Court File No. CV-08-00359335

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HOWARD GREEN and ANNE BELL

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, GERALD McCAUGHEY, TOM WOODS, BRIAN G SHAW, KEN KILGOUR

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF VINCENT GENOVA

(CLASS COUNSEL FEE APPROVAL)

(SWORN JANUARY 5, 2022)

I, VINCENT GENOVA, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am partner at Rochon Genova LLP ("Rochon Genova") which is counsel for the Plaintiffs in the above-captioned proceeding (the "Action"). Along with Joel Rochon, I founded Rochon Genova in 1999.

2. I have sworn an affidavit in this action in support of a motion brought for an Order:

   (a) approving the Settlement Agreement pursuant to section 29 of the *Class Proceedings Act, 1992* (the "*CPA*") and the settlement of this Action pursuant to section 138.10 of the Ontario *Securities Act* (the "*OSA*"); and

(b) approving the Distribution Protocol which is Schedule "D" to the Settlement Agreement.

3. I now swear this affidavit in support of the motion for approval of Class Counsel Fees.

OVERVIEW

4. This fee request arises in an exceptional and seminal case. Although securities class actions are generally complex, very few are as protracted, costly and high risk as the present action. The context of this hard-fought litigation, which lasted more than 13 years, includes a highly contested leave motion pursuant to s 138.8 of the *Securities Act* argued in two phases over several months, an appeal to the Court of Appeal and to the Supreme Court of Canada and numerous interlocutory motions, lengthy cross-examinations and discoveries and voluminous documentary productions and expert reports. As I describe more fully below, early in the lifecycle of this action, this litigation represented extraordinary risk to our firm. The firm continued to face numerous and substantial risks throughout the life of this litigation, which I describe more fully below. From the outset of this litigation, the firm allocated very significant human and financial resources in the prosecution of this Action on behalf of the Class Members.

5. Every stage of this action up to the eve of trial was highly contested by very formidable counsel teams from Torys LLP and Goodmans LLP. The initial leave motion involved over 15 expert affidavits, 27 days of cross examinations, and weeks of preparation. The appeals to the Court of Appeal and the Supreme Court of Canada dealt with issues of first impression for secondary market securities misrepresentation claims in Canada. The documentary production included more than 150,000 documents, and parties engaged in a further 20 days of discovery and exchanged over 450 pages of written interrogatories. Trial preparation involved the preparation of comprehensive expert reports, including reply reports, dealing with the very complex securities

and derivative products at issue and numerous corporate governance issues. Millions of dollars were invested in these reports not only for the merits based leave motion, but also for the 9-week trial, which was scheduled to commence on October 4, 2021.

6. In every respect, this was very much "bet the firm" litigation for Class Counsel.

7. The fee request presented on this motion is fair and reasonable, and supported by the Representative Plaintiffs. It recognizes the exceptional nature of risk undertaken by our young firm at the time it commenced the case in 2008, the tremendous resources expended in its prosecution ever since, and the successful result achieved for our clients.

8. It became evident early on in the litigation that this case was fast becoming a monumental undertaking for our small boutique law firm. At the time, although we then had a dedicated capable group of lawyers, our resources were modest and needed to be bolstered in order to ensure that we were able to successfully advance this important class action.

9. To meet this challenge, we recognized that we needed to invest in bringing on lawyers with particular expertise in the area of securities law in the context of class action lawsuits. We used available funds from the resolution of other cases to bring on other counsel including, amongst others, Peter Jervis, Doug Worndl and Ron Podolny, in particular, to assist with the prosecution of this and other securities cases.

10. The first major procedural step in any securities class action is the leave and certification motion. Given the merits based nature of the leave motion, it also necessitated considerable resources beyond our firm, including the sourcing of several experts, the preparation of those reports and cross-examinations. By its nature, the leave motion exposed the Plaintiffs to a significant adverse cost award. On October 13, 2011, in advance of the hearing of the leave motion

in this case, we applied for adverse cost protection from the Class Proceedings Fund ("CPF"). Our request was denied.

11. At the time, the case faced its first existential threat when, on the penultimate day of the leave hearing in early 2021, the Ontario Court of Appeal released its decision in *Sharma v. Timminco Ltd.*, 2012 ONCA 107, which shook the securities bar and ruled, for the first time, that section 28 of the *CPA*, did not suspend the limitation period in section 138.14 of the *OSA*. The implication of this was that the Part XXIII.1 leave motion had to be finally determined (not just commenced) prior to the *OSA* three-year limitation period. After a very detailed review of the evidentiary record on the leave motion, Strathy J. held that he would have granted the Plaintiffs leave to commence their action, *but for* the limitations issue posed by the newly released *Timminco* decision. As I describe in more detail below, we appealed Justice Strathy's decision to a five-member panel of the Court of Appeal, and were successful in obtaining an order granting leave and certification in a decision released in February 2014. This result was upheld by the Supreme Court in a decision released on December 4, 2015. While pursuing these complicated appeals, Rochon Genova had no adverse cost indemnity from CPF or any other third party funder.

12. Subsequent to our firm's success at the Court of Appeal, and after the Defendants sought leave to appeal to the Supreme Court of Canada, we renewed our request to the CPF for adverse costs protection that we hoped to secure. Our firm had spent many hundreds of thousands of dollars, with an undertaking to pay the remainder, for expert reports and staffing costs. These were very substantial obligations and the risk of not recovering the substantial investment in expert witness fees and, worse, of being exposed to the adverse costs of two large Bay Street law firms that acted for the Defendants was extremely daunting. Unfortunately, the CPF denied our renewed request, advising that we could apply again after all appeals including the appeal to the SCC has been exhausted.

13. The firm continued to bear the substantial risk of prosecuting the class members claims to the SCC without any costs protection from the CPF or any other funder. At the time of the appeal and thereafter, courts in Ontario had begun awarding considerable adverse costs to successful parties. Mr. Rochon and I spent endless hours discussing the ramifications of being unsuccessful. We concluded that our firm at the time would not have the ability to financially withstand an unsuccessful outcome. In order to satisfy any adverse costs award and fulfil our obligations to pay the remaining costs for our experts, we would not only exhaust our firm's assets and line of credit, but it would have also been necessary to use our personal funds by mortgaging assets.

