fact that the representor here was always a Tax Agent almost always not alleged to have been acting fraudulently was that any liability in deceit would require proof that:

(i) a party to whom the law of deceit would attribute responsibility for the Tax Agent's representations to SKAT acted fraudulently, that is to say with intent that the Tax Agent make a representation that was in fact made (as a matter of the material essence of what was said), to induce SKAT to pay a tax refund claim, that party knowing the representation to be false or being recklessly indifferent, not caring whether it be true or false; and

(ii) the trial defendant under consideration either (a) was that party, so as to have a primary liability for deceit, or (b) was liable as an accessory to the deceit of that party.

8. On the first aspect, attributing responsibility, there was no difficulty of principle in this case where the allegation was that the Tax Agent's named client was acting fraudulently in authorising the Tax Agent to submit the claim. If SKAT proved that on the facts, then the named client in question committed fraud against SKAT through the Tax Agent, and in principle trial defendants might be liable as accessories to that fraud. However, SKAT also alleged primary liability on the basis of attributing responsibility to, and an alleged fraudulent intent on the part of, the following:

(i) in relation to the Solo Model, (a) the custodians (SCP, Old Park Lane, Telesto and West Point), (b) Sanjay Shah, (c) each of the DWF Ds (while at Solo), and (d) Mr Jain (in respect of his LabCos' tax refund claims);

(ii) in relation to the Maple Point Model, (a) the custodians (NCB, Indigo and Lindisfarne), (b) each of the DWF Ds (for 2014 trading only in the case of Rajen Shah and Mr Dhorajiwala), and (c) Maple Point;

(iii) in relation to the Klar Model, (a) the custodian (Salgado) and (b) Mr Klar himself.

9. For those allegations of primary liability, SKAT needed a theory of attribution of responsibility other than that of agency. In that regard, in summary, SKAT submitted that attribution of responsibility, outside the case of agency, was not limited to the well-known case considered in *Clerk & Lindsell on Torts*, 24th Ed. at 17-33*ff*, where D makes a statement to R, intending R to pass it on to C (as a statement made by R to C) in order to induce C to act on it. That well-known case was obviously capable of applying to a custodian, if by issuing a CAN it made a false statement to its client that it intended the client to pass on to SKAT, through the Tax Agent's submission of a tax refund claim. But SKAT did not suggest that Sanjay Shah, for example, made false representations to the Tax Agents, or to any other party, intending that they be passed on to and relied on by SKAT. The factual allegation, leaving aside the separate case that he was the Tax Agents' 'true principal' (as SKAT put it), was that Sanjay Shah, again for example, deliberately designed the Solo Model business in such a way that the Tax Agents would make statements to SKAT that he knew to be false and that he intended would induce SKAT to accept and pay tax refund claims.

10. SKAT submitted that though different forms of language have been used, the authorities taken as a whole, and basic justice, supported a principle that if D deliberately arranges things so that C is induced to act upon a misrepresentation made to C by R, by such means and with such intent that it is proper to say on the facts that D was using R as an instrument by which to achieve their (D's) goal of misleading C into acting or failing to act by a representation essentially to the effect of the representation in fact made, D knowing it to be false or not having an honest belief in its truth, then C will be entitled to damages for deceit against D. That should be so, SKAT argued, whether or not R also had deceptive intent. If that principle be sound, then the liability it recognises on the part of D is a primary liability, since it does not require proof that R acted fraudulently.

11. SKAT referred, for example, to *Parkes v Prescott* (1869) LR 4 Ex 169, a libel case in which the chairman at a public meeting, at the request of a participant, slandered the claimant, and they both (the chairman and the other participant) pointedly expressed a desire that attending local reporters take notice of the "*very scandalous*" matter stated and that "*publicity would be given to [it]*". Fair non-verbatim summaries of what had been said were published at the instance of the reporters. It was held that there was a proper basis upon which a jury might find publication by the chairman and the participant (jointly and severally, D) through the reporters (R), defaming the claimant (C), so that D had libelled C by the publication, not merely slandered him at the meeting. SKAT submitted that this was consistent with *R v Michael* (1840) 9 C&P 356, 173 ER 867, in which the defendant purchased poison, intending it to be administered to her baby son, to kill him. She gave it to an unknowing nurse to administer, who put it on a mantelpiece, as a result of which it was in fact administered innocently by another child. The defendant was guilty of administering poison – the administering of the poison by the innocent child was "*as much, in point of law, an administering by the [defendant] as if [she] had actually administered it with her own hand*" (*ibid* at 359, 868).

12. More modern examples, SKAT said, included:

    (i) *OMV Petrom v Glencore* [2015] EWHC 666 (Comm), in which Flaux J (as he was then) attributed responsibility for misrepresentations made to the claimant buyer of oil, through documents issued by the defendant to another in which the defendant knowingly misdescribed the oil sold, since the defendant intended the misdescription to be given to and relied on by buyers like the claimant;

    (ii) *European Real Estate Debt Fund v Treon* [2021] EWHC 2866 (Ch), to the extent it considered the possible liability of a defendant who was said to have procured company directors to cause a parent company to make false representations, the parent company being unaware of the falsity;

    (iii) the recent decision of Foxton J in *4VVV Ltd et al v Spence et al* [2024] EWHC 2434 (Comm) that certain individuals were liable for deceit who had acted to ensure that materials used by Emerging Properties Ltd ('EPL') to attract property investors would make false representations, so that investors would be tricked into investing, without any finding as to whether EPL acted fraudulently (so the liability found was a primary liability, not liability as accessories to a deceit committed by EPL).

13. SKAT submitted that those and other cases were best viewed not as establishing a series of specific doctrines of attribution, but as illustrations, each ultimately on their own individual facts, of a legal maxim that he who acts through another acts himself (which not so long ago might have been cited by an English judge, without giving a translation, as "*qui facit per alium facit per se*"). On that view, the key concept is that of agency, but not (or not limited to) agency by agreement for one legal person to represent or act on behalf of another (as here the Tax Agents' agencies to submit tax refund claims on behalf of clients). The concept, SKAT said, was agency in the more general sense of instrumentality or means through which power is exerted or an end is achieved. A decision on the particular facts of any given case that D set out to cause C to be deceived (tricked by a false representation), using R as the means by which the misleading statement would be delivered to C that D wished C to receive, is necessary, on SKAT's

argument, to ensure that responsibility is not attributed, leading to primary liability in deceit, merely on a finding that D acted in some way that was causative of a misstatement being made by R to C. Such a decision should also be sufficient, SKAT submitted – the huge variety of human activity and the related limitless ingenuity of the dishonest make it unrealistic to require or to formulate anything more specific as the applicable principle.

14. On that view of the law, in the well-known case of D making a representation to R, intending R to pass it on to C, the representation made by D to R is merely the means by which D achieves their intention, namely that C be deceived by a misrepresentation made to C by R. The liability attaches to the intent to deceive C by misrepresentation, achieved by D through R, not to the precise means by which, with that intent, D achieved the deception.

15. Submissions were made on that by the Shah Ds and the DWF Ds that other trial defendants adopted. Summarising broadly, they submitted that:

    (i) there was no such overarching, single principle, but a series of specific, circumscribed situations in which liability has been recognised;

    (ii) one such situation is where a company director, acting fraudulently, directs, procures or authorises the company to make a false statement to the claimant (see *C Evans & Son Ltd v Spritebrand Ltd* [1985] 1 WLR 317, at 325-330, referred to by Foxton J in *4VVV*), but that is not a true example as it was said in *Lifestyle Equities CV v Ahmed et al.* [2024] UKSC 17, [2025] AC 1, to be a case of accessory liability;

    (iii) another is what I referred to in paragraph 9 above as the well-known case of a representation by D to R, intending R to pass it on to C, but that did not apply to a defendant who, whatever else they may have done to bring about the result, made no representation to R (and the Shah Ds submitted that *European Real Estate Debt Fund v Treon*, *supra*, does not take the law any further than that);

    (iv) the only other is where D has manifestly approved of or adopted R's representation to C (which the Shah Ds submitted required that D's involvement should be apparent to C), in which D would have a primary liability if acting fraudulently: *Bradford Third Equitable Building Society v Borders* [1941] 2 All.E.R. 205 at 211B.

16. It was also submitted by the DWF Ds that SKAT, having originally alleged deceit against the Tax Agents, could not rely on a doctrine of action through an innocent 'agent' merely by no longer pursuing that allegation, and (by way of Catch-22) neither could SKAT ask the court to find that any party not now before it as a trial defendant had acted fraudulently. I do not agree with either limb of that submission. As to the first limb, if the doctrine propounded by SKAT is sound, its purpose and effect is not to render it *necessary* for the claimant to prove that the 'agent' was innocent, but to render it *unnecessary* to consider that question, because the defendant will be liable either way, if the premise for liability articulated in the first sentence of paragraph 10 above is proved. As to the second limb, if the liability of a defendant before the court requires, in principle, that some third party not before the court be liable, the third party's liability simply becomes something the claimant must prove, if it can. The absence of the third

party from the legal proceedings may affect the evidence available to the claimant, but is not an impediment as a matter of principle.

17. I preferred SKAT's submissions on this point of principle, and I would have directed myself that if on the facts any given trial defendant had deliberately arranged things so that SKAT was induced to act upon a misrepresentation made to it by a Tax Agent, the defendant in effect using the Tax Agent as means by which to achieve their (the defendant's) goal of causing SKAT to be so misled, the defendant knowing the representation that would be and was made to be false, or not having an honest belief in its truth, then SKAT would have been entitled to damages for deceit against that trial defendant, whether or not the Tax Agent was (also) acting fraudulently.

18. One consequence of that approach is that where a defendant is alleged to be liable in deceit, as a primary liability, in respect of a misstatement made to the claimant by another that induced the claimant to act, or refrain from acting, so as to suffer loss, it may be impossible or unrealistic to consider separately the relevant state of mind of the defendant and the question whether responsibility for the misstatement is to be attributed. Another consequence is to simplify the analysis. That can be illustrated from the case put against Sanjay Shah in closing. SKAT contended in its written closing submissions that he was "*primarily liable*", i.e. liable in deceit as a primary tortfeasor:

    (i) as the "*procurer/inducer*" of any representations made by the CANs issued by the Solo Model custodians;

    (ii) as the "*party who procured, induced or caused*" representations to be made "*through the Solo Applications [i.e. the tax refund claims supported by CANs issued by Solo Model custodians] by the Tax Agents (as "innocent agents", save in the case of Syntax)*"; and/or

    (iii) as the "*true principal in relation to those representations*", meaning those referred to in (ii) above.

19. That presents the matter as if there are different doctrines of attribution, for each of which SKAT advanced a case that Sanjay Shah was caught. The better view (as SKAT itself submitted in Mr Rabinowitz KC's oral closing argument) is that a single question arises, namely whether Mr Shah deliberately arranged matters so that one or more of the representations alleged by SKAT would be made to SKAT by the Tax Agents, the representation or representations in question being false and Mr Shah knowing that (or having no honest belief in the truth of the relevant representation or representations) and intending SKAT to be induced thereby into paying out on the tax refund claims submitted to it. At all events, that is so given that (a) any representations made to SKAT were made by the Tax Agents, and (b) there was no agency agreement between the Tax Agents, or their principals, the named clients, and Sanjay Shah, under which the Tax Agents were appointed his agent and agreed that they would be acting on his behalf in respect of tax refund claims they submitted to SKAT.

20. The nature and content of the representations alleged by SKAT meant that the issue of whether a given defendant understood that representations essentially to the effect of those representations, or any of them, would be or were made to SKAT was a significant question explored at trial for at least those defendants said by SKAT to have a primary liability for deceit. That led to a question arising in oral closing argument, on which

submissions were made for SKAT and for some of the defendants, as to whether there would be liability for deceit where, speaking objectively, a pleaded representation was made, and, subjectively:

(i) the representee understood the pleaded representation to have been made to it, and relied on it to its detriment;

(ii) the representor did *not* understand or intend what they said to convey that which it in fact conveyed, but intended to convey by it a different lie, i.e. a different statement of fact, known to the representor to be false (or in the truth of which they had no honest belief).

21. As part of SKAT's submissions, Mr Graham KC posed as an example a fee obtained to speak at a civic conference where the representation was, and was understood by the representee to be, that the representor was the Mayor of Boston, Lincs., but the representor, who was not a Mayor at all, intended what they said to convey that they were the Mayor of Boston, MA. That to my mind did not capture the possible point, because (subject to detailed consideration of the facts if it were a real case) it would be likely to be fair to say the representor intended the representee to understand, cumulatively, (i) that the representor was a Mayor, and (ii) that their Mayoralty was in Boston, MA, and that the representee was induced by the misrepresentation as to (i) even if their error in thinking that the representor was referring to Boston, Lincs., was also material to their decision (and perhaps even essential to it). There was no possible analogy there to the case SKAT had pursued at trial here.

22. Varying Mr Graham KC's example, suppose an attendance fee in respect of the conference, paid by the local council to the defendant, upon application, and then:

(i) a deceit claim alleging that the fee was obtained by fraudulently misrepresenting in the application that the defendant was the Mayor of Boston, Lincs., the defendant indeed not being a Mayor at all,

(ii) a finding that the fee was granted to the defendant by the council on its understanding that the application said the defendant was the Mayor of Boston, Lincs., but

(iii) a finding that the defendant did not understand or intend to communicate any such thing, although they did intend to convey that they were a business leader invited to attend by the Mayor of Bolton, MCR, knowing that to be untrue because they had received no such invitation.

23. I agree with the simple submission by Mr Head KC for the DWF Ds that the mismatch between (ii) and (iii) should mean that the pleaded deceit claim would fail. If the representation pleaded and understood by the council to have been made was not made in the first place (objectively speaking), the pleaded claim would fail *in limine*; if (objectively) that representation was made, the pleaded claim would fail because the defendant did not intend to mislead by any such statement, and the false statement they intended to make about having a Mayoral invitation to attend had no impact (if indeed it can be said to have been made at all).

Deceit – Accessory Liability

24. SKAT also pursued causes of action in deceit on the basis of accessory liability, in some cases against defendants not said to have a primary liability, in other cases as an alternative claim where primary liability was alleged. In *Lifestyle Equities*, *supra*, the Supreme Court confirmed that accessory liability required (i) a primary actionable wrong, and (ii) that the accessory intended the primary wrongdoer to do that which constituted the primary wrong. That does not require the accessory to appreciate that the result, if their intention is realised, will be the commission of an actionable wrong by the primary wrongdoer. Here, where the primary wrong alleged was deceit, accessory liability required the alleged accessory to intend that SKAT be misled into paying tax refund claims by misrepresentations made to it through the submission of those claims by Tax Agents on behalf of named clients and that either (i) those named clients would know that, or be recklessly indifferent as to whether, those representations were false, or (ii) the Tax Agents were being used by the primary tortfeasor(s), with intent that SKAT be deceived, as the means by which to achieve that intent.

25. An alleged accessory having that intent is liable, SKAT alleged, if they procured or induced the primary tortfeasor(s) to commit their fraud or if they gave more than trivial assistance in the commission of that fraud pursuant to a common design that SKAT should be deceived.

26. Although in some formulations for closing argument SKAT overlooked this, the need upon which *Lifestyle Equities* insists for the accessory to know of all the essential factual ingredients of the primary wrong means, in a deceit claim, that it is necessary but not sufficient for the accessory to intend that false statements be made to the claimant. In a straightforward case of deceit by the party making the representations, the accessory must intend the representor to be acting with fraudulent intent, because such an intent on the part of the representor is one of the essential facts constituting the primary wrong. If the representor is an agent and the deceit is that of their principal, the accessory must intend the principal to be acting, through the agent, with fraudulent intent. If the representor is being used as an instrument of fraud by another who is not the representor's principal, the accessory must intend the fraudster to be using the representor, with fraudulent intent, in that way.

Constructive Trusts (Proceeds of Fraud)

27. SKAT claimed that if, as it alleged, it was induced by fraud to pay tax refund claims it had no liability to pay, then the traceable proceeds of that fraud were impressed with a constructive trust if, and then from when, they came into the hands of any party that had been privy to the fraud. SKAT relied *inter alia* on a well-known *dictum* of Lord Browne-Wilkinson in *Westdeutsche Landesbank v Islington LBC* [1996] AC 669, at 716C, that "*when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient*", which it said had been applied frequently at first instance, for example in *Commerzbank v IMB Bank* [2004] EWHC 2117 (Ch) at [36], [49], *Bank of Ireland v Pexxnet Ltd* [2010] EWHC 1872 (Comm) at [57], [61], and *Armstrong v Winnington* [2013] Ch 156 (Ch) at [127]-[128]. SKAT submitted that such a trust will arise, or re-arise, even if funds have been received in the interim by a party acting in good faith and providing consideration for the receipt, before coming into, or coming back into, the hands of a fraudster, citing *Wilkes v Spooner* [1911] 2 KB 473, *per* Vaughan Williams LJ at 483.

28. I did not understand SKAT's analysis to be contentious at trial, except for an important objection of principle raised by at least the Shah Ds and the DWF Ds to the effect that for a constructive trust over proceeds to have arisen, SKAT needed to have rescinded its decision to pay the claims in question, or the payments themselves.

29. SKAT argued that the objection misapplied a doctrine known to contract cases, where it is said that a constructive trust can only arise over assets obtained from the performance of a contract procured by fraud if, and then when, the contract is rescinded. Mr Hoyle, who took this part of the argument for SKAT, submitted that the basis for that doctrine was that in contract cases, the existence of the contract provides a legal basis justifying the receipt and retention of what may have been obtained under the contract. That was why, he argued, the contract in such cases has to be rescinded if the claimant wishes to lay proprietary claim to such benefits; it was not (as at least the Shah Ds argued) that in such cases the intention when the benefit was transferred under the contract was anything other than to transfer full and unconditional legal and beneficial title.

30. Mr Hoyle accepted that the notion was not limited to contracts, acknowledging that there could be other legal rights, for example statutory rights or rights under a trust, that justified receipt and retention. In the present case, payments were made by a public law body implementing decisions made by it, tax refund claim by tax refund claim, to pay in purported exercise of its public law rights and obligations. The normal doctrine of public law is that the purported exercise of such rights and obligations has legal effect in accordance with its terms unless and until quashed or set aside. Prof. Waage's agreed expert evidence included his opinion on "*the effect as a matter of Danish public law of SKAT's purported rescission and/or reversal of payments … by declarations made by it in 2016*", which he set out in these terms:

> "*70. It is the decision to make the payment that would be revoked (as a public law, administrative act). I should note that a Danish court does not in any sense effect the revocation as a judicial act. The revocation would be an administrative law decision made by SKAT itself (although as a public law act, revocation may be challenged before the Danish courts).*
>
> *71. The reversal of the payments would be achieved by SKAT bringing a private law claim for the restitution (i.e. reversal) of the payment made pursuant to the decision. The private law claim would typically be a monetary restitution claim or a claim seeking compensation for unjust enrichment.*
>
> *72. The principal effect as a matter of Danish law of SKAT's purported revocation of its earlier payment decisions would be that SKAT could more easily bring a private law claim for the restitution of the payment. If SKAT had revoked its earlier payment decision, then SKAT would need only to point to that revocation as justifying its claim to be entitled to restitution of the payment – unless, of course, the recipient challenged the validity of the revocation in the … same proceedings. Once SKAT had revoked its earlier payment decisions, those earlier payment decisions could no longer be relied on by the defendants as a valid basis for the recipients of the supposed refund payments to retain them* [emphasis added]. *(I note here that payment decisions do not themselves give rise to obligations, without more. Thus an unexecuted payment decision would not in itself entitle the intended beneficiary of that decision to payment. It may,*

however, serve as evidence that SKAT was under an obligation to make the payment in question.)

73. However, it would also be open to SKAT to bring a private law claim for the restitution of the payments without first taking the public law step of revoking them. It could do so by proving to the court that the original payment decision had been procured by fraud or made by mistake or was otherwise invalid and that the circumstances justified the court ordering restitution of the payment.

74. It is important to note that, even without a decision to revoke the payment decision, SKAT always retains the option to file a private law claim in all cases. This means SKAT could always present an argument to the court that the recipient had no valid claim to be paid and that the money should, therefore, be repaid. In this scenario, there would not be a public law or administrative act in the form of a revocation decision revoking the initial (incorrect) payment decision upon which SKAT could and would centre its claim.

75. If SKAT chose to proceed without revoking its earlier payment decision, it might find that the situation was more complicated than it needed to be, for instance, when trying to prove to a judge that SKAT had a valid claim for restitution. It is generally easier to refer to a validly revoked decision (which necessarily means there was no valid basis for payment) than to ask the judge to determine the validity of the payment in the private law action. However, if there is sufficient evidence that there was no basis for the original payment (because the original payment decision was invalid), and thus that SKAT is indeed entitled to a refund, there would be no need for the administrative law step of a decision to revoke. The court would determine on the available evidence that the payment had been procured by fraud or made by mistake or that the recipient for some other reason had no right to retain it, with the result that SKAT was entitled to the restitution of the payment made and would rule accordingly."

31. That is a complex passage, mixing matters of Danish public law with matters of Danish private law on restitution or unjust enrichment and matters of practical advice and Danish procedural law (rules of evidence in court proceedings). The sentence in Prof. Waage's paragraph 72 that I have emphasised, read in isolation, might be thought to imply that unless and until revoked, SKAT's decisions to accept and pay tax refund claims *could* be relied on as providing a legal basis justifying receipt and retention within Mr Hoyle's explanation and generalisation of the English law trusts doctrine requiring rescission in contract cases before a trust may arise. However, in my view Prof. Waage's evidence, quoted above, taken as a whole, is to the opposite effect, and the reference to putative reliance being placed by a defendant on an unrevoked payment decision is a comment about forensic practicalities or evidence, not a proposition of substantive Danish public law.

32. Therefore, if SKAT's analysis of the rescission requirement in contract cases is correct, the doctrine giving rise to that requirement would have no application here. Then, under English law, a constructive trust would exist in respect of the proceeds of the fraud alleged by SKAT, had it proved that fraud, whenever those proceeds came into the hands of one of the fraudsters, even if that was long before SKAT's July 2016 revocation of decisions to accept and pay the subject tax refund claims.

33. It is not necessary to decide whether SKAT's analysis is correct, since (as will be seen, below), I have not extended this Appendix by considering, *obiter*, the equitable claims that SKAT asserted (including its proprietary claims) far enough to make the point relevant, likewise the unlawful means conspiracy claims made by SKAT (one of the unlawful means alleged being the breach of constructive trusts over proceeds of fraud).

34. If constructive trusts over proceeds did arise, then SKAT made claims alleging breach of those trusts (when traceable proceeds were paid away, otherwise than to or to the order of SKAT, after the trust in question had arisen), and claims alleging dishonest assistance in those breaches of trust or the knowing receipt of the proceeds of those breaches of trust. References in Appendix 2, above, to SKAT pursuing claims for dishonest assistance or knowing receipt, are all references to claims put forward on that basis.

Unlawful Means Conspiracy

35. In its claims for damages for unlawful means conspiracy, then, SKAT alleged not only that the deceit it alleged, if proved, amounted to unlawful means, but also that breach of constructive trust, dishonest assistance in such breach, and dealing unconscionably with assets knowing them to have been received through a breach of trust, would count as unlawful means in a claim for damages for conspiracy to injure by unlawful means. Some defendants submitted, to the contrary, that none of those were or should be recognised as unlawful means in the present context.

36. In *FM Capital Partners Ltd v Frédéric Marino et al.* [2018] EWHC 1768 (Comm) at [455]-[456], Cockerill J recorded that it had been conceded in that case that "*bribery, breaches of fiduciary duty, dishonest assistance and knowing receipt*" were all capable of constituting unlawful means for a conspiracy claim. In *Crypton Digital Assets Ltd et al v Blockchain Luxembourg SA et al.* [2021] EWHC 1172 (Ch) at [61(ii), (v)], Deputy Master Brightwell recorded that the unlawful means alleged in the pleading of a conspiracy claim included breach of fiduciary duty, dishonest assistance and unconscionable receipt, in a judgment determining a strike-out application in which no point was taken about that (the asserted flaws in the pleading that the Deputy Master was asked to consider are set out at [59]). Unfathomably, SKAT cited those two judgments as authority for the proposition that knowing receipt qualified as unlawful means for the tort of conspiracy to injure by unlawful means. Neither is anything of the sort.

37. Whether breach of fiduciary duty qualifies as unlawful means in this context (and potentially therefore also, if it might add anything, conduct giving rise to dishonest assistance or knowing receipt liability), has not been decided. The point was left open by the Supreme Court in *JSC BTA Bank v Ablyazov (No.14)* [2018] UKSC 19, [2020] AC 727, at [15]. The Supreme Court also there left open whether breach of a contract qualified where the party claiming to have been the victim of a conspiracy was not privy to the contract, but I would now be bound to say that it did, on the authority of *Racing Partnership Ltd v Sports Information Services Ltd* [2020] EWCA Civ 1300 (reported as *Racing Partnership Ltd v Done Bros (Cash Betting) Ltd et al.* [2021] Ch 233).

38. I do not think it obvious that there is any principled reason to distinguish between breach of a contract to which the conspiracy claimant is not party and breach of trust or fiduciary duty where the conspiracy claimant is not a beneficiary, when considering

what can amount to unlawful means in a tortious conspiracy claim. But these are all, I respectfully suggest, points deserving consideration at the highest level on which it serves no purpose for more to be said, *obiter*, in this judgment. (For example, personal compensatory liabilities for dishonest assistance or knowing receipt may be seen as species of ancillary liability (as Lord Briggs JSC noted in *Byers v Saudi National Bank* [2023] UKSC 51, [2024] AC 1191, at [42]); and it has been suggested that recognising breach of trust or fiduciary duty as unlawful means for a common law conspiracy claim would be inconsistent with the careful delineation, through those equitable causes of action, of when there should be liability for secondary participation in equitable wrongdoing (see *Clerk & Lindsell*, 24th Edition, para 23-120 at n.570; and Lewison LJ's comment in his dissenting judgment in *Racing Partnership Ltd*, *supra*, at [248]).)

39. Finally, I consider this all to have been a red herring in the present case. In a claim for damages for conspiracy to injure by unlawful means, the harm in respect of which damages can be awarded is the harm, if any, caused in fact by the use of the unlawful means that are within the scope of the conspiracy. In the present case, if the unlawful means in question had been deceits practised upon SKAT that it had proved, that would have given rise to no difficulty. Proving the deceits as unlawful means would have included proof that those unlawful means caused SKAT to pay the tax refund claims in question. But none of the other alleged unlawful means could be said to have caused SKAT to make either (i) the tax refund claim payments that may have been traceably the origin of the breaches of trust alleged, or (ii) later tax refund claim payments made in response to further tax refund claims. SKAT submitted that it had "*suffered losses to the extent that it is unable to recover the proceeds of the [tax reclaim payments] by reason of their concealment, laundering or distribution through the equitable wrongs committed by the [relevant defendants]*". But it made no attempt to establish any such loss at trial.

Unjust Enrichment

40. SKAT pursued unjust enrichment claims against almost all of the trial defendants. However, apart from Syntax (a Tax Agent, and therefore immediate recipient of payments from SKAT), and the corporate Godson Ds (Solo Model USPFs on whose behalf a Tax Agent will have been acting, in the case of their tax reclaims), there was the difficulty in the way of any such claim that it requires enrichment to have been at the expense of the claimant, as confirmed and explained by the Supreme Court in *Investment Trust Companies v Revenue and Customs Commissioners* [2017] UKSC 29, [2018] AC 275 ('*ITC*').

41. SKAT submitted that in the cases of a payment made by the claimant, if the defendant's alleged unjust enrichment did not come through the receipt by them or their agent, from the claimant, of that payment, the enrichment might still be considered to have been at the expense of the claimant, under *ITC*, if:

    (i) what the defendant (or their agent) received was part of a coordinated transfer as contemplated by Lord Reed in *ITC*, at [48], [61], i.e. "*a set of related transactions, operating in a coordinated way, as forming a single scheme or transaction, on the basis that to answer the question by considering each of the individual transactions separately would be unrealistic*". Examples are *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221, as explained in

ITC at [61]-[66], and *Menelaou v Bank of Cyprus UK Ltd* [2015] UKSC 66, [2016] AC 176; or

(ii) the defendant (or their agent) received a payment or other asset "*into which the claimant can trace an interest. Since the property is, in law, the equivalent of the claimant's property, the defendant is therefore treated as if he had received the claimant's property*" (*ibid*, at [48]).

42. Taking the second possibility first, I do not read Lord Reed's brief observation, unnecessary to the decision in *ITC*, as treating traceability of a benefit received by a defendant to a payment or other transfer of value by a claimant as sufficient for the defendant to be treated as enriched at the claimant's expense for the purpose of a common law unjust enrichment claim. Indeed if that were the law, the decision in *ITC* would surely have gone the other way. In my view, all Lord Reed was doing by that remark was noting that where proprietary claims are recognised by the law in respect of benefits indirectly, but traceably, derived from what was originally some payment or transfer by a claimant, the law is granting a remedy in respect of a benefit provided to the defendant indirectly from the claimant.

43. In relation to coordinated transfers, HHJ Bird took a very restrictive view of that concept in *Tecnimont Arabia Ltd v National Westminster Bank plc* [2022] EWHC 1172 (Comm), holding as a result that the ordinary operation of an international banking payment mechanism, not involving relationships of principal and agent, meant that the originating payor's intended payee, via the banking chain, was not enriched at the expense of the payor. On that point, HHJ Paul Matthews differed, and refused to follow *Tecnimont*, in *Terna Energy Trading doo v Revolut Ltd* [2024] EWHC 1419 (Comm); and I consider that to be clearly the better view (so the question of when a third judge at first instance should depart from the considered decision of a second *puisne* judge not to follow the decision of a first does not arise). (I noted what *Tecnimont* had decided in "*Unjust enrichment scholarship in the courts: use and utility*" [2023] LMCLQ 624, at 641; but the focus of that article was on judicial methods and the influence of the academic writers in the field, not the soundness or otherwise of the decisions noted.)

44. Though *Tecnimont* went too far in applying it, the principle remains that in the context of unjust enrichment claims, the defendant is only considered to have been enriched at the expense of the claimant by direct transfers, or something in reality equivalent thereto. In this case, for trial defendants other than Syntax (as regards tax refund claim payments made to them by SKAT) or the corporate Godson Ds (as regards tax refund claim payments made by SKAT to a Tax Agent in respect of a tax refund claim submitted on their behalf), the facts are a world away from the sort of coordinated transfer described in *ITC*. SKAT's reliance on that notion confused, with respect, the existence of arrangements to which defendants were party (and which could be described as coordinated, from the perspective of at least some of the defendants) under which they would receive payments, but not from SKAT, if payments were made by SKAT, with the *ITC* notion of coordinated transfers involving the payor (and others) such that the party intended by the payor to benefit from its payment or other transfer was not the immediate or direct recipient from the claimant.

45. On the facts, that means that SKAT's unjust enrichment claims were bound to fail except as against Syntax (where I have no liability decision to make anyway because of the default judgment) and as against the corporate Godson Ds (in so far as unjust

enrichment claims were asserted by SKAT in relation to those defendants' respective own tax refund claims).

SKAT's Factual Cases

46. Apart from a brief comment, at the end, about recoveries that have been made by SKAT to date, the principal purpose of the remainder of this Appendix is to identify my key findings on SKAT's factual case against the trial defendants as to their contemporaneous knowledge or understanding of (as relevant) Solo Model, Maple Point Model or Klar Model trading and whether deceit was being or might be being practised against SKAT. I go further than that when dealing with SKAT's cases against Sanjay Shah, the DWF Ds and Mr Klar, so as to identify how I would have analysed the applicable boundary between principal and accessory liability in deceit on the facts of this case, and when considering Lindisfarne's position, to identify how I would have decided its time bar defence to the deceit claim against it and what I would have made of the negligence claim against it.

47. The task of judging SKAT's claims, defendant by defendant, was made harder than it could have been by the approach taken by SKAT in its written closing submissions. I made a general observation about the length of and detail in those submissions in paragraph 35 of the main body of this judgment. Not only was that a general difficulty when it came to the defendant by defendant Annexes served by SKAT, those Annexes suffered particularly from a failure to set out in a clear or concise way the nature of and basis for important findings of fact sought on the basis of inference.

48. To illustrate that by one example, in the Fletcher Annex, SKAT rehearsed over several pages of close detail a factual case about the incorporation and use of a BVI company, Wappineer Ltd, and four English subsidiaries of that company, for the receipt, ultimately for the benefit of Messrs Fletcher and Devonshire jointly, of their success fees under the arrangement described in paragraph 195 of the main body of this judgment. Within that detail, a submission was made that Mr Fletcher had given "*obviously untruthful*" evidence that Wappineer was incorporated and used with a view to making it less likely that Mr Murphy could find out about that new deal, and that it was to be inferred that the real purpose was concealment of the fees earned by Messrs Fletcher and Devonshire "*from regulators and tax authorities, such as SKAT*".

