

**CANADIAN SSA BONDS CLASS ACTION NATIONAL SETTLEMENT AGREEMENT**

Made as of November 2, 2022

Between

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, RICCARDO PERSI, BRANDON MCKINNON, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LIUNA PENSION FUND OF CENTRAL AND EASTERN CANADA (FORMERLY NAMED LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA)**

(the "Plaintiffs")

and

**BARCLAYS CAPITAL CANADA INC., BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS EXECUTION SERVICES LIMITED, and BARCLAYS CAPITAL SECURITIES LIMITED**

(the "Settling Defendants")

**CANADIAN SSA CLASS ACTION NATIONAL SETTLEMENT AGREEMENT**  
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**CANADIAN SSA BONDS CLASS ACTION NATIONAL SETTLEMENT AGREEMENT**  
**RECITALS**

- A. **WHEREAS** the Action was commenced by the Plaintiffs in the Federal Court;
- B. **WHEREAS** the statement of claim in the Action alleges, among other things, that the Settling Defendants and others participated in an unlawful conspiracy, contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34, the common law and/or the civil law, to, among other things fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably the price of supranational, sub-sovereign, and agency bonds;
- C. **WHEREAS** the Settling Defendants have denied and continue to deny each and all of the claims and allegations made by Plaintiffs and/or the Settlement Class members including that the Plaintiffs and/or the Settlement Class members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;
- D. **WHEREAS** the Plaintiffs, Class Counsel, and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;
- E. **WHEREAS** the Plaintiffs and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Settling Defendants under this Settlement Agreement, is obtained for the Settlement Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the class they seek to represent;
- F. **WHEREAS** the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been

asserted against the Releasees by the Plaintiffs and the Settlement Class in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. **WHEREAS** the Settling Defendants do not hereby attorn to the jurisdiction of the Federal Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Action;

H. **WHEREAS** counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

I. **WHEREAS** as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the class the Plaintiffs seek to represent, subject to approval of the Federal Court;

J. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the class they seek to represent;

K. **WHEREAS** the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all claims that were or could have been asserted against the Releasees in the Action;

L. **WHEREAS** the Parties consent to certification of the Action as a class proceeding solely for the purposes of implementing this Settlement Agreement and contingent on approval by the Federal Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

M. **WHEREAS** the Plaintiffs assert that they are adequate class representatives for the class they seek to represent and will seek to be appointed representative plaintiffs in the Action;

N. **WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement in the Federal Court; and

O. **WHEREAS** Settlement Class Members were provided an opportunity to opt-out of the Action, the deadline for Settlement Class Members to opt-out of the Action has passed, and there were two (2) opt-outs from the Action;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed with prejudice as to the Settling Defendants only, all without costs as to the Plaintiffs, the class they seek to represent or the Settling Defendants, subject to the approval of the Federal Court, on the following terms and conditions:

### **SECTION 1 - DEFINITIONS**

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) **Action** means the action styled *Mancinelli et al. v. HSBC Holdings PLC et al.* (Court File No. T-1871-17).

(2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notice, but excluding Class Counsel Fees and Class Counsel Disbursements.

(3) **Canadian Counterparties** means Persons with Canadian addresses who can be reasonably identified based on client records that the Settling Defendants have in their possession, custody or control who were or may have been counterparties to SSA Bond Transactions during the Class Period.

(4) **Class Counsel** means Koskie Minsky LLP, Sotos LLP, Siskinds LLP, and Camp Fiorante Matthews Mogergerman LLP.

(5) **Class Counsel Disbursements** include the disbursements, administration expenses, and applicable taxes incurred by Class Counsel in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiffs in the Action.

(6) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.

(7) **Class Period** means the period between January 1, 2005 and December 31, 2015.

(8) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of SSA Bonds?

(9) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.

(10) **Defendants** means Bank of America Corporation, Bank of America, N.A., Bank of America Canada, Bank of America, National Association, Bank of America Merrill Lynch International Limited, Merrill Lynch International, Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Canada Inc, Merrill Lynch International Services Limited, Merrill Lynch Financial Assets Inc, Merrill Lynch Benefits Ltd, BNP Paribas S.A, BNP Paribas Group, BNP Paribas (Canada), BNP Paribas North America Inc, BNP Paribas, Citigroup Inc, Citibank N.A, Citigroup Global Markets Inc, Citigroup Global Markets Limited, Citibank Canada, Citigroup Global Markets Canada Inc, Crédit Agricole S.A, Crédit Agricole Corporate and Investment Bank, Crédit Agricole Corporate and Investment Bank (Canada Branch), Credit Suisse Group AG, Credit Suisse AG, Credit Suisse Securities (Europe) Ltd, Credit Suisse International, Credit Suisse Securities (Canada), Inc, Credit Suisse Securities (USA) LLC, Deutsche Bank AG, Deutsche Bank Securities Inc, Deutsche Bank Securities Limited, HSBC Holdings PLC, HSBC Bank USA, N.A, HSBC Securities (USA) Inc, HSBC Bank PLC, HSBC North America Holdings Inc, HSBC Bank Canada, HSBC USA, Inc, Nomura Securities International, Inc, Nomura International PLC, Royal Bank of Canada, RBC Europe Limited, RBC Capital Markets LLC, Toronto-Dominion Bank Group, TD