14. While we ultimately succeeded by the narrowest of margins (5-4) in Ottawa, it was only after Mr. Rochon and I essentially wagered the continuation of our firm and our personal assets on our faith that we had a meritorious action against the Defendants. On December 1, 2016, almost a year after the Plaintiffs were successful at the Supreme Court, we finally received funding from the CPF. However, that funding was not comprehensive and did not cover 100% of our disbursements. More importantly, the funding did not alleviate our responsibility to pay salaries to lawyers and clerks who continued working on the file, nor did the funding cover large portions of disbursements that the CPF was not prepared to cover. Therefore, and despite the very welcome assistance from the CPF, our firm remained financially exposed in its commitment to advance this litigation to trial. At the end of the day, we paid for and were responsible for many hundreds of thousands of dollars for disbursements that were not covered by the CPF.

15. As the record discloses, our firm dedicated many millions of dollars in docketed hours to advance this case so that it would be ready for the lengthy 9-week trial that appeared to be all but inevitable. We have tirelessly prosecuted this case from its inception until the day the Settlement Agreement was signed.

16. Below, I describe our fee request on this motion, and provide a detailed explanation of the factors which support it.

Class Counsel Fees Requested

17. Class Counsel seek the approval of Class Counsel Fees to be paid in accordance with the retainer agreements entered into by the Representative Plaintiffs in 2008 authorizing a 30% fee which comes to $37,500,000.00 plus taxes and disbursements.

18. As will be discussed later in this affidavit, Rochon Genova has been assisted in this litigation by our co-counsel, Himelfarb Proszanski LLP in Toronto.

Retainer Agreements

19. Attached as **Exhibit "A"** is a copy of the retainer agreement entered between the Representative Plaintiff Howard Green and Rochon Genova on May 13, 2008.

20. Attached as **Exhibit "B"** is a copy of the retainer agreement entered between Representative Plaintiff Anne Bell and Rochon Genova on November 10, 2008. Attached as **Exhibit "C"** is a copy of a written indemnity of Anne Bell by Rochon Genova dated March 23, 2010.

21. The terms of Mr. Green's Retainer Agreement and Ms. Bell's Retainer Agreement are essentially the same. In broad terms, they provide for:

(a) the payment of a contingent fee to Rochon Genova on the basis of 30% of the total value of the amount recovered, or on the basis of a 4 times multiplier of the time spent prosecuting this claim, whatever is higher;

(b) Rochon Genova is entitled to recover from any settlement or judgment all reasonable disbursements incurred along with accrued interest on those disbursements and taxes;

(c) Rochon Genova agrees to indemnify the Representative Plaintiffs against any adverse cost order in this Action.

22. The fee requested by Rochon Genova represents 30% of the $125,000,000.00 settlement amount. This also represents a multiplier of approximately 2.53 times the value of the docketed time in the 13 years of this litigation.

23. Both Representative Plaintiffs fully support this fee request and have provided affidavits to this effect, which I have reviewed.

Factors Supporting the Request for Class Counsel Fees

24. In my experience as partner and co-founder of Rochon Genova, the complications and resulting cost of prosecuting a complex securities class action like this can be very significant. This was certainly borne out in this case not only from the standpoint of the sheer complexity of the case, but also the length of time—over 13 years since issuing the claim— required to achieve this important recovery for Class Members. In Rochon Genova's 20+ year history of class actions practice, we assumed more risk and devoted more resources to the prosecution of this case over the last 13 years than with any other case.

25. As discussed below, prior to the commencement of the Action, Rochon Genova assessed and assumed the following risks of prosecuting this massive securities class action with an uncertain outcome, including exposure to not only our own fees and disbursements, but potentially those of both sets of opposing counsel.

a) Class Counsel's indemnification against adverse costs exposed Class Counsel to significant risk

26. At the commencement of the Action, Rochon Genova agreed to indemnify their clients, the Representative Plaintiffs, against adverse costs.

27. Rochon Genova's indemnification against adverse costs exposed our firm to significant risk and that risk grew over the course of the action which was without any safety net at all until some point after we received a decision from the Supreme Court of Canada on December 4, 2015. Had we not been successful in the SCC, our firm would have been responsible for the costs of the entire action borne by two formidable defence firms.

28. It is noteworthy that a proposed securities class action very similar to this one was brought by leading US securities class actions firms on behalf of US resident CIBC shareholders before the US Federal Court in the Southern District of New York. That case alleged substantially the same misrepresentations regarding CIBC's exposure to US subprime RMBS in 2007. On March 19, 2010, U.S. District Judge William H. Pauley III (SDNY) dismissed that case on a motion for summary judgement. In his reasons for decision, Judge Pauley ruled that many major financial institutions failed to anticipate a meltdown in the mortgage market during the period in 2007 covered by the Class Period, and that the US plaintiffs failed to demonstrate that CIBC had information in its possession that was contrary to CIBC's public statements about its subprime risk exposure. Attached as **Exhibit "D"** is a copy of the March 19, 2010 decision of District Judge Pauley in *Plumbers & Steamfitters Local 773 Pension Fund v. CIBC et al.*, 08 Civ. 8143.

29. Even though the parallel US case failed in 2010, we had faith in our investigation and our ability to prove our case against CIBC. Accordingly, we carried on, in spite of the failure of the parallel US case in the SDNY.

30. In an effort to fund disbursements in the case and to gain protection against adverse costs, we initially applied to the CPF for funding on October 18, 2011 prior to the leave and certification motion before Mr. Justice Strathy, which was heard February 9, 10, 13-17 and April 5, 2012. However, that funding request was denied and the firm was placed in a very difficult and at times precarious situation in having to fund millions of dollars in expert fees and other associated case costs, in addition to having to brace ourselves in the event of an adverse costs award, should we fail at any stage of the appeals which ultimately ended at the SCC.

31. Put another way, the CPF's denial of our funding application was a major blow to our firm, in light of the considerable resources in salaries and expert fees and other case costs we poured into this file. Nevertheless, we successfully appealed the decision of Justice Strathy to a five-member panel of the Court of Appeal, which released its decision on February 3, 2014. To convene a five-judge panel of the Court of Appeal for the purpose of overturning a previous decision of that Court was a rare procedural request and naturally a stressful and inherently risky event. But this was the only path forward available to us at that time.

32. Notably, funding from the CPF was not approved until December 1, 2016, *after* the leave and certification decision was decided in the Plaintiffs' favour by the Supreme Court of Canada. Therefore, for the first eight years of this action, commenced July 2008, Rochon Genova was exposed to paying an adverse costs award of opposing counsel for the entire action including the leave motion and appeals to the Ontario Court of Appeal and the Supreme Court of Canada, as well as the cost of disbursements, the bulk of which were for the fees of expert witnesses. Obtaining funding in this context was also essential since this funding provided an important safeguard for our firm to avert the potential of a catastrophic outcome to the firm and to the equity partners personally.