49. As it happens, I do not draw that inference, and I judged Mr Fletcher's evidence on that point to be truthful and supported by the contemporaneous documents, that is to say his evidence that concealment from Mr Murphy, not from regulators or tax authorities, was the reason advice was taken from Barnes Roffe on using a BVI company "*so as to ensure that third parties cannot get the financial information*". The present point, however, is that the inference that SKAT said should be drawn went nowhere in the Annex:

    (i) The Wappineer story was set out, at unnecessary length, as detail said to prove that by December 2014, Messrs Fletcher and Devonshire expected to be paid US$20m, of which US$780,000 had already been paid, and that the balance of US$19.22m was paid to them through their corporate vehicles in the summer of 2015. A reference to the transcripts where that was dealt with in cross-examination would have sufficed.

(ii) The claim of untruthful evidence, and the suggested inference about concealment from SKAT, was no part of that proof, but appeared in the middle of it.

(iii) The fact allegedly to be inferred that Mr Fletcher made use of an offshore corporate structure in order to conceal receipts from regulators and tax authorities such as SKAT made no other appearance in the Annex. It was not said to be a matter from which any state of mind alleged by SKAT against Mr Fletcher was to be inferred, in its deceit or conspiracy claims. It was not even relied on in support of the allegation that Mr Fletcher's assistance, as alleged by SKAT, in what were said to have been breaches of constructive trusts arising in respect of the indirect proceeds of fraud, was dishonest. For that, the only point relied on that related to Wappineer and its subsidiaries was the different point that Mr Fletcher caused Ganymede or the mini-Ganymedes to be invoiced on a false basis.

50. It was therefore harder work, and took longer, to consider SKAT's factual case, as part of reaching my decisions in the case and preparing this judgment, than it would have been if the Annexes had been better structured and focused. For a number of the defendants, in what follows I have sought to distil from SKAT's relevant Annex a concise but sufficient summary of at least the main elements of the case put by SKAT in closing. In each case, though, to be clear, I had regard to the entirety of the relevant Annex when considering my findings. I have not attempted, however, as part of that, to satisfy myself that SKAT only took in closing points on the facts that were open to it on the pleadings. That is potentially favourable to SKAT, and if its claims had not failed in any event at a prior stage in the analysis, I would have wanted to give that closer scrutiny, as regards every defendant, but especially as regards those litigating in person.

SKAT vs. Sanjay Shah

51. In this section of this Appendix, 'Mr Shah' will always be Sanjay Shah. He was the driving force behind Solo Model trading and the massive business it became, particularly in 2014/2015. He founded and was the ultimate beneficial owner of the Solo and Elysium Groups. He devised the idea of using internalised settlement to avoid the need for shares or external funding. He recruited (directly or indirectly via others) the large majority of the principals behind Solo Model USPFs and LabCos, short sellers, stock lenders and (for 2014/2015) forward counterparties. Of course assisted by others, particularly the DWF Ds until they left Solo, Priyan Shah and Mr O'Callaghan thereafter, Sanjay Shah's principal activity during 2012-2015, other than the management of the great wealth he was acquiring from it, was the Solo Model trading and the sharing of the huge profits generated by it.

52. It was common ground that Mr Shah was aware at all times that the Solo Model custodians never held any shares with VP Securities, directly or indirectly via any sub-custodian, for themselves or their clients. That is to say, he knew there was never any chain of custody, and that means there were no shareholdings. In cross-examination, Mr Shah sought to defend himself on this point by proposing that shares only exist as book entries, and therefore a book entry made by a Solo Model custodian was, or could have been, a share. That is obviously fallacious. A share is what it always has been. Fungibility and dematerialisation mean that a custody chain of share ownership records now functions, in effect, as the ultimate complete share register identifying who owns

shares. So there is a sense in which it is perhaps true to say that nowadays an account record of a certain kind will be the only record a shareholder normally has of their shareholding. But that is very different to Mr Shah's proposition that a custodian does, or can, create shares simply by making a book entry that purports to record that they are holding shares for a client. Nor, for completeness, was there any basis in the expert evidence for supposing there was ever any market (mis-)understanding that a custodian not holding shares could somehow create shares by such a book entry. The market practice experts were agreed that no such concept was known.

53. When asked to clarify what exactly he was saying he thought at the time a Danish share was, Mr Shah was unable to offer anything coherent:

> "*Well, yes, a share was a -- I suppose I would call it an abstract asset. It is dematerialised and it can only be represented in the books and records of a custodian. It is the custodian's obligation to make sure their own books and records balance. So for every positive account holding there has to be a negative account holding somewhere, and that is where the short seller's position comes in.*"

54. It is axiomatic that there cannot be securities overdrafts, i.e. negative 'holdings' of shares. A "*positive account holding*" with a custodian backed by the custodian only by a short seller's "*negative account holding*", whatever else it might constitute, is not a shareholding; and I am confident Mr Shah knows that full well, and knew it at the time.

55. In any event, Mr Shah also knew throughout that what the USPFs received, and later the LabCos, that was the subject matter of the CANs issued to them, was (in the terminology I have been using) a dividend compensation payment, and not a payment in any sense passed up a custody chain so that its ultimate indirect source had been the Danish company.

56. Mr Shah advanced a positive case in defence to SKAT's claims that on reasonable grounds, including his understanding of market practice, and in the light of the legal advice received by Solo from Hannes Snellman, he honestly believed that the Solo Model USPFs and LabCos became entitled to be paid a tax refund by SKAT on the basis of their Solo Model transactions. I reject that case, as will be apparent, below, where I deal with SKAT's case that Mr Shah had no honest belief in the truth of the tax ownership and dividend entitlement representations.

57. He also sought originally to deny, and still at trial to water down, the nature and extent of the direction by Solo's GSS team of all Solo Model trading. This was a lasting hangover, in my judgment, of a strong instinct he had at the time that pervaded everything he did or said about the GSS business, that the tax refund claims it generated would be challenged if SKAT realised they were the product of artificial structured trading, coordinated as to every term of every transaction by Solo and having no purpose except for the generation of those claims. That mindset, I think, has become too ingrained for Mr Shah to be able to jettison it in favour of honesty about how the GSS business operated when, in the event, the tax refund claims were not impugned on that basis (or at all events they were not impugned on that basis in these proceedings, in which it was not relevant to consider, and so I have not attempted to consider, how any case against the validity of the claims may have been articulated in any of the other proceedings around the world). It explains, in my judgment, the dishonesty to which

Mr Shah was privy, indeed that he mostly directed, concerning the Solo Model trading, such as:

(i) documenting the profit-sharing fees of participants falsely, through contracts and invoices, as fees for financial or other services not in fact agreed or provided;

(ii) misdescribing the nature of the GSS business in response to external enquiries;

(iii) conducting important business off email, in particular by Skype and WhatsApp, to conceal the central coordination of the trading by GSS and also (I think) to conceal that Mr Shah was in truth still running SCP from Dubai even after Ms Stratford's appointment as CEO in London. Mr Shah gave rather striking evidence to the effect that when the criminal investigations against him began he had been advised to stop using his Skype account by a lawyer, and the account was subsequently deleted by his "*IT support team*". The Skype exchanges that made their way into evidence at trial were obtained by SKAT from SCP's administrators thanks to the fortuitous fact that Skype communications had sometimes been conducted by logging into Skype accounts on computers that were left in SCP's offices when the administrators took over.

58. Mr Shah also showed a willingness to conduct business dishonestly by the elaborate arrangements by which he acquired in clandestine fashion effective control of Varengold Bank and Dero Bank.

59. All of that, together with my assessment of him when he gave evidence, left me reluctant to trust anything that Mr Shah said for himself about the facts. At the same time, however, in my judgment it is all explicable on grounds other than that he thought that representations were being made to SKAT so as to mislead it into paying claims such as, or anything like, were alleged by SKAT as the basis for all of the claims it pursued. Furthermore, it was not relied on by SKAT in closing as evidence that Mr Shah realised that any of the representations alleged by SKAT was being made (see paragraph 90 below).

60. With those general findings in mind, I set out below what I would have made of SKAT's case against Mr Shah if it had established that it was misled into accepting and paying Solo Model tax refund claims, as it alleged. I do so following something like the order in which SKAT addressed matters in its Sanjay Shah Annex for closing, i.e. the written closing submission that focused on the case, on the facts and in law, put against Mr Shah.

Understanding of the Alleged Representations

Awareness of the Tax Reclaim Documents

61. At the time, Mr Shah was well aware of the form and content of the SCP CANs and, in the latter part of the chronology, those of the other Solo Model custodians, Old Park Lane, Telesto and West Point. He also understood at the time that their only purpose was to support a tax refund claim submitted by one of the Tax Agents on behalf of the USPFs (and, latterly, LabCos) to which they were issued; and that the CANs themselves had to be submitted to SKAT, and were routinely so submitted, as the 'dividend

advice(s)' required by Form 06.003, a form with which he was familiar. I did not identify any basis for a finding, nor did SKAT seek a finding, that Mr Shah was aware of Form 06.008 or of the fact that Form 06.003, the then current form, was not used in every instance.

62. Mr Shah cavilled in cross-examination at the suggestion that he knew at the time that the CANs went to SKAT. However, I do not think it credible that he does not now still know that he knew at the time that the CANs themselves went to SKAT, so obvious is it on the documentary evidence that he did and so central to everything were the CANs. Indeed, I think that SKAT was correct to submit in closing, as it did, that Mr Shah gave himself away on that point by an unguarded answer when trying to defend a silly point he had put forward that SKAT had somehow 'approved' the Solo Model trading structure by paying tax reclaims arising from it:

> "*Q. … You say they in inverted commas somehow "approved" this by paying. How do you say SKAT would have known or knew that these were cum-ex trades, Mr Shah?*
>
> *…*
>
> *A. They wouldn't have known that they were cum-ex trades, but they would have known that the DCAs were genuine.*
>
> *Q. They would have known -- they would certainly have thought that the DCAs were genuine, Mr Shah.*
>
> *A. Thought, yes. But my belief was that they knew the DCAs were genuine.*"

63. Mr Shah saw examples of Acupay's covering letter in connection with the first Solo Model Danish trades. Acupay sent Solo, and I think it overwhelmingly likely Mr Shah would have read at the time, copies of the full tax refund claim documentation submitted to SKAT for their first five Solo Model Danish tax reclaims. He did not see Goal or Syntax cover letters. If representations were made to SKAT only because of the language used in those cover letters, then Mr Shah was unaware of them.

The Core Representations

64. SKAT's primary submission was that Mr Shah must have understood that the core representations would be and were being made to SKAT, since he knew the tax reclaim documents they would be and were receiving.

65. The premise of that submission – contemporaneous familiarity with the reclaim documents – is correct, except as regards the language of the Goal and Syntax cover letters, if that language made a difference. However, I do not accept the conclusion for which SKAT contends. It is not so obvious that any of the particular representations alleged by SKAT was made, at least in essence, by the tax reclaim documents for it to be said that Mr Shah, if he had given the point any thought, cannot have failed to see it. Further, as the way I have just expressed that indicates, SKAT's bald submission assumes, whereas it would require SKAT to prove, that Mr Shah *did* give thought at the time to what the tax reclaims would convey to SKAT by way of representation, i.e. as a statement of fact or law made to SKAT on which SKAT would be likely to consider

itself entitled to rely as a positive assertion by the Tax Agent that what was stated was true.

66. There was an element, here and elsewhere in the case, of bold assumption on SKAT's part that, since (as is now clear) the equity buyers under the Solo Model never acquired any shares, there must have been a fraud. I do not say it was an unreasonable immediate instinct to think that the possibility that a fraud had been committed should be considered. It was HMRC's instinct in tipping SKAT off, having identified (as it put it in its initial spontaneous disclosure letter to SKAT dated 29 July 2015) that, "*The main issue with the whole system [i.e. the Solo Model] is that it is stockless and is a series of book-keeping entries, with no actual stock at all in the system*". It was also Arunvill's first thought when Mr Bains explained the Solo Model to it in 2014 (see paragraph 254 below and paragraph 609 of the main body of this judgment). But immediate reactions of that sort do not amount to a sustainable case that any particular representation was in fact ever made to SKAT, let alone that Mr Shah (or any other given individual) realised as much.

67. SKAT did not rest on that primary submission. It also contended that the trial evidence established Mr Shah's contemporaneous appreciation that the core representations would be and were being made to SKAT by the Tax Agents.

68. For the tax ownership representation, SKAT submitted that Mr Shah had not disputed in cross-examination that he thought a Solo Model CAN conveyed that the client to whom it was issued had a shareholding on the dividend declaration date. I think that is a fair characterisation of Mr Shah's evidence; but that was not the representation alleged, or its essence, which was a statement about share ownership for Danish tax purposes. Mr Shah's evidence was in any event qualified, as to be fair SKAT acknowledged, in that he said, in effect, that given the context he thought any statement about share ownership in a Solo Model CAN referred to beneficial ownership. SKAT submitted that this was "*doubtful in the light of the wording of the [CANs], which does not mention beneficial ownership, although the Tax Refund Form does refer to "beneficial owner"*."

69. My concerns about his credibility notwithstanding, I accept Mr Shah's evidence that at the time he had in his head a notion that the equivalence, in economic effect, of a sale purchase to a shareholding, from the trade date in markets like Denmark where that was the convention, was a kind of 'beneficial ownership' such as DTTs had in mind. His idea was quite mistaken, but genuinely held. It was also, I find, Mr Klar's wrongheaded, but genuine, idea at the time; likewise for Rajen Shah and Mr Horn.

70. SKAT's submission was that whether or not Mr Shah had that sort of idea in mind, since he knew the Solo Model CANs were an essential part of the tax refund claims being made to SKAT, he must have understood, and intended SKAT to understand, that references in a CAN to the client having a "*no. of shares*" meant share ownership for the purposes of Danish tax law. Mr Shah accepted no such thing, when it was put to him; and in my judgment he was right to do so. It does not follow, and in any event I believed and accept Mr Shah's evidence that he did not think at the time that any statement of that kind was being made to SKAT.

71. For the dividend entitlement and dividend payment representations, SKAT said Mr Shah had admitted in cross-examination an understanding that the Solo Model CANs

conveyed that the client had been entitled to the gross dividend amount stated and had received a payment in the net amount stated. Again, I consider that a fair characterisation of his evidence; but again, that is not the representation alleged, the essence of which is a statement about effects under Danish tax law. (For completeness, I should note that on one occasion, when asked about a West Point CAN, Mr Shah said "*Yes, correct*" when it was put to him that he "*understood this to be conveying that the client was therefore entitled to a gross dividend in the stated amount as a matter of Danish tax law?*", but I do not believe he caught the final few words of that question when giving that answer.) His consistent evidence, in my judgment credible evidence despite my general concerns about him as a witness, was that he did *not* think anything was being said to SKAT about the content, effect or application to the facts of Danish tax law.

72. Again, as with the tax ownership representation, it does not follow, as SKAT submitted, from the fact that a CAN was being provided to support a tax refund claim that Mr Shah, or anyone else, must have understood or intended that a CAN would be read by SKAT as making any such statements. I do not accept that Mr Shah had any such understanding or intention. The fact, somewhat laboured by SKAT in its closing argument, that ultimately what might constitute a 'dividend' for the purposes of entitlement to a Danish dividend tax refund payment must surely be a matter of Danish tax law, and rather incoherent though some of Mr Shah's evidence about that was, does not mean that statements made to SKAT must or should be taken to be stating things "*as a matter of Danish tax law*".

73. When Mr Shah acknowledged, as he did, that CANs would convey to the reader an entitlement to the gross dividend amount, on his evidence as a whole I consider that he had in mind the circular reasoning he intended to deploy for his defence on the tax representation, to which I turn next, i.e. he had in mind to say that he thought at the time the client *did* have an entitlement to the gross amount because of an entitlement to be paid the 27% by SKAT as a tax refund.

74. SKAT rightly accepted that Mr Shah did not admit that any Solo Model CAN made the tax representation. SKAT submitted that his evidence on this topic was characterised by affected misapprehension, leading to incoherence. In my judgment, Mr Shah did not find the questions easy to deal with, but that was mostly because they were put without making clear what precisely was meant and, therefore, what precisely he was being asked to agree or dispute. It will be clear from my consideration in the main body of this judgment of what CANs purported to state, considering the matter objectively, that it is important to be precise as to what is meant by, for example, the idea of the named client having suffered a withholding of tax, or of tax having been deducted from the payment received by the named client.

75. In my view, a fair summary of Mr Shah's evidence on this point, taken as a whole, is that:

    (i) he accepted that the payment in respect of which a Solo Model CAN was issued was not a payment that came to the client up a chain of custody, ultimately therefore, albeit indirectly, from the Danish company, and that he was well aware of that at the time;

(ii) he did not accept that any of the Solo Model CANs conveyed that the client *had* received such a payment; and

(iii) he insisted that the references in Solo Model CANs to "*Tax*" amounts (SCP; Old Park Lane) or "*Withholding tax deducted*" (Telesto; West Point) conveyed in each case no more than that the custodian had subtracted the amount so labelled from the stated gross amount to calculate the net amount paid to the client.

76. The difficulty for Mr Shah, even allowing for the problems created by the way questions were put, was how to explain a reported payment of an amount net of 'tax' if, as he appeared to agree, the same report stated that there had been an *entitlement* to the gross amount. Mr Shah's best effort was the circular logic in the first answer in the following exchange in cross-examination:

> "*Q. What do you say the reference to "withholding tax deducted" actually refers to, then, Mr Shah?*
>
> *A. The only way I can explain that is that's 27% of the gross dividend which is the difference between the net and the gross, and that amount represents the amount that the pension plan or the applicant is entitled to receive from SKAT.*
>
> *Q. So that is simply a reference to a calculation which has been made to produce the net dividend amount figure?*
>
> *A. Yes, that's my understanding.*
>
> [In fact, Mr Shah's first answer said rather more than that. It said that the 27% was deducted, and labelled (in this instance) "*withholding tax deducted*" because the client was entitled to be paid that proportion of the gross entitlement by SKAT.]
>
> *Q. Do you accept, Mr Shah, that this conveys to the reader and was intended to convey to the reader that there has in fact been withholding tax deducted?*
>
> *A. I would say that it depends on the reader, it depends on who the reader is.*
>
> *Q. Would you accept that a tax authority, whose job it was to give 'refunds' in respect of withheld tax, would have understood and intended and been intended to understand this to be a reference to there in fact having been withholding tax deducted?*
>
> *A. I'm not that familiar with the processes but my understanding is that this would convey to SKAT that this is the amount that the applicant is entitled to reclaim.*
>
> [This confirmed that Mr Shah *did* intend his first answer in the way I understood it – see above.]
>
> *Q. Mr Shah, how would a reader of this know or understand that no tax has actually ever been deducted?*
>
> *A. You mean deducted by the issuing company?*

> *Q. Actually deducted, as opposed to as part of some calculation simply intended to achieve another figure?*
>
> *A. Well, if the question is how would I explain that, I would explain by saying that this arises due to the loophole.*
>
> *Q. The question is how would a reader of this know or understand that no tax has actually ever been deducted?*
>
> *A. I don't know the answer to that.*"

77. Save for the accidentally candid final answer, I did not believe that Mr Shah in that exchange was giving evidence of what he now perceives as recollection concerning how he understood or saw things at the time. He was putting forward the best he had managed to come up with to try to argue his way out of accepting that CANs purported to record a payment net of tax in the sense contended for by SKAT (paragraph 509*ff* of the main body of this judgment). I consider him smug enough to have thought he had an argument that might work despite its circularity, but not smart enough to realise that it involved positively asserting an understanding that, when presented to SKAT in support of a tax refund claim, Solo Model CANs would make positive representations of entitlement to a refund (which SKAT has not considered it credible even to allege).

78. The question arises whether Mr Shah took himself down that dead end in his evidence because he knows that at the time he *did* think SKAT was being told by the CANs, falsely, that the reported payment was net of tax withheld by the issuer (in the sense SKAT alleges, paragraph 509*ff* of the main body of this judgment again), for some other identifiable reason, or for no particular reason other than a propensity towards trying to talk his way out of things and not telling things straight when doing so. SKAT relied on the natural sense of the CANs being to the effect of the tax representation, which I have not accepted, and on an isolated answer Mr Shah gave that a "*DKK DCA Tracker*" spreadsheet maintained by the GSS team at his request existed, as Mr Goldsmith KC put it in asking the question, "*to track the amounts of tax to be reclaimed from SKAT as set out in the DCAs*".

79. In my judgment, it reads too much into that answer to say that Mr Shah agreed anything by it as to what precisely, on its own or when submitted to SKAT, a CAN would state as regards the nature or meaning of the 'tax' amount stated in it. On the more general point (the natural sense of a CAN), Mr Shah did not in his evidence make anything of the possible point of distinction that I noted in the wording of the SCP CANs (their narrative statements describing what they were reporting), but I should also note that Mr Rabinowitz KC put the case to Mr Shah in relation to that on the basis that the SCP CANs "*used ambiguous language …, like payment that represents the dividends*", although no case of the deliberate use of ambiguity in order to deceive was pleaded.

80. In my judgment, Mr Shah did not focus on the precise language of CANs. He regarded them as generic documents, and he was obviously aware at the outset of Solo Model trading that the SCP CAN had been copied from the form of CAN issued by Merrill Lynch in the Broadgate transaction, which involved cum-ex trades in which the payment will have been a dividend compensation payment. Further, I accept the evidence of Mr Horn, Rajen Shah, and Mr Klar to the effect, in each case, that they thought the CAN merely recorded and reported the basis on which the net amount to be

credited had been calculated. I do not accept that Sanjay Shah was as removed from the detail or reliant on others, particularly (at the time) Mr Horn and Rajen Shah, as he (Sanjay Shah) tried to portray in his evidence. However, I think it unlikely that he had a decidedly different understanding of what a CAN was, and what it did and did not state, than they had.

81. Overall, on balance, I was not persuaded that Mr Shah thought at the time that the tax representation, or its essence, would be made, or was being made, by the tax refund claims submitted to SKAT.

The Honest Custodian Representation

82. SKAT's submission was a single sentence, relying on Mr Shah's admission in cross-examination, for each form of Solo Model CAN, that anyone reading the CAN would think that the issuer of the CAN honestly believed the statements in it were accurate and true. That does not prove appreciation of the honest custodian representation, which would require an understanding that the Tax Agent was stating to SKAT that the custodian had acted honestly; indeed, more specifically, that the Tax Agent was stating to SKAT that the custodian honestly believed the core representations to have been made by the CAN and to be true.

Conclusion

83. For the reasons summarised above, I was not persuaded that Mr Shah at the time knew or intended that any of the representations alleged by SKAT would be or were being made to it by the Tax Agents.

Knowledge of Falsity

Core Representations

84. There is an awkwardness about expressing as a finding that a defendant knew that a representation was false, or did not have an honest belief in its truth, where the defendant in question did not realise that the representation was being or had been made in the first place. In relation to the tax representation and the dividend payment representation, the position is relatively straightforward, but still since my finding is that Mr Shah did not at the time understand that the representation would be or was being made, I prefer to express myself as follows:

    (i) Mr Shah knew that the payment made to a Solo Model USPF or LabCo reported by a CAN was never a dividend payment, net of tax, coming to the USPF or LabCo ultimately from the issuer, indirectly up a chain of custody;

    (ii) therefore, if he had understood that the tax representation or the dividend payment representation would be or was being made to SKAT, he would have known that SKAT was being told a falsehood with each tax refund claim made to it arising out of Solo Model trading.

85. The position in relation to the tax ownership representation and the dividend entitlement representation is more complicated, because they are, as alleged, representations as to a status or characterisation under Danish tax law which in relevant respect operated on

a fiction. It therefore does not follow from Mr Shah's undoubted knowledge that the Solo Model USPFs and LabCos were not shareholders on the dividend declaration date that he knew they would not be treated as such under Danish tax law by virtue of the trade date of their equity purchases.

86. The publicly available materials from SKAT and Clearstream, along with the First HS Advice, might reasonably have led Mr Shah (likewise Mr Horn and Rajen Shah) to believe that a cum-ex buyer of Danish shares who acquired a shareholding upon settlement of their purchase would be treated under Danish tax law as having been the shareholder as from the trade date of the purchase. They would not have had reason to suppose that it made any difference whether the seller was short or long on the trade date, or, if the seller was short then, when precisely prior to settlement the seller acquired shares, or an entitlement or effective ability to have shares transferred to the buyer, so that the trade settled successfully as it did, DVP.

87. However, none of that gave Mr Shah (or, again, Mr Horn or Rajen Shah) any basis for thinking that Danish tax law might treat a buyer who never acquired shares as having nonetheless been a shareholder. Nothing in any publicly available material, or any market practice, or the advice from Hannes Snellman, gave reason to think that the entirely synthetic world created by the Solo Model, in which there were no shares at all, ever, was a world in which Danish tax law would say that the Solo Model equity buyers, the USPFs and later the LabCos, were nonetheless to be treated as having been shareholders, at any time.

88. The burden of proof remains on SKAT, of course; and I agree with the Shah Ds' submission that *Raja v MacMillan* [2020] EWHC 951 (Ch), cited by SKAT, is not authority for any rule of law for the tort of deceit that a non-lawyer cannot hold an honest belief in the truth of a representation, the accuracy or inaccuracy of which is or depends upon a matter of law, unless legal advice has been taken that supports, or was honestly believed to support, its accuracy. It is therefore possible, in theory, for Mr Shah (or Mr Horn or Rajen Shah) to have had an honest belief that Solo Model equity buyers would be treated by Danish tax law as shareholders from the dividend declaration date, entitled to the dividend declared on that date, though they never became shareholders at all and though there was no legal advice (from Hannes Snellman or at all) to support that belief.

89. The difficulty for those defendants, though, is that by the First HS Advice and Ms Becker-Christensen's emails in finalising it, it was apparent that in Hannes Snellman's view it was *essential* for Danish tax law that the Solo Model equity buyer *did* acquire full legal and beneficial title to a real shareholding, and that if Hannes Snellman had been told of the Solo Model secret ingredient, they would have advised that the equity buyer would *not* be considered by Danish tax law as ever having been a shareholder or entitled to any dividend. I therefore conclude that, had Mr Shah thought that the tax ownership representation or the dividend entitlement representation was being made to SKAT, he would have believed at the time that SKAT was being told an untruth.

90. Save for their potential to bear upon my assessment of Mr Shah's general credibility, the extensive efforts made or led by Mr Shah to conceal the reality of the Solo Model as a centrally directed, share-less trading model, and his involvement in what I have described as collateral dishonesty, either as part of that obfuscation or elsewhere (e.g. in his clandestine acquisition of control of Varengold Bank and Dero Bank), were relied

on by SKAT, as to substance, only as supposed further factors supporting a finding that he knew of the falsity of the core representations. I was not persuaded that they provided support to SKAT on that point.

Honest Custodian Representation

91. I accept SKAT's case that Mr Shah was at all times the directing will and mind of the Solo Model custodians. His knowledge was their knowledge; and I am quite sure he saw it that way too, i.e. if honest about it, he would have to say they knew what he knew.

92. Although I have not identified any way in which this might have affected the outcome, given my conclusions (see below) on the attribution of responsibility for any representations that were made, I would therefore have said that if the honest custodian representation was made, and if Mr Shah realised that it was made, then it was a misrepresentation, and Mr Shah knew that, because the Solo Model custodians, through Mr Shah and therefore to his knowledge, would then have been acting fraudulently, not honestly, if and to the extent that the core representations were made and Mr Shah understood as much.

Intention to Induce Reliance by SKAT

93. To the extent that the representations alleged by SKAT were made to it in relation to Solo Model trading, if Mr Shah had realised that was the case, I would have considered it self-evident that he intended SKAT to rely on those representations.

Attribution of Responsibility

94. SKAT's Particulars of Claim, with its Schedules 5A to 5AG containing further particulars against individual defendants or groups of defendants, was a difficult, poorly structured, somewhat impenetrable pleading. In *SKAT v Goal Taxback* [2020] EWHC 1624 (Comm), which dealt with a summary judgment application by Goal and a cross-application by SKAT to amend, I acknowledged the daunting nature of the task of pleading SKAT's claims in these proceedings, but even allowing for that came to the conclusion, with regret, "*that SKAT's pleading is not fit for purpose, so far as concerns SKAT's claims against Goal, on which alone I have focused in the detail required to form such a view because of the need to determine this summary judgment application*" (*ibid*, at [58]). In that respect, the pleaded case against Goal was not an outlier, and SKAT's sprawling, imprecise and badly structured pleading was an ongoing source of difficulty throughout the proceedings. There is room for an argument, with the benefit of hindsight, that it should have been struck out with a direction that SKAT re-plead with a proper structure and focus, in line with Section C.1.1 of the Commercial Court Guide.

95. In that regard, it has not helped the task of preparing this judgment that SKAT's written closing submissions did not do what I thought I had said during oral openings at trial I would want them to do, which was to take the case pursued by SKAT in closing against each defendant and, for each analytically distinct cause of action pursued against that defendant, identify the case SKAT said it had pleaded on each necessary ingredient of that cause of action, taking them one at a time, and then make for each such ingredient

whatever submissions SKAT wanted to give me in writing as to why, it contended, it had established at trial what, by that pleading, it had set out to establish.

96. The pleaded case that Mr Shah has a primary liability for deceit, although any representations made to SKAT were made in each instance by a Tax Agent as applicant submitting a tax refund on behalf of a named client, is a case in point. It is a complex mess, difficult to assimilate and hard to understand. As it happens, in my request that the written closing submissions should assist in this regard, I noted by way of example, and in effect, that if there were different routes by which it was alleged that Mr Shah had a primary liability for deceit, and different routes by which it was alleged that he had an accessory liability for someone else's deceit, then each of those routes gave rise to an analytically distinct cause of action. I identified then, as regards primary liability, that SKAT appeared to be pursuing two routes for liability against Mr Shah: first, that where his signature was on a Solo Model CAN, SKAT would say that was sufficient (a route, in the event, not pursued in closing); second, that SKAT would say he was the true principal of whoever was to be regarded as having made representations to SKAT (that is to say, in fact, as I have decided, the Tax Agents).

97. It will become apparent from what follows why it had not jumped readily off the page of SKAT's pleading that it also pursued a case of the kind considered in paragraph 9*ff* of this Appendix, above; but I have come to the view that such a case was indeed pleaded:

    (i) At first blush, SKAT's only relevant pleaded case in the Particulars of Claim seemed to be at paragraph 57(b), alleging that Mr Shah was primarily liable as one of a number of alleged "*true principals on whose ultimate instructions the [Tax] Agents were acting*".

    (ii) Paragraph 59 alleged that Mr Shah induced or procured the making of allegedly fraudulent representations. That is a plea of accessory liability, albeit without identifying the alleged primary tortfeasor in respect of whose deceit, if proved at trial, there might be an accessory liability on the basis of inducing or procuring their tort. Since nothing different was specified, however, and reading paragraphs 57 to 59 together, so far as they relate to Mr Shah, I would say that paragraph 59 alleged accessory liability in respect of the alleged primary liability of Syntax (paragraph 57(a)), the others alleged to have been "*true principals*" of the Tax Agents in Solo Model tax reclaims (paragraph 57(b)), and the Solo Model custodians (paragraph 58(a)).

    (iii) There were further pleas that, on their own terms, appeared also to be pleas of accessory liability, alleging participation in a common design to deceive SKAT (paragraphs 57(c) and 58(b)). They likewise did not specify the alleged primary fraudster, and seemed similarly to have been alleging accessory liability in respect of the primary liabilities identified in this key run of paragraphs.

98. Those common design pleas alleged that liability was created by the actions SKAT alleged in Section G of the Particulars of Claim, said to be "*actions taken in furtherance of the deceits in pursuance of a common design*". The use of "*the deceits*" would tend to refer the reader to the immediately preceding pleas, so in paragraph 57(c), the alleged deceits of Syntax and the "*true principals*" of the Tax Agents (paragraphs 57(a) and 57(b), respectively), and in paragraph 58(b), the alleged deceits of custodians.

99. Those pleas were reiterated and particularised in Schedule 5B to the Particulars of Claim. Paragraph 3 of that Schedule alleged that Mr Shah procured or induced the Solo Model custodians to do the acts said to render them liable, and the same was said by paragraph 4 in respect of Syntax (from when it came under Mr Shah's control). Those are allegations of accessory liability. Paragraph 4A of the Schedule alleged that Mr Shah "*instructed or directed or procured*" the Tax Agents to submit Solo Model tax refund claims containing the false representations alleged by SKAT, "*as stated in paragraph 50(j) of the Particulars of Claim*". Paragraph 50(j) alleged that in connection with the Solo Model, the Tax Agents "*acted on the instructions and at the direction of [Mr Shah] or his associates*". Paragraph 4A of the Schedule therefore did not raise any further or different case than that of Mr Shah being the Tax Agents' "*true principal*" (as alleged in paragraph 57(b) of the Particulars of Claim).