Bank, N.A, TD Securities Limited, TD Group US Holdings, LLC, TD Bank USA, N.A, Barclays Capital Canada Inc., Barclays Bank PLC, Barclays Capital Inc., Barclays Execution Services Limited and Barclays Capital Securities Limited, and any Persons added as defendants in the Action in the future. For greater certainty, Defendants includes the Settling Defendants.

(11) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Federal Court.

(12) ***Effective Date*** means the date when the Final Orders have been received.

(13) ***Final Approval Order*** means the later of a final judgment pronounced by the Federal Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.

(14) ***Final Dismissal Order*** means the later of a final order from the Federal Court dismissing the Action as against the Settling Defendants, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the dismissal order in accordance with its terms, upon a final disposition of all appeals.

(15) ***Final Orders*** means the Final Approval Order and the Final Dismissal Order.

(16) ***Non-Settling Defendant*** means a Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Action has been dismissed or discontinued, either before or after the Date of Execution.

(17) ***Other Actions*** means actions or proceedings, excluding the Action, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(18) ***Parties*** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(19) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor,

beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(20) ***Plaintiffs*** means Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Riccardo Persi, Brandon McKinnon, and Jack Oliveira in their capacity as The Trustees of the LiUNA Pension Fund of Central and Eastern Canada (formerly named the Labourers' Pension Fund of Central and Eastern Canada).

(21) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the Federal Court would have apportioned to the Releasees.

(22) ***Released Claims*** means any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, counsel fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, choate or inchoate, which the Releasers ever had, now have, or hereafter can, shall or may have, representatively, derivatively, or in any other capacity, against the Released Parties arising from or relating in any way to any conduct alleged or that could have been alleged in the Action and arising from the factual predicate of the Action or any amended pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to: (i) communications related to SSA Bonds, the trading of SSA Bonds between a Released Party and any other broker, dealer or trader in SSA Bonds or any participant in the conspiracy alleged in the Action, (ii) agreements, arrangements, or understandings related to SSA Bonds, SSA Bond Trading or prices or rates associated with SSA Bonds between released Party and any other broker, dealer or trader in SSA Bonds or any participant in the conspiracy alleged in the Action, (iii) the sharing or exchange of customer or other confidential information between a Released Party and any other broker, dealer or trader in SSA Bonds or any other participant in the conspiracy alleged in the Action, (iv) the establishment, calculation, communication, control, manipulation, quotation

or use of the price, spread, yield or rate of any SSA Bond in connection with the conspiracy alleged in the Action, or (v) acts to conceal the conspiracy alleged in the Action.

(23) **Released Party** or **Released Parties** means Releasees.

(24) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and each of their past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators insurers, spouses, family law claimants, creditors and assigns of each of the foregoing (whether or not they object to the settlement set forth in the Settlement Agreement and whether or not they make a claim for payment from the Settlement Fund), excluding always the Non-Settling Defendants.

(25) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

(26) **Settlement Agreement** means this agreement, including the recitals and schedules.

(27) **Settlement Amount** means CAD\$150,000.

(28) **Settlement Class** means all Persons in Canada who, between January 1, 2005 and December 31, 2015, entered either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA Bond Transaction. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates, and any person who validly opted-out of the Action or who was automatically excluded from the Action pursuant to s. 334.21(2) of the *Federal Courts Rules*.

(29) **Settlement Class Member** means a member of the Settlement Class.

(30) **Settled Defendants** means any Defendant (excluding the Settling Defendants) that enters or entered a settlement agreement with the Plaintiffs in the Action, and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

(31) **Settling Defendants** means Barclays Capital Canada Inc., Barclays Bank PLC, Barclays Capital Inc., Barclays Execution Services Limited, and Barclays Capital Securities Limited.

(32) **Settling Defendants' Claims** means claims, including Unknown Claims as defined below, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Action.

(33) **SSA Bond** means any and all supranational, sovereign, sub-sovereign, governmental, quasi-governmental, and agency bonds or debt instruments regardless of the structure, currency, or credit quality.