33. After the 2015 Supreme Court of Canada decision, the determination of costs of the preliminary 2012 leave and certification motion was referred back to Mr. Justice Strathy. Sitting *ex officio*, Justice Strathy awarded the Plaintiffs' costs on a *partial indemnity* basis of $2,679,277.82 comprised of fees of $1,505,418.72 plus disbursements of $932,123.14. Importantly, the award of costs only provided partial compensation for the very substantial disbursements costs that had been incurred by our firm to prosecute the action through the leave motion. Attached as **Exhibit "E"** is a copy of Mr. Justice Strathy's Reasons on Costs in this case dated June 10, 2016.

34. The terms of the Representative Plaintiffs' retainer agreements, attached hereto as Exhibits "A"-"C", specify that Class Counsel's fee is calculated on the value of any settlement or judgment received by the class, "over and above any award of court costs or claim for reasonable disbursements."

35. The June 2016 partial indemnity costs award related only to the 2012 leave and certification motion. The substantial indemnity value of Class Counsel's time was, of course, considerably in excess of the amount awarded. Beyond that, this costs order was made many years after those costs were actually incurred by Rochon Genova.

36. Had the Supreme Court of Canada not found in favour of the Plaintiffs, not only would Rochon Genova have lost all of the fees and disbursements incurred up to the December 2015 judgment of the Supreme Court, it would also have had to pay the Defendants for their costs. In my opinion, that indemnification obligation would have been in the millions of dollars given that the adverse costs being sought would have been for the entire action as incurred by the Defendants who were represented by leading counsel at two of Canada's top firms – Torys LLP and Goodmans LLP.

37. Therefore, until the decision of the Supreme Court of Canada in December 2015 and Justice Strathy's costs award in June 2016, Rochon Genova faced a financial exposure of many millions of dollars on this case. Had the Supreme Court of Canada not found in favour of the Plaintiffs, the Rochon Genova firm would have faced significant financial challenges to the point of having a liquidity crisis of its own.

38. After the CPF agreed to provide financial support to Rochon Genova on December 1, 2016, some of the financial risk to the firm was mitigated in that the CPF only agreed to indemnify the Plaintiffs for adverse costs awards, and to pay for a portion of the other case costs incurred by Rochon Genova.

39. While this support from the CPF certainly assisted in terms of partially de-risking the case, and enabled our firm to proceed with the prosecution of this action, there has never been any contribution towards the millions of dollars of time we continued to invest in this case over the course of the 13-year duration of this case.

40. To date, the time investment of Rochon Genova in terms of the value of the work in progress ("WIP") of all time-keepers over the life of this file is approximately $14,808,597.04 representing 21851.42 hours of billable time. I note that there have been 43 time-keepers who have docketed time on this file over the last 13 years.

41. In addition, the CPF has not provided funding for all disbursements incurred. Rochon Genova has incurred approximately $2,860,317 in un-funded disbursements, without re-imbursement by the CPF.

(b) Securities class actions, particularly Part XXIII.1 class actions, are high-risk, complex, hard fought, expensive and protracted

42. The Part XXIII.1 secondary market civil liability regime is a complex regime, evidenced by the fact that very few plaintiff firms have taken on the risk of investigating, analyzing and

prosecuting such cases and even fewer cases of this nature have ever succeeded in terms of providing substantial recovery for class members. According to a recent study by NERA Economic Consulting, since its introduction into law on December 31, 2005 until the end of 2020, there have been 112 statutory secondary market cases, or approximately 7.5 cases per year. The high-water mark was 2019 when 14 such cases were filed. Of the 112 cases, 34 (30%) remained unresolved at the end of 2020; 14 have been denied leave and/or certification; and 10 have been discontinued. Attached hereto and marked as **Exhibit "F"** is a copy of "Trends in Canadian Securities Class Actions: 2020 Update" published by NERA Economic Consulting.

43. The requirement that leave be obtained prior to the commencement of an action under Part XXIII.1 is a significant feature of the regime that distinguishes securities class actions from other class actions where, generally, a plaintiff may move directly for certification, a step that is not a test of the merits (section 5(5) of the *CPA*).

44. Under the *OSA*, leave requires a preliminary assessment of the merits. To obtain leave, the plaintiff must establish that there is "a reasonable possibility that the action will be resolved at trial in favour of the plaintiff." There has been considerable case law devoted to this standard, including two leading decisions of the Supreme Court of Canada (one of which was the present case, *Canadian Imperial Bank of Commerce v Green*, [2015] 3 SCR 801).

45. In our experience:

(a) given the merits based requirement, the leave motion typically requires considerable front-end loading wherein a plaintiff must conduct a thorough investigation and analysis into the available public record, and commission expert opinion or opinions in order to establish that it has a reasonable possibility of establishing the key elements of her case;

(b) defendants typically challenge the leave motion, often filing responding expert opinion and sometimes fact witnesses;

(c) cross-examinations, motions arising out of cross-examinations and lengthy hearings are the norm for this kind of case; and

(d) success or failure on the leave motion will invariably result in appeals.

46. At the commencement of this Action, Rochon Genova was faced with the above risks and other risks inherent to the prosecution of a securities class action in Ontario. It was anticipated that:

(a) this case would be hard fought by leading defense counsel who are experts in the defence of securities cases at two of the best corporate law firms in Canada;

(b) the defense was extremely well funded and would spare no expense;

(c) there would be great resistance to the leave and certification motions, and indeed at every step of this proceeding;

(d) the leave and certification motion would itself involve many days of cross examinations of both fact and expert witnesses;

(e) if successful on the leave and certification motion, there would be production of tens of thousands, if not hundreds of thousands of documents and weeks of examinations for discovery;

(f) if the case did not settle, there would be a very lengthy trial with an uncertain outcome; and

(g) the exposure to potential adverse costs awards, including the fees and disbursements of multiple defence firms and their various experts, would be considerable, in the several millions of dollars.

47. The predicted risks at the outset of this litigation not only came to pass, they were far more significant than we originally imagined. Not only was leave and certification hotly contested; the decision was ultimately appealed to the Supreme Court of Canada.

48. The leave and certification motion involved 13 expert reports, 27 days of cross examinations of both fact and expert witnesses, thousands of pages of evidence, and 8 hearing days. This preliminary motion determined whether the case would be allowed to proceed.

49. In terms of the steps leading to trial, the documentary production included more than 150,000 documents, and parties engaged in a further 20 days of discovery and exchanged over 450 pages of written interrogatories. Trial preparation also involved the preparation of comprehensive expert reports, including reply reports, dealing with the very complex securities and derivative products at issue and numerous corporate governance issues. Several millions were invested in these reports not only on the merits based leave motion, but also for preparation for the 9-week trial. In every respect, this was very much "bet the firm" litigation for Class Counsel.