100. In a footnote in its written closing submissions, SKAT also referred to paragraph 8C of Schedule 5B. That alleged that "*As set out in paragraphs 3-6 above, [Mr Shah] played a significant role in the making or procuring the making of [the representations alleged by SKAT]*". I have already noted paragraphs 3, 4 and 4A, as thus cross-referenced. Paragraph 5 said that "*As set out in Section G of the Particulars of Claim*", the representations allegedly made to SKAT "*were made as part of fraudulent schemes by defendants acting with a common design to defraud SKAT. It is to be inferred from the facts and matters set out in the Particulars of Claim and this Schedule [i.e. every fact pleaded across c.300 pages!] that [Mr Shah] was the primary individual responsible for the making of the*" representations alleged (as regards the Solo Model), alternatively the substantial majority of them. Paragraph 6 then alleged that Mr Shah carried out "*acts of assistance in furtherance of the said common design …, as particularised more fully in paragraph 8 below*", and the particulars under paragraph 6 itself then made it clear that the cross-reference to paragraph 8 was intended to encompass paragraphs 8A to 8Q, with all their sub-paragraphs, covering c.18 pages. Paragraph 8, under a heading "**A3. Conspiracy**", pleaded that Mr Shah was "*the primary individual responsible for devising and orchestrating the Solo WHT Scheme. In concert with [specified others], [Mr Shah] participated, and provided substantial assistance, in the execution of the Solo WHT Scheme and received substantial payments and assets … directly or indirectly representing the proceeds of the Scheme*", and said that the paragraphs that followed (which included paragraphs 8A to 8Q) set out the "*concerted action taken by him pursuant to the Solo WHT Scheme*".

101. Going back, then, to Section G of the main Particulars of Claim, it occupied (so far as it related to the Solo Model) 18 pages, opening with paragraph 49, by which SKAT alleged that the representations it pleaded "*were made as part of fraudulent schemes by which the Alleged Fraud Defendants [which include Mr Shah]:*

49(a) identified or procured or assisted in the formation of seemingly eligible applicants for WHT refunds;

49(b) manufactured fictitious and/or sham transactions and/or carried out illegitimate trading for the purpose of facilitating WHT Applications;

49(c) made or procured or assisted in the making of the WHT Applications, including the [representations alleged]; and/or

49(d) dealt with the sums paid by SKAT in reliance on said representations in such a way as to conceal and/or launder and/or distribute the proceeds of the WHT Applications."

102. That is all very far removed from the approach to the pleading of a cause of action called for by Section C.1.1 of the Guide. It is what it is, however, as the pleading on which SKAT went to trial, and when the full impact of the cross-referencing to Section G of the Particulars of Claim is appreciated, I consider that it was open to SKAT to pursue in closing, as it did, an argument that Mr Shah had a primary liability in deceit on the basis that he deliberately caused SKAT to be deceived (tricked by false representations), using the Tax Agents as the means by which deceptive communications he wished SKAT to receive would be delivered.

True Principal

103. The Solo Model was a structured trading model constructed entirely around the generation of tax refund claims to be submitted to the national tax authority of the jurisdiction of the shares traded, and therefore SKAT so far as concerned Danish shares. It was not in any normal use of language an equity investment platform, or even an equity trading platform. It did involve, that is to say make use of, equity trading, meaning (as I concluded) real equity trading transactions, albeit transactions on carefully coordinated terms that SCP cleared and settled using its bespoke share-less methodology. But the trading was not the business, it was merely the means whereby SCP's GSS business unit, under the ultimate direction of Mr Shah, generated the tax reclaims that (as a matter of his intention as SCP's directing mind) SCP wanted, and was trying, to create.

104. In short, this was, in substance, *SCP's tax reclaim business*. I do not consider that is affected by the fact that Mr Shah chose to take the primary profit into Ganymede rather than SCP itself. I have no doubt he did so because Ganymede was an unregulated, offshore entity, and Mr Shah instinctively wanted to avoid the risk of the FCA questioning the appropriateness of what SCP was doing, if it saw that SCP was generating very substantial profits for itself through creating and then taking the lion's share of tax refund claims. In principle, indeed, I think it may be open to question whether Mr Shah had any right to divert profits away from SCP in that way, but I do not consider that further as it was not raised as part of any of SKAT's pleaded claims.

105. In my judgment, the business reality is also unaffected by the subsequent Solo Group arrangements under which (i) the GSS business unit operated as Genoa, providing services to SCP, (ii) the new Solo Model custodians were used, via 'white labelling' arrangements, to create the appearance of four similar businesses, not just a single SCP (GSS) business, and (iii) the automation machinery, when it was developed, was provided via other related companies. They were all means by which SCP's tax reclaim business developed, increasing in complexity and sophistication, and expanding hugely; but it remained, in substance, SCP's business throughout.

106. The Solo Model trading structure, as SCP's devised *modus operandi*, required SCP to have access to tax favoured entities to be the equity buyers under the Model. USPFs (and later LabCos) were identified, by type, as candidates to be those tools of SCP's trade, and so were recruited. That is why, for example, the first Solo Model recruitment communication (for possible Belgian trading) was Mr Shah's email to Mr Markowitz

on 9 April 2012 wondering if Mr Markowitz had a "*pension fund in the US that can be used for trading equities and derivatives*". In the ensuing email exchange, Mr Shah did dress the proposal up as (i) "*similar to the Broadgate strategy (equities and futures)*", a half-truth given the key difference not mentioned that there would be no shares, and (ii) a "*platform which should suit your risk profile which we have been developing*"; but I consider the initial language used telling.

107. Once recruited, the USPFs (and later the LabCos) were directed by SCP to appoint and use the Tax Agents selected by SCP for the business. The Solo Model was not available to 'investors' who might want to take care of their own Danish tax affairs, filing their own tax refund claims. The Tax Agents having then been appointed by the USPFs and LabCos, as they had to be so as to have evidence of their authority to submit tax reclaims on their behalf, they (the Agents) knew what the job required and could largely get on with it. But it was clear on the evidence at trial that to the extent that further direction was ever required or sought, it was given to the Agents by, and sought by them from, SCP (GSS). The Belgian tax authority enquiry is a good example (see paragraph 158 of the main body of this judgment); there were also plenty of more routine examples, showing that the Tax Agents looked to SCP for direction, and knew that SCP expected them to do so, over when to submit reclaims, how to batch them, and what to do with the proceeds.

108. In my judgment, without contradicting the legal fact that the contractual agency was always between the Tax Agent and the USPF or LabCo, in the context of attributing responsibility for the tort of deceit, the correct conclusion is that SCP was at all times the true principal behind, and directing, the Tax Agents' activity in relation to the Solo Model. It is a step too far, however, to say that Mr Shah personally occupied (or also occupied) that role. He was SCP's directing mind and will for the tax reclaim business; and he was the most important individual at SCP for it. But there were very significant others, most importantly (and without trying to be exhaustive) Mr Horn and Rajen Shah until they left Solo in 2013, Priyan Shah and Mr O'Callaghan thereafter, and Mr Barac, and to a more limited extent but still important, Mr Bains and Mr Dhorajiwala. It would not be correct for present purposes, in my view, to ignore SCP's separate legal identity and say that Mr Shah personally rather than SCP was the Tax Agents' true principal.

109. I therefore would have rejected SKAT's claim that Mr Shah had primary liability on the basis of his being the true principal of the representors (the Tax Agents), from the perspective of the tort of deceit.

Deliberate Deceit Scheme

110. There was no deliberate scheme to cause SKAT to be deceived into paying tax refund claims, as alleged by SKAT. Mr Shah behaved dishonestly in various ways, as did most of those whose respective involvement in the Solo Model was considered in any detail at trial. However, he did not identify at the time that it would or did involve the making of any of the representations alleged by SKAT.

111. On the pleaded case, I consider it is not necessary to go any further than that for any case of primary liability for deceit against Mr Shah to be dismissed. In case that is wrong, and in case it might ever matter, I do go further, however. Mr Shah's ingrained habit of obfuscation as regards SCP's tax reclaim business and his ready willingness to engage in collateral dishonesty in relation to it notwithstanding, I was left quite clear

after the extensive exploration of Mr Shah and his methods at trial, that he did not plot with others or in some other way set out to trick SKAT into paying tax refund claims through falsehoods in the tax reclaim documents that would be submitted to it. He did, I find, plot with others and set out to cause tax refund claims to be made to SKAT without any positive belief that they would be valid claims, hoping that SKAT would accept and not challenge them. That was not alleged by SKAT to give it any cause of action (either in the tort of deceit, which is my immediate focus, or as unlawful means for a conspiracy claim, which I deal with below).

Accessory Liability for Deceit

112. For multiple reasons, therefore, SKAT's claims against Mr Shah for damages for deceit on the basis that he had a primary liability as a fraudster fail.

113. Furthermore, as I have just made clear in rejecting the 'deliberate deceit scheme' theory for primary liability, in my judgment there was no common design to which Mr Shah was party to trick SKAT into making payments by falsehoods in the tax reclaim documents. Therefore, the only accessory liability that might have fallen to be considered further, if SKAT had established that it was misled into paying Solo Model tax refund claims by misrepresentations in fact made to it through those documents, would have been the liability alleged by SKAT for inducing or procuring deceit.

114. As Professor Paul S Davies explains and emphasises in *Accessory Liability* (2015, Hart Studies in Private Law), which I respectfully consider an exceptional work whose only defect now is being 10 years old so it could do with being updated, for example at p.183, "*Accessory liability must be parasitic upon a primary tort; if a primary tort has not been committed, then there is nothing to which accessory liability can attach.*" Here, the claim is of an accessory liability on the part of Mr Shah for torts of deceit, and in the light of the conclusions I have now reached on the facts, had any such torts been committed, the primary tortfeasors could only have been:

(i) the Tax Agent Syntax, in respect of tax refund claims it submitted after Mr Shah's knowledge and intent became its knowledge and intent when he took control of Syntax as a corporate acquisition, if, that is, Mr Shah's knowledge and intent had then rendered Syntax liable for deceit through the reclaim documents it submitted. Save for that case as regards Syntax, which only arises because Mr Shah came to be its directing mind and will, SKAT did not pursue any allegation that any of the Tax Agents had acted fraudulently. (For completeness only, I note that the default judgment obtained by SKAT against Syntax does not prove anything against any other defendant, as regards Syntax's liability, if any, to SKAT);

(ii) SCP as the true principal of the Tax Agents in respect of all Solo Model tax refund claims, again that is if Mr Shah's knowledge and intent, being SCP's knowledge and intent, rendered SCP liable for deceit as a primary liability;

(iii) the Tax Agents' named clients, i.e. the USPFs and LabCos on whose behalf the Tax Agents submitted Solo Model tax refund claims, if those clients knew that those claims would or did involve false statements being made to SKAT with a view to inducing it to accept and pay the claims.

115. The conduct element of accessory liability in tort is discussed in *Accessory Liability*, *supra*, at pp.188 to 202. As explained from p.194, what precisely the law means by the inducement or procuring of a tort is somewhat obscure on the authorities; but it can be said, negatively, that English law does not consider mere 'assistance' to be sufficient, essentially because the firm view is taken that proof that something the defendant did was causative of the commission of a tort by another should not be sufficient, even if it be shown also that the defendant realised at the time that the tort would result from what they did. The general sense, hampered it may be by a lack of a suitable single word of adequate or sufficiently precise meaning, is that the defendant must have not merely caused or assisted, but must have incited, persuaded or encouraged the primary tortfeasor to do that which constituted their tort. The Editors of *Clerk & Lindsell* admirably attempt a single-word encapsulation, namely that "*where one person instigates another to commit a tort, they are joint tortfeasors …*" (24th Ed., para.4-04 at n.12, citing three of the many cases discussed by Professor Davies). They make clear that that case and the case of persons who share in the commission of a tort in furtherance of a common design are the two forms of accessory liability known to the law, for each of which the defendant "*must know the essential facts which make the act wrongful, even if the tort is one of strict liability*" (*ibid* at n.13b, citing *Lifestyle Equities*, *supra*).

116. The utility of considering liability issues that would have arisen only if SKAT's claims had not failed at multiple prior stages, and in truth my ability sensibly to consider such issues, has its limit. As regards the case against Mr Shah, I consider that this point in this Appendix is close to that limit, so in what follows I take things very shortly.

117. SKAT would have had to establish as regards (i) Syntax, (ii) SCP, or (iii) the USPFs / LabCos, that they had acted fraudulently in relation to a pleaded misrepresentation that SKAT had proved, and by which it had shown that it was induced into paying tax refund claims.

118. As regards Syntax and SCP, that would have followed from whatever findings I had made concerning Mr Shah's knowledge and intentions, as the directing mind and will of Syntax from 19 September 2014 (as I would have found, that being the date on which Mr Shah became UBO of 82% of Syntax and effectively took over direction of its operations) and as the directing mind and will of SCP throughout, respectively.

119. For completeness, I perhaps should add that cases in which a corporate entity has committed fraud through the actions of an individual who was its directing mind and will, and the individual has been held personally liable, have sometimes been analysed as cases of joint tortfeasorship through a common design, the individual being held unable on the facts of the case to avoid personal responsibility for what they did by saying that they were acting for the company in doing it. It would make no difference here if that were the preferred analysis, save that strictly it would qualify my seemingly unqualified rejections, above, of a common design theory for accessory liability on the part of Mr Shah.

120. As regards the USPFs and LabCos, I was not persuaded by the evidence at trial that they acted fraudulently. Firstly, I would not have found that they were told, or otherwise realised, that Solo's method did not involve any shareholdings ever being acquired. Among the trial defendants, the only individuals whose knowledge or understanding was that of any of the USPFs or LabCos were Messrs Godson and Fletcher (USPFs),

and Messrs Jain and Preston (LabCos). In their cases, my positive finding is that they did *not* know or understand that the Solo Model was a share-less settlement model. As stated in the main part of this judgment (paragraphs 145 to 147), I do not accept the evidence of Mr Horn that the Argre Principals knew of the synthetic nature of the settlement model and consider it much more likely that, since they did not need to know, they were not told, in line with Mr Shah's general and keen desire to keep secret that which could be kept secret about how the Solo Model worked.

121. Secondly, I would not have found that they realised at the time that the tax reclaim documents were misleading, as alleged by SKAT. Such a finding would have required a conclusion that the USPF or LabCo in question both (a) realised that a representation found to have induced SKAT to pay their tax refund claims would be or was made to SKAT by the reclaim documents submitted on their behalf, and also (b) knew it to be false or had no honest belief in its truth as required by *Derry v Peek*. I was satisfied that Messrs Godson, Fletcher, Jain and Preston did not know, and were not recklessly indifferent as to whether, the tax reclaim documents contained falsehoods. They trusted Mr Shah and SCP; and SKAT's best efforts in cross-examination, and those individuals' discreditable willingness to adopt Mr Shah's habit of collateral dishonesty, did not persuade me that they were not at the time honestly trusting what seemed to them a plausible notion that Mr Shah, a high-profile and seemingly very successful entrepreneurial hedge-fund owner, with those working for him at SCP, had hit upon a way of accessing the market to support a structured trade that made for very low risk trading, indeed effectively risk-free, a small portion of the profits from which SCP was happy to pay to the USPFs or LabCos, respectively, that were needed for the trade to operate.

122. As regards the vast majority of (individuals behind) USPFs and LabCos, who were not part of the trial here, in my judgment there was no basis in evidence upon which the necessary two-part conclusion could be stated as a finding of fact. SKAT's case largely boiled down to its optimistic mantra that it was so obvious that it was right, about what representations were made to it by the tax reclaim documents, that any participating USPF or LabCo must have realised they would be or were being made, and it was so obvious that the Solo Model used synthetic settlement, meaning there were no shares, that any such USPF or LabCo must have known of, or been reckless as to, the falsity of those representations, or alternatively someone from Solo must have explained the Solo Model in such detail to anyone coming on board as an equity buyer / potential tax refund claimant (via Tax Agents) that they could not have failed to realise that the deceit alleged by SKAT would or did result. I disagree. I am of course alive to the fact that in a fraud case, there may be a forensic incentive for a claimant to present the matter as simple and straightforward, and for defendants to insist that the claimant's case is complex and difficult. However, in my judgment it is not any want of forensic skill and ability that caused SKAT to struggle with that throughout, and it was not cunning advocacy, or artificiality of analysis or explanation on the defendants' side at trial, that causes me now to say that SKAT's optimistic submission as to the obviousness of everything does not begin to reflect the reality of this case on the evidence.

123. Thirdly, as regards accessory liability on the part of Mr Shah for deceit, if there had been deceit, on the part of the Solo Model USPFs and/or LabCos, I would have found without any hesitation that Mr Shah instigated and encouraged the making by the Tax Agents of the Solo Model tax reclaims on their behalf.

124. Fourthly, and finally as regards that alleged liability, SKAT would have had to prove, if *Lifestyle Equities* were taken to be definitive as to the test, that Mr Shah *knew* that the USPFs and LabCos, respectively, realised that whatever representation had been held to have induced SKAT to pay would be or was being made by the Tax Agents on their behalf, and that Mr Shah *knew* that the USPFs and LabCos, respectively, knew that representation to be false or had no honest belief in its truth. Anything less would not be knowledge, on Mr Shah's part, of the essential facts making wrongful in the material sense that which the USPFs and LabCos, respectively, did, i.e. making what they did deceit on their part.

125. At the risk of philosophy, *obiter*, on p.262 of a judgment, I wonder if there may yet be room to consider whether *knowledge* of the essential facts is or should be the definitive test. The question is what must be the state of mind of the alleged accessory concerning that which they have incited or encouraged, and then: (a) it seems to me possible to think that inciting or encouraging a tort, believing or intending that the tort would be committed, should be sufficient, always making clear in that regard that it is not necessary for the accessory to realise that what they have incited or encouraged is categorised by the law as wrongful (tortious); (b) where the tort is only committed if there is a subjective degree of fault on the part of the primary tortfeasor (knowledge, belief, absence of honest belief, wilfulness, etc.), I tentatively question whether it is in truth meaningful to ask whether an alleged accessory *knew* what was going on inside the primary tortfeasor's head, but there may be no such difficulty about contemplating what the accessory *believed or intended* concerning the primary tortfeasor's state of mind.

126. Whether I applied a test of knowledge, or concluded that belief or intent was the better test or at any rate would suffice, the trial did not give me any basis for finding against Mr Shah that he knew (or believed or intended) that the USPFs or LabCos would be or were acting fraudulently (the meaning of which I set out more fully in paragraph 124 above). Nor indeed was any such case seriously (if at all) put to Mr Shah in cross-examination; and in the Sanjay Shah Annex for closing argument in which SKAT set out its written closing submissions against him in particular, the requirement to establish that he knew (or possibly believed or intended) that a party with a primary liability in deceit was acting fraudulently was overlooked. SKAT misstated the requirements as being that (i) another person has "*committed a misrepresentation*", (ii) Mr Shah had "*intentionally induced or procured the principal tortfeasor into making a misrepresentation*", and (iii) Mr Shah "*had knowledge of the essential facts of the misrepresentation*". The omission making that a flawed analysis was acknowledged by SKAT in oral closing argument; but no case on the facts as to Mr Shah's knowledge (if alleged) that the USPFs or LabCos were acting fraudulently emerged, none having been set out in the Sanjay Shah Annex.

Unlawful Means Conspiracy

127. SKAT failed to establish that it suffered loss by the use of unlawful means against it. The deceit it alleged was not proved. The other unlawful means asserted, even assuming in SKAT's favour that they might qualify as such under English law as to the ingredients of the tort of conspiracy to injure by unlawful means, all required for their existence that the deceit SKAT alleged was first proved. I have also found, or concluded that I would have found, that Sanjay Shah did not understand that deceit was being practised against SKAT.

128. Any claim of unlawful means conspiracy against Mr Shah therefore fails; and I consider that at this point in this Appendix (*cf* paragraph 116 above) I have now reached the limit of utility or realism for considering what I would have made of that claim in different circumstances.

Other Claims

129. I consider the same is true in respect of the other claims pursued against Sanjay Shah, that is to say claims for:

(i) equitable compensation alleging dishonest assistance in breaches of constructive trusts alleged to have come into existence in respect of the proceeds of the fraud SKAT alleged but did not prove;

(ii) equitable compensation *in lieu* of an account of profits alleging 'knowing' receipt (i.e. receipt in circumstances where it would be unconscionable to countenance retention of the benefit by the recipient) of benefits alleged to have been received by Mr Shah in breach of those alleged constructive trusts;

(iii) restitution in respect of enrichment alleged to have been unjust on the basis that it was enrichment at SKAT's expense directly or indirectly through SKAT being induced to make payments by the fraud it alleged but did not prove; and

(iv) declarations as to SKAT's beneficial proprietary interest, as it alleged, in various assets of Mr Shah's said to be the traceable indirect proceeds of the fraud SKAT alleged but did not prove.

130. Mr Shah is the individual who loomed largest in the case, albeit he was involved in only one of what SKAT sought to prove had been three fraudulent schemes, whereas the DWF Ds were important to Solo Model trading in 2012/2013 and then to Maple Point Model trading in 2014 (all of them) and 2015 (Mr Horn only), and Mr Klar had involvement with both of those Models throughout whilst at the same time designing and implementing his own Klar Model (so that his was the 'prize' for the largest aggregate claim amount put forward by SKAT, aggregate damages of DKK11,986,647,246.53, reducing after giving credit for recoveries to DKK8,391,653,667.29). I consider it is not surprising, therefore, that even limiting heavily how much I have chosen to deal with in this Appendix in relation to the claims against Mr Shah, this section of the Appendix is not very short. I mean no disrespect to any of the other trial defendants, or to the efforts to which SKAT went in setting out how its case against them individually was put, if in the remainder of this Appendix I deal with matters more briefly.

SKAT vs. Other SSDs

131. The SSDs other than Sanjay Shah himself are 17 corporate entities and 6 now defunct such entities (see Appendix 1, above). Each either was at some material time or times indirectly ultimately owned and controlled by Sanjay Shah, or is now so owned and controlled. Many of them were so owned and controlled throughout, for example the Elysium entities and Ganymede. Some of the corporate SSDs involved in the Varengold Bank or Dero Bank acquisition were not under Sanjay Shah's control so as to be affected by his state of mind for the purpose of establishing their liability, if any, to

SKAT. In the table under paragraph 134 below, the 'Directing Mind' column relates to the period when any liability to SKAT would have been incurred by the corporate SSD in question rather than to the position now.

132. As explained in paragraphs 38 to 40 of the main body of this judgment: the six defunct corporate SSDs are Ampersand, Elysium Properties, Skyfall, Skyfall Holdings, Woodfields, and Woodfields Holdings; on the other hand, Colbrook, Ganymede and T&S, which were struck off the register in the Cayman Islands on 31 October 2022, have been restored to existence.

133. In addition, as the trial came to a close, SKAT and the SSDs were working towards agreeing terms the effect of which would be to avoid a need for separate consideration to be given to SKAT's claims against Elysium Holdings, Elysium Property Holdings, Honey Jersey and Trillium Holdings, whatever the outcome of SKAT's claims against Sanjay Shah personally or other SSDs.

134. The remaining ten corporate SSDs are AESA, Araya, Bellview, Elysium Dubai, Elysium Global, Elysium Trading, Hooloomooloo, PCM, Treefrog, and Trillium. None of those companies was involved in the Solo Model trading. All were said by SKAT to have become involved in one way or another in the use to which Sanjay Shah caused Ganymede to put the tax refund proceeds of that trading paid out by SKAT. It will be recalled that the Solo Model business was set up in such a way that Ganymede was the principal, indirect, recipient under Sanjay Shah's control of profits derived from SKAT's payments. For some of those SSDs, the practical purpose of the proceedings was questionable (at all events by the time of the Main Trial), given their material lack of assets:

SSD	**Directing Mind**	**Assets**
AESA	Sanjay Shah	None, or 160,000 Varengold Bank shares*
Araya	Sanjay Shah	€5m CoCo bonds; Possibly, 160,000 Varengold Bank shares*
Bellview	Paul Preston	176,963 Varengold Bank shares
Elysium Dubai	Sanjay Shah	973,812 Varengold Bank shares; £3.78m US$681.5k, €123k & AED40.9m, cash at bank; debtors of AED1.64m (Equity Media FZE LLE, said by the SSDs to have been dissolved) and AED5m (KOJI DMCC)
Elysium Global	Sanjay Shah	€162.73m and £14.99m cash at bank; a yacht

SSD	Directing Mind	Assets
Elysium Trading	Sanjay Shah	€50.1m cash at bank
Hooloomooloo	Sanjay Shah	6 apartments in Japan
PCM	Mark Patterson	160,000 Varengold Bank shares
Treefrog	Sanjay Shah	£30.8k and €36.7k cash at bank
Trillium	Sanjay Shah**	€481k cash at bank

* Varengold Bank continues in business. Its shares are listed on the Frankfurt Stock Exchange. In relation to AESA and Araya, I was told that one or the other owns 160,000 Varengold Bank shares (they are not both Varengold Bank shareholders), the question was which, on which I have made no finding: SKAT said it was AESA; the SSDs said it was Araya.

** The attribution of Sanjay Shah's knowledge and intentions such that he was the directing mind for the purpose of any liability to SKAT, where indicated in the table, was common ground between the SSDs and SKAT except in the case of Trillium. In my judgment, SKAT was correct in its claim that Sanjay Shah was also, at all material times, the directing mind of Trillium, as the vehicle by which, through his informal nominees, he acquired effective control of Dero Bank.

135. Given the conclusions reached in the main body of this judgment, the possibility of the corporate SSDs having one or more of the liabilities variously alleged against them by SKAT does not now arise. In those circumstances, I have not lengthened this Appendix with a consideration of those alleged liabilities.

SKAT vs. DWF Ds

136. The DWF Ds were important individuals in the establishment and operation of Solo Model trading, up to their respective departures from Solo in April 2013 (Rajen Shah), June 2013 (Mr Horn) and September 2013 (Mr Dhorajiwala).

137. Mr Horn and Rajen Shah developed the transaction structure for Solo Model trading, on the instructions and with the involvement of Sanjay Shah. They obtained the First HS Advice from Hannes Snellman, under Sanjay Shah's direction. They played important roles in implementing and orchestrating Solo Model trading and the distribution of the proceeds of tax refund claims generated by that trading. They checked SCP CANs (and in Mr Horn's case, signed them himself while still based in London up to early 2013), and liaised with the Tax Agents about the submission of tax refund claims to SKAT. They agreed with Sanjay Shah, and were paid, percentage shares of Ganymede's tax refund claim profits.

138. Mr Dhorajiwala was responsible for the operational elements at SCP of giving effect to the Solo Model trading transactions, including the accurate recording and share-less settlement of the trades. On Mr Horn's departure in June 2013, he took over as nominal Head of GSS, until his own departure three months later, and in that role was promised a 20% share of Ganymede's profits.

139. In the second half of 2013, the DWF Ds devised and prepared to implement the Maple Point Model, which closely resembled the Solo Scheme as it functioned in 2012-2013. Mr Horn was the lead individual, but Rajen Shah and Mr Dhorajiwala also had important roles. For 2014, the DWF Ds provided their services via Oryx (and took their profits through Siladen), and in that way implemented and coordinated the operation of the Maple Point Scheme by:

    (i) assisting NCB to establish a custody business to act as custodian for Maple Point Model trading;

    (ii) recruiting Indigo (owned by Mr Dhorajiwala's brother-in-law Nailesh Teraiya) to act as a second custodian for that trading, helping it to set up and run its custody business, and in Mr Horn's case becoming a director;

    (iii) identifying entities to act as trading counterparties;

    (iv) planning and coordinating the Maple Point Model trades; and

    (v) in the case of Rajen Shah and Mr Horn, providing the DCAs issued by NCB and Indigo to the Tax Agents for submission to SKAT.

140. For 2015, Mr Horn presided over the Maple Point Model on his own, through WWAM, as part of which he:

    (i) recruited Lindisfarne as second custodian in place of Indigo;

    (ii) facilitated the establishment of Koi as a Tax Agent for the Maple Point Model USPFs to engage;

    (iii) planned and coordinated the trading of the parties under the Maple Point Model; and

    (iv) provided the DCAs issued by NCB and Lindisfarne to the Tax Agents.

141. All three DWF Ds appreciated throughout that the Solo Model and Maple Point Model trading involved no (real) shares ever changing hands, or being owned or acquired by any participant. The trading was, in that sense, synthetic at the point of settlement, by virtue of the self-fulfilling settlement loops deliberately created by the coordinated trades.

Understanding of the Alleged Representations

Awareness of the Tax Reclaim Documents

142. Mr Horn and Rajen Shah were familiar at the time with the form and content of the CANs issued by SCP (during their time at Solo), Indigo, NCB and (in Mr Horn's case) Lindisfarne. They had also seen and familiarised themselves with SKAT's Form 06.003, when considering the deployment of the Solo Model to trading in Danish shares. They knew that the essential purpose of the custodians issuing CANs was so that they could be used to support tax refund claims, and that the CANs themselves had to be, would be, and were in fact, sent to SKAT with the tax reclaim form.

143. Mr Dhorajiwala was also familiar at the time with the form and content of the CANs issued by SCP (while he was at Solo), Indigo and NCB. He knew that they were a key part of making tax refund claims, and that they were provided to the Tax Agents to support the making of such claims. He assumed at the time that CANs were sent to SKAT as part of the submission of tax refund claims, but (I find) was never told in terms, and did not know for sure, that that is what happened. He was aware that a tax reclaim form had to be used, but he did not familiarise himself with SKAT's Form 06.003 or otherwise become aware of its particular content at any material time.

144. As I said when considering Sanjay Shah's understanding or intention as regards what, if any, representations were being made (paragraph 65 above), it is not so obvious that the representations alleged by SKAT would be made by them that familiarity with the documents is a basis for inferring an understanding or intention that those representations would be made.

The Core Representations

145. For its primary submission in closing against Mr Horn, then, SKAT sought to piece together snippets of evidence for an argument that:

(i) Mr Horn admitted knowing at the time that the purpose of a tax refund claim was "*to seek a refund of (a) tax withheld; (b) on dividends that had been received; (c) on shares owned by the [named client]*", that a tax refund claim "*could not be made without submitting these "matters" to SKAT (i.e. that there had been tax withheld on dividends received on shares owned by the [client])*", and that a CAN was a statement by a custodian "*which set out "facts" regarding the client's receipt of a dividend on a particular stock, whose primary purpose was to support a tax reclaim*"; and

(ii) "*These matters constitute the essence of the Core Representations.*"

146. Materially similar primary submissions were made against Rajen Shah and Mr Dhorajiwala.

147. As a submission that the defendant in question understood and intended at the time that the pleaded core representations would be or had been made to SKAT by the tax refund claim documents submitted to it, I did not find that persuasive. The fact that a refund of a certain kind is sought is uninformative as to what, if any, representations of fact or law are made by the claim documents. The relationship, if any, between 'matters' that are 'submitted', on the one hand, and statements capable of constituting actionable representations, on the other hand, is unidentified. The giant leap between the proposition that a CAN includes statements of fact relating to a subject matter and the allegation that, to the defendant's knowledge at the time, the very particular representations alleged by SKAT would be and were being made, is simply unjustified.

148. SKAT's alternative submission, against each of the DWF Ds, was an argument that "*In any event, [he] made certain admissions as to the content of the Core Representations in their full form*". However, the making of some admissions as to some of the content of the core representations is no concession that the defendant in question understood and intended at the time that those representations, as pleaded, would be or were being made. As the DWF Ds submitted in writing for closing, this was a case in which

language and its use mattered. So for example, given the terms of the tax ownership representation pleaded, it takes SKAT nowhere to have elicited (so it submitted) an admission from Mr Horn that an SCP CAN "*was making a statement about the number of shares held by the [named client] in SCP's custody account*".

149. For that example, the particular exchange cited by SKAT from Mr Horn's cross-examination was as follows:

"*Q. And so this is -- you understood and intended this document to be stating that Acorn was the owner of 5.95 million shares in TDC, correct?*

A. Yes, those were held in Acorn's custody account. They were recorded in Acorn's custody account. That was the number of shares it had in the custody account.

Q. And that records the position as at the date of dividend declaration, correct?

A. No, that is actually -- this doesn't. I think it would be the date, the case of dividend declaration -- this actually just records the position on the payment date.

Q. But … if a dividend is declared in respect of shares owned by Acorn, would it not be saying by implication that that ownership had been acquired on or before the ex-date -1?

A. I think these are not jurisdiction-specific. … The DCA is a generic thing that was produced for every market. It does not vary in format. I don't think you could read in a holding on a particular date from the DCA.