(34) **SSA Bond Transaction** means any purchase, sale, trade, assignment, novation, unwind, termination, or other exercise of rights or options with respect to any SSA Bond.

(35) **Trust Account** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel or the claims administrator, once appointed, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.

(36) **Unknown Claims** means any and all Released Claims against the Releasees which Releasors do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Settling Defendants' Claims against Releasors which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasors or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasors and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Settling

Defendants' Claims. Nevertheless, the Plaintiffs and the Releasees shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled and released, any and all Released Claims and Settling Defendants' Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiffs and the Releasees acknowledge, and Settlement Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Settling Defendants' Claims was separately bargained for and was a key element of the Settlement Agreement.

## **SECTION 2- SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall use their reasonable best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Action as against the Settling Defendants.

### **2.2 Motion Seeking Approval of Notice and Certification**

(1) The Plaintiffs shall file a motion in the Federal Court, as soon as practicable after the Date of Execution, for an order approving the notice described in Section 9.1(1) and certifying the Action for settlement purposes.

(2) The Federal Court order approving the notice described in Section 9.1(1) and certifying the Action for settlement purposes shall be substantially in the form attached as Schedule A.

### **2.3 Motion Seeking Approval of the Settlement**

(1) The Plaintiffs shall file a motion before the Federal Court for an order approving this Settlement Agreement as soon as practicable after:

- (a) the order referred to in Section 2.2(1) has been granted; and
- (b) the notice described in Section 9.1(1) has been published.

(2) The Federal Court order seeking approval of this Settlement Agreement shall be substantially in the form attached as Schedule B.

(3) This Settlement Agreement shall only become final on the Effective Date.

#### **2.4 Pre-Motion Confidentiality**

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Settling Defendants and Class Counsel, as the case may be, except as stated in Section 2.4(2) and as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements, as necessary to give effect to its terms, or as otherwise required by law.

(2) Upon the Date of Execution, Class Counsel may disclose the existence and terms of this Settlement Agreement to the Federal Court and Non-Settling Defendants.

### **SECTION 3 - SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

(1) Within thirty (30) days of the order of the Federal Court approving the notices described in section 9.1(1) and certifying the Action for settlement purposes, the Settling Defendants shall pay the Settlement Amount to Class Counsel, for deposit into the Trust Account.

(2) Payment of the Settlement Amount shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action, including, but not limited to, legal fees or costs of notice.

(6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Federal Court obtained after notice to the Parties.

### **3.2 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

## SECTION 4 - TERMINATION OF SETTLEMENT AGREEMENT

### 4.1 Right of Termination

(1) The Plaintiffs and the Settling Defendants shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so (“Termination Notice”) to all other Parties hereto within thirty (30) days of the date on which:

- (a) the Federal Court declines to certify the Action for the purposes of the Settlement Agreement;
- (b) the Federal Court declines to approve this Settlement Agreement or any material term as set out herein;
- (c) the Federal Court approves this Settlement Agreement in a materially modified form;
- (d) the Federal Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as Schedule B; or
- (e) any order approving this Settlement Agreement made by the Federal Court does not become a Final Approval Order.

(2) Except as provided for in Section 4.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the Distribution Protocol,
- (c) shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.



#### **4.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify the Action as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying the Action as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (c) any prior certification of the Action as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Action or any other litigation;
- (d) any order dismissing the Action against the Settling Defendants shall be set aside and declared null and void and of no force or effect; and
- (e) within ten (10) days of such termination having occurred, Class Counsel shall return or destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide counsel to the Settling Defendants with a written certification by Class Counsel of such return or destruction within ten (10) days of such termination having occurred. Nothing contained in this Section 4.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the

Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

#### **4.3 Return of Settlement Amount Following Termination**

(1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Settling Defendants the amount the Settling Defendants have paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notice required by Section 9.1(1), and any costs of translation required by Section 13.12, such costs in total not to exceed thirty thousand Canadian dollars (CAD \$30,000).

#### **4.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 4.1, 4.2, 4.3, 4.4, 7.1, 7.2, 8.1(4), and 9.1(2), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 4.1, 4.2, 4.3, 4.4, 7.1, 7.2, 8.1(4), and 9.1(2) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 5 - RELEASES AND DISMISSALS**

#### **5.1 Release of Releasees**

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against the Settling Defendants; and (ii) any and all Released Claims as against all Released Parties.