50. Another substantial securities class action where Rochon Genova was co-counsel was litigation, started in 2016, against Valeant Pharmaceuticals International Inc. ("Valeant") , its auditors ("PWC") and others, in the Quebec Superior Court. That case settled in two parts:

(a) an initial partial settlement with PWC of $30 million and counsel fees of $9 million, both of which were approved by the Quebec Superior Court on November 12, 2019;

(b) a final settlement with Valeant and the other defendants for $94 million and counsel fees of $29.1 million both of which were approved by the Quebec Superior Court n November 16, 2020.

51. The total settlement in the Valeant case was $124 million, with total counsel fees (exclusive of disbursements and taxes) of $38.1 million (or approximately 31%). The case settled at the early stages of discovery, approximately 4 years after the case started.

52. As these settlement and fee approvals appear not to have been reported, I attach as:

(a) **Exhibit "G"** the Decision of the Quebec Superior Court dated November 12, 2019 approving the PWC partial settlement;

(b) **Exhibit "H"** the Decision of the Quebec Superior Court dated November 12, 2019, approving partial Class Counsel Fees;

(c) **Exhibit "I"** the decision of the Quebec Superior Court dated November 16, 2020 approving the balance of the Valeant settlement of $94 million; and

(d) **Exhibit "J"** the decision of the Quebec Superior Court dated November 16, 2020, approving the balance of Class Counsel fees of $29.1 million.

53. I note that Rochon Genova was one of seven firms participating in a consortium of co-counsel representing the Class in the Valeant case, which co-counsel collectively shared the risk of prosecuting that action.

54. I note further that the Valeant case settled as examinations for discovery were just getting underway and no trial date had yet been set.

Fees and disbursements financed to date

55. Since the commencement of the Action up to and including the date of this affidavit, Rochon Genova has docketed fees of $14,808,597.04 and incurred HST on those fees of $1,620,090.49, and Rochon Genova has financed disbursements of $6,964,160.62 and HST on those disbursements of $362,221.96. Rochon Genova has incurred disbursements that remain to be paid, in the amount of $921,859.80, and HST on that amount of 119,841.77. The total amount of disbursements incurred, including HST, is $8,368,081.

56. The Defendants reimbursed Rochon Genova in the amount of $1,099,559 (inclusive of HST) further to a cost award following the Plaintiffs' successful certification motion, as described above. CPF has reimbursed Rochon Genova in the amount of $4,408,205.93 (inclusive of HST) since it extended certain financial support to this action on December 1, 2016, for a total reimbursed, to date, to Rochon Genova of $5,507,764.

57. Accordingly, the disbursements (inclusive of HST) incurred by Rochon Genova and not covered by CPF amount to: $2,860,317.

58. As stated above, Rochon Genova has been assisted in this litigation by its co-counsel, Himelfarb Proszanski LLP. One of the firm's founding partners, Mr. Peter Proszanski, worked with Rochon Genova in the investigation and formulation of this case prior to pleading in 2008. His contribution was particularly valuable in informing the counsel team regarding the developments in the CIBC litigation in the U.S., and its implications for the Canadian case. Mr. Proszanski continued to provide strategic advice throughout the lifecycle of this action. He also participated, along with Rochon Genova team, in the various mediation sessions referred to above. Along with Rochon Genova, Himelfarb Proszanski lawyers have acted as liaison with the Representative Plaintiffs during the course of this litigation.

59. Since the commencement of the Action up to and including the date of this affidavit, Himelfarb Prozsanski has docketed fees of $68,812.50 and incurred HST on those fees of $6,138.63.

60. The following chart sets out the disbursements that have been financed by Rochon Genova in pursuing the Action, up to the date of this affidavit:

TYPE	TOTAL
Courier	$5,823.07
Parking	$94.25
Copies, Scanning and Facsimile	$281,263.16
Long Distance Telephone Charge	$7,945.32
Postage	$13,990.20
Research/Resource Material	$314,369.60
Binding Supplies	$30,972.68
Agents Fees	$23,501.66
Expert Reports	$5,336,263.68
Mileage/Travel/Meals	$101,183.00
Mediation	$49,027.83
Non-Expert Reports	$343,861.32
PR/Media	$114,015.81
Service of Documents	$340,021.30
Court Fees	$1,827.74
TOTAL BEFORE TAX:	$6,964,160.62
TAX:	$362,221.96
TOTAL INCLUDING TAX:	$7,326,382.58

Summary of Rochon Genova's fee and disbursement request

61. Rochon Genova's legal fee and disbursement request may be summarized as follows:

ITEM	TOTAL
Fee Request:	$37,500,000.00
HST on Fee Request:	$4,875,000.00
Disbursements:	$6,964,160.62
Taxes on Disbursements:	$362,221.96
Disbursements covered by interim cost award:	($1,099,559)
Disbursements covered by CPF:	($4,408,205.93)
Unfunded / outstanding disbursements incurred by Rochon Genova (inclusive of HST):	$2,860,317
Total Fee/Disbursement Request (including applicable taxes):	**$45,235,317**

62. Pursuant to *Regulation 771/02*, the CPF levy will be imposed on the class' recovery, in the amount of the sum of: (a) the amount of any financial support paid by the CPF (in this case, disbursements funded) and (b) 10 percent of the amount of the settlement funds remaining. In other words, once the Class Counsel fee and the Administrator's fee is deducted from the settlement amount, the CPF will receive a reimbursement of the approximately $4.4 million in disbursements it has funded, and a levy in the amount of 10% of the settlement amount remaining. We estimate CPF's total entitlement (disbursements repayment and levy) to amount to approximately $12 million.

Anticipated fees and disbursements to be incurred

63. Considerable work remains to be done by Class Counsel. Our involvement following the execution of this affidavit will include:

(a) preparing for and attending the settlement approval motion;

(b) facilitating implementation of Part 2 of the Plan of Notice;

(c) liaising with the Administrator and financial experts to ensure the fair and efficient administration of the Settlement; and

(d) responding to inquiries from Class Members and their lawyers regarding the Settlement.

64. Based on our experience in other cases, we estimate that we will accrue approximately an additional $150,000 in time at our current hourly rates before our work on this matter is completed.

65. In summary, in light of the numerous and substantial risks faced by our firm in the prosecution of this action over the past 13 years, the protracted and complex nature of this proceeding, the result achieved for the class, and the terms of the retainer agreements, the requested fee in the amount of 30% of the class members' recovery, plus HST, plus disbursements of $2,860,317 (inclusive of HST) is fair and reasonable.