Q. So is the DCA then saying Acorn has a settled position of 5.9 million shares as at the date on which the dividend was paid to it?

A. No, it definitely does not say that. It doesn't say anything about -- it is saying that there are shares of 5.95 million recorded in Acorn's custody account. It is not saying anything about settled positions or anything.

Q. But it must be saying, must it not, that the shares are in its custody account at the relevant time for the jurisdiction in question to make Acorn entitled to the dividend?

A. No, it doesn't say that, because it is just a generic document that is produced for every single jurisdiction without varying its format. It does not provide specific tax advice in relation to any jurisdiction, so it cannot be said to do that, no.

Q. But if it is giving information about the dividend, it is presumably saying that Acorn, the addressee of the dividend credit advice, is entitled to the dividend, because –

A. It is saying -- what it is saying is that the custodian has credited on this date the client with an amount which the custodian has treated as a dividend, but it is not saying anything about the tax treatment in any jurisdiction."

150. That came nowhere close to an admission by Mr Horn that he understood and intended at the time that something to the essential effect of the tax ownership representation, as

pleaded, would be made to SKAT. Moreover, that evidence only justified SKAT's claim that Mr Horn admitted the making by the CAN of "*a statement about the number of shares held [in a] custody account*" if that means something other than, and falling well short of, a real shareholding (a 'settled balance' of shares). That is because the follow-up questions explored what Mr Horn meant by the acceptance in his initial answer that the CAN recorded a 'number of shares' that were 'held in the custody account'. His further answers made clear that he had *not* meant, and did *not* admit, that the CAN recorded any actual shareholding.

151. Given the *obiter* nature of this Appendix, I shall not lengthen it further by going through each of the sections of evidence picked out by SKAT for Mr Horn, or those it highlighted for Rajen Shah or Mr Dhorajiwala, or setting out evidence cited by the DWF Ds in response.

152. My findings taking all of that evidence into account are that, as regards the tax ownership representation and the dividend entitlement and dividend payment representations alleged by SKAT:

(i) Mr Horn did not understand or intend that any of the CANs, or tax refund claims supported thereby, would represent to SKAT that the named client was the Danish tax law owner of any shares when the dividend was declared (or at all), or was entitled as a matter of Danish tax law to the dividend referred to in the CAN or had received directly or indirectly from the Danish company a payment net of tax in respect of such an entitlement. He did not think at the time (and as it happens still does not think now) that anything like any of those representations was being or had been made to SKAT.

(ii) Mr Horn considered that the SCP CANs, and those issued by NCB, Indigo or Lindisfarne under the Maple Point Model, did no more than report to the custodian's client an account credit that the custodian was treating as a 'dividend' item, in an amount calculated from the gross dividend declared and the standard WHT rate in Denmark (at the time, 27%). To Mr Horn at the time (and still today), the 'dividend' label did not mean or imply that a real dividend had been earned, because he was steeped in the habits of the market that extended to the use of that label for various types of dividend-related income, including what I am calling a dividend compensation payment (which, in his use of language at the time, Mr Horn would have said was a species of 'market claim'). He did not think anything more was being communicated to SKAT by the provision of a CAN in support of a tax refund claim; and he regarded it then as a matter entirely for SKAT whether it took that as a sufficient basis for making payments.

(iii) Rajen Shah likewise did not understand or intend that anything similar to any of those pleaded representations would be or was being made to SKAT. From his experience of the market, including in particular seeing the CANs that Merrill Lynch issued in the context of the Broadgate fund activity, Mr Shah considered that CANs were generic credit advices that did not make any claim of share ownership at all, let alone of ownership for the purpose of any tax law. He did not expect them "*[to] distinguish between a market claim or a compensation payment or a real dividend, as you describe it, which is traceable to the CSD. There is absolutely no distinction made.*" Therefore, similarly to Mr Horn, he

saw them as merely reporting a dividend-related credit and saying nothing as to the basis or legal characteristics of the payment.

(iv) Mr Dhorajiwala also did not understand or intend that any of those representations would be or was being made to SKAT. He held the mistaken, but honest, view that there was some sense in which a share purchaser was a shareholder from the trade date even where the trade settled only through the synthetic settlement method used in the Solo and Maple Point Models. He saw CANs as recording, as it was put to him, that the named client "*was the legal and beneficial owner of the stated amount of the shares on the key date when the dividend would be declared*"; but because of his confused view of share ownership, that was evidence (which I accept) to the effect only that, to his way of thinking, CANs recorded that the client had by the dividend declaration date purchased (i.e. contracted to acquire) the stated share volume. He was led to give some answers that SKAT argued were concessions that he thought CANs represented to the reader that the client had an entitlement to the gross dividend amount, but I do not accept that that was the tenor of his evidence taken as a whole. He had in mind that *if* the client was able to make a successful tax refund claim, it would ultimately receive the gross dividend amount, but not that the CANs made any relevant representation. I agree with the DWF Ds' submission that when Mr Dhorajiwala clarified that he saw the 'tax' references in CANs as "*just showing the calculation made in order to demonstrate the amount that was credited to [the client's] account*", he was not retreating to a party line (as SKAT submitted in closing), but telling the truth as to how he saw it at the time.

153. As regards the tax representation, likewise having taken into account all the evidence relied on by either side, I find that:

(i) Mr Horn did not understand or intend that the tax representation, or any statement essentially to its effect, would be or was being conveyed to SKAT. I agree with the DWF Ds' submission that Mr Horn's thinking at the time was accurately captured by the following answer given under cross-examination:

"*Q. … So when you look at the gross dividend as a means of identifying the dividend that is being referred to, what is being said is that Acorn had the right to the dividend declared, tax has been deducted from it, and that is why the net dividend has been credited to the addressee's account, yes?*

A. No, you are going too far there. All it is saying is a custodian has credited somebody with a net dividend and that this is the method by which the net dividend is calculated. It cannot be characterising something for tax purposes which is a matter of local tax law."

(ii) Similarly, and as with Mr Horn a finding bearing well in mind my concerns as to Rajen Shah's credibility as a witness, Rajen Shah did not understand SKAT to be being told anything more than that the Danish withholding tax rate had been used to calculate the amount credited to the client: "*… DCAs are produced on the basis of a calculation which requires the gross dividend less the maximum -- the highest rate of withholding tax in the relevant jurisdiction, and in Denmark that is 27%. It is a calculation methodology, it is not a reference to an actual amount of tax withheld. It is a calculation reference.*"

(iii) The same goes for Mr Dhorajiwala (see paragraph 152(iv) above).

154. I add for completeness that I was not persuaded by two particular arguments put forward by the DWF Ds, and I took that into account when coming nonetheless to the view of the facts summarised above:

(i) It was submitted that (a) the data, by reference to which the off-the-shelf WP2 software used by NCB operated, contained "*the whole omnibus account*", and therefore (b) an NCB CAN "*could not be making, or read as making, the statements in the terms SKAT alleges in these proceedings*". The conclusion would not follow, even if the premise were correct. Mr Horn, arguing the point from the witness box, said that the NCB CANs contained only "*standard words that this system always uses. It is using them here in respect of a non-traceable market claim. It cannot have the meaning that you ascribe to it.*" But if by its form and content the CAN issued by the WP2 system conveyed, on the face of things, 'traceability' (in other words, that there were real shareholdings with real dividend entitlements), it was a system flaw, rather than a reason to read the CANs differently, that CANs were generated for dividend compensation payments where the payee had not acquired any real shareholding. In any event, I am in no position on the evidence to accept the premise that the data 'contained the whole omnibus account', the key element there being how the coding of the software resulted in or recorded settlement rather than failure for a Maple Point Model share-less transaction loop.

(ii) It was submitted that even if an investor "*has a settled balance of shares traceable to an account at VP Securities [i.e. is a shareholder], there is still no entitlement to the gross dividend amount from the issuer; the entitlement is only to the net dividend amount. Characterising this entitlement as a 'gross entitlement which is then reduced by the WHT amount' is entirely artificial: where there is a WHT regime in place, there is only ever an entitlement to the net dividend amount.*" I disagree. The real shareholder's dividend entitlement is to the gross dividend amount, but it carries with it a dividend tax liability that is discharged by the withholding. There is nothing artificial about that, just as it is not artificial, but rather it is natural and accurate, to say that an employee who is paid net of income tax under a PAYE scheme earns so as to be entitled against their employer to their gross wage.

The Honest Custodian Representation

155. As in its argument against Sanjay Shah (see paragraph 82 above), so also against each of the DWF Ds, SKAT rested in closing on the *non sequitur* that because he had made an admission that anyone seeing a CAN would think, or assume, that the custodian had acted honestly, or the like, he had therefore admitted to understanding and intending at the time that the honest custodian representation was being made to SKAT with each tax refund claim submitted. I consider it a fair criticism, advanced by the DWF Ds in closing, that SKAT did not put a case in cross-examination that they realised and intended at the time that SKAT was being *told by the tax reclaim documents*, interpreted in context, *that the custodian honestly believed the core representations to be true*.

Conclusion

156. None of the DWF Ds understood or intended that any of the representations alleged by SKAT, or representations to the same essential effect as any of them, would be or were being made to SKAT.

Knowledge of Falsity

Core Representations

157. It was common ground between SKAT and the DWF Ds that if Mr Horn or Rajen Shah thought at the time that the core representations would be and were being made to SKAT, then he would have known them to be falsehoods, as regards each of the dividend entitlement, dividend payment and tax representations.

158. As regards the tax ownership representation, it was submitted by the DWF Ds that Mr Horn and Rajen Shah each held a positive belief concerning Danish tax law, based on the First HS Advice, such as to have made the representation, in their mind at the time, essentially true. I do not accept that. They had no good reason for any such belief, indeed (as I am confident they knew at the time) they had not sought advice that might be capable of providing a basis for such a belief. Further, it was apparent to them from their correspondence with Hannes Snellman in the course of obtaining the First HS Advice that if such advice were sought from Hannes Snellman, it would very probably be negative.

159. Mr Horn's and Rajen Shah's unwillingness now to acknowledge any of that did them no credit. It betrayed them as not honest enough to trust the court with a true account of their approach at the time as part of the factual basis for any judgment as to liability. Their true positive defence on the facts, which I would have been content, on balance, to accept despite my significant misgivings about their evidence, was that they did not think at the time that representations such as SKAT alleged were made to SKAT. They should not have succumbed to the pressure I consider the litigation led them to feel to say that they had a well-researched belief that the Solo Model and Maple Point Model trading did generate refund entitlements under Danish tax law. But my conclusion was not, and is not, that they succumbed to that pressure because they in fact knew or believed that they had played a part in SKAT being defrauded, i.e. tricked through misinformation in the tax reclaim documents.

160. The position is different for Mr Dhorajiwala. Again, it was admitted that if he had thought the dividend entitlement, dividend payment, or tax representation, or in each case a representation to the same essential effect, was being made to SKAT, he would have known that SKAT was being given a falsehood. That is because those representations, as pleaded, are tied to what Mr Dhorajiwala, like Mr Horn and Rajen Shah, would have thought of as a traceability (of rights or payments) down to VPS or the Danish company that he, like they, knew was not present in the Solo Model or Maple Point Model trading. However, the tax ownership representation is not, on its own terms, necessarily so tied. I accept Mr Dhorajiwala's evidence that he trusted Mr Horn and Rajen Shah to have taken sufficient external legal advice – here, so far as material, Danish tax law advice – to be comfortable that the trading did or might generate entitlements. Mr Graham KC put to Mr Dhorajiwala, implying criticism, that the gist of his evidence on the point was "*Not me, guv*"; but the criticism was

unwarranted. Mr Dhorajiwala's fair answer was "*It wasn't my responsibility to do that, so no [i.e. he agreed it was 'not him']*", and in my judgment there was and is no basis for considering that it *was* Mr Dhorajiwala's responsibility or that he should not have trusted Mr Horn and Rajen Shah.

Honest Custodian Representation

161. The DWF Ds conceded that they could not have said they held a positive belief in the truth of the honest custodian representation, if they had thought it was made to SKAT. This was said to follow logically from their absence of honest belief in the truth of at least some of the core representations, if made, and the fact that the honest custodian representation, if made, was a representation relating to the truth of (all four of) the core representations. That seems to me to overlook the further essential element that falsity, allegedly appreciated by the DWF Ds, requires the custodian in each case not to have believed honestly in the truth of the core representations. That is perhaps explained by the fact that the custodians all knew that there were no (real) shares so that the 'traceability' point made in the previous paragraph would apply to them too, and the DWF Ds in turn surely would have known that. Be that as it may, the proposition at the start of this paragraph was a concession for closing argument and my finding would have been based on that.

Intention to Induce Reliance by SKAT

162. If any of the representations alleged by SKAT had been made to it in relation to Solo Model or Maple Point trading, during their respective periods of involvement, and if they had realised that to be the case, I would have considered it self-evident, as with Sanjay Shah, that each of the DWF Ds intended SKAT to rely on those representations.

163. The DWF Ds argued against any such conclusion; but the argument addressed the wrong question in such a way as rather to confirm that there was no separate point on intention to induce. It was said for each of Mr Horn, Rajen Shah and Mr Dhorajiwala, in turn, that he "*had no intention that SKAT would rely on any statements in the [tax reclaim documents] in a sense in which they were false*", and then that "*SKAT's case on this point [intention to induce] necessarily fails given that [he] did not understand those documents to contain the Core Representations, or the Custodian Honesty Representation.*" However, logically, and following the structure adopted by SKAT's written argument, the issue of intention to induce reliance by SKAT was addressed *after* the prior question, on which SKAT had to succeed, whether the defendant in question understood and intended, at the time, that the pleaded representations would be or were being made to SKAT.

164. Any separate issue whether the defendant intended to induce reliance by SKAT fell to be addressed only if, contrary to that defendant's submissions on the prior question, it was found against them that they *did* understand and intend the tax reclaim documents to convey one or more of the pleaded representations to SKAT. The DWF Ds' submission, therefore, was an attempt to rebut SKAT's case on intention to induce reliance by arguing that it would not arise, not by providing any reason for saying it was wrong it if did arise.

165. The DWF Ds did refer, additionally, to evidence that would support findings that they considered it to be SKAT's task to assess tax refund claims and decide whether to pay

them, that there was a hope that SKAT would decide to pay but (as Mr Horn put it) they had "*no way of making that happen*", that they did not know anything of SKAT's processes or criteria for assessing tax refund claims and deciding whether to pay out on them, and that they did not think it automatic that SKAT would pay out but rather had in mind that SKAT might decline, in which case a question would have arisen whether to seek to challenge SKAT's refusal, on which at any rate Mr Horn, who alone was asked about it, was "*not sure whether the [USPFs] would have wished to pursue that ...*". I would make all of those findings. However, whether individually or taken as a whole, they do not undermine the ordinary inference that if false statements material to whether there is an entitlement to a tax refund are knowingly made through the tax reclaim documentation submitted to a tax authority, the intention in doing so is that the tax authority should be influenced by those statements in favour of accepting the claim and paying out.

Attribution of Responsibility

Solo Model

166. For the reasons I gave, above, in relation to Sanjay Shah, but *a fortiori* for the DWF Ds since they were always acting under his ultimate direction, working for SCP, I do not accept SKAT's case that the DWF Ds could have had primary liability for any deceit practised upon SKAT by SCP or by the USPFs as the Tax Agents' principals. That conclusion is perhaps qualified for Mr Horn, as it was for Sanjay Shah, by the fact that he was a partner in SCP and a member of its management committee (*cf* paragraph 119 above).

Maple Point Model

167. Under the Maple Point Model, however, the tax reclaim business was different on this aspect. It was not the custodian's business in anything akin to the way that under the Solo Model it was, in truth, the business of SCP's GSS division. The analysis for 2015 might have been more complex if Mr Horn had succeeded in having GESL take over as custodian from Indigo. As it is, for both 2014 and 2015, in the Maple Point Model, the custodians (NCB, Indigo and Lindisfarne) were recruited as essential cogs in the transaction machinery, but in my view the business was in substance a joint venture between Maple Point and Oryx (for 2014) and WWAM (for 2015), the corporate vehicles for the business used by the DWF Ds (for 2014) and Mr Horn (for 2015). Maple Point's role was the recruitment of USPFs to undertake the directed trading, and the introduction of the DWF Ds to NCB, and the DWF Ds developed and ran the show, with the benefit of that input as one (but only one) of the key ingredients.

168. Within that joint venture, Oryx for 2014, and WWAM for 2015, controlled the relationships with the Tax Agents, and was *de facto* the party directing the Tax Agents' activity. My conclusion for the Maple Point Model tax reclaim business equivalent to the conclusion at paragraph 108 above for the Solo Model, is that, without contradicting the contractual agency of the Tax Agents for the Maple Point Model USPFs, Oryx (for 2014 trades) and WWAM (for 2015 trades) had a primary responsibility for any representations made to SKAT through the Tax Agents for the purpose of possible liability for deceit. That means it is not necessary to take a view on whether Maple Point might also have had such a responsibility. There was no prospect of any of the DWF Ds having a liability based upon a primary liability on the part of Maple Point without

having a commensurate liability based upon a primary liability on the part of Oryx (for 2014 trades) or WWAM (for 2105 trades).

169. For Rajen Shah, in relation to Oryx, and for Mr Horn, in relation to WWAM, the same qualification to what I have just said arises as for Sanjay Shah in relation to SCP (see paragraph 119 above). It has an additional importance for SKAT's claims against the DWF Ds in relation to the Maple Point business, because in my judgment it would render it fair to consider possible liability against them on the basis of Oryx or WWAM as putative primary tortfeasor, through the mind and will of Rajen Shah or Mr Horn, respectively, although neither of Oryx and WWAM was identified in SKAT's pleadings as an alleged primary tortfeasor.

Accessory Liability for Deceit

170. As with Sanjay Shah for the Solo Model tax reclaim business (paragraph 113*ff*, above), the possible accessory liability for deceit that would have required to be considered in the case of the DWF Ds, for both the Solo Model and the Maple Point Model, if I had found that SKAT was misled into paying tax refund claims by misrepresentations, as it alleged, would have been the possible liability alleged by SKAT for inducing or procuring deceit. No allegation was pursued that the Tax Agents acted fraudulently in respect of tax refund claims with which the DWF Ds had any involvement. The possible primary tortfeasors, therefore, could only have been:

(i) SCP (for Solo Model trades prior in each case to the respective DWF D's departure from Solo);

(ii) Oryx (for 2014 trades, affecting all three DWF Ds), if through Rajen Shah as its directing mind Oryx had the understanding and intention to render it liable for deceit and WWAM (for 2015 trades, affecting only Mr Horn), if through Mr Horn WWAM had such an understanding and intention, the additional candidacy of Maple Point not in practice adding anything; or

(iii) the relevant USPFs.

171. Again, I would not have found that the USPFs acted fraudulently as alleged by SKAT (*cf* paragraphs 117 and 120 to 122 above). Had the finding been that they acted fraudulently, there would have been no difficulty with the conduct element of a possible accessory liability on the part of Mr Horn and Rajen Shah (*cf* paragraphs 115 and 123 above), but I express no view concerning Mr Dhorajiwala beyond saying that he is not necessarily in the same position as the other DWF Ds, given his different and subordinate role at the time. For all three DWF Ds, I was not persuaded that they knew (or believed or intended) that the USPFs would be or were acting fraudulently (*cf* paragraph 126 above). On that last aspect, the case as closed by SKAT was again flawed by failing to identify, let alone establish by evidence, the necessary element of knowledge (or perhaps belief or intent) that the USPFs would be or were acting fraudulently.

172. As regards SCP, for it to have acted fraudulently would have required different findings of fact, contrary to those which I have made concerning Sanjay Shah's knowledge and intentions. As regards Oryx and WWAM, findings contrary to those which I have made

would have been required concerning Rajen Shah's and Mr Horn's knowledge and intentions, respectively. It would then have been necessary to consider separately:

(i) as regards SCP, for each of the DWF Ds, (a) whether he instigated and encouraged SCP, and (b) whether he did so knowing, believing or intending that SCP would act or was acting fraudulently;

(ii) as regards Oryx, equivalent questions for Mr Horn and Mr Dhorajiwala.

The inability of a directing mind to avoid personal liability to which I adverted in paragraph 118 above would mean, I think, that no separate issue would arise as regards Mr Horn if, through his knowledge and intentions, WWAM had acted fraudulently.

173. To consider any further the possibility of liability as accessories to deceit would, in my view, stray beyond the limit of utility and ability to which I referred in paragraph 116 above.

Unlawful Means Conspiracy and Other Claims

174. Paragraphs 127 to 129 above apply equally to the DWF Ds (substituting each of them in turn for the references to Sanjay Shah).

SKAT vs. Lindisfarne

Deceit

175. The Lindisfarne Annex to SKAT's written closing submissions put forward a flawed analysis of any possible liability in deceit. The argument for a finding that Lindisfarne should be held responsible for the representations alleged by SKAT, if they were made, consisted of two unnecessary paragraphs citing pleadings and evidence for the undisputed proposition that Lindisfarne issued the Lindisfarne CANs (i.e. they were not forgeries) and a one-sentence third paragraph asserting as follows:

"*That the representations in the Lindisfarne DCA[s] were being made by Lindisfarne was clear on the face of the documents, which were on Lindisfarne headed paper and included Lindisfarne's registration in the footer.*"

Any representation in a Lindisfarne CAN, however, was not a representation to SKAT, but rather a representation, albeit indeed by Lindisfarne, *to its client*, the addressee of the CAN. SKAT's case on this key element of any claim of primary liability for deceit against Lindisfarne thus suffered from the misdirection to which I referred in paragraph 472 of the main body of this judgment.

176. SKAT addressed at length on the evidence whether Lindisfarne knew at the time that its CANs would be and were being sent to SKAT, or only (as Lindisfarne said) that they would be and were being sent to the Tax Agents and might well be sent to SKAT. In my judgment, that served more to obscure than to help resolve what would have been the real question. What would have mattered is Lindisfarne's *purpose* in issuing CANs to the equity buyers, following the share-less settlement of their purchase trades, so as to give them a separate and specific documentary record relating to one (only) of the cash movements generated by that settlement. What Lindisfarne knew of how its CANs would be or were being used might shed some light on that, potentially justifying or

supporting a finding by inference as to purpose. But it would be unrealistic to think it might make a difference to anything if Lindisfarne only believed that its CANs might well be going to SKAT, rather than knowing for sure that they were.

177. Lindisfarne would expect to maintain, and provide to its clients, full and accurate account records. It was under regulatory obligations to do so. It had no such obligation as regards CANs. Mr Horn explained to Lindisfarne at the outset of its involvement that the trading model was a structured equity purchase transaction in which a back-to-back stock lending chain, from the buyer to a stock loan intermediary to the seller, was used to settle the purchase, so that no shares needed to be acquired and the trade was self-funding, with no profit or loss other than possible tax reclaim profits for the buyer, and that Lindisfarne would be expected to issue CANs for use by tax reclaim agents.

178. On that explanation, and since the clients would get full account statements anyway, the only conceivable reason why a CAN might be wanted was so it could be presented to a tax authority, or used in some other way by the tax reclaim agent as the basis for submitting a tax reclaim. I have no doubt at all that Lindisfarne issued CANs as it did so that what it stated in those CANs could be passed on to the relevant tax authority, i.e. SKAT. That was the evident sole purpose of having CANs; that was Lindisfarne's purpose in issuing them.

179. As it happens, I agree with SKAT that it was plain on the contemporaneous evidence that Lindisfarne at the time in fact understood that the CANs themselves would be and were being submitted to SKAT. Mr Baker of Lindisfarne did some basic research for himself, as part of getting comfortable with becoming involved, that made it clear that specific payment confirmation for the 'dividend' income in relation to which a tax refund claim was made was typically required. An email of his to Mr Horn on 1 February 2015 queried, in effect, whether it would be a problem for the client's intended tax refund claim that CANs in the form Mr Horn had suggested Lindisfarne might use would not identify to the tax authority particular numbered securities or show share ownership. Mr Horn's team took pains with Lindisfarne to ensure that minute details in the client's name or address in a CAN (e.g. changing "*Apt.1710*" to "*#1710*" in an address, or "*Rd"* to "*Road*") would match "*the 6166s*", which could only be a reference to some kind of official tax form (even if, as Messrs Baker and Hogarth both said in evidence, they did not know or ask precisely what form it was). Similar pedantic care was insisted upon in how exactly the details of the Danish securities were recorded (e.g. the spacing within the typed name of the Danish company). Messrs Baker and Hogarth cannot have failed to conclude, and I am satisfied that they did in fact conclude at the time, that their CANs were going to SKAT (and not just being used by the Tax Agents as a source of information).

180. It follows from Lindisfarne's purpose in issuing its CANs that if it knew them to convey falsehoods, or to convey information in the truth of which it had no honest belief and which was in fact false, then Lindisfarne would have been liable, if SKAT had been misled thereby into paying out tax refund claims, as a primary liability in deceit.

181. Lindisfarne argued that it would be wrong to assess SKAT's claims against it on the basis of what SKAT would get from its CANs, read in isolation from the full monthly account reports prepared for its clients. I find that there was never any thought that those reports might be going to SKAT; and I do not accept evidence to the contrary given by Messrs Hogarth and Baker (the former more insistently and even less credibly than the

latter). It can be said in favour of Lindisfarne that it is inherently unlikely that it thought its CANs said anything that would be falsified by the full account statements, but that is not the same point. I have borne that in mind when judging what Lindisfarne thought its CANs said; but the immediate, and different, suggestion, which I reject, is that Lindisfarne thought at the time that SKAT was or might be receiving and taking into account the full monthly reports.

182. Lindisfarne, acting by Messrs Baker and Hogarth, understood its CANs to be accurate contemporaneous records of income events for their clients that were based on the dividends declared by the Danish company that, in turn, were dividends that were subject to the Danish WHT regime. Messrs Baker and Hogarth saw the details recorded in the CANs as doing no more than identifying accurately the Danish share issue, and share volume, by reference to which that income had arisen, and the calculation of the income amount that had been credited. They did not at the time consider that their CANs made statements anything like any of the core representations alleged by SKAT.

183. It was my assessment at trial that, through the fog of his feistiness in the witness box, the penny was starting to drop for Mr Hogarth that there was at least an argument that Lindisfarne CANs may have been capable of being misleading (*cf* paragraphs 20 to 22 of Appendix 6, above). I am satisfied, however, that that was not a thought he had at the time. On balance, I was likewise satisfied that Mr Baker did not consider at the time that the CANs said anything that might be misleading. His disreputable conduct in November 2015 gave me real pause for thought over that (see paragraph 24 of Appendix 6), but on the evidence as a whole I think the better view is that that was an aberration, out of character, and was not done because of any belief Mr Baker had that there had been anything deceptive about Lindisfarne's CANs.

184. In my ruling at the end of the Main Trial on the unavailability to SKAT of an argument to found liability upon reckless indifference as to meaning, I reserved judgment on that point in the case of Lindisfarne (see paragraphs 2 to 6 above). I do not need to take a final view on the procedural fairness of considering such a liability in its case, however, because my finding of fact is that Messrs Hogarth and Baker in fact paid honest attention to what CANs in the format proposed would state and did not conclude that they would or might be misleading. Even if they should reasonably have come to a different view (a question to which I return, below, because as an alternative to deceit SKAT sought damages against Lindisfarne for negligent misstatement), there is no room for a finding of reckless indifference as to meaning, i.e. that Lindisfarne did not care whether its CANs would or might mislead SKAT.

185. Since Lindisfarne acted honestly, I find, at the time, any claim against it founded upon the honest custodian representation could not succeed. For completeness, SKAT's argument was once again flawed through want of a proper analysis of what the alleged liability required it to prove. SKAT rested its case that Lindisfarne was aware that the honest custodian representation was made upon Lindisfarne's "*pleaded position … that the DCAs were intended to be honest and accurate statements of the facts set out therein …*". That was said to be a material and sufficient concession (*"… (i.e. the Custodian Honesty Representation)*"), but it is not at all. The honest custodian representation, if made, would have been a representation by the Tax Agent to SKAT that Lindisfarne honestly believed the core representations to be true. Lindisfarne did not concede, and I could not on the evidence find, that it had awareness at the time that any such representation would be or was being made to SKAT.

186. SKAT's claim against Lindisfarne for damages for deceit therefore would have failed in any event.

187. Turning for completeness to Lindisfarne's time bar defence, had it been liable in deceit, it was common ground that, reclaim by reclaim, any cause of action against Lindisfarne for damages for deceit arose when SKAT paid the claim, but the primary six-year limitation period for bringing proceedings did not begin to run until SKAT, acting with reasonable diligence, could have discovered Lindisfarne's fraud (s.32(1)(a) of the Limitation Act 1980). Furthermore, it was common ground that if Lindisfarne deliberately concealed from SKAT any fact relevant to its putative right of action for damages for deceit, then SKAT would not be time barred so long as it commenced proceedings within six years of when, acting with reasonable diligence, it could have discovered the concealment (s.32(1)(b)).

188. The deceit claim against Lindisfarne was introduced by amendment, on terms that preserved any accrued time bar, only on 19 May 2023. As a consequence, the question for s.32(1)(a) was whether if, contrary to my decision, there was deceit by Lindisfarne, SKAT might have discovered that fraud, acting with reasonable diligence, prior to 19 May 2017. The only question for s.32(1)(b) was whether by a letter dated 15 July 2019, Lindisfarne deliberately concealed some fact or facts relevant to SKAT's right of action against Lindisfarne in deceit, for that purpose assumed to have existed. That was a letter sent by Lindisfarne's solicitors, on Mr Hogarth's instructions and with his specific approval as to its contents, in response to a letter from SKAT's solicitors threatening a deceit claim. The deceit claim was then introduced well within six years of Lindisfarne's letter, so if it engaged in deliberate concealment, then the claim was necessarily in time under s.32(1)(b).

189. As regards s.32(1)(a), my finding would have been that the only piece of the puzzle missing for SKAT by early 2016 (never mind May 2017), if it wanted to sue Lindisfarne for deceit, was whether Lindisfarne appreciated at the time that its CANs were generated by trading structures involving the share-less settlement methodology that characterised the Maple Point Model business. I have no doubt SKAT, acting with reasonable diligence, could have obtained evidence that would have confirmed that within 2016, and certainly by mid-May 2017. I would therefore have held that, unless the limitation period was effectively extended by operation of s.32(1)(b), the deceit claim against Lindisfarne was time barred.

190. Turning to s.32(1)(b), Lindisfarne's letter of 15 July 2019 included some falsehoods (as I would have considered them if I had found that Lindisfarne had acted fraudulently in the first place), namely that:

    (i) Lindisfarne "*held an honest…belief in the facts and matters set out in the Credit Advice Notes*";

    (ii) Lindisfarne performed "*discrete, market-standard custodian services (primarily record-keeping of its clients' accounts)*";

    (iii) Lindisfarne had not benefited "*to the tune of millions from the WHT Scheme*", and had only charged its "*ordinary fees*"; and

(iv) there had not been "*close liaison*" with Mr Horn, with whom Lindisfarne had only "*met or corresponded … approximately 10 times*".

191. But that did not conceal anything relevant, deliberately or otherwise, from SKAT, even though as SKAT rightly submitted the purpose of the letter as a whole, and those particular statements within it, was no doubt to dissuade SKAT from escalating Lindisfarne to be an 'Alleged Fraud Defendant' (to use the language of SKAT's pleadings). At the time, Lindisfarne was already a defendant, but so far as fault-based claims are concerned it was sued only on the basis of allegedly negligent misstatement in breach of a duty of care said to have been owed to SKAT.

192. SKAT accepted, on the authority of *Canada Square Operations v Potter* [2023] UKSC 41, [2024] AC 679, that a concealed fact is only relevant to the right of action for the purpose of s.32(1)(b), if the claimant's cause of action would be incomplete (incapable of being pleaded) without it. As I concluded in paragraph 189 above, on the assumption necessarily now made that Lindisfarne had acted fraudulently in 2015, the only gap possibly blocking SKAT from pleading a deceit claim against Lindisfarne was cogent evidence that Lindisfarne knew that its CANs related to trades settled without shares. But Lindisfarne had confirmed by RFI Requests prior to the exchange of solicitors' letters in June/July 2019 that:

(i) none of the share purchases underlying Lindisfarne CANs was reported to Lindisfarne's sub-custodian, and Lindisfarne had at all times no shares held in custody relating to the trades;

(ii) the amounts credited to clients and reported by the Lindisfarne CANs were traceable only to amounts debited from short sellers, and there was never any payment coming to Lindisfarne up a custody chain;

(iii) the amounts labelled 'tax' in Lindisfarne CANs did not correspond to tax withheld by the Danish company in any traceable sense; and

(iv) Lindisfarne had oversight of all the structured transactions so as to have known all of that at the time.