(2) Upon the Effective Date, subject to Section 5.3, each of the Releasors: (i) shall be deemed to have, and by operation of the Final Orders shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Released Parties, regardless of whether such Releasor executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

## **5.2 Covenant Not To Sue**

(1) Upon the Effective Date, and notwithstanding Section 5.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

## **5.3 No Further Claims**

(1) Upon the Effective Date, each of the Releasors shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Action against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Action is not certified, the continuation of the claims asserted in the Action on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, each of the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

#### **5.4 Dismissal of the Action**

(1) Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

#### **5.5 Releases and Dismissal Constitute a Material Term**

(1) The releases and dismissal contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Federal Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of the Settlement Agreement

### **SECTION 6 - CLAIMS AGAINST OTHER ENTITIES**

#### **6.1 Claims Against Other Entities Reserved**

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

#### **6.2 Bar Order**

(1) Class Counsel shall seek bar orders from the Federal Court providing for the following:

(a) to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Action or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Action);

- (b) if the Federal Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise,
- (i) the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - (ii) the Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only claims for damages (including punitive damages, if any), restitutionary awards, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and
  - (iii) the Federal Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees remain in the Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action and any determination by the Federal Court in respect of the Proportionate Liability of the Releasees shall only apply in the Action and shall not be binding on the Releasees in any other proceeding; and
  - (iv) a Non-Settling Defendant may, on motion to the Federal Court, determined as if the Settling Defendants remained parties to the Action, and on at least thirty (30) days' notice to counsel for the Settling Defendants, and not to be brought unless and until the Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
    - (A) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Federal Courts Rules*;

- (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (C) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (v) the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to Section 6.2(1)(b)(iv). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of information obtained from discovery in accordance with Section 6.2(1)(b)(iv). Notwithstanding any provision in the Court order approving this Settlement Agreement, on any motion brought pursuant to Section 6.2(1)(b)(iv), the Federal Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
  - (vi) a Non-Settling Defendant may serve the motion(s) referred to in Section 6.2(1)(b)(iv) on the Settling Defendants by service on counsel for the Settling Defendants in the Action.
  - (vii) to the extent that such an order is granted pursuant to Section 6.2(1)(b)(iv) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).
- (c) the Settling Defendants shall retain and reserve all rights to oppose any motion by Non-Settling Defendants to seek discovery from the Settling Defendants.

(2) The Parties acknowledge that the bar orders shall be considered a material term of the Settlement Agreement and the failure of the Federal Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of the Settlement Agreement.

## **SECTION 7- EFFECT OF SETTLEMENT**

### **7.1 No Admission of Liability**

(1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further,

whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Action, or any other pleading filed by the Plaintiffs.

## **7.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence in any pending or future action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **7.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Action against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Action is not certified, the continuation of the claims asserted in the Action on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

(2) Section 7.3(1) shall be inoperative to the extent that it is inconsistent with Class Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

## SECTION 8 - CERTIFICATION FOR SETTLEMENT ONLY

### 8.1 Certification Solely for the Purposes of Settlement

(1) The Parties agree that the Action shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Action and the approval of this Settlement Agreement by the Federal Court.

(2) The Plaintiffs agree that, in the motion for certification of the Action as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class.

(3) The Parties agree that the certification of the Action as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

(4) The Settling Defendants retain all of their objections, arguments, and defences with respect to class certification, and reserve all rights to contest class certification, if the settlement set forth in this Settlement Agreement does not receive the Federal Court's approval, if the Federal Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Federal Court's final approval, if the Federal Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to the Action.



## **SECTION 9 - NOTICE TO SETTLEMENT CLASS**

### **9.1 Notice Required**

- (1) The proposed Settlement Class shall be given a notice of the hearing at which the Federal Court will be asked to approve the Settlement Agreement and Class Counsel Fees.
- (2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

### **9.2 Form and Distribution of Notice**

- (1) The notice shall be in a form agreed upon by the Parties and approved by the Federal Court or, if the Parties cannot agree on the form of the notice, the notice shall be in a form ordered by the Federal Court.
- (2) Notice shall be disseminated by a method agreed upon by the Parties and approved by the Federal Court or, if the Parties cannot agree on a method for disseminating the notice, the notice shall be disseminated by a method ordered by the Federal Court.

## **SECTION 10 - ADMINISTRATION AND IMPLEMENTATION**

### **10.1 Mechanics of Administration**

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Federal Court on motions brought by Class Counsel.