SWORN OR AFFIRMED before me at the City of Toronto, in the Province of Ontario, this 5th day of January, 2022

RPodolny

A Commissioner, etc.

Vincent Genova

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT VINCENT GENOVA

(Class Counsel Fee Approval)
(Sworn January 5, 2022)

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Lawyers for the Plaintiffs

RETAINER AGREEMENT

Retainer

I, **Howard Green**, hereby retain and employ the law firm of *Rochon Genova LLP* as my solicitors and hereby authorize them to institute a Class Action pursuant to the *Class Proceedings Act, 1992,* naming me as a representative plaintiff on behalf of a class of persons in Canada who purchased shares and other securities in the Canadian Imperial Bank of Commerce ("CIBC") from May 31, 2007 to December 6, 2007and to take such actions and conduct such proceedings as they may consider necessary or proper for the conduct of the proceeding.

Commitments

1. I understand that this litigation is to be pursued on a contingency basis such that fees and reasonable disbursements with respect to the common issues will be payable only in the event of success in the class proceeding. Fees, reasonable disbursements and GST will not be charged to me unless the litigation is successful.

2. I understand that according to the *Class Proceedings Act, 1992*, "success in a class proceeding" includes:
    a) judgment on the common issues in favour of some or all class members; and
    b) a settlement that benefits one or more class members.

3. I understand that *Rochon Genova LLP* shall be entitled to a legal fee which is a percentage of the total value of any settlement or judgment to the class, over and above any award of court costs, or claim for reasonable disbursements incurred by *Rochon Genova LLP*. I agree that the above percentage will be calculated on a 30% fee of the total value of the amount recovered, or on the basis of a 4 times multiplier of the time spent prosecuting the claim, whichever is higher. I agree that in addition to any legal fee, *Rochon Genova LLP* shall be entitled to recover from any settlement or judgment all reasonable disbursements incurred along with interest which has accrued on such disbursements, and GST.

4. I understand that the total legal fee will vary according to the total value of any settlement or judgment which may result from this litigation. I understand that any such settlement or judgment could vary greatly depending on several factors, including the total number of injured persons in Canada, additional information which comes to light during the course of the litigation, and the nature of any settlement or judgment. By way of illustration only, I understand that in the event a judgment of $30 million was awarded and upheld following any and all appeals, the total legal fee payable to *Rochon Genova LLP* (under the percentage model) would be $7.5 million. I understand that the legal fee could be significantly lower than this amount, or significantly higher than this amount, depending upon the size of the damages to the class. In terms of reasonable disbursements, by way of illustration only, I understand that if the reasonable disbursements are $1 million, then $1 million is payable to *Rochon Genova LLP* from any settlement or judgment in addition to legal fees. I understand that in the event no judgment or settlement results, no legal fees or reasonable disbursements will be payable.

5. I understand that this Retainer Agreement, and any fees awarded pursuant to the Retainer Agreement, shall be subject to approval of the Court, which must be satisfied that the overall fees awarded are fair and reasonable having regard to a number of factors, including the risk of taking the case on a contingency basis, the complexity of the case and the results achieved. I further understand that, in the event the Court awards fees on the basis of a multiplier, the Court has the discretion to fix the base fee and the appropriate multiplier. With respect to the base fee, the *Class Proceedings Act* specifies that the Court shall allow only a reasonable fee in determining a solicitor's base fee.

6. Notwithstanding the foregoing, if I terminate, at my initiative, this Retainer Agreement and/or retain a different solicitor in this class proceeding, I hereby acknowledge that *Rochon Genova LLP* will then render an account for hours worked to date, reasonable disbursements and GST, which account will be paid forthwith by

me, or alternatively, will be the subject of protection of my new counsel, said protection to be satisfactory to *Rochon Genova LLP*. In the event the account is not paid forthwith and is instead protected by my new counsel, it shall be a first charge on any judgment or settlement funds pursuant to s. 32 (3) of the *Class Proceedings Act* and shall rank ahead of any fees and reasonable disbursements chargeable by my new counsel. I shall not be personally liable to pay any account rendered by *Rochon Genova LLP* in the event that I retain new counsel and my new counsel:

a) agrees to protect *Rochon Genova LLP's* account as a first charge on any proceeds; and
b) pursues the matter to judgment, regardless of the outcome.

7. I understand that *Rochon Genova LLP and* will conduct meaningful consultations with the representative plaintiff(s) before accepting any settlement or pursuing an appeal of the trial verdict.

8. I further understand that *Rochon Genova LLP* agree to indemnify and hold me harmless in relation to any costs exposure which may arise by reason of my participation in this class action.

9. I understand that in the event that I, as a representative plaintiff, should die prior to the completion of this matter, it is proposed that my estate continue in my place. In the event that the estate is unable or unwilling to continue as a representative plaintiff, arrangements could be made to substitute another individual or individuals to act as representative plaintiff(s). In the event that the estate is unwilling to continue, then the estate will be liable for the account as detailed in paragraph. If, however, the action is unable to proceed due to the unavailability of a substitute representative plaintiff as described in s. 2(1) and s. 2(2) of the *Class Proceedings Act,* then I will not be liable for an account as detailed in paragraph 6, or any other costs.

Termination of Retainer

10. I further acknowledge and understand that if I terminate, at my initiative, this retainer Agreement and/or retain a different solicitor to pursue my action, that *Rochon Genova LLP* shall retain the class members as clients and remain as solicitors of record for the Class and shall have the right to amend the pleadings to replace me as class representative.

11. This Retainer Agreement replaces any previous Retainer Agreement which I may have executed.

Dated at Thornhill, Ontario this 13TH day of May, 2008.

Witness STEVEN SIEGER

HOWARD GREEN

RETAINER AGREEMENT

Retainer

I, **Anne Bell** hereby retain and employ the law firm of *Rochon Genova LLP* as my solicitors and hereby authorize them to institute a Class Action pursuant to the *Class Proceedings Act, 1992,* naming me as a representative plaintiff on behalf of a class of persons in Canada who purchased shares and other securities in the Canadian Imperial Bank of Commerce ("CIBC") from May 31, 2007 to February 28, 2008 and to take such actions and conduct such proceedings as they may consider necessary or proper for the conduct of the proceeding

Commitments

1 I understand that this litigation is to be pursued on a contingency basis such that fees and reasonable disbursements with respect to the common issues will be payable only in the event of success in the class proceeding. Fees, reasonable disbursements and GST will not be charged to me unless the litigation is successful

2 I understand that according to the *Class Proceedings Act, 1992*, "success in a class proceeding" includes:

a) judgment on the common issues in favour of some or all class members; and

b) a settlement that benefits one or more class members.