193. SKAT submitted that it was only able to discover "*the true position of Lindisfarne's knowledge and dishonesty*", so as to be able to plead a deceit claim in these proceedings, after its review of disclosure provided by Lindisfarne in 2020. I was unable to identify – indeed, I think SKAT made no real attempt to identify – what necessary averment, for the deceit claim later introduced against Lindisfarne, it was not in a position to plead prior to the June/July 2019 letters or was in any way obscured by them. I agree with Lindisfarne's submission, to the contrary, that if (as must currently be assumed) the deceit claim was well founded in the first place, then (a) on any view upon receipt of the RFI Responses summarised above, SKAT was in a position to plead that claim, and (b) nothing in the July 2019 letter changed that position.

194. Had I not been dismissing the deceit claim against Lindisfarne for (multiple) other reasons anyway, therefore, I would have concluded that it was in any event time barred.

Unjust Enrichment

195. I have not lengthened this Appendix by considering whether any claim in unjust enrichment against Lindisfarne could have succeeded if SKAT had established, as it alleged, that it had been defrauded.

Negligence

196. The only other claim pursued against Lindisfarne was a claim for damages for negligent misstatement. For that claim, SKAT submitted that it had to prove five elements, following which it would be Lindisfarne's burden to show (if and to the extent alleged) that there had been contributory negligence by SKAT upon the basis of which any damages awarded should be reduced. Those five elements were that:

(i) Lindisfarne made a misrepresentation to SKAT;

(ii) Lindisfarne owed SKAT a duty to take reasonable care in making the representation in question in respect of loss of the kind said to have resulted;

(iii) there had been a breach of that duty of care, that is to say a failure to take reasonable care in making the representation;

(iv) SKAT relied on the representation; and

(v) loss of a kind within the scope of the duty of care was caused to SKAT as a result.

197. SKAT submitted that "*[the] principles governing whether a defendant made a representation … addressed in the context of deceit … apply equally to a claim in negligent misrepresentation*". The claim was that Lindisfarne owed SKAT a duty to take reasonable care over what it said to its clients in its CANs to them, because it knew or should have realised that the purpose of those CANs was to be provided to SKAT to support a tax refund claim to be submitted by or on behalf of the client. In my view, the principles for attributing responsibility cannot be the same as in a deceit claim, although there may be cases where the same factors are decisive. For deceit, depending on the facts, the justification for a finding that D has a liability for a misrepresentation made by R to C may be tied to D's intention to cause C to be misled. An assumption of responsibility by D towards C to take care in doing something that resulted in R making a misrepresentation to C must be based on factors rendering it just to impose liability for careless conduct, bearing in mind in particular the very *absence* of intent on D's part to cause C to be misled.

198. For the facts of this case, and reflecting the claim pursued at trial, the first two elements of the cause of action are better reformulated as requirements for SKAT to establish that:

(i) Lindisfarne's CANs made misstatements that resulted in the making to SKAT of (one or more of) the misrepresentations it alleged; and

(ii) Lindisfarne owed a duty to SKAT to take reasonable care to ensure that its CANs did not misstate matters in such a way that they might cause misrepresentations to be made to SKAT.

199. That formulation preserves the important factor that SKAT founded its claim squarely on its allegation that statements to the essential effect of the particular representations it pleaded *were* made to it, were false, and were relied on by it such that invalid tax refund claims were paid and SKAT suffered loss in the amounts paid out. That was the foundation alleged by SKAT for the negligence claim against Lindisfarne as well as for the deceit and conspiracy claims it pursued (and other claims parasitic thereon), which is why the conclusions reached in the main body of this judgment led to the failure of that negligence claim as well.

200. I agree with SKAT's submission that the established legal principles under the foundational decision of the House of Lords in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, on negligence liability attaching to the making of statements by financial professionals that cause pure economic loss, are sufficient to determine whether Lindisfarne owed SKAT a duty of care. There is no need for any development of the law (incrementally or otherwise), and no need to give general or separate consideration to notions of the justice or reasonableness of imposing or not imposing a duty of care – as Lord Goff put it in *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 at 181D, "*there should be no need to embark upon any further enquiry whether it is 'fair, just and reasonable' to impose liability for economic loss*".

201. As reflected in paragraph 197 above, a well-developed body of authority following *Hedley Byrne* establishes that the foundation for a duty of care in that type of case is a notion of assumption of responsibility, by the defendant towards the claimant, for the statements it made that had the capacity to cause loss to the claimant if they were inaccurate: see, for example, *NRAM Ltd v Steel* [2018] UKSC 13, *per* Lord Wilson at [24]; *Playboy Club London Ltd v Banca Nazionale del Lavoro SpA* [2018] UKSC 43, *per* Lord Sumption at [7]; *Spire Property Development LLP v Withers LLP* [2022] EWCA Civ 970, *per* Carr LJ (as she was then) at [59].

202. In *Caparo Industries plc v Dickman* [1990] 2 AC 605 at 638C-D, Lord Oliver summarised the principle established by *Hedley Byrne* as follows:

> "*… the necessary relationship between the maker of a statement or giver of advice ("the adviser") and the recipient who acts in reliance upon it ("the advisee") may typically be held to exist where (1) the advice is required for a purpose, whether particularly specified or generally described, which is made known, either actually or inferentially, to the adviser at the time when the advice is given; (2) the adviser knows, either actually or inferentially, that his advice will be communicated to the advisee, either specifically or as a member of an ascertainable class, in order that it should be used by the advisee for that purpose; (3) it is known either actually or inferentially, that the advice so communicated is likely to be acted upon by the advisee for that purpose without independent inquiry, and (4) it is so acted upon by the advisee to his detriment.*"

203. Lord Oliver noted that his formulation accorded *inter alia* with the US authority of *Glanzer v Shepard* (1922) 135 N.E. 275, where a purchaser paid too much for goods because of a negligent weight certification by a public weigher and (as Lord Oliver summarised it), "*the identity of the recipient of the certificate was known, the purpose of the certificate was known, and the certificate was issued for the very purpose of enabling the price of the goods to be ascertained and with the knowledge that it would be acted upon by the recipient for that purpose*" (*Caparo v Dickman* at 638F). Lord Bridge similarly emphasised the importance of the defendant's knowledge of a specific

purpose, transaction and recipient for information or advice they were asked to provide (*ibid*, at 620H-621C). In *Hedley Byrne* itself, at 486, Lord Reid reasoned thus:

"*A reasonable man, knowing that he was being trusted or that his skill and judgment were being relied on, would, I think, have three courses open to him. He could keep silent or decline to give the information or advice sought: or he could give an answer with a clear qualification that he accepted no responsibility for it or that it was given without that reflection or inquiry which a careful answer would require: or he could simply answer without any such qualification. If he chooses to adopt the last course he must, I think, be held to have accepted some responsibility for his answer being given carefully, or to have accepted a relationship with the inquirer which requires him to exercise such care as the circumstances require*."

204. It has never been a bar to liability that the defendant did not communicate directly with the claimant. As Lord Morris said in *Hedley Byrne*, at 497: "*apart from cases where there is some direct dealing there may be cases where one person issues a document which should be the result of an exercise of the skill and judgment required by him in his calling and where he knows and intends that its accuracy will be relied upon by another*". It is not necessary for the defendant to know for certain that what they say will be passed on, it may be sufficient that they should have realised that it was likely to be passed on; and it is not necessary that their sole purpose in making the statement was that it be so communicated, it may be sufficient for that to have been part of its purpose: *Playboy Club*, *supra*, *per* Lord Sumption at [11].

205. In *JP SPC4 v Royal Bank of Scotland International Ltd* [2022] UKPC 18, [2023] AC 461, the Privy Council judgment summarised the factors that examination of the case law shows to have been "*of particular relevance in determining whether there is an assumption of responsibility in relation to a task or service undertaken*" as including:

"*(i) the purpose of the task or service and whether it is for the benefit of the claimant; (ii) the defendant's knowledge and whether it is or ought to be known that the claimant will be relying on the defendant's performance of the task or service with reasonable care; and (iii) the reasonableness of the claimant's reliance on the performance of the task or service by the defendant with reasonable care.*"

206. In considering those factors, particularly the second and third of them, it will be relevant whether:

(i) the defendant made clear by disclaimer that it did not take responsibility for reliance on what it said (as in *Hedley Byrne* itself), or its statement was otherwise "*qualified or explained, for example as a statement of belief rather than fact, or as not having been verified for accuracy or completeness*" (*McClean v Thornhill* [2023] EWCA Civ 466, *per* Simler LJ (as she was then) at [93]); and

(ii) the claimant was independently advised, or could independently verify the information provided, such that the defendant could not reasonably have expected the claimant to rely on its information or advice (*ibid*, at [89]; see also *NRAM*, *supra*, at [19] and [23]).

207. Applying those principles, SKAT submitted that "*Lindisfarne owed [SKAT] a duty to take reasonable care [to ensure] that the Core Representations and Custodian Honesty*

Representations were accurate" (my emphasis). I do not think that is meaningful as regards the honest custodian representation. That is a representation allegedly made to SKAT, when a tax refund claim supported by a Lindisfarne CAN was submitted to it, that Lindisfarne honestly believed the core representations to be true concerning the payment credit reported by the CAN. What it means to propose that Lindisfarne owed a duty to take care to ensure that a representation about its honesty in respect of other representations was true is, to my mind, elusive. It makes sense to contemplate a duty to take care over the accuracy of a CAN that might be broken because of a careless failure to realise that the CAN as issued would convey something that Lindisfarne did not honestly believe to be true as much as it might be broken by a careless failure to realise that something Lindisfarne thought would be so conveyed was untrue. But that is not to contemplate a duty of care owed by Lindisfarne as to the accuracy of a representation about its own honesty.

208. As regards the core representations, then, the formulation of the alleged duty of care seems meaningful, but it is nonetheless unusual. The duty of care alleged is tied to, and assumes the existence of, the core representations. I think that is unorthodox, but the factors put forward by SKAT in support of imposing the duty of care indicate that it was deliberate. In what follows, I should emphasise, I am only summarising those factors, as put by SKAT, not saying whether their presence on the facts was made good at trial.

209. In that regard, SKAT submitted that:

(i) a clear purpose of the Lindisfarne CANs (in fact, their sole purpose) was to be provided to SKAT as part of tax refund claims made by or on behalf of the respective clients to whom they were issued;

(ii) Lindisfarne knew and understood that its CANs at the very least might well be provided to SKAT as part of such claims (and in fact, Lindisfarne understood at the time that they *would be* provided to SKAT with any tax refund claims made, and expected such claims to be made, knowing as it did that the generation of such claims was the entire commercial purpose of the trading);

(iii) Lindisfarne chose not to include any disclaimer against reliance, or in particular against third party reliance, in its CANs, no doubt (SKAT said) because such a disclaimer would prevent them being used to support tax refund claims;

(iv) it was reasonably foreseeable to Lindisfarne that SKAT would rely on its CANs, since they were, and would appear to SKAT to be, formal confirmation of facts within Lindisfarne's first-hand knowledge and not within SKAT's, issued by an FCA-regulated UK custodian without any words of qualification;

(v) the Lindisfarne CANs could not to Lindisfarne's knowledge be checked by SKAT even SKAT wanted to do so, since they recorded matters which occurred solely within Lindisfarne's own transaction records.

210. So far so orthodox, as a set of factors that, if present, would tend to support the imposition of a duty of care. But not a duty of care, as alleged by SKAT, tied to the core representations and therefore existing or not, as the case might be, depending on whether or not those representations were made. The possible duty of care supported

by those orthodox factors would be a duty to take care to ensure that the CANs contained accurate information. To take a basic example, if through carelessness a CAN overstated the amount credited to the client, SKAT foreseeably took the CAN at face value and when the error came to light the client refused to reimburse SKAT in respect of the consequent overpayment, that duty of care (if indeed owed) would support a damages claim against the custodian.

211. To bridge the gap between those orthodox factors and the bespoke duty of care alleged by SKAT in respect of the core representations, SKAT submitted that the following additional supporting factors were present, namely that (continuing the numbering from paragraph 209 above):

(vi) Lindisfarne intended SKAT to rely upon the core representations, as (SKAT said) without such reliance it would not receive the majority of its anticipated profits from acting as a custodian in relation to the Maple Point Model trading; and

(vii) Lindisfarne knew or ought to have known that SKAT would suffer losses if the core representations were false in that it would then have made 'refund' payments that would not have been made if Lindisfarne had exercised due care and skill so that those representations would not have been made.

212. Lindisfarne did not intend SKAT to rely upon the core representations, because it did not occur to Lindisfarne that they would be or were being made to SKAT. The bespoke duty of care proposed by SKAT was not owed.

213. SKAT's concern, to formulate the duty of care alleged as something more than just a simple duty as to the accuracy of the basic factual detail in the CANs, was I think well-founded. Such a simple duty would not attend to SKAT's cause for complaint against Lindisfarne. But meeting that concern by tying the alleged duty of care to the making of the core representations was not a satisfactory solution. SKAT's cause for complaint against Lindisfarne was that, so SKAT said, its CANs were misleading as to the nature and basis of the payment credits reported by them. Lindisfarne's submission against the imposition of any duty of care did not focus on the precise formulation of the duty put forward by SKAT. In my view it would not have been unfair to consider instead a more satisfactory formulation, namely a duty owed by Lindisfarne to SKAT to take reasonable care to ensure that its CANs were not misleading as to the nature and basis of the payments reported. If their purport was essentially to the effect of the core representations, then they were misleading about that, but without more that would not give rise to liability if that duty were owed. The question would remain, but it would go to breach of duty, its natural location in the analysis, whether Lindisfarne should have realised that the CANs were misleading.

214. Turning back, then, to the factors relied on by SKAT in support of there being a duty of care owed by Lindisfarne (paragraphs 209 and 211 above), now as to whether they were present on the facts:

(i) the sole purpose of the Lindisfarne CANs, as SKAT submitted, was to be provided to SKAT as part of tax refund claims made by or on behalf of the respective clients to whom they were issued;

(ii) Lindisfarne did understand at the time, as SKAT claimed, that its CANs *would be* provided to SKAT with any tax refund claims made, and did expect such claims to be made, knowing as it did that the generation of such claims was the purpose of the trading;

(iii) Lindisfarne did not include any express disclaimer against reliance, or third party reliance in particular, but I do not accept SKAT's submission that that was because such a disclaimer would prevent them being used to support tax refund claims. There was no basis in the evidence for such a finding. In my view, Lindisfarne had no reason to suppose that if its CANs included an express disclaimer they could not have been used, and (through Messrs Baker and Hogarth) its actual thinking at the time was that an express disclaimer was not needed because its CANs were evidently not 'tax vouchers' of the kind to which I referred in paragraph 453(v) of the main body of this judgment;

(iv) Lindisfarne's CANs were, and would appear to SKAT to be, payment advices issued by an FCA-regulated UK custodian to its clients, without any words of qualification, but that does not make it foreseeable to Lindisfarne that SKAT would rely on the CANs as evidence of the nature or basis of the reported payments, when they were evidently not tax vouchers of the type tax authorities require when seeking to have financial institutions certify things for them;

(v) it was not known to Lindisfarne, nor should it have been, that in relevant respect its CANs *could not* be checked by SKAT because they recorded matters which occurred solely within Lindisfarne's own transaction records. SKAT could readily have chosen only to pay claims supported by details of, and evidence confirming, the trading underlying the CANs, against which to check any notion the CANs might have conveyed as to the nature and basis of the reported payments. That said, it was obvious to Lindisfarne – and I find it did realise at the time – that full trading records, or even full account statements, were very probably not going to SKAT in the ordinary course of things, because otherwise there would be no point to the CANs and they would surely not have been asked for;

(vi) Lindisfarne did intend SKAT to rely upon its CANs as confirmation that the client's account had been credited with the net amounts shown, and I think it fair to say that Lindisfarne was aware that the majority of its anticipated earnings from acting as a custodian in relation to the Maple Point Model trading would only be realised if the trading worked in the practical sense that SKAT accepted and paid the resulting tax refund claims. But that does not mean Lindisfarne intended SKAT to rely upon its CANs as evidencing the nature and basis of the reported payments, and I find that Lindisfarne did not so intend. (That is not, I add for completeness, inconsistent with the fact that Lindisfarne realised that SKAT was not routinely demanding full trading records or monthly accounts);

(vii) it is an obvious truth that Lindisfarne could reasonably have appreciated that SKAT would suffer loss if it paid out on tax refund claims that were not valid under Danish tax law, but in my judgment Lindisfarne had no reason to suppose that SKAT was or might be relying on Lindisfarne taking care over what it said in its CANs in order to avoid suffering such loss.

215. For its part, Lindisfarne submitted, by way of positive case against the imposition of any duty of care, that:

(i) It produced CANs and full monthly reports for its clients, not for SKAT. That is true up to a point, but it only produced the CANs, in addition to full monthly reports, so that via the Tax Agents they would go to SKAT.

(ii) Lindisfarne "*had no knowledge of, or involvement in, the WHT reclaim process and it expected both its clients and SKAT to take such steps as necessary to satisfy themselves of their entitlement to a WHT refund (if any).*" That overstates the depth of Lindisfarne's ignorance, since it realised that its CANs routinely went to SKAT and that full trading records or monthly accounts very probably did not. Nonetheless, I accept the submission as to Lindisfarne's expectation. I find that *is* what Messrs Baker and Hogarth expected, and in my judgment it was a reasonable expectation.

(iii) Lindisfarne "*did not make any representations to SKAT in its DCAs. Any representations were made by the [clients] only, which appear to have divorced the DCAs from the Monthly Reports.*" It is true that Lindisfarne did not itself make representations to SKAT in or by its CANs, and that any representations made to SKAT were in fact made by (strictly) the Tax Agents acting expressly on behalf of the clients; but that is not itself a significant factor in the present context given the purpose, known to Lindisfarne, of issuing the CANs. It is not true that the clients (or the Tax Agents) 'divorced' the CANs from the monthly reports. The CANs were asked for and issued, as Lindisfarne appreciated, to go to SKAT on their own, not married to the monthly reports.

(iv) SKAT had a policy not to approach third parties, such as Lindisfarne, for information – the submission implicitly being (this was not spelt out) that Lindisfarne did not know or have reason to know that at the time. This was a misplaced submission. It was based on evidence given by Mr Ekstrand, which was somewhat surprising but I have no reason to doubt it, that there was a policy of that sort that applied to the suspected fraud investigation in late 2015 and 2016. I could not find that there was any such policy relating to SKAT's ordinary processes; the BT Opera episode discussed in the main body of this judgment (at paragraph 582*ff*) is to the contrary, and SKAT had a specific statutory right under s.69B of the Danish WHT Act to require the provision of information;

216. The submission for Lindisfarne, in conclusion, was that it was not reasonably foreseeable to it that SKAT would rely on its CANs:

"*a. without the Monthly Reports;*

b. without appropriate context from the clients/agents in the WHT Applications;

c. without making further enquiries to satisfy itself of any entitlement for a refund; and

d. in relation to matters on which the DCAs did not purport to express any view, such as tax matters (the DCAs [being], quite obviously, not tax vouchers)."

217. It will be apparent from the foregoing that I do not accept point (a). However, points (b) to (d), which do not require point (a), are correct. It reasonably did not occur to Lindisfarne that its CANs might be regarded by SKAT as sufficient to establish entitlement to anything under Danish tax law. That would have been my conclusion in any event, but all the more so since SKAT did not use the established method of requiring formal tax vouchers if it was looking to financial institutions to certify anything for them. It was reasonable for Lindisfarne to think that express disclaimer language was not needed.

218. I would therefore have dismissed in any event SKAT's negligence claim against Lindisfarne. The question of breach would not have arisen, but my finding on the facts would have been that it was reasonable for Lindisfarne not to identify as a possibility that its CANs might be thought to convey any statement to the effect of the tax ownership representation, the dividend entitlement representation, or the dividend payment representation. My further finding would have been, on balance, that it was reasonable for Lindisfarne not to realise that its CANs might be taken to convey a statement to the effect of the tax representation. I consider that Lindisfarne ought to have seen that its CANs might be thought to convey that the payment credit in the net amount reported related to an entitlement of some kind to the gross dividend amount stated, which could mislead since there was no such entitlement under the transactions being cleared and settled by Lindisfarne. But that is not the breach of duty alleged, since it does not translate to the tax representation (or its essence).

219. If required, Lindisfarne alleged that there was fault by SKAT in causing any losses for which Lindisfarne might be held liable, such that damages should be reduced for contributory negligence under the 1945 Act. I would have agreed with SKAT that on the authorities as they stand, carelessness in accepting and relying on the word of the defendant misrepresentor may not be relied upon by the defendant as contributory negligence in a negligent misstatement claim: see *Nocton v Lord Ashburton* [1914] AC 932, *per* Lord Dunedin at 962; *Standard Chartered Bank v Pakistan National Shipping Corp (No.2)* [2002] UKHL 43, [2003] 1 AC 959, *per* Lord Hoffman at [14]-[17]; *Gran Gelato v Richcliff* [1992] Ch 560 at 574-575; *McCullagh v Fox Lane* [1996] PNLR 205 at 240.

220. If therefore the cause of loss to SKAT had been reliance by Mr Nielsen on misstatements made by Lindisfarne that Lindisfarne had intended should induce SKAT to pay tax refund claims supported by its CANs, I would have said that damages did not fall to be reduced even if that reliance was careless on the part of Mr Nielsen. On the facts, of course, my finding was that there was no such reliance.

221. The limits of the doctrine identified in paragraph 219 above would have to have been examined more closely if SKAT had established its *prima facie* claim against Lindisfarne by reference to systemic reliance of the type discussed in the main body of this judgment, but which also, I found, was not made out on the facts. I do not think it necessary or appropriate to attempt a hypothetical consideration in the absence of relevant factual findings. That is particularly so bearing in mind that the central focus of Lindisfarne's submission was the negligent inadequacy, as Lindisfarne would have it, of SKAT's system for considering and paying tax refund claims during the relevant period, including its failure to address the obvious insufficiency of 'Form + CAN' as evidence of any relevant entitlement. Any judgment upon that submission would be

driven by whatever conclusions had been reached as to why SKAT's system justified a finding of inducement that I concluded could not be made.

SKAT vs. Mr Klar

222. Mr Klar was the central figure in Klar Model activity. The Klar Model was his in design, implemented using Salgado, the company he incorporated in the Comoros Islands, as custodian, although there would never be any shares for it to hold in any custody account. Salgado's only clients were Mr Klar's own tax-favoured equity buyers, Europa and Khajuraho, the USPFs established by Blue Ocean and Cole, the corporate vehicles of Messrs Kenning and Bergeron, which were also tax-favoured equity buyers, and Mr O'Sullivan/Heber as short seller (on Mr Klar's case which, on balance, I was prepared to accept: see paragraph 370 of the main body of this judgment).

223. Mr Klar also participated in Solo Model and Maple Point Model activity:

(i) Through his Cayman Island companies, Amalthea and Cork Oak, Mr Klar was a Solo Model stock lender in 2013 (Amalthea only) and a forward counterparty in 2014 (both companies).

(ii) Through his companies Sherwood and Potala, also incorporated in the Cayman Islands, Mr Klar was a stock lender and forward counterparty for Maple Point Model trades.

(iii) Amalthea, Cork Oak, Sherwood and Potala each earned and received 0.5% of the gross dividend amount involved in each Solo Model or Maple Point Model trade (respectively) in which it participated. Since tax refund claims generated by either Model were always for the full WHT amount applicable to the dividend at the WHT rate of 27%, a fee of 0.5% of the gross dividend equalled, in amount c.1.85% of the possible tax refund claim amount (0.5 / 0.27 = 1.85185185…).

224. The day to day activity of Amalthea, Cork Oak, Sherwood and Potala was conducted by Mr Sethuraman rather than by Mr Klar in 2014 and 2015, although Mr Klar continued to be authorised to trade for them had he chosen to do so. Whether when he was approving their trades, or after he had employed Mr Sethuraman, Mr Klar was not told and did not know for sure that the trading in which his Cayman companies were participating utilised a share-less settlement model, let alone the precise detail; but he assumed that something of that kind was being operated, having been at Solo when the Solo Model was being developed and having been one of the originators there of the thought that such a settlement model might be a possibility, and another Cayman company of his having conducted Belgian Solo Model trading as equity buyer in 2012.

225. At the Main Trial, Mr Klar accepted that Solo Model, Maple Point Model and Klar Model trading all in fact operated without the acquisition by any party of any shareholding, and that upon the findings of Danish tax law made in *SKAT (Validity Issues)*, *supra*, the tax refund claims made pursuant to trading under all three Models were not valid claims that SKAT was obliged to pay. SKAT submitted that as a result, "*the key issue for the Court to decide in relation to Mr Klar's liability is his state of mind during the Relevant Period: did he honestly believe that the representations that were made to SKAT as part of the Klar, Solo and Maple Point Schemes were true?*" That overlooked the major prior question whether Mr Klar appreciated that any of the

representations alleged by SKAT was made (or any statement or statements to the same essential effect as one or more of them).

226. There was something of the Red Queen about Mr Klar and his thinking. In "*Through the Looking Glass*", the Red Queen responds to Alice's insistence that "*one can't believe impossible things*" with the memorable riposte, "*I daresay you haven't had much practice … . When I was younger, I always did it for half an hour a day. Why, sometimes I've believed as many as six impossible things before breakfast.*" On his account, Mr Klar at the time believed, although he was not a lawyer and had never taken or seen legal advice to the effect of any of these propositions, that:

(i) a buyer became a 'beneficial owner' of Danish shares by contracting to buy shares even if the seller was short at all times and never transferred any shareholding to the buyer;

(ii) the 'market claim' payment (as he would label it), i.e. the dividend compensation payment, by the short seller to the buyer in such a trade would be recorded in the buyer's accounts as income earned in the gross dividend amount and a tax liability incurred;

(iii) as a result, at least in theory, there could be tax refund entitlements in excess of the total tax levied on a declared dividend, as a "*by-product of the way that the equity markets have been constructed*", even though he understood that what counted as a tax liability or a tax refund liability would be a matter of local tax law (here, Danish tax law), not a matter of market practices or understandings.

227. As well as having put forward a materially false account in his Defence and witness statement (with each of which Mr Klar's candid oral evidence stood in marked contrast), Mr Klar participated in the collateral dishonesty of written agreements and invoicing that presented falsely the nature of his companies' earnings, and also engaged in a specific fraud upon Global Fidelity Bank to enable himself to get an account opened there for Salgado, in which he created fake registers of shareholders and directors so as to present himself as the sole shareholder and director of Salgado. He made copies of these documents, got them notarised and then presented the notarised copies to Global Fidelity Bank as part of its account opening procedures.

228. Mr Klar accepted that he knew at the time that this was improper and that it involved deliberately providing false information to the bank. He said he did what he did to make sure Salgado could pay its clients what was due to them from Klar Model trading after Caledonian Bank, Salgado's previous bank, collapsed and, fearing a lengthy process if the true ownership structure of Salgado was shown to Global Fidelity, he wanted to get Salgado's funds out quickly. He said in his oral evidence at trial that Salgado had about US$10 million at Caledonian, the vast majority of which (in his mind) was due to Salgado's clients, and he was "*concerned that if I didn't take control, let's say, of the role of Salgado in the liquidation [of Caledonian] that the money would not get distributed the way it should be and that's why I portrayed myself as the director and the shareholder, rather than portraying, as was indeed the case, Mr Moray Stuart as the director … and the charitable trust as the shareholder …*". Mr Klar accepted that that did not justify what he did, but insisted that, ultimately, he was not trying by it to cheat anyone out of anything. I accept that evidence.

229. Those dishonest actions notwithstanding, my assessment was, and is, that Mr Klar had indeed persuaded himself during the relevant period to the view that merely contracting to acquire shares, if the trade did not fail and dividend-based income arose under it, might be sufficient under some systems to give rise to a tax refund claim; and that Denmark was one of those systems. SKAT noted that, taken to its extreme, Mr Klar's claimed belief entailed that he could conjure up tax refund entitlements simply by creating trading records and accounting book entries for entities all controlled by himself and acting at his direction. I do not think that is correct, because that kind of complete self-dealing might well be viewed as truly sham. Whether for tactical reasons or otherwise, SKAT chose not to take that point against Mr Klar at trial as regards Klar Model trading as actually implemented. In any event, Mr Klar acknowledged the logic of SKAT's suggestion, and I considered that he was being truthful in saying that was his thinking during the relevant period, fantastical though I think that should have seemed to him at the time.

Deceit

230. Mr Klar knew at the time that any tax refund claim submitted to SKAT would be made by a Form (in fact, or at all events it should have been, Form 06.003), with which he had made himself familiar, supported by a CAN and evidence of the tax-favoured status of the client.

231. Mr Klar did not, however, understand that statements to the effect of the representations alleged by SKAT, or any of them, would be made to SKAT. He considered that CANs indicated that the clients to whom they were addressed had been the 'beneficial owners' (as he understood that notion) of the shares referenced prior to the ex-date. In other words, he thought they stated only that the clients had purchased (i.e. contracted to acquire) shares prior to the ex-date. That is not the tax ownership representation alleged by SKAT. SKAT submitted that Mr Klar "*would have appreciated that a representation as to beneficial ownership of shares in the context of a WHT Application implied a further representation that the shares – and therefore the dividends on those shares – were owned by the [client] for Danish tax purposes.*" I do not agree. The submission betrayed the confusion of thought that infected SKAT's claim that the representations it alleged were made. The documents in fact said nothing about the Danish tax status or consequences of the information provided. If SKAT was looking only to pay if certain strict requirements of Danish tax law were satisfied, that would not mean that statements not otherwise made by the tax reclaim documents were somehow implied, let alone that Mr Klar would have realised as much. I have no hesitation in finding that Mr Klar did not in fact understand that there was any such implication.

232. Mr Klar thought that CANs indicated that the client had been entitled to the gross dividend amount stated, but had received only the net amount stated because the 'tax' amount had been deducted from the gross amount. That says nothing about the basis of the supposed gross entitlement; and in my judgment Mr Klar's thinking in that regard was confused. What matters, however, is that I am sure he did not understand the CANs to be making any statement, or implying anything, about the Danish tax treatment of the contractual entitlement he thought they reflected. He understood them to be reporting the crediting of 'market claims' (as he would have used that term), and that whether such claims amounted to dividends under Danish tax law was a question of Danish tax law, but he did not think that meant that CANs were impliedly making statements about the application of Danish tax law to the transactions to which they

related. In short, Mr Klar did not understand at the time that anything essentially similar to the dividend entitlement representation or the dividend payment representation, as alleged by SKAT, would be or was being made to SKAT.

233. As regards the tax representation, Mr Klar appreciated at the time that only the Danish company would have made any payment to SKAT in respect of the 27% tax on the dividend declared referenced in a CAN. That is the essence of a withholding tax system. Allied to his mistaken but genuinely held view that there could be tax refund entitlements in excess of the tax collected, Mr Klar did not think that the references in a CAN to 'tax' or 'tax amount' connected the payment made to the client, as reported by the CAN, and the withholding of tax by the Danish company, in the sense conveyed by the tax representation alleged by SKAT.

234. This is in substance the same conclusion as I reached in relation to the DWF Ds, above. There was a withholding tax rate of 27% applicable to the Danish dividends referenced in CANs. Its existence explained why the amount referable to those dividends that was paid to the clients to whom CANs were addressed was in the amount of the net dividend, i.e. the declared dividend less an amount equal to a tax deduction at that withholding rate. But that did not mean that the CANs were reporting the passing on of a payment in that net amount coming up a custody chain from the Danish company, via VPS, rather than a payment simply under contract calculated in that way. Contrary to SKAT's argument, therefore, it is credible that Mr Klar may have thought, as he said he did at the time, that in identifying a 'Tax amount' by reference to a stated 'Withholding rate' of 27%, and upon that basis calculating a 'Net dividend' amount and a 'Due payment amount' by deducting that 'Tax amount' from the 'Gross dividend', Salgado CANs were not intended to convey to SKAT that the Danish company had withheld tax from a payment made to the client.

235. As regards the honest custodian representation, in closing SKAT relied on a single answer by Mr Klar in cross-examination:

"*Q. You … knew at the time that these credit advices were submitted that SKAT would … understand from the credit advices that the custodian issuing the credit advice itself honestly believed that the facts stated in the credit advice were true, correct?*

A. Correct."

236. I consider it misstates the effect of that question and answer to say, as SKAT contended, that Mr Klar conceded by it a belief at the time that the honest custodian representation would be or was being made. The custodian made no statement to SKAT, and the honest custodian representation, as alleged, was a representation, by the Tax Agent, that the custodian honestly believed the core representations to be true. Therefore, the question to be addressed was whether Mr Klar thought that the Tax Agents were impliedly telling SKAT that the custodians honestly believed the core representations to be true, those being statements not made in terms by any of the CANs and certainly not consisting of "*facts stated in the [CANs]*". The answer Mr Klar gave to the very different question put to him did not show me that he would have answered the correct question in the affirmative; and on the whole of his evidence, I am confident he would not have done so.