### **10.2 Information and Assistance**

- (1) Subject to the privacy, bank secrecy and other laws, regulations, and policies of any Canadian or foreign jurisdiction, including, where determined by the Settling Defendants to be required by such laws, regulations or policy, an order of the Federal Court compelling such production, which shall be obtained by the Plaintiffs at their expense and which shall not be opposed by the Settling Defendants, the Settling Defendants will engage in reasonable best efforts to provide to Class Counsel a list in electronic format of the names and addresses of Canadian Counterparties who can be reasonably identified based on reasonably accessible client records that the Settling Defendants have in their possession, custody or control, and reasonably accessible

transactional data related to Canadian Counterparties. The Settling Defendants make no representation or admission that such information exists or is reasonably accessible as of the date of this Settlement Agreement, but the Settling Defendants undertake to make reasonable inquiries. To the extent that such information exists, is reasonably accessible and is provided to Class Counsel, the Settling Defendants make no representation or admission that Canadian Counterparties whose names and addresses appear on the list are class members and make no representation as to the accuracy or completeness of the information. Any information provided pursuant to this provision shall be maintained as confidential by Class Counsel and used only for the purposes of:

- (a) providing Canadian Counterparties with notice in accordance with Section 9 of this Agreement;
  - (b) providing Canadian Counterparties with instructions about the process they may follow should they choose to receive subsequent notices or communications in the Action and/or participate in the settlement administration process; and
  - (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Action.
- (2) The information required by Section 10.2(1) shall be delivered to Class Counsel within sixty (60) days of the order of the Federal Court approving the notices described in section 9.1(1) and certifying the Action for settlement purposes.
- (3) All information provided by the Settling Defendants pursuant to Section 10.2(1) shall be kept confidential, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 10.2(1) to any Court-appointed notice provider and/or any Court-appointed claims administrator, to the extent reasonably necessary for the purposes enumerated in Section 10.2(1). Any Court-appointed notice provider and/or any Court-appointed claims administrator shall be bound by the same confidentiality obligations set out herein. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant

to Section 10.2(1) shall be dealt with in accordance with Section 4.2(1)(e) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

(4) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 10.2.

## **SECTION 11 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **11.1 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring a motion seeking an order from the Federal Court approving the Distribution Protocol.

### **11.2 No Responsibility for Administration or Fees**

(1) The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

## **SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

### **12.1 No Liability for Fees**

(1) (1) The Settling Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

### **12.2 Costs of Notice**

(1) Class Counsel shall pay the costs of the notice required by Section 9 and any costs of translation required by Section 13.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notice or translation.

### **12.3 Court Approval**

(1) (1) Class Counsel may seek the Federal Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

### **12.4 Administrative Expenses**

(1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

## **SECTION 13- MISCELLANEOUS**

### **13.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Federal Court and/or such other courts as may be required by the Federal Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

### **13.2 Releasees Have No Liability for Administration**

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

### **13.3 Headings, etc.**

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **13.4 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

(a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

(b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Federal Courts Rules*, the act may be done on the next day that is not a holiday.

### **13.5 Ongoing Jurisdiction**

(1) The Federal Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Federal Court for such purposes only and for no other purpose.

### **13.6 Governing Law**

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

### **13.7 Entire Agreement**

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

### **13.8 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all of the Parties, and any such modification or amendment must be approved by the Federal Court.

### **13.9 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

### **13.10 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **13.11 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

### **13.12 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by the Federal Court, Class Counsel and/or a translation firm selected by Class

Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

### **13.13 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

### **13.14 Schedules**

(1) The schedules annexed hereto form part of this Settlement Agreement.

### **13.15 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

### **13.16 Authorized Signatures**

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

### 13.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

#### **For the Plaintiffs and for Class Counsel in the Action:**

Charles M. Wright  
SISKINDS LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8  
Tel: 519.672.2121  
Fax: 519.672.6065  
Email: charles.wright@siskinds.com

David Sterns  
SOTOS LLP  
Barristers and Solicitors  
180 Dundas Street West, Suite 1250  
Toronto, ON M5G 1Z8  
Tel: 416.977.0007  
Fax: 416.977.0717  
Email: dsterns@sotosllp.com

Reidar Mogerman and David Jones  
CAMP FIORANTE MATTHEWS  
MOGERMAN  
4th Floor, 856 Homer St.  
Vancouver, BC V6B 2W5  
Tel: 604.689.7555  
Fax: 604.689.7554  
Email: rmogerman@cfmlawyers.ca  
djones@cfmlawyers.ca

Kirk M. Baert  
KOSKIE MINSKY LLP  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3  
Tel: 416.595.2117  
Fax: 416.204.2889  
Email: kmbaert@kmlaw.ca

#### **For the Settling Defendants:**

Christopher Naudie  
OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place,  
100 King Street West  
Suite 6200, P.O. Box 50  
Toronto, ON M5X 1B8  
Tel: 416.862.6811  
Fax: 416.862.6666  
Email: cnaudie@osler.com



**13.18 Date of Execution**

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, RICCARDO PERSI, BRANDON MCKINNON, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LIUNA PENSION FUND OF CENTRAL AND EASTERN CANADA (FORMERLY NAMED THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA)** on their own behalf and on behalf of the Settlement Class, by their counsel:

Name of Authorized Signatory:

Bridget Moran for David Sterns

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Signature of Authorized Signatory:



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for: Sotos LLP  
Class Counsel

Name of Authorized Signatory:

Bridget Moran for Aryan Ziaie

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Signature of Authorized Signatory:



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for: Koskie Minsky LLP  
Class Counsel

Name of Authorized Signatory:

Bridget Moran

---

Signature of Authorized Signatory:



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Siskinds LLP  
Class Counsel

Name of Authorized Signatory:

Bridget Moran for David Jones

---

Signature of Authorized Signatory:



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for: Camp Fiorante Matthews Mogerman LLP  
Class Counsel

**BARCLAYS CAPITAL CANADA INC., BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS EXECUTION SERVICES LIMITED, and BARCLAYS CAPITAL SECURITIES LIMITED** by their counsel, Osler, Hoskin & Harcourt LLP.

Name of Authorized Signatory:

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Signature of Authorized Signatory:

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Osler, Hoskin & Harcourt LLP

Name of Authorized Signatory:

\_\_\_\_\_

Signature of Authorized Signatory:

\_\_\_\_\_

Camp Fiorante Matthews Mogerman LLP  
Class Counsel

**BARCLAYS CAPITAL CANADA INC., BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS EXECUTION SERVICES LIMITED, and BARCLAYS CAPITAL SECURITIES LIMITED** by their counsel, Osler, Hoskin & Harcourt LLP.

Name of Authorized Signatory:

*Christopher Naudie*

\_\_\_\_\_

Signature of Authorized Signatory:

*C. Naudie for*

\_\_\_\_\_

Osler, Hoskin & Harcourt LLP

**SCHEDULE “A”**

**Date:**

**Docket: T-1871-17**

**Ottawa, Ontario, \_\_\_\_\_, 2022**

**Present: Mr. Justice A.D. Little**

**FEDERAL COURT  
PROPOSED CLASS ACTION**

**B E T W E E N :**

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, and JACK OLIVEIRA in their capacity as THE TRUSTEES OF THE LABOURERS’ PENSION FUND OF CENTRAL AND EASTERN CANADA**  
**Plaintiff**

**- and -**

**BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA, NATIONAL ASSOCIATION, BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED, MERRILL LYNCH INTERNATIONAL, MERRILL LYNCH, PIERCE, FENNER & SMITH INC., MERRILL LYNCH CANADA INC, MERRILL LYNCH INTERNATIONAL SERVICES LIMITED, MERRILL LYNCH FINANCIAL ASSETS INC, MERRILL LYNCH BENEFITS LTD, BNP PARIBAS S.A, BNP PARIBAS GROUP, BNP PARIBAS (CANADA), BNP PARIBAS NORTH AMERICA INC, BNP PARIBAS, CITIGROUP INC, CITIBANK N.A, CITIGROUP GLOBAL MARKETS INC, CITIGROUP GLOBAL MARKETS LIMITED, CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC, CRÉDIT AGRICOLE S.A, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK (CANADA BRANCH), CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (EUROPE) LTD, CREDIT SUISSE INTERNATIONAL, CREDIT SUISSE SECURITIES (CANADA), INC, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC, DEUTSCHE BANK SECURITIES LIMITED, HSBC HOLDINGS PLC, HSBC BANK USA, N.A, HSBC SECURITIES (USA) INC, HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC, HSBC BANK CANADA, HSBC USA, INC, NOMURA SECURITIES INTERNATIONAL, INC, NOMURA INTERNATIONAL PLC, ROYAL BANK OF CANADA, RBC EUROPE LIMITED, RBC CAPITAL MARKETS LLC, TORONTO-DOMINION BANK GROUP, TD BANK, N.A, TD SECURITIES LIMITED, TD GROUP US HOLDINGS, LLC, TD BANK USA, N.A, BARCLAYS CAPITAL CANADA INC., BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS EXECUTION SERVICES LIMITED and BARCLAYS CAPITAL SECURITIES LIMITED**

**Defendants**

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving the short-form and long-form notices of settlement approval hearing, the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against Barclays Capital Canada Inc., Barclays Bank PLC, Barclays Capital Inc., Barclays Execution Services Limited, and Barclays Capital Securities Limited (the “**Settling Defendants**”) was heard this day at ●.

**ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated ● attached to this Order as Schedule “A” (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiffs, counsel for the Settling Defendants, and counsel for the Non-Settling Defendants;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this Motion:

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the short-form and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “C”.
3. **THIS COURT ORDERS** that the plan of dissemination for the short-form and long-form notices of settlement approval hearing (the “**Plan of Dissemination**”) is hereby approved in the form attached hereto as Schedule “D” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
5. **THIS COURT ORDERS** that the “**Settlement Class**” is certified as follows:

*All Persons in Canada who, between January 1, 2005 and December 31, 2015, entered either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA Bond*

*Transaction. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.*

*“SSA Bond” refers to any and all supranational, sovereign, sub-sovereign, governmental, quasi-governmental, and agency bonds or debt instruments regardless of the structure, currency, or credit quality.*

*“SSA Bond Transaction” means any purchase, sale, trade, assignment, novation, unwind, termination, or other exercise of rights or options with respect to any SSA Bond.*

6. **THIS COURT ORDERS** that Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Riccardo Persi, Brandon McKinnon, and Jack Oliveira in their capacity as The Trustees of the LiUNA Pension Fund of Central and Eastern Canada (formerly named the Labourers’ Pension Fund of Central and Eastern Canada) are appointed as the representative plaintiffs for the Settlement Class.
7. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of SSA Bonds purchased in the SSA market?
8. **THIS COURT ORDERS** that this Order, any reason given by the Court in connection with it and the certification of the Action as against the Settling Defendants for settlement purposes pursuant to this Order, including, without limitation, the definition of the Settlement Class and the Common Issue, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.
9. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect in respect of the Settling Defendants on subsequent motion made on

notice in the event that the Settlement Agreement is terminated in accordance with its terms.

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The Honourable Justice Little

**SCHEDULE “B”**

**Date:**

**Docket: T-1871-17**

**Ottawa, Ontario, \_\_\_\_\_, 2022**

**Present: Mr. Justice A.D. Little**

**FEDERAL COURT  
CLASS ACTION**

**B E T W E E N :**

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, and JACK OLIVEIRA in their capacity as THE TRUSTEES OF THE LABOURERS’ PENSION FUND OF CENTRAL AND EASTERN CANADA**  
**Plaintiff**

**- and -**

**BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA, NATIONAL ASSOCIATION, BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED, MERRILL LYNCH INTERNATIONAL, MERRILL LYNCH, PIERCE, FENNER & SMITH INC., MERRILL LYNCH CANADA INC, MERRILL LYNCH INTERNATIONAL SERVICES LIMITED, MERRILL LYNCH FINANCIAL ASSETS INC, MERRILL LYNCH BENEFITS LTD, BNP PARIBAS S.A, BNP PARIBAS GROUP, BNP PARIBAS (CANADA), BNP PARIBAS NORTH AMERICA INC, BNP PARIBAS, CITIGROUP INC, CITIBANK N.A, CITIGROUP GLOBAL MARKETS INC, CITIGROUP GLOBAL MARKETS LIMITED, CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC, CRÉDIT AGRICOLE S.A, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK (CANADA BRANCH), CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (EUROPE) LTD, CREDIT SUISSE INTERNATIONAL, CREDIT SUISSE SECURITIES (CANADA), INC, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC, DEUTSCHE BANK SECURITIES LIMITED, HSBC HOLDINGS PLC, HSBC BANK USA, N.A, HSBC SECURITIES (USA) INC, HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC, HSBC BANK CANADA, HSBC USA, INC, NOMURA SECURITIES INTERNATIONAL, INC, NOMURA INTERNATIONAL PLC, ROYAL BANK OF CANADA, RBC EUROPE LIMITED, RBC CAPITAL MARKETS LLC, TORONTO-DOMINION BANK GROUP, TD BANK, N.A, TD SECURITIES LIMITED, TD GROUP US HOLDINGS, LLC, TD BANK USA, N.A, BARCLAYS CAPITAL CANADA INC., BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS EXECUTION SERVICES LIMITED and BARCLAYS CAPITAL SECURITIES LIMITED**

**Defendants**

**ORDER**



**THIS MOTION**, made by the Plaintiffs for an Order approving the settlement agreement entered into with Barclays Capital Canada Inc., Barclays Bank PLC, Barclays Capital Inc., Barclays Execution Services Limited, and Barclays Capital Securities Limited (the “**Settling Defendants**”) and dismissing this Action as against the Settling Defendants, was heard this day at ●.

**AND ON READING** the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ● written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the Action has passed, and there were two Persons who validly and timely exercised the right to opt out;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position in respect of this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the following definitions apply:
  - (a) *Action* means the action, styled *Mancinelli et al. v. HSBC Holdings PLC et al.* (Court File No. T-1871-17).
  - (b) *Class Counsel Disbursements* include the disbursements, administration expenses, and applicable taxes incurred by Class Counsel in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiffs in the Action.