3 I understand that *Rochon Genova LLP* shall be entitled to

3. I understand that Rochon Genova LLP shall be entitled to a legal fee which is a percentage of the total value of any settlement or judgment to the class, over and above any award of court costs, or claim for reasonable disbursements incurred by *Rochon Genova LLP*. I agree that the above percentage will be calculated on a 30% fee of the total value of the amount recovered, or on the basis of a 4 times multiplier of the time spent prosecuting the claim, whichever is higher. I agree that in addition to any legal fee, *Rochon Genova LLP* shall be entitled to recover from any settlement or judgment all reasonable disbursements incurred along with interest which has accrued on such disbursements, and GST.

4 I understand that the total legal fee will vary according to the total value of any settlement or judgment which may result from this litigation. I understand that any such settlement or judgment could vary greatly depending on several factors, including the total number of injured persons in Canada, additional information which comes to light during the course of the litigation, and the nature of any settlement or judgment By way of illustration only, I understand that in the event a judgment of $30 million was awarded and upheld following any and all appeals, the total legal fee payable to *Rochon Genova LLP* (under the percentage model) would be $7 5 million. I understand that the legal fee could be significantly lower than this amount, or significantly higher than this amount, depending upon the size of the damages to the class. In terms of reasonable disbursements, by way of illustration only, I understand that if the reasonable disbursements are $1 million, then $1 million is payable to *Rochon Genova LLP* from any settlement or judgment in addition to legal fees I understand that in the event no judgment or settlement results, no legal fees or reasonable disbursements will be payable.

5. I understand that this Retainer Agreement, and any fees awarded pursuant to the Retainer Agreement, shall be subject to approval of the Court, which must be satisfied that the overall fees awarded are fair and reasonable having regard to a number of factors, including the risk of taking the case on a contingency basis, the complexity of the case and the results achieved. I further understand that, in the event the Court awards fees on the basis of a multiplier, the Court has the discretion to fix the base fee and the appropriate multiplier With respect to the base fee, the *Class Proceedings Act* specifies that the Court shall allow only a reasonable fee in determining a solicitor's base fee

6. Notwithstanding the foregoing, if I terminate, at my initiative, this Retainer Agreement and/or retain a different solicitor in this class proceeding, I hereby acknowledge that *Rochon Genova LLP* will then render an account for hours worked to date, reasonable disbursements and GST, which account will be paid forthwith by

me, or alternatively, will be the subject of protection of my new counsel, said protection to be satisfactory to *Rochon Genova LLP* In the event the account is not paid forthwith and is instead protected by my new counsel, it shall be a first charge on any judgment or settlement funds pursuant to s. 32 (3) of the *Class Proceedings Act* and shall rank ahead of any fees and reasonable disbursements chargeable by my new counsel. I shall not be personally liable to pay any account rendered by *Rochon Genova LLP* in the event that I retain new counsel and my new counsel:

a) agrees to protect *Rochon Genova LLP's* account as a first charge on any proceeds; and

b) pursues the matter to judgment, regardless of the outcome.

7. I understand that *Rochon Genova LLP and* will conduct meaningful consultations with the representative plaintiff(s) before accepting any settlement or pursuing an appeal of the trial verdict.

8. I understand that in the event that I, as a representative plaintiff, should die prior to the completion of this matter, it is proposed that my estate continue in my place In the event that the estate is unable or unwilling to continue as a representative plaintiff, arrangements could be made to substitute another individual or individuals to act as representative plaintiff(s). In the event that the estate is unwilling to continue, then the estate will be liable for the account as detailed in paragraph. If, however, the action is unable to proceed due to the unavailability of a substitute representative plaintiff as described in s 2(1) and s 2(2) of the *Class Proceedings Act,* then I will not be liable for an account as detailed in paragraph 6, or any other costs.

Termination of Retainer

9 I further acknowledge and understand that if I terminate, at my initiative, this retainer Agreement and/or retain a different solicitor to pursue my action, that *Rochon Genova LLP* shall retain the class members as clients and remain as solicitors of

record for the Class and shall have the right to amend the pleadings to replace me as class representative.

10. This Retainer Agreement replaces any previous Retainer Agreement which I may have executed

Dated at 10th this day of November, 2008.

Witness

Anne Bell

Court File No. 08-00359335-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HOWARD GREEN and ANNE BELL

Plaintiffs

-and-

CANADIAN IMPERIAL BANK OF COMMERCE, GERALD MCCAUGHEY, TOM WOODS, BRIAN G. SHAW, and KEN KILGOUR

Defendants

Proceeding under the *Class Proceedings Act, 1992*

INDEMNITY

WHEREAS Anne Bell has agreed to act as a representative plaintiff in the above noted action;

AND WHEREAS a representative plaintiff may be exposed to an adverse costs order in the event that the action is unsuccessful through the leave and certification motion, related appeals and at the common issues trial;

THEREFORE *Rochon Genova LLP* hereby agrees as follows:

In the event that the Defendants seek and obtain a costs order against Anne Bell in the above noted action, *Rochon Genova LLP* will indemnify and save harmless Anne Bell in respect of any and all such costs.

Dated at Toronto this 23rd day of March, 2010.

ROCHON GENOVA LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

PLUMBERS & STEAMFITTERS LOCAL 773 PENSION FUND, *Individually and on Behalf of All Others Similarly Situated*,

Plaintiff,

-against-

CANADIAN IMPERIAL BANK OF COMMERCE, GERALD McCAUGHEY, THOMAS D. WOODS, BRIAN G. SHAW, and KEN KILGOUR,

Defendants.

----------X

08 Civ. 8143 (WHP)

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, District Judge:

Lead Plaintiff Plumbers & Steamfitters Local 773 Pension Fund (the "Pension Fund" or "Plaintiff") brings this putative securities class action lawsuit against Defendant Canadian Imperial Bank of Commerce ("CIBC") and four of its officers, Gerald McCaughey ("McCaughey"), Thomas D. Woods ("Woods"), Brian G. Shaw ("Shaw"), and Ken Kilgour ("Kilgour" and collectively the "Individual Defendants"), alleging that the Defendants misled investors about CIBC's exposure to fixed-income securities backed by subprime residential mortgages. The Pension Fund asserts that Defendants' false statements and omissions caused injury in violation of Sections 10(b), 15 U.S.C. § 78j(b), and 20(a), 15 U.S.C. § 78t(a), of the Securities Exchange Act of 1934 (the "Exchange Act"). Defendants move to dismiss the Consolidated Class Action Complaint (the "Complaint") pursuant to Fed. R. Civ. P. 12(b)(6). For the following reasons, Defendants' motion is granted.