237. For the reasons set out above, my findings in relation to Mr Klar are that he was aware of the contents of Salgado CANs and Form 06.003, and envisaged that in the Solo Model and Maple Point Model trading any CANs issued by custodians would be similar; but it did not occur to him, and he did not at the time understand, that any of the representations alleged by SKAT, or representations essentially to any of their effect, were being made to SKAT.

238. If Mr Klar had understood that something to the effect of the dividend entitlement and dividend payment representations, or the tax representation, was being said to SKAT, he would have believed that SKAT was being told something untrue. As regards the tax ownership representation, Mr Klar's misguided notion of 'beneficial ownership' extended to the idea, in his mind, that a contract to acquire a shareholding was sufficient for Danish tax refund purposes to constitute share ownership. He therefore would have thought, genuinely but wrongly, that if the tax ownership representation was being made to SKAT, it was not being told something untrue.

239. As with Sanjay Shah and the DWF Ds, I would have considered that there was no real issue over whether Mr Klar intended SKAT to rely on the representations it alleged were made to it, if he had thought that they would be and were being made by the submission of tax refund claims.

Primary Liability

240. SKAT submitted that Mr Klar could have a primary liability for deceit in relation to the Klar Model tax refund claims, on the basis either that he procured or induced the deception of SKAT, or on the basis that he was the true principal of the Tax Agent (which was always Goal for Klar Model trades); but the latter was said to arise only for the tax refund claims submitted on behalf of Europa and Khajuraho.

241. SKAT's submission on the first possibility (procuring and/or inducing deception) relied upon five aspects of Mr Klar's role in relation to the Klar Model business, namely that:

(i) he was the mastermind behind the business who designed, implemented and funded it (to the extent any funding was needed, that is to say set-up and maintenance costs for Salgado);

(ii) he controlled Salgado, the custodian, produced the Salgado DCAs, and sent them to Goal for transmission to SKAT with tax refund claims;

(iii) he owned and controlled Europa and Khajuraho, conducted their trading, and was the individual by whom they authorised the submission of their tax refund claims to SKAT;

(iv) he recruited Blue Ocean and Cole to join the Klar Scheme and had input into almost every aspect of their trading and the submission of tax refund claims on their behalf; and

(v) he directed Goal to submit the tax refund claims that were made to SKAT on behalf of all four Klar Model equity buyers.

242. The real issue, however, was not what Mr Klar did, or its centrality to the making of the Klar Model tax refund claims, which was evident and needed no lengthy submission. The issue was Mr Klar's purpose and intention in doing what he centrally did in that regard. If Mr Klar's intent was to cause SKAT to be misled by one or more of the misrepresentations it alleged, Mr Klar realising at the time that it or they would be made to SKAT by Goal through the tax refund claims, then I would have been prepared to find primary liability on the basis of the doctrine of instrumentality to which I referred in paragraph 13 above. My finding though is that Mr Klar had no such intention to deceive SKAT.

243. In the case of the Klar Model, I was not satisfied that it is appropriate to characterise Mr Klar, or Salgado, as a 'true principal' of Goal. In relation to the tax refund claims submitted on behalf of Mr Klar's tax-favoured equity buyers, Europa and Khajuraho, the same qualification arises as with Sanjay Shah in relation to SCP (paragraph 119 above). Subject to that qualification, I would have considered that Mr Klar in any event had no primary liability for deceit.

Accessory Liability

244. In my judgment, Mr Klar undoubtedly instigated the submission of tax refund claims by Goal in respect of Klar Model trading, for claims submitted on behalf of Blue Ocean and Cole, as well as for claims submitted on behalf of his own entities, Europa and Khajuraho. If, contrary to my findings, (i) SKAT was misled into paying Klar Model tax refund claims by one or more of the misrepresentations it alleged, and (ii) that was within Mr Klar's intent in encouraging the submission of those claims, then the consequent finding would have been that Europa and Khajuraho, acting by Mr Klar, were each liable for deceit in respect of the tax refund claims submitted on their behalf, and Mr Klar was liable with them. I have no basis in the evidence, however, to find against Blue Ocean or Cole that, through Mr Kenning or Mr Bergeron, they had any thought that SKAT would be or was being deceived. If Mr Klar did not have a primary liability on the basis of using inter alia Blue Ocean and Cole as instruments of his for practising deception upon SKAT, I could not have found that he had instead an accessory liability for a deceit practised by either of those entities.

245. SKAT noted that Mr Kenning was, by background and experience, a tax attorney in the US, with prior experience of div-arb trading (although there was no detail concerning that experience in evidence). It submitted that he "*would therefore have known that SKAT would not pay out WHT refunds without the submission of documentation showing that the applicant owned shares and had received dividends on which it had suffered a withholding of tax*". Except that it perhaps encompasses the tax representation alleged by SKAT, a finding to that effect would not be a finding that Mr Kenning thought the representations alleged by SKAT, or statements to their essential effect, would need to be made to SKAT. I do not accept the submission on the facts anyway. An experienced US tax lawyer with at least some knowledge of div-arb trading would have no *a priori* reason to know or have any particular assumption about how any given national tax authority, in this case SKAT, approached tax refund claims.

246. The allegation of accessory liability through assistance pursuant to a common design would add nothing on the facts, as regards Mr Klar's possible liability for deceit.

247. SKAT also alleged that Mr Klar was liable, as an accessory, for deceit in respect of all tax refund claims paid by SKAT that were generated by Solo Model trading in 2013, 2014 and 2015, and all tax refund claims paid by SKAT that were generated by Maple Point Model trading. The basis of liability alleged was the provision of more than minimal assistance in an alleged common design to defraud SKAT. Without doubt, Mr Klar provided more than minimal assistance, through Amalthea and Cork Oak for Solo Model trading during 2013 to 2015 inclusive and through Sherwood and Potala for Maple Point Model trading. If my findings of fact had led to conclusions that SKAT was misled into paying tax refund claims, as it alleged, and that Mr Klar was privy to a common design to deceive SKAT, liability would have followed. But they did not.

Unlawful Means Conspiracy and Other Claims

248. I have not lengthened this Appendix with any hypothetical consideration of SKAT's further or alternative claims against Mr Klar.

SKAT vs. Messrs Patterson & Bains

249. This section deals with SKAT's claims against Mark Patterson and Jas Bains, each of whom worked for Sanjay Shah and was closely involved in the Solo Model. They were both part of Mr Shah's acquisition of control of Varengold Bank and Mr Patterson was also involved in the Dero Bank acquisition.

250. Mr Patterson joined Solo in March 2013 after working at a number of financial institutions, including Macquarie where he was a stock loan trader focused on div-arb transactions. Sanjay Shah had known him for 10 years or so before he joined Solo. By then, the Solo Model had been up and running for a year; and Mr Patterson's key role became the orchestration of the trading, communicating to those trading for the equity buyers, short sellers, and stock lenders, the trades that were on offer to them around each dividend declaration in respect of which Solo (GSS) wanted trades to be done. He also assisted Solo, and the external participants, in liaising with the Solo Model brokers from time to time, and in supervising, or dealing with problems arising from, the execution of the planned trades by the participants involved. He helped to establish the Malaysian side of the Solo Model business, visiting Labuan as the first Solo Model LabCos were being incorporated and helping Mr Preston in particular to understand what he needed to be able to participate. He assisted Sanjay Shah with the automation of Solo Model trading for 2015. I agree with SKAT that on the evidence, particularly that of the spreadsheets tracking Solo Model outcomes and entitlements, more probably than not Sanjay Shah agreed with Mr Patterson as part of his move to Dubai that from then (and therefore, in the event, for Solo Model 2014 and 2015 trades), he would be entitled to 1.5% of the gross dividend amounts involved in Solo Model trades that generated successful tax refund claims (which is equal in amount to c.5.56% of the tax refund claim amount), although the amounts in fact paid to Mr Patterson for 2014 and 2015 Solo Model trading did not match that exactly.

251. Sanjay Shah considered Mr Patterson his "*lieutenant*" in operating the Solo Model. He went on to participate in Mr Shah's clandestine acquisition of control of Varengold Bank and Dero Bank through what were at the time his (Mr Patterson's) companies, Ampersand, PCM, Woodfields and Woodfields Holdings. Mr Patterson joined as a member of SCP (the limited partnership), but ceased to be a member at the end of January 2014 immediately prior to moving to Dubai, where he continued to work as

before for Sanjay Shah, but now at the office where Mr Shah was based and as a consultant to Mr Shah or companies of his, including Ganymede. His personal status was later altered again, from April 2015, to that of employee of Elysium Dubai.

252. Mr Patterson did not participate in the Main Trial, and made some significant admissions as part of pleading guilty to criminal charges in Denmark and in a Response to a Notice to Admit Facts he served in these proceedings. They went as far as an admission that by the end of 2013, Mr Patterson considered that the Solo Model business was "*wrong*". SKAT submitted, and conceded, that that admission did not go far enough. That was both submission and concession because it both encapsulated SKAT's argument that Mr Patterson's admissions understated the extent of his knowledge, and his intentions, during the relevant period, but also recognised (rightly) that a belief that in some unspecified way the Solo Model business was, or had become, "*wrong*", did not found liability on any of the claims SKAT pleaded against Mr Patterson in these proceedings.

253. Mr Bains joined Solo in about October 2010, having qualified as a solicitor and practised at Freshfields before moving to roles at ING, then Barclays. He had experience of tax structured transactions and arbitrage, although as with Mr Patterson the evidence at trial does not enable me to describe in any detail the types of transaction with which Mr Bains might therefore have had familiarity before arriving at Solo. He was a founding member of SCP upon its creation as a limited partnership on 31 March 2012, and sat on its management committee, until July 2013. Prior to Mr Pitts' arrival to take on the Compliance functions, Mr Bains was SCP's Head of Legal, Head of Compliance, Money Laundering Reporting Officer and *de facto* COO in London. Mr Bains left SCP in July 2013, but continued to work for Sanjay Shah as a paid consultant until the summer of 2014.

254. Mr Bains joined Arunvill in October 2014, turning down lucrative terms offered by Sanjay Shah for a return to SCP in order to do so. He sold himself to Arunvill, in part, on the basis that he could bring them a very profitable trading structure. Having been taken on, Mr Bains duly presented the Solo Model methodology. The reaction at Arunvill, to which I referred in paragraph 66 above, was to suggest that it was "*fraudulent because there was no dividend and therefore no withholding tax was ever suffered by the party claiming it*". Arunvill's first reaction is no substitute for a serious attempt to analyse and prove that the tort of deceit as defined by English law was committed, on the basis pleaded by SKAT for trial here; and as set out in the main body of this judgment, I found that SKAT did not prove its pleaded case.

255. For current purposes, the important implication of Mr Bains' presentation to Arunvill, in my judgment, is that it contradicts the idea that Mr Bains thought when working for Sanjay Shah that the Solo Model tax refund claims amounted to or involved fraud on SKAT. In saying that, to be clear, I consider that Mr Bains would have understood that it would be fraud deliberately to cause tax refund claims to be submitted that made false statements to SKAT designed to mislead it into paying out. I find that Mr Bains did *not* understand that the Solo Model involved that, or consider it as a possibility prior to receiving Arunvill's reaction. I was unimpressed by Mr Bains in a number of respects, but I think it inconceivable that he took to Arunvill, having trailed it to them as the big money-making idea he would bring, a scheme to defraud national tax authorities, believing it to be such and envisaging that they would be happy to replicate it.

256. Whilst at Solo, Mr Bains himself signed a substantial number of SCP CANs. As part of the development of the Solo Model, Mr Bains was involved in assessing SCP's ability properly to implement the Model as an FCA regulated entity, for which he took external advice on a number of points (including from Pinsent Masons and CMS Cameron McKenna), in which he was open, where it seemed to him relevant, that SCP would never hold shares in custody at any stage. For example, on 8 March 2012 Mr Bains confirmed to Michael Lewis of Pinsent Masons, in the context of some advice he was taking from him, that "*Most of our transactions will be structured transactions in the following sense: we expect one client to be long 100 shares in stock X whilst another client is short 100 shares in stock X. No actual stock needs to be custodied with a subcustodian because of this 'net-off'. Indeed, we do not expect actual cash to be custodied with a subcustodian.*" There is room for the view that Mr Bains should have seen the share-less nature of the Solo Model as relevant generally to any external legal advice he took in connection with it; but I do not accept the submission made by SKAT that he was deliberately withholding that detail, when he did so, because of any concern that it had the result that the Solo Model trading gave rise to fraud on SKAT.

257. Mr Bains assisted with the implementation of Solo Model test trades and oversaw the onboarding of Solo Model participants. He drafted at least the early versions of the Ganymede consultancy or service agreements through which Ganymede would take the lion's share of Solo Model tax refund claim proceeds and reward trading counterparties for their participation.

258. Mr Bains was not involved in obtaining any Danish tax law advice, which he left to the structurers, Mr Horn and Rajen Shah, reporting to Sanjay Shah. I consider that he should not have done that. Following the backlash in Germany against cum-ex trading there, including by 2011 the possibility for views to be taken that it involved criminal conduct, and given Mr Bains' qualifications and his roles at SCP, he should have insisted that he have at least oversight of the legal advice being sought and the ability to review any legal advice obtained, if not prime responsibility for seeking and obtaining it. Mr Bains did not take that approach. That does not mean, however, and I do not find, that Mr Bains knew or believed that the Solo Model trading provided no proper basis for submitting tax refund claims for consideration by SKAT, let alone that it resulted in fraud, i.e. the communication of falsehoods to SKAT with a view to inducing it to pay.

Deceit

259. SKAT did not pursue in closing any claim that Mr Patterson had a primary liability in deceit. He was said to have accessory liability in respect of the alleged deceit of others arising from Solo Model trading.

260. I concluded when considering the case against Sanjay Shah, above, that the only candidates for primary liability in relation to the Solo Model are:

(i) Syntax (as regards tax refund claims submitted by it from 19 September 2014);

(ii) SCP; and

(iii) the Solo Model USPFs and LabCos.

261. SKAT alleged that Mr Patterson was liable on the basis of assistance pursuant to a common design to deceive SKAT. Until oral closing argument, SKAT had suggested that participation in Sanjay Shah's acquisition of control of Varengold Bank and Dero Bank "*assisted in the concealment or laundering of the proceeds of fraud [which] assisted the commission of the tort of deceit by making it harder for SKAT to recover such proceeds and … recoup its losses [and] also contributed to SKAT not discovering the fraud earlier and therefore paying out further tax reclaims on a false basis … .*" That suggestion was withdrawn by SKAT in oral closing argument, so I say nothing more about it here (or in later sections of this Appendix – it was also raised, but dropped in oral closing argument, against various other trial defendants). In the case of Mr Patterson, there was never any need to rely on the Varengold Bank and Dero Bank episodes to establish more than minimal assistance in Solo Model trading with a view, as Mr Patterson appreciated, to tax refund claims being submitted by the Tax Agents on behalf of the Solo Model USPFs and LabCos. Without doubt Mr Patterson provided such assistance.

262. I agree with SKAT's argument against Mr Patterson that, on the evidence cited in the Patterson Annex to SKAT's written closing submissions, it is probable, and I therefore find, that he was aware at the time he was assisting with the Solo Model trading of the form and content of the CANs issued by the Solo Model custodians, and of the fact that they would be submitted to SKAT. The argument that Mr Patterson shared a common design to deceive SKAT was the following single sentence: "*From his knowledge of the [CANs], Mr Patterson was … aware of the substance of the Core Representations made to SKAT, which is sufficient for the purposes of a claim in deceit.*" That is the optimistic mantra I rejected in paragraph 122 above. I reject it again as applied to Mr Patterson, and that is even if (possibly generously to SKAT) I treat it as a submission referring to the essence of the core representations, as pleaded, though in SKAT's written closing submissions the "*substance of the Core Representations*" referred to the 'substance' statements formulated in SKAT's Restatement document that were materially different from the representations pleaded (as referred to in the main body of this judgment, paragraph 460).

263. SKAT advanced an allied submission that because Mr Patterson surely knew (and indeed I would have been content to find, on the probabilities, that he did know) that the Solo Model settlement method was a share-less method in which, at settlement, the buyer's stock loan fed the stock lender's stock loan which fed the short seller's sale, so that there was no (external) shareholding or dividend income, he "*must therefore also have known that the Solo Applications were based on fraudulent documentation*". I do not accept that argument. It was not self-evident that the only way to cause SKAT to pay tax refund claims was to make statements to it that Mr Patterson would have known to be false, from his knowledge of how the Solo Model worked.

264. SKAT submitted that it is not necessary, for accessory liability in deceit, for the putative accessory to know "*the precise means by which the deceptive [representations] would be made to [the claimant] or even the precise identity of the principal wrongdoer in respect of each such means*". Even if that is true, the only basis put forward in closing against Mr Patterson that he was privy to a common design to deceive SKAT was the case I have rejected, above.

265. Accordingly, even if SKAT had persuaded me to find that deceit had been practised by a primary tortfeasor, I would not have found Mr Patterson liable as an accessory to that deceit.

266. Turning to Mr Bains, again SKAT's case in closing argument was only that he was liable as an accessory to deceit on the basis of assistance provided pursuant to a common design to deceive SKAT. As will be clear from what I have already said, I have no doubt that Mr Bains did *not* share any such design, even if (contrary to my findings) others at Solo did understand and intend that deceit was being practised against SKAT. I would again have had no difficulty in finding that Mr Bains provided more than minimal assistance if he had shared such a common design.

267. I agree with SKAT that Mr Bains was aware throughout his involvement with the Solo Model that CANs such as those issued by SCP, a number of which he signed himself, were issued on the back of the trading, and that he understood at the time that the clients wanted such documents to support tax refund claims that would be submitted on their behalf by the Tax Agents. I do not accept that the evidence showed him to be aware that the CANs themselves would be or were being sent to the tax authorities. He assumed that there would be a Form for the making of tax refund claims that the Tax Agents had to use, but I could not say on the evidence that at the time he was familiar with Form 06.003 as the actual Form that was supposed to be used for Denmark. He saw the CANs themselves as confirming information to the client about what had happened on a trade it had done, which involved a "*kind of net dividend*". Beyond thinking that it would be the Tax Agents' job to know what was required for submitting a tax refund claim, including what (if anything) had to be said to the tax authority in question, Mr Bains gave no thought at the time to what, if any, statements were being made to SKAT by or with the tax refund claims generated by Solo Model trading.

268. SKAT submitted in closing, to the contrary, that Mr Bains conceded in cross-examination that he understood during the relevant period that the core representations, or their essence, would be made to SKAT by any tax refund claim submitted to it. In my judgment, that was not the effect of his evidence, considered as a whole. For example, SKAT submitted that he conceded "*that part of the application would be saying to the authority that tax had been withheld from the payment of a dividend received by the client*". The full exchange in cross-examination was much more nuanced and equivocal, and the final question eliciting the answer on which SKAT relied was long, complex, and included a false premise apt to lead a witness astray (my added emphasis throughout):

"*Q. You would have understood that the tax agents, whether it was Goal or Acupay or someone else, would submit a document, a form, to the Danish tax authorities, yes?*

A. Yes, I drafted the Acupay exclusivity agreement which you brought up a few days ago [*viz.*, a draft prepared by Mr Bains in March 2012].

Q. And you would have understood that that document would have told the Danish authority that Solo's client wanted to reclaim tax, yes?

A. That is what reclaim agents do, so the answer is yes.

Q. Yes. And the document would also have said that the client had had tax withheld on a dividend that it had received, yes?

A. ***I wouldn't have thought about it in that kind of detail.*** *I just know reclaim agents go and get the reclaims. That is what they do. That is the full extent of my knowledge of what reclaim agents do.*

Q. Even from May 2013, are you telling us that you didn't understand that an application for a tax reclaim would involve saying that the client had received dividends on Danish shares that it owned?

A. ***Again, if you had asked me in May 2013: what does a reclaim agent need to tell a government -- no, I just wouldn't have known what -- I wouldn't have known it in the words you have said.*** *To me, tax agents, reclaim agents, make the reclaims on behalf of clients who have done dividend arbitrage trades.*

Q. What are they reclaiming, Mr Bains?

A. Again, they are reclaiming -- well, I don't know, sorry. I don't know how to answer your question there.

Q. You don't know what the tax agents are reclaiming?

A. Okay -- oh, got it, okay. So reclaim agents are reclaiming withholding taxes.

Q. Yes. So you would have been aware that the client would have had -- the client would be saying that it had had tax withheld from its dividend, wouldn't you?

A. ***I don't know what the client would be saying.***

Q. But if you are aware that a tax reclaim is being made, and you have been very kind and helpful and ***you have said that you understood that*** *what that meant is* ***the client would be saying that it had had withholding tax withheld from it*** *and that that was what it would be reclaiming, you must have well understood that part of the application would be saying to the authority that tax had been withheld from the payment of a dividend received by the client, yes?*

A. If you had asked me that question in May 2013, I would have said yes. By then, I would have known that, yes.

269. The seeming partial agreement with the last part of that long final question was the answer relied on by SKAT. It was put on the premise that Mr Bains had said something in the preceding answers that he had in fact denied three times. His evidence elsewhere during his cross-examination was consistent, and I accept from him, that he (i) saw the CANs as informative documents for the clients, (ii) had no intention that they should contain anything that was incorrect, and (iii) did not know, or give any thought at the time to, what (if any) statements had to be or were made to SKAT by or through the Tax Agents when submitting a tax refund claim. The Acupay Reclaim Agreement that Mr Bains was asked to review in September 2012, while he was at Solo, made Acupay's client (which would be the USPF or, later, LabCo) "*responsible for providing Acupay with all the relevant information and documentation required for a tax reclaim in the relevant jurisdiction*", which it stated would include, without limitation: "*I. a full* ***Power***

of Attorney *... which gives Acupay the authority to make the claim on behalf of the Client, and receive the funds on its behalf; and II. a* ***Certificate of Residence*** *issued by the relevant government agency in the Client's jurisdiction. The Client accepts that each jurisdiction to which Acupay is applying for refund will have different information and document requirements and agrees to provide to Acupay any further information or documentation which is required by the presiding tax authority, as requested by Acupay.*" That was consistent with Mr Bains' understanding that whatever the Tax Agent had to send to SKAT would be sorted out between the Tax Agent and the clients, and in my judgment will have confirmed that understanding for him.

270. In relation to the honest custodian representation alleged by SKAT, Mr Bains reasonably acknowledged that he imagined a client to whom a CAN was issued would believe that the custodian who had issued it honestly believed statements made by it to be true. SKAT founded its submission that Mr Bains realised that the honest custodian representation was made to it on its claim that he knew that CANs went to SKAT as part of tax refund claims. I was not persuaded that Mr Bains did know that, so SKAT's submission failed. In any event, as I have said in relation to other trial defendants, above, appreciation that CANs went to SKAT does not in my view translate into appreciation that the Tax Agents were making a representation to SKAT that the custodian honestly believed the core representations to be true.

271. As with Mr Patterson, therefore, I would not have found Mr Bains liable as an accessory to any deceit enabled by the Solo Model trading, if I had found that there was deceit.

Unlawful Means Conspiracy and Other Claims

272. As with Mr Klar, I have not added to the length of this Appendix by including any consideration, on some hypothetical basis, of the other claims SKAT made and pursued in closing against Mr Patterson or Mr Bains.

SKAT vs. Other Solo Model Ds

(Ms Bhudia and Messrs Devonshire, Fletcher, Godson, Jain, Körner, Mitchell, Murphy, Oakley, Preston & Smith)

273. This section deals with SKAT's claims against the Other Solo Model Ds, namely the individuals listed immediately above and certain corporate entities of theirs that are also trial defendants, that is to say:

(i) Orca, in the case of Messrs Oakley and Mitchell;

(ii) Körner GmbH, in the case of Mr Körner (as to which, I note that Körner GmbH may not still be owned by Mr Körner, but that is irrelevant to any possible liability to SKAT);

(iii) Godson 401K, Lawler 401K, Idea Guy 401K and Watts St 401K, in the case of Mr Godson; and

(iv) Eris, Oberix, Double Two and Double Two Investments, in the case of Mr Jain.

They are the 10 unrepresented corporate trial defendants to which I referred in paragraph 30 of the main body of this judgment. Mr Godson and Mr Jain may have seen

themselves as speaking for their respective companies; but there was never any application for, or grant of, permission for lay representation of those companies at the Main Trial.

274. Before turning to say something about the claims pursued by SKAT against the Other Solo Model Ds, I summarise in the immediately following paragraphs their respective participation in the primary events.

275. Mr Smith was involved in the Solo Model throughout. He was the executing broker at Novus for the equity trades and associated futures trades for Solo Model 2012 trades, and having moved to Dubai he became a stock lending counterparty for 2013 to 2015 Solo Model trades, through Colbrook and other corporate vehicles owned and controlled by him. Also through Colbrook, Mr Smith participated in Sanjay Shah's covert acquisition of control of Varengold Bank, which is why Colbrook came eventually to be owned indirectly by Sanjay Shah so that it was a Sanjay Shah D in the litigation. Mr Smith was offered by Sanjay Shah a personal commission of 1% of gross dividend amounts for the Solo Model 2012 trades he brokered at Novus, but that was not paid, and in the event his remuneration for involvement in Solo Model trading came from either 0.5% or 0.75% of gross dividend amounts on the Solo Model 2013, 2014 and 2015 trades in which his stock lending companies were involved, all as agreed between Mr Smith and Sanjay Shah. Mr Smith took those rewards through his corporate vehicles, including a Dubai branch of Colbrook ('Colbrook JLT') set up with assistance from Sanjay Shah, using (as was commonplace for Solo Model trading participants) the dishonest method requested by Sanjay Shah of Ganymede (or, later, the mini-Ganymedes) being invoiced for services that had not been rendered rather than SCP, or perhaps Ganymede, being invoiced for a participation fee or profit share on the trading, either of which would have been a proper way of describing the real arrangement.

276. Mr Murphy was the CEO and principal shareholder of Novus. He acted as the executing broker at Novus for Solo Model 2013 trades and again in the first half of 2014, Mr Smith having moved to Dubai. During 2014, Mr Murphy agreed to sell Novus to Sanjay Shah for £2m, and the sale was in due course completed in 2015. In mid-2013, Mr Murphy was a part of Sanjay Shah's recruitment drive to find additional financial services professionals in the US who might be in a position to set up USPFs to join the Solo Model trading scheme. He was introduced to Mr Fletcher by Mr Devonshire, leading to the introduction of the Standard Credit Individuals to the Solo Model, through Mr Fletcher and the sales pitch meeting with Sanjay Shah and Mr Murphy referred to in paragraph 193 of the main body of this judgment. Sanjay Shah agreed to pay Mr Murphy 15% of tax refund claim proceeds received for the account of USPFs thus introduced to the Solo Model by Mr Murphy, which Mr Murphy took through his company Schmet, adopting the Solo Model norm of false invoicing. He agreed and paid fees to the Standard Credit Individuals for USPFs introduced by them of (according to Mr Murphy's recollection) about US$80,000 per plan.

277. Mr Murphy also agreed terms with Mr Fletcher (which for his part, Mr Fletcher regarded as for himself and Mr Devonshire in equal shares) for the introduction of USPFs by him and the Standard Credit Individuals. As I said in paragraph 195 of the main body of this judgment, Mr Murphy dealt dishonestly with Mr Fletcher. He was in fact doubly dishonest: firstly, he told Mr Fletcher that he (Mr Murphy) was getting US$75,000 per USPF, which they agreed should be split equally (meaning Mr Murphy would retain US$25,000 and pay US$50,000 to Mr Fletcher for him and Mr

Devonshire), although Mr Murphy's agreement with Sanjay Shah was in fact for 15% of tax reclaim proceeds achieved, which was expected to be, and in the event was, far more than US$75,000 per USPF; secondly, when that came to light and Mr Fletcher argued that Mr Murphy should be sharing equally (passing on two-thirds of) what he actually made, Mr Murphy told Mr Fletcher that it had been (the Euro equivalent of) US$1.43m, although the true figure was US$6.43m.

278. In early 2015, Mr Murphy moved to Dubai to assist Sanjay Shah generally, as might be agreed between them, in something of a global ambassadorial role for Mr Shah's interests (not limited to the Solo Model trading activity). He offered to become involved in the trading itself as a stock lender, but at Sanjay Shah's suggestion instead arranged for Schmet and three newly incorporated vehicles he established for the purpose to be Solo Model short sellers. By agreement with Sanjay Shah, Mr Murphy was paid for his involvement and took his rewards through his short selling companies, his services company Lanesra Consulting DWC-LLC or his wife's company LV Consultants, but he fairly accepted at trial that the arrangement was really a personal one between himself and Mr Shah, and all those companies received what they received on his (Mr Murphy's) behalf. He used the ubiquitous false invoicing method beloved of Sanjay Shah so as to be paid. Through Polaris and Polaris One, Mr Murphy participated in Sanjay Shah's effective acquisition of control of Dero Bank, which is why (like Colbrook in the case of Mr Smith) they later came to be owned indirectly by Sanjay Shah, although (unlike Colbrook) they are not now trial defendants (see paragraph 31(v) of the main body of this judgment).

279. Messrs Oakley and Mitchell were involved in all versions of Solo Model trading across the relevant period, as short sellers through Orca and other corporate vehicles they owned and controlled. They were remunerated, by agreement with Sanjay Shah, by 1.75%-2.0% of the gross dividend amounts related to the Solo Model trades in which they participated. They used Sanjay Shah's dishonest services contract invoicing methodology for receiving that remuneration, which they took through Orca, DDC (one of their other short-selling companies) and their respective personal services companies, PMLO (Mr Oakley) and Neonsky (Mr Mitchell).

280. Mr Körner was also a trading counterparty for the Solo Model trading throughout. He owned and controlled Körner GmbH (then called CEKA Invest GmbH) and a number of other companies that were variously short sellers or stock lenders on Solo Model trades. Like other participants, his reward for that participation was agreed with Sanjay Shah and was based on the dividend amounts by reference to which the Solo Model trades in which he took part had been structured. Mr Körner invoiced and collected those participation fees through various corporate vehicles using Sanjay Shah's false invoicing method.

281. In 1997, after completing a university degree in accounting and finance, Ms Bhudia joined Merrill Lynch as a Financial Controller in its Global Equities business. She met Sanjay Shah there and they remained friends. She had already moved to Dubai in the late 2000s, before Sanjay Shah relocated there in early 2009. Sanjay Shah said in evidence that she had "*a deep understanding of dividend arbitrage and equity markets*", but what exactly he meant by that, and how accurate that understanding might then have been, was not explored; and I had no evidence from Ms Bhudia, or other evidence, that might enable me to put any meaningful detail to that very high-level comment. Through T&S and other corporate vehicles of hers, Ms Bhudia was a forward counterparty for

Solo Model trades in 2014 and 2015. Also through T&S, she indirectly acquired shares in Varengold Bank for Sanjay Shah as part of his covert acquisition of control, which is why (like Colbrook for Mr Smith) T&S later came to be indirectly owned by Sanjay Shah and was a Sanjay Shah D at trial.

282. Mr Devonshire was at Novus in 2013. When Mr Murphy indicated that he had an interest in finding US-based financial professionals that might be introduced to Solo (Sanjay Shah), Mr Devonshire put Mr Murphy in touch with Mr Fletcher. Thereafter, Mr Devonshire was a largely passive 50% beneficiary of the arrangements made by Mr Fletcher under which Mr Fletcher would be remunerated for introductions of USPFs to SCP (GSS) for Solo Model trading. He was not a completely 'sleeping partner', doing nothing at all except receive from time to time his share of what Mr Fletcher had earned for the two of them, and like everyone else in Sanjay Shah's orbit he involved himself in the false invoicing practices that Mr Shah favoured.

283. Having been put in touch with Mr Murphy by Mr Devonshire, Mr Fletcher arranged for his colleagues, the Standard Credit Individuals, to meet Mr Murphy and Sanjay Shah on their recruiting trip to New York in the summer of 2013. That led to 11 USPFs (including Roxy Ventures LLC Solo 401(k) Plan, set up by Mr Fletcher himself) becoming Solo Model clients, participating as equity buyers and successful tax refund claimants (through the Tax Agents). Proportionately modest success fees were paid by Mr Murphy (through Schmet) to Mr Fletcher (through Equilibrium Capital, his company owned jointly with Mr Devonshire, so that the benefit was shared equally with Mr Devonshire as Mr Fletcher intended).

284. As described above, Mr Murphy was dishonest with Mr Fletcher about the fees that Sanjay Shah was paying. When that came to light Mr Fletcher did a deal directly with Mr Shah, cutting Mr Murphy out, to be paid a success fee of US$1m per USPF for further USPFs introduced by Mr Fletcher to Solo, if he could arrange such introductions and if successful tax refund claims were then made on behalf of those further USPFs. Through complex and obfuscatory invoicing mechanics, involving as always for Solo Model success fees false descriptions of what was invoiced, Messrs Fletcher and Devonshire were duly paid US$20m since, at Mr Fletcher's initiative pursuant to the new deal with Sanjay Shah, 20 new USPFs connected to Messrs Tucci and Bradley were successfully introduced.