- (c) ***Effective Date*** means the date when the Final Orders have been received approving the Settlement Agreement and dismissing the Action against the Settling Defendants.
- (d) ***Non-Settling Defendant*** means a Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Action has been dismissed or discontinued, either before or after the Date of Execution.
- (e) ***Other Actions*** means actions or proceedings, excluding the Action, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (f) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (g) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the Federal Court would have apportioned to the Releasees.
- (h) ***Released Claims*** means any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, counsel fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, choate or inchoate, which the Releasers ever had, now have, or hereafter can, shall or may have, representatively, derivatively, or in any other capacity, against the Released Parties arising from or relating in any way to any conduct alleged or that could have been alleged in the Action and arising from the factual predicate of the Action or any amended pleading therein, from the

beginning of time until the Effective Date, which shall be deemed to include but not be limited to: (i) communications related to SSA Bonds, the trading of SSA Bonds between a Released Party and any other broker, dealer or trader in SSA Bonds or any participant in the conspiracy alleged in the Action, (ii) agreements, arrangements, or understandings related to SSA Bonds, SSA Bond Trading or prices or rates associated with SSA Bonds between Released Party and any other broker, dealer or trader in SSA Bonds or any participant in the conspiracy alleged in the Action, (iii) the sharing or exchange of customer or other confidential information between a Released Party and any other broker, dealer or trader in SSA Bonds or any other participant in the conspiracy alleged in the Action, (iv) the establishment, calculation, communication, control, manipulation, quotation or use of the price, spread, yield or rate of any SSA Bond in connection with the conspiracy alleged in the Action, or (v) acts to conceal the conspiracy alleged in the Action.

- (i) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and each of their past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators purchasers, predecessors, successors, insurers, spouses, family law claimants, creditors, and assigns of each of the foregoing (whether or not they object to the settlement set forth in this Settlement Agreement), and whether or not they make a claim for payment from the Settlement Fund, excluding always the Non-Settling Defendants.
- (j) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries,

affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

- (k) **SSA Bond** means any and all supranational, sovereign, sub-sovereign, governmental, quasi-governmental, and agency bonds or debt instruments regardless of the structure, currency, or credit quality.
- (l) **SSA Bond Transaction** means any purchase, sale, trade, assignment, novation, unwind, termination, or other exercise of rights or options with respect to any SSA Bond.
- (m) **Settled Defendants** means any Defendant (excluding the Settling Defendants) that enters or entered a settlement agreement with the Plaintiffs in the Action, and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.
- (n) **Settlement Class** means all Persons in Canada who, between January 1, 2005 and December 31, 2015, entered either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA Bond Transaction. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates, and any person who validly opted-out of the Action or who was automatically excluded from the Action pursuant to s. 334.21(2) of the *Federal Courts Rules*.
- (o) **Settlement Class Member** means a member of the Settlement Class.
- (p) **Trust Account** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the Bank Act, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel or the claims administrator, once appointed, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.

4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 334.29 of the *Federal Courts Rules* and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in the Federal Court by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
9. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 20, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N1 or other legislation or at common law or equity, in respect of any Released Claim except for the continuation of the Action against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Action is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Action on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

11. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
12. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
13. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Action or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Action);
14. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
  - (a) the Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (b) the Plaintiffs and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees remain in the Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action against whom claims for contribution and indemnity or other claims over were made on a timely basis, and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Action and shall not be binding on the Releasees in any other proceeding.
15. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of Settlement Class Members in the Action or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
16. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Action, and on at least

thirty (30) days' notice to counsel for the Settling Defendants, and not to be brought unless and until the Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:

- (a) documentary discovery and an affidavit of documents from the Settling Defendant(s) in accordance with the *Federal Courts Rules*;
  - (b) oral discovery of a representative of the Settling Defendant(s), the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on the Settling Defendant(s) in respect of factual matters; and
  - (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
17. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 25. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 25. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 25, the Court may make such orders as to costs and other terms as it considers appropriate.
18. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 25 above on the Settling Defendants by service on counsel for the Settling Defendant.
19. **THIS COURT ORDERS** that the approval of the Settlement Agreement and this Order, and any reasons given by the Court in connection with the approval of the Settlement Agreement or this Order (except any reasons given in connection with paragraphs 13-18 of this Order), are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Action and, without restricting the generality of the foregoing, may not be relied upon by any Person to establish jurisdiction, the criteria



for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order and for no other purpose.
21. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any member of the Settlement Class has or may have in the Action against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
22. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.
23. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Class Counsel for the benefit of the Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Action against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

25. **THIS COURT ORDERS** that the Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.

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The Honourable Justice Little