BACKGROUND

I. The Parties

The Pension Fund seeks to represent a class of all purchasers of CIBC securities on the New York Stock Exchange (the "NYSE") as well as U.S. persons who otherwise acquired a CIBC security between May 31, 2007 and May 29, 2008 (the "Class Period") and were damaged thereby. (Consolidated Class Action Complaint dated Feb. 20, 2009 ("Compl.") ¶¶ 1, 32.) Plaintiff purchased CIBC common stock during the Class Period. (Compl. ¶ 19.)

CIBC is a chartered Canadian bank whose securities are traded under the symbol "CM" on the NYSE and the Toronto Stock Exchange. (Compl. ¶ 20.) From August 2005 until the present, Defendant McCaughey has served as President and Chief Executive Officer ("CEO") of CIBC. (Compl. ¶ 21.) Defendant Woods was Senior Executive Vice-President and Chief Financial Officer ("CFO") during the Class Period before being reassigned in January 2008 to Chief Risk Officer. (Compl. ¶¶ 22, 208.) Defendant Shaw was Senior Executive Vice President and Chairman and CEO of CIBC World Markets, the company's investment banking arm. (Compl. ¶¶ 23, 72.) Defendant Kilgour was Senior Executive Vice-President and Chief Risk Officer. (Compl. ¶ 24.) Since the Class Period, CIBC has terminated Kilgour and Shaw. (Compl. ¶¶ 23-24.)

By virtue of their senior positions within the company, all of the Individual Defendants had access to the confidential and sensitive business information of CIBC. (Compl. ¶ 26.) Moreover, Plaintiff alleges that each of the Individual Defendants participated in and exercised some control over the drafting, preparation, and approval of various public,

shareholder, and investment reports and had access to undisclosed adverse information harmful to CIBC. (Compl. ¶¶ 28-31.)

II. Mortgage-Backed Securities

Plaintiff alleges that Defendants "immersed" CIBC in the U.S. mortgage-backed securities market and then misled CIBC investors about the company's holdings as the value of those assets plummeted. (Compl. ¶ 38.) In the late 1990s, mortgage interest rates in the United States declined, leading to increased demand for homes and a corresponding run-up in home prices. (Compl. ¶ 41.) Aggressive and "oftentimes predatory" lenders extended credit to so-called "sub-prime" borrowers—i.e., persons with a high debt-to-income ratio. (Compl. ¶¶ 41, 44.)

By 2005, the increase in housing prices began to abate as interest rates increased. (Compl. ¶ 42.) To sustain a high volume of new mortgages, lenders offered "adjustable rate" plans to borrowers. (Compl. ¶ 42.) Lenders also extended "no income/no asset verification" loans for which borrowers were not required to substantiate their creditworthiness. (Compl. ¶ 45.) Such loans were classified as "non-prime" or "Alt-A" mortgages. (Compl. ¶ 45.)

These individual home loans were sold by the banks issuing them to third parties who then securitized the assets. (Compl. ¶ 40.) Mortgage securitization is the pooling of thousands of loans to form the collateral for so-called residential mortgage-backed securities ("RMBS"). (Compl. ¶ 46.) RMBSs are issued as bonds in tranches ranging from "High Grade" (AAA- and AA-rated bonds) to "Mezzanine" (BBB- to B-rated bonds) to unrated. (Compl. ¶¶ 47-48.) When income is generated from the underlying home loans, it is paid over to the

tranches according to bond seniority (High Grade being first). (Compl. ¶¶ 47-48.) If borrowers default on home loans and the amount of income generated by the pool of loans decreases, the lowest-rated tranches are the first not to receive payments. (Compl. ¶ 48.)

RMBSs can themselves be pooled for inclusion in a category of securitization known as a collateralized debt obligation ("CDO"). (Compl. ¶ 52.) CDOs are issued and rated in a manner similar to RMBSs, that is, by the priority of payments from the underlying collateral. (Compl. ¶ 52.) To protect, or "hedge," against default of an RMBS or CDO, the holder may purchase insurance known as a credit-default swap ("CDS"), through which the holder pays a counterparty to assume the risk of default. (Compl. ¶ 63.)

III. CIBC's Mortgage-Backed Securities

In 2005, two years before the Class Period began, the first signs of a deteriorating U.S. housing market emerged—American home values declined, interest rates rose, and the mortgage default rate increased. (Compl. ¶¶ 85-86, 100.) As defaults rose, the revenue streams feeding RMBSs and, in turn, CDOs dried up. (Compl. ¶¶ 87, 99.) Plaintiff alleges that the impairment in the value of mortgage-backed securities was widely known because the decline was tracked by the ABX Index, an exchange for these securities, and was reported in the press. (Compl. ¶¶ 89, 98-99, 103-112.) By April 2007, press reports indicated that some of the $450 billion in subprime mortgage debt sold in 2006 had lost 37 percent of its value. (Compl. ¶ 111.)

By the beginning of the Class Period, CIBC had accumulated $11.5 billion in assets collateralized by subprime mortgage loans. (Compl. ¶¶ 73, 115.) Of that total, $9.8

billion was hedged. (Compl. ¶ 74.) CIBC hedged $3.5 billion through one counterparty known as ACA Financial Guaranty Corporation ("ACA Financial"). (Compl. ¶¶ 10, 74.)

The gravamen of this litigation is that CIBC, as owner of these securities in the midst of a U.S. mortgage crisis, misled investors about the firm's mortgage-backed holdings and its relationship with ACA Financial. (Compl. ¶¶ 113, 116.)

IV. The Alleged False Statements and Omissions

a. May 2007 Release and Conference Call

On May 31, 2007—the start of the Class Period—CIBC issued a press release, incorporated into a Form 6-K filed with the SEC, regarding its second quarter 2007 financial results (the "Second Quarter 2007 Release"). (Compl. ¶ 128.) The Second Quarter 2007 Release did not specifically address the U.S. mortgage crisis but referred to pages 67 through 69 of the 2006 Annual Accountability Report (the "2006 Accountability Report") for off-balance sheet arrangements, which included the company's CDO exposure. (Compl. ¶ 131.) In the 2006 Accountability Report, CIBC stated, "Although actual losses are not expected to be material, as of October 31, 2006, our maximum exposure to loss as a result of involvement with the CDOs was approximately $729 million." (Compl. ¶ 132.) Plaintiff alleges that this reference and the statement that "there were no other significant changes to off-balance sheet arrangements for the three and six months ended April 30, 2007" constituted "blatantly false and misleading" representations because CIBC's actual exposure to the U.S. real estate market was almost $12 billion. (Compl. ¶ 133.) Moreover, Plaintiff alleges that CIBC should have written down $2.15 billion of its mortgage-backed portfolio as of its Second Quarter 2007 Release. (Compl. ¶ 134.)