285. Mr Godson acted, like Mr Fletcher, as an introducer of USPFs to Solo (GSS) by identifying and recruiting US-based individuals who might be in a position to establish USPFs that could trade on the SCP platform. He also established, so that he was in each case the trustee and beneficiary, five USPFs of his own, including Godson 401K, the only one of the five which is a trial defendant, and he was the trustee and authorised representative of eight other USPFs, three of which are trial defendants (Idea Guy 401K, Lawler 401K and Watts St 401K). He was also a point of contact for a further eleven USPFs introduced to Solo at his initiative. His initial understanding with Sanjay Shah was that he should receive a share of the proceeds of successful tax refund claims made on behalf of the USPFs he introduced, but that was not finalised or implemented and instead there was a final deal that he would be paid US$500,000 per USPF that he introduced, in each case if it traded successfully. Mr Godson received his fees as falsely-invoiced consultancy fees payable to his company, JAA, and in each case JAA passed on US$100,000 to the individual behind the USPF in question when that was not Mr Godson himself. For all the USPFs with which Mr Godson had any involvement, the

trading on the SCP platform was conducted by Mr Lehman, never by Mr Godson. On one occasion, Mr Lehman gave detailed instructions to Mr Godson on how to access relevant accounts and take the steps needed for some Solo Model trading activity that there was a chance Mr Lehman might not be able to conduct, but in the event Mr Lehman was available and attended to it himself.

286. Mr Jain was part of the Malaysian branch of the Solo Model business, moving to Labuan and establishing there his four LabCos, to be Solo Model equity buyers, under a profit sharing arrangement with Sanjay Shah under which Ganymede took c.80% and Mr Jain's vehicle Ten Rings took c.20% of the net tax refund claim proceeds paid on tax refund claims submitted on behalf of his LabCos, being of course the only profits from the trading they did. As with everyone else involved in similar ways, the invoicing and payment of that profit share was done through invoices falsely describing the earnings. Mr Jain's other significant involvement was his participation, through the corporate Jain Ds, in Sanjay Shah's acquisition of effective control of Varengold Bank (using Erix and Oberix) and Dero Bank (using Double Two and Double Two Investments).

287. Finally for this element of this Appendix, Mr Preston was also part of the Malaysian expansion of the Solo Model business. Whereas Mr Jain had been at Solo, running an FX desk and having no involvement in the Solo Model, Mr Preston had been at IPG, the property consultancy of which Sanjay Shah had become a major client. Mr Preston was persuaded by Mr Shah to relocate to Labuan to establish and own LabCos, and that is what he did. He was himself the registered shareholder of six LabCos, but his involvement was a collective effort with Garry Hope and Tim Murphy from IPG. Messrs Hope and Murphy were in practical terms part of Mr Preston's efforts in relation to his six LabCos, and Messrs Preston and Murphy were likewise part of Mr Hope's efforts in relation to a further six LabCos established under his sole registered ownership. Their reward was a profit share, the only source of profits of course being tax refund claims if successfully made on behalf of the LabCos. Through Skyfall, Skyfall Holdings and Bellview, Mr Preston was part of Sanjay Shah's covert acquisition of control of Varengold Bank, which is why they all later came into Mr Shah's indirect ownership. They were Sanjay Shah Ds at the Main Trial (subject to the point made in paragraph 38 of the main body of this judgement for Skyfall and Skyfall Holdings, they being two of the corporate SSDs that stand struck off).

Deceit

288. The deceit claims pursued by SKAT against these Other Solo Model Ds were all claims alleging accessory liability, except that:

(i) the corporate Godson Ds were Solo Model USPFs, and in respect of the tax refund claims submitted on their behalf, SKAT alleged that they had a primary liability in deceit if misrepresentations were made on their behalf by Goal (which was always the Tax Agent in their case); and

(ii) Mr Jain's LabCos, Kandi Capital Ltd, DJ Capital Ltd, Shayka Consulting Ltd, and TenTwo Trading Ltd, were not defendants in these proceedings, but they were Solo Model LabCos and SKAT alleged that Mr Jain had a primary liability in deceit if misrepresentations were made on their behalf by Acupay (which was always the Tax Agent in their case).

289. The summaries I set out above recapping the Other Solo Model Ds' respective involvements with Solo Model trading justify the finding, and I do find, that they provided more than minimal assistance in the operation of the Solo Model tax refund claim business, with the exception of the corporate Jain Ds, which had no involvement in Solo Model trading. If that business involved the making to SKAT of the representations it alleged were made to it with each tax refund claim, then (with that same exception), these Other Solo Model Ds indeed provided material assistance towards the making of those representations, and the main issue of fact for all of these trial defendants would have been their state of mind, i.e. their knowledge, intention, understanding, or as the case may be, as might be required in law for the various causes of action pursued against them by SKAT.

290. To identify my findings in relation to that main issue, I find it convenient to deal first with those of the Other Solo Model Ds who were principally involved in providing trading counterparties required by the Solo Model to enable the USPF and LabCo equity buyers to settle their cum-ex purchases without funding, and then to deal separately with the others, whose principal involvement was at the USPF/LabCo end of Solo Model trades. Mr Murphy had an involvement in both areas. Novus' broking of trades and Mr Murphy's later involvement as a short seller was on the trading counterparty side of things. Mr Murphy's assistance to Sanjay Shah as introducer of Mr Fletcher, and through him the other Standard Credit Individuals, in the summer of 2013 was at the USPF end of the trading. It makes no difference to any finding I make, but for what it may be worth I find it more natural to consider Mr Murphy as part of the trading counterparty group, because like the rest of that group he had at least some background in dividend arbitrage prior to his involvement with the Solo Model, whereas those I consider later did not (Messrs Devonshire, Fletcher, Godson, Jain and Preston).

Trading Counterparties (Ms Bhudia and Messrs Körner, Mitchell, Murphy, Oakley & Smith)

291. Against most trial defendants, but particularly against these trading counterparty individuals, in both cross-examination and argument, SKAT contended that it would have been evident to them that:

(i) they were participating in structured trading around dividend declaration dates organised by Solo, with Solo setting the terms on which parties were asked to trade, no possibility of negotiation over those terms (only, in principle, the entitlement to refuse the trade), and an end result that they did not have to fund their account at Solo or the settlement of any of their individual trades;

(ii) stock loans were priced from a cum-div market price immediately prior to a dividend ex-date, even though they were simple ex-div stock loans, traded after that ex-date, for settlement on the related dividend payment date, and never included any margin or haircut;

(iii) therefore, the stock loan collateral amount was being used in some way to fund the cum-ex equity purchase; and

(iv) there were no real shareholdings.

292. I agree that if an individual participating as equity buyer, short seller or stock lender gave serious thought to how the trading in which they were involved worked, they

might be expected to see that (i), (ii) and (iii) above were or were probably true. They might also have concluded that the Solo Model involved, or might involve, trades settling without any real shareholdings ever changing hands ((iv) above), but I do not accept they would be bound to realise that rather than to assume that Solo had further structured transaction machinery in place to enable it to ensure that trades always settled. It was shown to me at trial that that was not the case, but that is with the benefit of hindsight and the intense investigation through the litigation process of how the Solo Model had in fact operated during the relevant period.

293. I turn then to the individuals in this group of defendants, taking them in the order in which I introduced their respective involvements at paragraph 274*ff* above, to set out my findings as to their knowledge or understanding at the time of their involvement as to whether the Solo (GSS) business involved or gave rise to fraud, as alleged by SKAT.

294. Mr Smith had a vague, general understanding that 'div-arb' trades might be structured with a view to a party seeking to take advantage of differences in tax regimes between different countries. In Solo Model trading relating to Danish shares, he saw himself as only ever acting as a matched principal for a fee, either when broking equity trades and futures at Novus, or when acting as a back-to-back stock lender. He understood that Solo was structuring trades with a view to facilitating tax refund claims made by or on behalf of the end buyers under the structure, and he understood them, and the short sellers involved, to be newly formed, minimally capitalised entities that could not have funded the purchase of the large share volumes traded. He also understood that Solo was using a settlement model or method that involved internally settling trades for matching volumes so that shares did not have to be brought in by the trading parties to achieve settlement. He realised this meant that the stock lending was being treated as the buyer's source of funds and the seller's source of stock to complete the equity purchase, and that the stock lending was, indirectly, lending by the buyer to the seller.

295. However, Mr Smith did not know how exactly Solo achieved that result. To his mind, that was something handled by the structurers and custodians (at Solo). He did not consider it relevant to his role to understand, nor did he in fact give thought to, whether the resulting tax refund claims would be valid under Danish tax law, or what was involved in the making of claims. He did *not* understand that SKAT was being given false information to mislead it into paying claims, nor did he decline to enquire about how the tax reclaims worked because of suspicion that that might be the case and a wish not to have that suspicion confirmed.

296. Mr Murphy understood that Novus, of which he was CEO and majority owner until May 2015, provided riskless matched principal brokering services to Solo. He believed Solo to be engaged (so far as material) in dividend tax arbitrage trading, the details of which were, as he saw things, not his concern, when his only involvement was through Novus, and something he left to Solo, trusting that they knew what they were doing, to the extent he became involved as a Solo Model short seller in 2015 and (in relation to Austrian shares) an equity buyer through a UK pension plan called Dhekelia on behalf of which Acupay made some tax refund claims which were not paid.

297. SKAT submitted that Mr Murphy "*must have appreciated*" that the Solo Model was structured around share-less settlement loops, "*must have understood*" that valid tax refund claims were not being generated, and "*must have known*" that the core representations alleged by SKAT were being made to it and were false. In my judgment,

Mr Murphy did not need to know any such thing, I am sure he was never told any such thing (by Sanjay Shah or anyone else), and I find that he did not in fact have any such knowledge or understanding. He saw in the limited trading done by Dhekelia that Solo was organising trading so that an entity like Dhekelia, on behalf of which any tax refund claim would be submitted, could trade without bringing cash or shares into its account at Solo. But he did not know, was not told, and did not think it necessary to find out the mechanism by which Solo achieved that. He had a general understanding that any tax refund claim would be reclaiming tax withheld on dividends declared on shares, but did not know or try to find out how the reclaim process worked.

298. Mr Murphy was shown at trial to have behaved dishonestly in various ways in his business dealings connected, directly or indirectly, with Solo or Sanjay Shah personally. He participated in the Solo Model norm of false invoicing and in Mr Shah's covert acquisition of effective control of Dero Bank, in connection with the latter of which he signed letters to the European Central Bank and BaFin falsely stating that he was acting independently and not in concert with anyone else in his share acquisition. He was dishonest with Mr Fletcher (and therefore, indirectly, with Mr Devonshire) about what he (Mr Murphy) had earned from Mr Fletcher's introduction of USPFs to Solo. He gave false and misleading descriptions to Harneys (BVI), lawyers he instructed for the establishment of his Solo Model short sellers, as to the business envisaged for them, and then again (later) as to the business in fact conducted by them (telling Harneys several times in 2016 that they had not done any business at all, "*absolutely NOTHING since inception*").

299. That dishonest behaviour is explicable without supposing Mr Murphy to have had any thought at the time that SKAT was or might be being tricked into paying tax refund claims by false statements made to it by the tax refund claim documentation. It did not persuade me that Mr Murphy had any such thought at the time.

300. I do not think it is necessary to add much in this Appendix to what I said about Messrs Oakley and Mitchell in paragraph 51*ff* of Appendix 6, above. Mr Oakley admitted in cross-examination to believing at the relevant time that for a tax refund claim there would need to be, as was put to him by Mr O'Leary for SKAT, "*some kind of statement from Solo to be sent to [the Tax Agent] that could be sent on the tax authority*" that "*would need to have a record of [the refund claimant's] trading*", "*would need to show that [it] had acquired shares in the relevant company*", and that it had "*received a dividend on those shares*" which had been "*net of tax …, such that there was an amount of excess withheld tax that [it] would be reclaiming*", all so as "*to evidence to [the tax authority] that [it was] entitled to a refund of the withheld tax*". Mr Mitchell made broadly similar admissions when he was cross-examined the following day. I entertain real doubt whether either Mr Oakley or Mr Mitchell in fact thought that at the time; but if I found, upon their admissions, that they did, I would not have found that they understood at the time that SKAT was being told anything untrue.

301. Mr Körner engaged inadequately with the proceedings, even though he was represented by solicitors until 8 March 2024. He served a very short Defence settled by junior counsel in September 2022, but failed to respond to a Request for Further Information served by SKAT or give disclosure of documents, and then failed to comply with an order made in November 2022 requiring him to rectify those failures. On 5 December 2023, Mr Körner's solicitors served a signed witness statement from him dated 10 November 2023 that did not contain a statement of truth or the confirmations of

compliance required by paragraphs 4.1 and 4.3 of CPR PD57AC. By order dated 19 April 2024, Mr Körner was granted relief from sanctions and given permission to rely upon that statement at the Main Trial on condition that he file and serve by 4 pm on 26 April 2024 a final version with a statement of truth and certificate of compliance in terms set out in an Appendix to that order, with any changes that might be needed to enable Mr Körner to do that shown as tracked changes, and identifying either within the final statement or by accompanying list the documents he had referred to for the purpose of preparing the statement. The order stated in terms, for the avoidance of doubt, that if Mr Körner failed to comply with that condition, he would not have relief from sanctions or permission to rely on the statement and he would be debarred from calling any factual witness evidence at the Main Trial.

302. By a hearsay notice dated 7 February 2024, SKAT gave notice of intention to rely at trial on certain statements made in Mr Körner's witness statement, highlighted in a copy of the statement served with the hearsay notice, on the basis that (as things then stood) Mr Körner did not have permission to rely on the statement. In the Körner Ds Annex to SKAT's written closing submissions, it sought to rely on the contents of Mr Körner's witness statement, against only the Körner Ds, pursuant to CPR 32.5(5), but asserted that it was not required "*to accept the truth of everything Mr Koerner [said] in that (self-serving) witness statement, as distinct from those passages … which inculpate Mr Koerner and are consistent with the inferences to be drawn from other evidence in the case*". No authority was cited for that; and I consider it to be contrary to *McPhilemy v Times Newspapers Ltd (No 2)*, [2000] 1 WLR 1732, as applied in *Property Alliance Group Ltd v Royal Bank of Scotland plc* [2018] EWCA Civ 355, [2018] 1 WLR 3529, at [170]-[173]. SKAT was seeking to put in evidence a written statement of a witness, prepared for the proceedings, knowing that his evidence conflicted to a substantial degree with the case SKAT was seeking to place before the court, on the basis that SKAT would say in the witness's absence that a substantial part of that evidence should be disbelieved as untrue, the very thing that, in *McPhilemy* (at 1740B), Brooke LJ deprecated as contrary to principle.

303. The mischief of unfair cherry picking prevented by those authorities is well illustrated by SKAT's desire in this case to rely on Mr Körner's acceptance, in his witness statement, that "*today it is clear that those trades and trading strategies are illegal. Full stop*", while inviting me to disbelieve and reject what is said in the same paragraph to the effect that, in his mind, the purpose of the trading was not "*to steal taxpayers' money and defraud the government*", and what is said earlier in the statement that he "*never ever thought that I was involved or even part of a fraud scheme*". Reading the statement as a whole *de bene esse*, as I did to consider SKAT's request to rely on parts of it, it does not support SKAT's case against Mr Körner of knowing participation in a scheme to mislead SKAT by providing it with false information, or of conduct in relation to proceeds of Solo Model tax refund claims with knowledge or belief that they had been or may have been generated by fraud. In my judgment, it would not be fair to allow SKAT to make use of only some parts of what Mr Körner had said would be his evidence in chief, if he had been a witness at trial, in support of the case it sought to prove against him. I have therefore paid no regard to Mr Körner's witness statement in making findings of fact about him and his understanding.

304. For that purpose, Mr Körner is properly to be treated as a defendant who chose not to give evidence, with the capacity that may have to allow adverse inferences to be drawn

against him. Had he participated at trial (which he remained free to do notwithstanding that he was debarred from giving evidence), he could not have relied in argument on the witness statement that by his procedural default was not in evidence, to rebut any inference that it might otherwise be proper to draw. The approach to assessing SKAT's case against him cannot be rendered more favourable to him by his decision not to participate.

305. SKAT submitted that it should be inferred that Mr Körner was told by Sanjay Shah or others at Solo, or realised for himself, that Solo Model trading used the share-less settlement loops that I have found it in fact used, that the purpose of the trading was to set up tax refund claims that would be made on behalf of the equity buyers, and then that "*Mr Koerner also knew that such refund applications would necessarily involve the making of representations to SKAT to the effect that the [client] (a) owned shares in a Danish company; (b) was entitled to receive dividends and/or had received payments representing dividends on such shares; and (c) that tax had been withheld from such payments*" (my emphasis). SKAT said there was an "*inherent probability that any application for a refund of dividend withholding tax would require the person seeking the refund to state that (a) they had suffered a withholding of tax on a payment made to them; (b) the payment represented a dividend; and (c) they had received the dividend qua shareholder in a Danish company*" (my emphasis again).

306. But the making of a tax refund claim to SKAT did not necessarily involve the making of any such representations, and there was no such inherent probability. In my judgment, SKAT had, at best, a case that Mr Körner must have thought that he was facilitating, and profiting from, the payment by SKAT of tax refund claims that might well be invalid claims, on what he knew about the underlying trading, because it was not looking into the underlying trading. But SKAT did not claim any duty of disclosure, or that in some other way the making or facilitating of tax refund claims not believing them to be valid claims, or even positively believing them to be not valid, gave it a cause of action.

307. Ms Bhudia engaged minimally with the proceedings. She pleaded a Defence but failed to give documentary disclosure, then ignored an order made in November 2022 requiring that failure to be rectified. She did not serve any trial witness statement and played no part in the Main Trial. There was evidence that Ms Bhudia took steps initially (in January 2014, liaising with Ms Spoto at Solo) for T&S to be a Solo Model stock lender, and that she agreed with Sanjay Shah to a reward for her participation, in the event as a forward counterparty, of 0.33% of the gross dividend amounts involved in the trades in which she was involved. In the light of that evidence, given Ms Bhudia's background, albeit I had only very general evidence about it, and given her failure to offer any other explanation in evidence, I infer that she realised, when agreeing to act and when acting as forward counterparty, that she was providing share price hedges within structured cum-ex trades designed and coordinated by Solo. I think it also right to infer that Ms Bhudia appreciated that the purpose of and sole source of potential profit within those trades will have been the making of tax refund claims.

308. SKAT submitted that it should likewise be inferred that Ms Bhudia knew that tax refund claims generated by the trading coordinated by Solo would "*necessarily involve*" the making of representations to SKAT that the equity buyer on behalf of whom a tax refund claim was made "*(a) owned shares in a Danish company; (b) was entitled to received dividends and/or had received payments representing dividends on such*

shares" and representations that "*(c) tax had been withheld from such payments*". That would mean, SKAT said, that Ms Bhudia was aware of the substance of the core representations that SKAT had sought to set out in its unhelpful Restatement for closing (as to which see paragraph 460*ff* of the main body of this judgment). I have declined for good reason to consider claims founded upon that Restatement; and if, generously to SKAT, I treated the closing submission as instead referable to the pleaded case, then my conclusion would be similar to that stated for Mr Körner immediately above. SKAT was wrong in its submission that making a dividend tax refund claim to SKAT necessarily involved the making to SKAT of representations such as SKAT alleged. I do not infer appreciation by Ms Bhudia that essentially such representations would be or were being made to SKAT. Her failure to give disclosure or evidence does not, in my judgment, justify the leap that would be involved in drawing such an inference.

309. In my view, those failures would support, and I would draw, the inference that Ms Bhudia considered at the time that she was facilitating in some way the generation of tax refund claims that might well not be valid. But that is not the same at all as an appreciation that she was, or may have been, facilitating the commission of fraud against SKAT.

310. SKAT submitted that it was likely, and I should find as a fact, that Sanjay Shah explained to Ms Bhudia, or she worked out for herself, that her companies' forward trades were part of structured cum-ex trades designed and coordinated by Solo which involved, or were likely to involve, self-balancing transaction loops settled without the acquisition by any party of any Danish shares. I do not consider that in order to participate as she did, Ms Bhudia must have had that explained to her or must have realised it for herself; and even taking into account her failure without any good reason to give disclosure or evidence, I am not persuaded to draw the inference sought by SKAT. I do not consider it more likely than not that Ms Bhudia was told or worked out anything more, as to the detail of how Solo was doing things, than that for her part, her stock lending (had that gone ahead) or her forward trades (as in fact executed) would always be back-to-back trades for a fee.

311. Through T&S, Ms Bhudia acquired Varengold Bank shares for Sanjay Shah. That included 146,397 shares (c.75% of the total shareholding acquired by T&S) purchased in T&S's name, but ultimately for Mr Shah, in September 2015, from (directly or indirectly) Paul Mora, the individual behind Arunvill. That purchase was for c.€2.6m more than their value at the time and was, or was part of, the means by which Mr Shah settled an acrimonious dispute with Mr Mora about Mr Shah's covert acquisition of control of Varengold.

312. T&S was also involved in what appear to have been transfers of funds between Sanjay Shah's companies. Some of those may be explained as transfers initially intended to fund acquisitions of Varengold Bank shares by T&S that did not go ahead, but I do not think that arises as even a possible explanation for payments booked as loans of €3.5m from SCP to T&S and from T&S to Elysium Dubai in March 2015, repaid by payments of €3.56m from Elysium Dubai to T&S and from T&S to SCP in May 2015. SKAT submitted that as cash transfers to and from T&S without apparent commercial purpose, and given Ms Bhudia's failure to give disclosure or evidence offering any other explanation for them, these should be inferred to have been payments "*intended to assist in concealing the dissipation of the proceeds of the Solo Scheme*" (i.e., in SKAT's

definition, a scheme to defraud SKAT). I consider that also a leap too far, quite apart from the fact that there was no real concealment, or dissipation for that matter.

Introducers / Equity Buyers (Messrs Devonshire, Fletcher, Godson, Jain & Preston)

313. Mr Devonshire pleaded and gave evidence that the opportunity mentioned to him by Mr Murphy, leading Mr Devonshire to put him in touch with Mr Fletcher, leading in turn to Sanjay Shah, accompanied by Mr Murphy, meeting Mr Fletcher and the Standard Credit Individuals in New York, was to introduce high net worth individuals in the US or UK who might be interested in investing at least £75,000 with the possibility of significant returns over a 3-4 year period. That, I think, bears no relation to anything that anyone with any knowledge of the Solo GSS business might have said, even allowing for the fact that whatever was said by Mr Murphy needed only to be, and so very probably was, minimal and very general. There was no £75,000, or other, minimum investment (a key feature of the Solo Model in fact being that no capital at all was required), the rewards for those who might be recruited were in the nature of fees for participating that would be earned, if participation was successful, in months, and certainly within a year, and the sole focus of the relevant recruitment exercise in which Mr Devonshire played his small part was on finding potential new US clients for Solo.

314. I therefore do not accept as reliable Mr Devonshire's account of what he was told about the opportunity. At this remove, I do not consider it possible to say how the wires of his recollection have become so badly crossed about that. Mr Murphy gave no evidence of what he told Mr Devonshire about it, and Mr Goldsmith KC for SKAT did not ask him about that or put any case to him on it. When cross-examined by Ms McCann for the Shah Ds, Mr Murphy said that Sanjay Shah had asked him if he could introduce "*US personnel, financial personnel, that could potentially set up pension plans*", and Mr Murphy made clear that what he meant by that was people in the US with experience in the financial industry. That seemed to me credible evidence, and I accept it. It explains why Mr Devonshire connected Mr Murphy to Mr Fletcher, his friend from childhood working at Standard Credit in New York. I consider it plausible that Mr Murphy might have told Mr Devonshire, in particular, that Sanjay Shah was looking for US-based financial professionals who might be able to set up pension plans, although it is equally plausible that he did not go even that far.

315. In my judgment, the only finding it is possible to make, on the balance of probabilities in something close to an evidential vacuum, is that Mr Devonshire was told, in substance, no more than that, through Mr Murphy, Sanjay Shah was looking to be introduced to "*US financial personnel*" (to use Mr Murphy's label) to whom he (Mr Shah) might present an opportunity.

316. Mr Devonshire had some limited later involvement, liaising over the onboarding at Solo of some of those introduced by Mr Fletcher, and has a recollection of the relevant business being referred to at Novus as the 'US Pension Funds Project' (or similar), so I infer that he came to appreciate, even if I could not say he was told at the outset, that the business involved or related in some way to USPFs. I do not accept SKAT's submission that this was further shown by the fact that Mr Devonshire also liaised with Solo (Ms Spoto in particular), at the suggestion of Mr Murphy, over his own (UK) pension fund, Equilibrium Pension Fund, possibly becoming a client of Solo's. That came to nothing in the event, and I did not think there was any substantial basis for

rejecting Mr Devonshire's evidence that it did so without him learning any detail of what trading or investment might be done or offered if his fund had been signed up. It was not clear to me even that it would have been GSS cum-ex trading at all, let alone in Danish shares in particular, and SKAT put no case about it to Sanjay Shah or Mr Murphy that might have avoided having to guess in the absence of evidence.

317. I also reject SKAT's submission that there was evidence justifying a finding that Sanjay Shah gave Mr Devonshire a basic outline of the GSS trading model. The submission relied on a clumsy over-interpretation of a passing reference to Mr Devonshire in Sanjay Shah's written evidence. Mr Devonshire was clear, as was Mr Murphy, as was Sanjay Shah in his oral evidence, that Mr Devonshire had no dealings at all with Mr Shah. Mr Fletcher claimed a recollection of Mr Devonshire having met Sanjay Shah once, socially, in Dubai, when there with Mr Fletcher; but I was not persuaded that that was more likely to be reliable than Mr Devonshire's recollection that he had never met Sanjay Shah at all.

318. I agree with Mr Jory KC's submission, developed persuasively in his careful written closing, that SKAT's case against Mr Devonshire of relevant knowledge or understanding such as might have resulted in some liability, if the deceit SKAT alleged had been practised upon it, depended entirely on "*so-called inferences that … are in fact invitations to jump to conclusions … in a context of making findings of dishonesty where the burden of proof which SKAT has to discharge requires compelling evidence.*" SKAT's case against Mr Devonshire, in my view, was an attempt to make bricks without even the seeds that might be planted to grow crops to provide the straw.

319. In particular, I do not accept SKAT's case that Mr Devonshire must have thought that the very large amounts that Mr Fletcher later secured for the two of them as an indirect consequence of the initial introduction of Mr Fletcher and his US colleagues to Sanjay Shah by Mr Murphy, following Mr Devonshire's introduction of Mr Fletcher to Mr Murphy, were explicable only on the basis that Sanjay Shah or Solo was operating some kind of fraud. He saw himself as very lucky, but never had the thought that it might be luck that came on the back of some kind of dishonest scheme. Contrary to SKAT's submission against him, in my view Mr Devonshire did not need at the time any better explanation for earning very large amounts when all he had done was introduce Mr Fletcher than that, so those large earnings demonstrated, he had been in the right place at the right time with the right contact to assist in what must have turned out to be a hugely profitable activity for (as he understood Solo to be) a successful FCA regulated hedge fund.

320. Nor did I consider there was any force in SKAT's claim that because in April-May 2015 Mr Devonshire had a brief indirect involvement (that went nowhere in the event) in Syntax looking for FX counterparties to exchange anticipated very large DKK amounts described in an email as "*funds coming from the Danish tax authorities as a refund*", it could be inferred that Mr Devonshire had a far greater knowledge at the time, and recollection now, of salient matters (*viz.* the nature and *modus operandi* of the GSS business) than he had, and has, on his account.

321. There were difficulties with Mr Devonshire's disclosure, but I was not persuaded that he sought deliberately to withhold anything available to him to disclose, or that he ever took steps to render material unavailable in order to avoid giving disclosure of it or out of concern that it might be incriminating.

322. The process of invoicing fees payable to Mr Fletcher and Mr Devonshire, through corporate vehicles, or by them (to those whom Mr Fletcher had introduced to Solo, or corporate vehicles of theirs), adopted, or copied, Sanjay Shah's obfuscatory methods. This was mostly, but not exclusively, Mr Fletcher, but I did not consider it justified the leaps to conclusions that SKAT's case required.

323. Mr Devonshire, I am confident, did not at any material time know, believe, or suspect, that the Solo business to which, indirectly through Messrs Murphy and Fletcher, he had been involved in introducing US clients and from which he had earned handsomely, was built upon or made use of deceit by way of tricking SKAT through false statements into making payments.

324. Mr Fletcher was introduced to the Solo Model in July 2013, by Sanjay Shah at the meeting in New York arranged with Mr Murphy, who also attended as did Mr Fletcher's colleagues from Standard Credit. It was presented as a dividend arbitrage trading opportunity that Solo had devised and structured, which it had been trading successfully, involving USPFs, so that Solo was willing to pay participation fees to individuals who could make USPFs available to Solo for the trading, to be conducted and organised for them by Roger Lehman in New York. SKAT submitted that Mr Fletcher professed such an "*implausible level of ignorance or incuriosity about the transactions and trading model in which he had become involved*" that I should disbelieve his account. Others might have interrogated the proposal more closely, but in my judgment Mr Fletcher's account that he took the broad description at face value, and trusted Solo and Mr Lehman with the detail, was honest and credible. It did not occur to Mr Fletcher to think that he might be doing business with a fraudster rather than an honest, clever and sophisticated, regulated hedge fund.

325. I was not persuaded by the evidence and argument relied on by SKAT that Mr Fletcher appreciated at the time, or thought it a possibility, that no shares were ever acquired in the Solo Model trades. He had a general understanding as a broker that equity trades that settled were treated as having been effective on, or as from, the trade date. He became aware during his indirect participation in Solo Model trades that the USPFs bought equities on a leveraged basis and entered into price hedges and stock lending trades that were part of how Solo got the trades to work; but he did not understand, and was never told, the full mechanics. He appreciated that the Solo Model was built around the USPFs making tax refund claims based on an idea of beneficial ownership from the trade date. He did not see it as necessary to take Danish tax law advice, he saw himself as trusting that Solo knew what they were doing. He did not identify the business as risky, in reality, because he was reassured that Solo would ensure that the trades would always settle and anyway the transactional exposures were on the USPFs, not on him or his colleagues personally.

326. I find that Mr Fletcher did not work out from what he did know about the trading that Solo might in fact be settling the equity purchases without any shares ever being delivered, and would not have thought at the time (and does not believe now) that he ever agreed to such a share-less settlement method. I do not accept SKAT's case that he thought that he was participating in, and had introduced others to, a system for making claims to SKAT for tax refunds where there was no entitlement. Nor in any event would that have sufficed for liability on the claims pleaded by SKAT, since the making of an invalid tax refund claim is not at all the same thing as, and need not involve, the procuring of payments from SKAT by deceit.

327. SKAT suggested, in effect, that it was unlikely that Mr Fletcher and the Standard Credit Individuals, a sizeable group of experienced financial market professionals, would have agreed to set up USPFs to participate in Solo Model trading without finding out how it worked in sufficient detail to make it obvious to them that it amounted to, or might amount to, a scheme to defraud SKAT. In my judgment, the far greater unlikelihood is that they might have been told or learned enough to make that obvious and yet all participated.

328. It is a basic problem with SKAT's grand conspiracy theory that in my judgment it failed to overcome at trial that Sanjay Shah had no reason whatever to suppose that any of those in the US, like Mr Fletcher, the Standard Credit Individuals, or Mr Godson and those whom he introduced, would wish to have anything at all to do with the Solo Model if they thought it was a scheme for committing a fraud on SKAT. That supports my conclusion in relation to Sanjay Shah himself that, whatever else one might think or make of the tax reclaim business from which he made his fortune, he did not think it involved tricking SKAT by false representations into making payments. When it comes to those to whom the business was pitched for possible participation, now for instance Mr Fletcher:

    (i) the idea that they realised, though Sanjay Shah did not, that the whole business was a fraud on SKAT, I consider not to be credible; and

    (ii) the idea that, if (contrary to my finding) Sanjay Shah did think that the whole business was a fraud on SKAT, he effectively pitched it as such by explaining fully how it worked, *ex hypothesi* believing that to show it to be a fraud, to a wide range of direct and indirect contacts of his, all of whom signed up to participate, I consider fanciful.

329. Mr Fletcher's disclosure was shown at trial to have been incomplete, in particular because he did not make proper efforts to retrieve emails from all addresses that he used or to which he had access at the time. But I was not persuaded that he had failed in that regard deliberately, so as to avoid giving disclosure, rather than through an inability to cope with the litigation.

330. Mr Godson, like Mr Fletcher, was primarily an introducer of financial market contacts of his in New York, to Solo, with a view to USPFs that they might be able to set up participating in Solo Model trading to be conducted for them by Mr Lehman, but also an indirect participant himself through his own USPFs. My findings in relation to Mr Godson's knowledge and understanding are essentially the same too. In short, I accept his factual defence, encapsulated by him in the following single sentence, plus brief elaboration, in his written closing submissions: "*Whilst I have learnt much about it in recent years, at the time I did not understand that the trades were 'settled to zero' or that there were possible concerns with representations made nor did I have any realistic way to have discovered this. Again, this was not 'turning a blind eye'. The strategy appeared to be running smoothly and successfully and I did not feel there was any reason to be monitoring closely. I was simply leaving those who had the expertise to do their job.*"

331. Like those who invest in good faith in what turns out to be a Ponzi scheme, some of whom after the fact may look back and wonder why it did not seem too good to be true at the time, *if* (contrary to my primary conclusions) Sanjay Shah was, through the Solo

Model, running a scheme to defraud SKAT, the likes of Mr Fletcher and Mr Godson were, in truth, collateral victims, not collaborating joint tortfeasors. Of course, unlike the final victims of a Ponzi scheme fraud who lose their savings when the scheme collapses, Messrs Fletcher and Godson did not invest, so as to be at risk of losing, any significant sum in the business, and in fact received substantial payments for their assistance; but they had successful, well-paid careers, and good reputations, to lose if they took part in a fraud, and my assessment of them is that they would not have run that risk, even for the very substantial financial rewards in the event realised by them through the Solo Model.

332. Mr Jain submitted in one of his written closing submissions that his LabCos set out to engage in arbitrage trading to "*lock in a profit on T-0*", i.e. the initial trade date, and that "*it did not (immediately) matter to [the LabCos], how or when this irreversible trading gain was "monetized" (by way of trade processing in the back office and, as regards non-realized profits at some time in the future)*". In my judgment, that was essentially gibberish, in the context of this litigation. It perpetuated a myth that Mr Jain presented as fact in his witness statement (and, regrettably, Mr Fletcher and Mr Godson adopted in theirs too, adapted to the facts of their USPFs' trading) that the motivation for the trading was to profit from the overall effect of the trade terms themselves. The only source for Mr Jain's understanding at the time of what his Labuan activity would be was Sanjay Shah's structurers at the time, Priyan Shah and Gerard O'Callaghan, who knew that any profit or loss generated from the trade terms, on paper, was supposed to be reversed by the inevitable and necessary unwind trades, and that if that was not achieved perfectly by the trade terms themselves, outturns would be adjusted after the fact to achieve it, because the entire and sole purpose of the trading was to generate a tax refund claim, and otherwise a flat outturn (nil profit, nil loss) for all concerned. It is impossible to suppose that that was not explained to Mr Jain as part of persuading him to relocate to Malaysia.

333. Mr Jain did his own trading for his LabCos, albeit (of course) that involved only saying yes to the trades he was invited to enter into, on the terms chosen by Solo. He was aware from doing so that his LabCos purchased on cum-ex terms, with a price hedge, and only settled their purchases by lending for cash collateral equal to their purchase commitment. I think it more probable than not, and therefore find, that he had those essential elements explained to him in advance, because he will have needed to understand the commitments (if any) his LabCos would be asked to take on when deciding whether to commit to the project.

334. I consider that a reasonably sophisticated person in Mr Jain's position might have identified that Solo might be matching his LabCos (as buyer-lenders) with the same end counterparties (as seller-borrowers), so that at settlement, bearing in mind the LabCos had no funds of their own for their purchases and no shares for their stock loans, the LabCos were ultimately:

(i) paying their sellers under the share purchases with what those same sellers were providing as cash collateral under the stock loans; and

(ii) lending to their sellers under the stock loans what they received from their sellers under the share purchases.

335. Such a person, if they identified that much, might have viewed the Solo Model as, in effect, a kind of sale and lease-back arrangement. I think it possible they might have identified as another explanation that Solo might be using (as was in fact the case) share-less settlement loops; but I consider it at least as likely that they would not have identified that as a possibility, if they had never been asked to agree to such a settlement method, and there is no evidence, nor was it put to Mr Jain by SKAT, that he had been asked to agree the method (as opposed, so SKAT alleged, to working out for himself that it was being used).

336. My assessment of Mr Jain, even bearing well in mind that his general lack of credibility extends to failures to be honest with the court in his evidence, is that he was nothing like sophisticated enough to have had any of those thoughts. I find that it did not occur to him that on each trade his LabCo would be and was, ultimately and indirectly, buying from and lending to the same counterparty. He contented himself with understanding and trusting that Solo had a tried and tested method that worked, so that his LabCos' trades would settle and not fail. What that method was, and how as a result Solo enabled parties like his LabCos to trade without investment, was (in his mind) Solo's concern and responsibility. The doggedness with which Mr Jain (with Messrs Godson and Fletcher) sought to insist, in the face of the full evidence now available as to Solo's methodology, that shares *were* acquired so that the tax refund claims made to SKAT were based on "*shares actually purchased by the relevant applicant before the Ex-date*" and "*dividends actually received*" was not, in my judgment, a charade by way of litigation tactic, but evidence of genuine bemusement that it may not have been true.

337. Mr Jain ceased participation when he was alerted to the possibility that an anti-avoidance rule might be applied in Denmark from 1 May 2015, so as to deny tax effects to transactions that had no commercial purpose except the generation of a tax advantage. That confirms that Mr Jain appreciated at the time that his LabCos were participating in transactions of that kind. I do not accept that it goes any further so as to evidence, as SKAT argued, some belief or realisation that the tax refund claims generated by Solo Model trading were fraudulent. If anything, it speaks to an intention not to be part of anything that was not a lawful activity.

338. I accept SKAT's submission on the evidence, and find, that at the time of his LabCos' trading activities, and therefore prior to and at the time of tax refund claims being submitted on their behalf by Acupay, Mr Jain was familiar with the form and content of CANs issued by SCP and the other Solo Model custodians. He thought that in each case they would convey to SKAT, and intended them to convey to SKAT, that his LabCo to which the CAN had been issued owned the stated number of Danish shares when the dividend was declared, was entitled to the gross dividend stated and was entitled to a refund of the WHT amount stated under applicable DTT.

339. I do not accept, my concerns about his evidence notwithstanding, that Mr Jain knew at the time that those statements were untrue, or had no honest belief in their truth. He was not, in my judgment, reckless in the *Derry v Peek* sense of not caring whether the statements he thought were being made to SKAT were true or false.

340. I do not therefore lengthen this indication of my findings concerning Mr Jain by considering the impact, if any, on the liability in deceit alleged against him of the fact that the statements he thought were being made to SKAT are materially different to the representations pleaded. It is a *non sequitur* to say, as SKAT submitted, that thinking

those statements were being made to SKAT means that Mr Jain understood the core representations, as pleaded, were being made. The impact of that mis-match may not have been a straightforward point.

341. That brings me finally, in this group of trial defendants, to Mr Preston. In his case, I think it is sufficient in the context of this Appendix to refer to what I said about him in paragraphs 30 to 32 of Appendix 6, above. I find that Mr Preston did not at the time know, believe or suspect that the business in which he was participating, through LabCos, was based on or involved the making of false statements to SKAT with a view to tricking it into making payments.

Unlawful Means Conspiracy and Other Claims

342. I have again not lengthened this part of this Appendix by considering the various other causes of action pursued by SKAT against these Other Solo Model Ds.

SKAT vs. Messrs Knott & Hoogewerf

343. Messrs Knott and Hoogewerf joined Solo to undertake, and at Solo headed and developed, areas of business quite different from and separate to the GSS cum-ex business created by Solo Model activity relating to Denmark and other jurisdictions. In the case of Mr Knott, that was a CFD business focused on equities, he having run such a business at Cantor Fitzgerald from where he knew Ms Stratford. In the case of Mr Hoogewerf, that was an IDB business focused on equity derivatives, his career having been in that field at a number of firms of brokers in the City of London and from 2008 at Espirito Santo Investment Bank. SKAT alleged that Messrs Knott and Hoogewerf nonetheless each came to have a degree of involvement in, and knowledge or understanding of, the Solo Model trading in relation to Danish shares, sufficient to have a liability.

344. SKAT's principal factual allegation against Messrs Knott and Hoogewerf concerned the agreement each of them reached with Sanjay Shah, via Ms Stratford, in May 2015, to be paid £2m (in the event denominated in Euros, so it became €2.76m). Sanjay Shah offered Ms Stratford that he would make those payments, and she negotiated them, alongside a payment for herself of £5m (in the event, paid as just over €7m). I do not accept SKAT's imaginative case concerning those payments, the substance of which was that Sanjay Shah was paying, and these three senior executives were agreeing, hush money to protect Mr Shah's guilty secret that Solo's GSS business was in fact a huge fraud on SKAT (and other tax authorities).

345. I accept the evidence that Mr Knott and Mr Hoogewerf each gave that, as they understood what had been discussed and agreed orally between them and Ms Stratford on behalf of Sanjay Shah, the arrangement was for payments by way of forgivable loans, a familiar retention incentive method in the City. An email from Mr Tweddle, group Chief Risk Officer, to Ms Stratford dated 29 April 2015, with subject "*Forgivable loans*", reported that he had done some research, that "*We need to make it easy for the individuals concerned to say 'yes'*", and that a loan agreement would be needed to give effect to such an arrangement as a way of paying a "*retention bonus*", evidencing that it was Ms Stratford's intent to propose, and negotiate for, such an arrangement.

346. At Sanjay Shah's instance, but without protest from Mr Knott or Mr Hoogewerf, the arrangements were documented as loans from Mr Shah personally (for which he drew funds from Ganymede). The loan agreement in each case did not provide for the loan to be forgiven if the payee did not choose to leave Solo prior to an agreed date (which was the essential oral deal), and payment was made to a Euro account at Varengold Bank the payee had to open for the purpose. When Mr Knott and Mr Hoogewerf each later entered into a settlement agreement relating to the termination of their employment, no express reference was made to the £2m/€2.76m loan arrangement.

347. For his part, Sanjay Shah disputed that he proposed or agreed that the loans be forgivable, although his pleaded case was that the loans were repayable if Mr Knott or Mr Hoogewerf, respectively, left SCP, and so were incentives to remain, i.e. they were not outright loans; and there was no evidence at trial from Ms Stratford to contradict Messrs Knott and Hoogewerf's evidence as to what at all events she proposed to and agreed with them. Were Mr Shah to pursue Mr Knott or Mr Hoogewerf for repayment, what is said in this judgment about the loan would be irrelevant, and I envisage that whether it was agreed orally that the loan would be forgivable, if so whether that affords any defence to a claim based on the written loan agreement, and in any event whether the later settlement agreement affords a defence, would all be in issue. It is not necessary for me to take a view on any of those questions. In particular, in my view Messrs Knott and Hoogewerf's failure to object to the absence of an express term providing for loan forgiveness does not mean their evidence that they believed that to be the nature of their arrangement cannot be right. It is a factor to be weighed, but even taking it into account I was satisfied that they were telling the truth on a matter they could be expected to recall reliably.

348. Sanjay Shah's decision to make these personal loans and to insist that they be paid to Varengold Bank accounts that the payees would have to open specially was peculiar, whatever the intention or agreement was as to forgivability. Furthermore, the amounts were very generous, particularly in the case of Mr Knott, who was not looking for any substantial improvement on his terms of remuneration at Solo or considering any possibility of going elsewhere. On their respective evidence, I concluded that Mr Knott identified at the time more so than did Mr Hoogewerf that this was an unusual way of going about things. In my judgment, however, neither of them felt there was anything improper about Mr Shah arranging things as he preferred, or that they should insist that the arrangement be documented differently. Mr Shah's wish to do things his way appeared to them idiosyncratic, but did not suggest to them that Solo's GSS business, with which they had had little involvement, was a fraud.

349. SKAT relied on the fact that the draft loan agreements, and some of the related correspondence, was sent to or from personal email addresses. But there were also emails relating to these payments on the company servers, negativing the suggestion by SKAT that there was an imperative of concealment about them.

350. Prior to joining Solo in November 2011, Mr Hoogewerf understood that div-arb existed as an area of trading strategies pursued by international banks, that some of those strategies sought to take advantage of reclaims on dividend income that might be available under tax treaties, and that some of the equity derivatives trades that the broking desks on which he had worked had booked may have been part of div-arb strategies. However, I find that he did not enquire about or research for himself how those strategies worked, and he neither had nor ever sought to acquire any knowledge

or understanding of what was required for a successful dividend tax refund claim in any jurisdiction. There was no need for him to have any such knowledge or understanding.

351. When he joined Solo, Mr Hoogewerf had an understanding that it had a div-arb business; and he therefore envisaged that there might be a substantial flow of 'internal' equity derivatives business for the broking desk he would build up at Solo, generated by the hedge fund's div-arb strategies. That did not require him to know or understand what those strategies were. SKAT's submission to the contrary wrongly proposed that something more than a general awareness that price hedging derivatives were often used in div-arb strategies was required to identify that div-arb strategies were a potential source of business for an equity derivatives broking desk or to understand the derivative trades that might be proposed to such a desk by or on behalf of those running such strategies.

352. As he joined Solo, Mr Hoogewerf joked in an email to a former boss that he was now at "*a Dubai based div arb trading fund looking to go legit with a London office*". I do not accept SKAT's submission that this evidences an awareness or belief on Mr Hoogewerf's part that Solo's trading strategies were perceived to be illegitimate and that the London office was there to provide, as SKAT put it, "*a veneer of respectability*". In my judgment, if thoughts of that kind had occurred to Mr Hoogewerf, he would not have wanted to have anything to do with Solo, and he would not have joined.

353. SKAT submitted that it was inherently likely that the Solo Model trading strategy would have been explained to Mr Hoogewerf whilst he was at Solo in sufficient detail for him to be able to identify that it involved, or might well involve, fraud against the tax authorities. That was speculative. There was no evidence of any such explanation being given to Mr Hoogewerf, or reason for any such explanation to have been given to him.

354. In late 2012, Mr Horn and Dipti Vyas liaised for a time with Daniel Redzsus, Mr Hoogewerf's 'right hand man' on the equity derivatives broking desk, as to whether he had or might like to set up a USPF to trade on the Solo platform. Mr Redzsus did not have a suitable pension plan, had no real interest in the proposal, and did not get as far as finding out what sorts of business activities would be involved if he said yes. He had (I find) a single conversation with Mr Hoogewerf in December 2012, and in my judgment there is no reason to doubt Mr Hoogewerf's evidence that it was a short conversation in which Mr Redzsus was looking for advice or reassurance about whether it would come across badly that he was saying no to an invitation by someone as senior as Mr Horn, with no discussion of the trading strategy that a Redzsus USPF might be being offered the chance to join.

355. Over two days in March 2013, Mr Hoogewerf's broking desk at Solo was asked to execute some crossed single-stock futures trades that were in fact elements of the unwind phase of some Solo Model trades. This was an isolated instance. I find that it neither required nor in fact caused Mr Hoogewerf to become aware of the Solo Model trading structure. SKAT's submission that these trades would have taught Mr Hoogewerf that Solo Model trading was circular and that there would be at least doubts as to whether such trading could give rise to valid tax reclaims was, in my judgment, unfounded. There was evidence, including in emails from Mr Hoogewerf relating to those March 2013 trades, that Mr Hoogewerf appreciated that the trades related to Solo's GSS business and that there was an element of pre-planning or coordination to

ensure that trades matched. It went no further than that, however, and that was not a reason for Mr Hoogewerf, or those working for him on the futures broking desk, to question or investigate the full trading structure of which the futures they were executing was evidently part.

356. Mr Hoogewerf became a director and CEO of West Point, the acquisition of which was agreed by Sanjay Shah in December 2012 and completed eventually in September 2013. Jason Browne and Rebecca Robson (who later moved to Labuan to be the trader for LabCos participating in Solo Model trading) moved to West Point from SCP (GSS). From April 2014, Ms Stratford on Sanjay Shah's instructions had responsibility for a project to 'white label' GSS business into West Point. Mr Hoogewerf had limited involvement, which did not involve him learning the GSS business that would be done in the name of West Point under the white labelling arrangement. I agree with SKAT that Mr Hoogewerf must have known that the proposal was for West Point to provide custody and clearing services for GSS business, through sub-contracting with SCP to enable it to do so; and, as Mr Hoogewerf accepted, he was aware at the time that West Point required a variation of its permissions from the FCA for that.

357. I consider it surprising that Mr Hoogewerf, as CEO of West Point, did not take a closer interest in the business that the company would be fronting under the white labelling arrangement. But I accept his evidence that he did not do so. I accept that he may well have seen the proposal as no more than West Point fulfilling a back office function for transactions executed by SCP (GSS). I do not think he should have seen that as absolving him from responsibility for satisfying himself that the business was appropriate for West Point, which would have required him to understand what the business was. But as I have said, I accept his evidence that that was in fact his approach at the time. I agree with Mr Hoogewerf's submission that the fact that he offered an indicative estimate of fee income for West Point from the activity is no real evidence to the contrary.

358. In early 2015, Mr Hoogewerf became a member of Telesto (which was an LLP). An email of his to Ms Spoto on 26 March 2015 evidences his understanding that what it was doing "*all seems very STP*", i.e. straight through processing. I agree with his submission that his membership of Telesto does not provide any reason to infer any particular knowledge of the GSS business or how it worked.

359. There was therefore, to my mind, no substantial basis for finding, and I do not find, that Mr Hoogewerf understood how the GSS business, i.e. Solo Model cum-ex trading, worked, when it came to the discussions with Ms Stratford that led to the €2.76m loan payment. As I noted in the main body of this judgment (paragraph 211*ff*), SKAT suggested that an enquiry from a Wall Street Journal writer in December 2014, and Ms Stratford's resulting consideration of the Hannes Snellman legal advice, lay behind those discussions, and, in substance, that the payment arrangements they generated amounted to bribery by Sanjay Shah to protect what all concerned appreciated was a business built upon fraud.

360. I considered that to be speculative. Its lack of substance is illustrated by the fact that the best SKAT could do, in support of a case that it should be inferred that the Wall Street Journal enquiry and Ms Stratford's possible concerns, provoked by it, over the sufficiency of the legal advice the GSS team had obtained, were shared with Mr Hoogewerf, was rely on the fact that at the time Mr Hoogewerf and Ms Stratford worked

on the same floor of the same office. Similarly, SKAT proposed, hopelessly, that it should be inferred in the absence of evidence that Mr Hoogewerf discussed those matters with Mr Khokhrai and Mr Bowler (at the time SCP's Head of Compliance and CFO, respectively), because Mr Hoogewerf has some recollection of both men and they both also worked in the Exchange Square office. (Mr Hoogewerf sent an email to Mr Bowler when the end of his short tenure as CFO was announced, saying "*Run like the wind my friend!*" It reads far too much into a light-hearted, throwaway remark like that to treat it as evidence that Mr Hoogewerf thought he was involved in a business to defraud SKAT and other tax authorities.)

361. SKAT's case against Mr Knott was vanishingly thin. It speculated without evidence that Ms Stratford may have discussed the Wall Street Journal approach and her consideration of the legal advice for the GSS business with Mr Knott, and criticised Mr Knott's evidence because he did not feel able to say that was impossible, while at the same time making it clear he had no recollection of any such discussion. In my judgment, he was not being "*evasive and equivocal*" as SKAT contended; he was being careful and honest. There is no reason to suppose that Ms Stratford had any such discussion with him. As I did in the case of Mr Hoogewerf, I reject the idea that Mr Knott is likely to have discussed these matters with others who were involved in them (unlike Mr Knott himself), for example Mr Khokhrai or Mr Bowler, because they worked in the same Solo group office at Exchange Square.

362. Mr Knott became a director of Old Park Lane on 16 April 2015. I accept his evidence that he did so as a favour to Ms Stratford and that he has a recollection of it being because of an understanding that Old Park Lane needed to have two directors. I agree with SKAT that since Old Park Lane ceased being a plc, and was re-registered as an ordinary private company a few weeks later, there was no need then for Mr Knott to remain as a director. I do not accept that that casts doubt on the honesty of Mr Knott's recollection, although it perhaps raises doubt as to its reliability. In any event, I do not accept that Mr Knott had knowledge or suspicion that SCP was perpetrating a fraud upon SKAT, or that Old Park Lane had any involvement in anything of that kind.

363. At about the same time, again at Ms Stratford's request, Mr Knott agreed to become an FCA-registered approved person in a significant management function at SCP. He was by then the head of a significant business within SCP. I regard as entirely speculative SKAT's suggestion that there was a further, or true, motive behind that appointment to lend an air of respectability to SCP (because of Mr Knott's good name). The absurdity of that suggestion, as part of a case that this appointment evidences Mr Knott becoming aware of, conniving at, and then taking a large 'hush money' payment to keep quiet about, a massive fraud, appears to have been lost on SKAT; but it is not lost on the court.

364. SKAT noted that in December 2010, Sanjay Shah made contact with Mr Knott (then still at Cantor Fitzgerald) asking to know which custodian Cantor used for German equities, because Solo had a fund looking to open an account with a custodian such that the fund would be the holder of shares for the purpose of dividends. Given the timing, that had nothing to do with the Solo Model or its methodology; and in any event, it would have told Mr Knott nothing more than the unremarkable fact that Solo might have a fund investing in German equities, and (perhaps, although this is a stretch) he might have guessed, or Mr Shah might have told him if they spoke, that the fund was engaged in div-arb trading.

365. Mr Knott's evidence, which I accept, was that Mr Shah "*was just looking to form a relationship with a prime broker, I would probably just call the person who I interacted with on a daily basis, in this case Commerzbank, and perhaps just given them details for them to speak to each other*". Mr Knott obviously meant a simple exercise in introduction by passing on contact details. SKAT accepted that the evidence had the ring of truth about it, but submitted that it "*leads to the inference that this interaction … did not match Mr Knott's description of a 'vanilla' introduction request [and] involved at least a high-level discussion of the trading strategy.*" There was no basis for that submission. What Mr Knott was describing was indeed a simple request for an introduction that Mr Knott probably accommodated, thinking no more of it.

366. After joining Solo, Mr Knott facilitated contact between Priyan Shah and others, at Solo, and a contact of Mr Knott's called Bernard Tew, who had asked Mr Knott for an introduction to Sanjay Shah with a view to Mr Tew becoming a div-arb client of SCP. Some emails from Mr Tew to Mr Knott in November and early December 2014 indicated that he had executed tax arbitrage trades in relation to Danish shares, resulting in tax refund claims. It is a fair inference that Mr Knott at least assumed that Solo at all events felt comfortable considering that type of business. It did not need to go any further than that, and there was no evidence that it went any further than that, as regards Mr Knott's awareness or understanding of what business Solo's GSS division was actually doing. I reject SKAT's case that some greater or detailed awareness or understanding on Mr Knott's part is to be inferred from the interaction with Mr Tew.

367. Almost all of the Old Park Lane CANs submitted to SKAT in support of tax refund claims it paid pre-dated Mr Knott's appointment as a director. The few that post-date that appointment were produced centrally for Old Park Lane by the GSS team. There was evidence, and I find, that Mr Knott became aware that (a) back office functions had been and were being conducted by or in the name of Old Park Lane to support SCP's div-arb business, (b) those functions extended to the issuing of CANs by or in the name of Old Park Lane, and (c) 75% of the fee income charged by Old Park Lane to the clients on that business was passed to SCP. The information available to Mr Knott, if he had examined it to try to work out how SCP's div-arb trades operated, might have caused him to identify that the USPF clients' equity purchases were structured to settle with offsetting stock loan transactions, involving the same volume of shares, and cash amounts, coming in and going out. However, I find that Mr Knott did not interrogate the information for that purpose, and did not know that that is how the Solo Model operated. He did not investigate how the business worked because he did not consider he needed to do so, not because he was turning a blind eye to a thought he had that it might be unlawful, or dishonest, or designed to defraud the tax authorities.

SKAT vs. Usha Shah

368. Usha Shah married Sanjay Shah in 1999. She was not generally part of or involved in her husband's business activities. However, SKAT alleged that she came to have involvement, and came to know or understand enough about the Solo Model trading, sufficient taken together to render her liable for conspiracy to deceive SKAT, for dishonest assistance or knowing receipt, and/or on the basis of unjust enrichment founded upon mistake induced by fraud.

369. In my judgment, SKAT's claim that Mrs Shah conspired to deceive SKAT was very wide of the mark, and had no substance. She trusted her husband and to the extent that

she was involved in his business at all, for example being appointed as a director to numerous companies and executing or approving documents in that capacity, she did as he directed. It did not occur to her that Solo's primary business, responsible for what became her husband's huge wealth, was or might be constructed around the practising of a fraud against SKAT and/or other tax authorities. Nor for that matter, I find, did she have any real idea of quite how wealthy as a family they had become. She realised that they were living what most would regard an extravagant lifestyle; but her evidence, which I accept, was that she only came to realise through this litigation just how wealthy they had become.

370. I do not believe Mrs Shah could have quantified, even in 'ballpark terms', what they were worth in 2015, at the height of her husband's financial success. In the October 2021 television interview I mentioned at the outset (paragraph 2 of the main body of this judgment), Sanjay Shah said that he made in excess of €500 million from cum-ex trading. Taking that as a broad approximation only, it is consistent with the evidence at trial as to the scale of the Solo Model business and the profit-sharing arrangements under it. On that same broad and approximate basis, then, if the Shah family wealth in mid-2015 might have been (say) €600 million or so, I find that was wealth an order of magnitude greater than Mrs Shah realised at the time that they had.

371. SKAT relied on Mrs Shah's complicity in what seem to have been dishonest practices on the inadequate basis, in substance, that she was told that was how things were done in Dubai. For example, her c.v. contained exaggerations or falsehoods, she signed an employment agreement with Elysium Dubai when not entitled to work under her UAE visa, as a way of getting personal bank accounts there to facilitate a bit more independence, and engaged staff to assist with the management of her son's complex autism under essentially bogus employment contracts between them and Elysium Dubai to enable them to get employment visas to work in Dubai. It is unattractive that Mrs Shah did or approved of any of that, but in my judgment it did not render her account of a lack of relevant knowledge about Solo's business any less credible, and it did not justify the drawing of an adverse inference that she was prepared to or did assist Solo or her husband to practise deceit upon SKAT.

372. I reject SKAT's case that when Mrs Shah, as she did, signed or allowed her e-signature to be used for documents of various kinds, having been appointed as a director of a number of companies, she knew or at least suspected that her husband's business, or elements of it, was "*illegitimate and/or unlawful*". She did not, I find, fail to ask him questions or make her own enquiries about what kinds of trading Solo did, or more generally about how her husband's businesses were making very large amounts of money, so as to avoid having suspicions of fraud or other dishonesty confirmed, or in any other way because of concerns that fraud or other dishonesty might be the basis of her husband's success. She did not ask questions because she trusted her husband (and those that worked for him), and did not think there was any reason not to do so.

373. For completeness, I should make clear that in saying all of that, I have in mind, and accept, SKAT's submission that Mrs Shah was not a naïve housewife. She was (and is) a capable, confident, intelligent person, who (in the UK) had set up and run a floristry business, working on that in the evenings and attending wedding fairs and trade shows to promote it, and (in Dubai) had planned and managed a major renovation of their main villa in The Palm Jumeirah, set up and managed the Autism Rocks Support Centre, and organised substantial fund-raising events, in each case with support but only limited

involvement from her husband. She proved herself capable, after the fact, of taking on responsibility for day to day matters at the Elysium Group when Mr Shah was in custody in Dubai for a short period in May-June 2018 because of a cheque that bounced for a payment to a Dubai state-owned property company.

374. Those substantial personal and professional achievements are not inconsistent with and did not cause me otherwise to doubt Mrs Shah's account of her lack of relevant knowledge about the Solo Model trading that gave rise to SKAT's claims in the proceedings. She was aware, as she said in her evidence, that her husband's success was built upon trading shares, and that Solo was known as a hedge fund, although she did not know what that meant or involved. She did not consider that she needed to know anything more than that, and (I find) did not in fact know anything relevant beyond it. SKAT's reliance, in support of its case to the contrary, on Sanjay Shah's statement when interviewed by SØIK (the Danish authority responsible for the criminal prosecutions relating to Solo's activities) that his wife had no specific knowledge of the dividend trading or other business that Solo did, but "*had a broad understanding about Ganymede's and Solo's business*", illustrates, with respect, the air of slight desperation about its attempts, in general, to establish its allegations against Mrs Shah.

375. The same is true of SKAT's invitation to the court to leap from the fact that Mrs Shah was asked to sign, as director of Ganymede, approvals for bonuses to be paid to her husband of US$16 million in November 2014, £5.35 million in May 2015 and €8.1 million in June 2015, to a finding that, "*Mrs Shah would have asked her husband why he was getting these very substantial bonuses from Ganymede [and] … he would have told her that the documents she was being asked to sign did not reflect the reality and that the 'bonuses' were a mere façade to move money from his business to his personal accounts*". Far more likely, and natural, but not consistent with SKAT's conspiracy theory, is the thought that Mr Shah might have said, if explanation were needed or sought, that he was paying himself large bonuses because his businesses had had a very successful year.

376. Mrs Shah had three involvements, very late in the overall chronology, which cannot be dismissed without more on the basic grounds set out above:

    (i) On 7 November 2015, she received AED10 million from Elysium Dubai, following a letter dated 5 November 2015 purporting to award her that amount as a bonus for her contribution to the business.

    (ii) On 3 February 2016, Mrs Shah withdrew AED2.5 million in cash from Emirates NDB Bank, derived from that 'bonus' payment.

    (iii) On 30 March 2016, she received another payment from Elysium Dubai, documented at the company as a bonus payment, this time of AED1.58 million.

377. By early November 2015, Mrs Shah was aware that fraud allegations had been made against her husband's business, as a result of which SCP's London office had been raided and assets were being frozen. It was not alleged that her actions, or her husband's, relating to the 7 November 2015 'bonus', the 3 February 2016 cash withdrawal, or the 30 March 2016 'bonus', involved or caused a breach of any freezing order in any jurisdiction. As Mrs Shah accepted in evidence: she had not earned any bonuses; the AED10 million payment to her was directed by Sanjay Shah because of

the risk that if it stayed in Elysium Dubai's account it would get frozen; the AED2.5 million cash withdrawal was also directed by Sanjay Shah, and involved going to the bank with a suitcase to collect the cash, which made her feel awkward and uncomfortable, because Mr Shah had become concerned that Mrs Shah's account at the bank might also be frozen, leaving her without funds for ordinary living expenses. Mrs Shah had no clear recollection about the AED1.58 million 'bonus', but I consider it a fair inference that she at least assumed, and may have been told by her husband, that the reason for it was essentially the same, i.e. to avoid the risk of losing access to funds if they got frozen as a consequence of the fraud allegations.

378. I regard it as unsurprising that Mrs Shah found the cash withdrawal episode uncomfortable, not least, as she said, because (at least as she perceived it at the time) it made everyone in the bank stare at her. Contrary to SKAT's submission that it was not credible, I accept Mrs Shah's evidence that at the time she considered that it was legitimate for Mr Shah to give her the AED10 million, and to get her to make the very large cash withdrawal, and consider that she would have felt the same about the AED1.58 million, because (essentially) it was all ultimately his money and she trusted him.

379. Had SKAT proved that these bonus payments (and/or the large cash withdrawal) involved breach of a constructive trust over the funds as held by Elysium Dubai prior to those payments, it would have been necessary to grapple with the question whether Mrs Shah's state of mind rendered her liable to SKAT on the basis of dishonest assistance or knowing receipt, given that she knew there were allegations of fraud being made against her husband, did not think there would be any truth in them, but realised that the allegations, whether they proved to be true or not, might lead to asset freezes that the payments to her were designed to avoid. As it is, that liability issue does not arise, and I leave my findings of fact with that conclusion as to Mrs Shah's understanding of matters at the time.

Recoveries by SKAT

380. I touched on the substantial recoveries made to date by SKAT at the end of the main body of this judgment (paragraph 618*ff*). The total recovered to date, as shown by the recoveries spreadsheet prepared by SKAT and which I accepted as accurate, is DKK3,636,111,818.50 in cash, c.30% of its total loss claimed in these proceedings, plus 579,571 Varengold Bank shares. Had SKAT succeeded in a claim for damages at common law, equitable compensation, or restitution on the basis of unjust enrichment, I would have been guided by the recoveries spreadsheet so as either to determine the final (net) amounts for which any judgments could properly be entered (subject then, separately, to any questions of election between remedies that might arise), or at least to identify any specific question or questions that might need further attention to allow me to make such a determination (which is what happened with Syntax, leading to the revised version of the spreadsheet that allowed me to quantify the amount to be awarded under the default judgment (see paragraph 623 of the main body of this judgment)).