During a conference call on May 31, 2007 (the "May 31 Conference Call"), analysts pressed McCaughey and Shaw on CIBC's purchase of a $330 million mezzanine CDO known as Tricadia, which was a particularly poorly-performing subprime asset. (Compl. ¶ 137.) One analyst inquired whether CIBC had "other exposures" like Tricadia. (Compl. ¶ 137.) Shaw responded about the "total exposure" faced by CIBC as follows:

> I guess I would probably say to the extent we have exposure in this space it tends to be more synthetic than direct CDO exposure. We don't see this as a major revenue contributor currently to CIBC . . . I guess I would just conclude by saying in summary our risks in this space is [sic] not at all major.

(Compl. ¶ 137.) Neither McCaughey nor Shaw stated CIBC's total RMBS or CDO exposure during the May 31 Conference Call. (Compl. ¶¶ 138-140.)

b. July 2007 Press Release

On June 15, 2007, Grant's Interest Rate Observer published an article about subprime mortgages which questioned CIBC's total exposure to such assets and speculated that it might be $2.6 billion. (Compl. ¶ 145.) The article also wondered whether CIBC had additional Tricadia-like holdings and questioned the accuracy of Shaw's statement in the May 31 Conference Call that CIBC faced low risks with its mezzanine CDOs. (Compl. ¶ 145.) On July 10, 2007, CIBC responded to the speculation in the press by stating that "CIBC does not disclose individual securities positions but confirms its previous statement to the media that its unhedged exposure to this sector is well below U.S. $2.6 billion" (the "July 10 Press Release"). (Compl. ¶ 146.) Plaintiff alleges the July 10 Press Release was materially false and misleading for failing to disclose CIBC's true exposure of almost $12 billion and that its hedges on such exposure were guaranteed by financially unstable counterparties. (Compl. ¶ 147.)

c. August 2007 Pre-Release, Release, and Conference Call

On August 13, 2007, CIBC pre-announced its third quarter 2007 financial results (the "Third Quarter 2007 Pre-Release"). (Compl. ¶ 157.) CIBC stated it expected to report "good revenue, expense and loan performance in most business groups, as well as higher than normal gains on securities and credit derivative hedges" in its third quarter 2007 financial results at the month's end. (Compl. ¶ 157.) The Third Quarter 2007 Pre-Release further detailed that CIBC expected mark-to-market write-downs on approximately $290 million of its structured credit business related to CDO and RMBS losses in the U.S. mortgage market. (Compl. ¶ 157.) The release also quoted McCaughey as asserting, "We had positive financial results in many areas which more than offset the Structured Credit write-downs." (Compl. ¶ 157.) CIBC further revealed its unhedged position in securities tied to U.S. mortgages:

> CIBC's exposure to [the U.S. residential mortgage market] before write downs is approximately US $1.7 billion (excluding exposure directly hedged with other counterparties). . . . CIBC estimates that less than 60% of this exposure relates to underlying subprime mortgages, while the remainder is midprime and higher grade assets. The majority of the US $1.7 billion exposure continues to be AAA-rated, the highest rating category.

(Compl. ¶¶ 158-59.)

However, from June to August 2007, shares of ACA Financial, CIBC's hedge for $3.5 billion in securities, fell from $15.00 to $5.17 per share. (Compl. ¶ 148.) On August 4, 2007, one industry publication forecasted the financial demise of ACA Financial as well as "devastating" financial consequences for companies and banks guaranteeing securities through that firm. (Compl. ¶ 149.) Plaintiff alleges the Third Quarter 2007 Pre-Release was false and misleading for not disclosing the additional $9.8 billion in hedged exposure as well as

information regarding ACA Financial's decline. Further, Plaintiff asserts "CIBC should have recorded a cumulative write-down of $5.65 billion . . . instead of the $290 million write-down reported." (Compl. ¶¶ 160-61.)

On August 30, 2007, CIBC announced its third quarter 2007 financial results, which were later incorporated into the company's Form 6-K (the "Third Quarter 2007 Release"). (Compl. ¶ 165.) The Third Quarter 2007 Release contained the same information as the pre-release regarding CIBC's exposure to the U.S. real estate market. (Compl. ¶¶ 166-67.) However, it also referenced off-balance sheet arrangements described in the 2006 Accountability Report. (Compl. ¶ 168.) During an earnings conference call that day (the "August 30 Conference Call"), Kilgour, Woods, and Shaw all made reference to the Third Quarter 2007 Release, and Woods represented that the firm was undertaking a "rigorous" review of the firm's mortgage-backed portfolio. (Compl. ¶ 173.) Later that day, Woods appeared on the Business News Network and characterized CIBC's portfolio as follows: "When the residential real estate market in the U.S. started to decline in June—July, we upped our efforts at looking at all of the CDO books. We have very low exposure right now." (Compl. ¶ 175.)

d. November 2007 Conference Call and Press Release

In a November 5, 2007 earnings conference call (the "November 5 Conference Call"), CFO Woods responded to an analyst's question about the quality of its RMBS and CDO hedges as follows: "We have provided a fair bit of detail on the unhedged positions, the hedges we have good counterparties [sic], and we are not going to go any further than that." (Compl. ¶ 180.) In autumn 2007, stories about the deteriorating financial condition of ACA Financial began to appear in the press. (Compl. ¶ 178.) At least one reporter predicted that ACA Financial

would file for bankruptcy. (Compl. ¶ 178.) Plaintiff alleges that Woods' representation regarding "good counterparties" was materially misleading in light of CIBC's extensive exposure to ACA Financial. (Compl. ¶ 181.)

Four days later, CIBC issued a press release announcing that it expected an additional write-down of $463 million for the fourth quarter relating to exposure in the U.S. real estate market (the "November 9 Release"). (Compl. ¶ 182.) Plaintiff alleges this release was false and misleading because it understated the true impairment of the company's mortgage-backed portfolio. (Compl. ¶ 183.)

e. December 2007 Release

On December 6, 2007, CIBC announced its fourth quarter results and revealed its hedged exposure to the U.S. housing market (the "Fourth Quarter 2007 Pre-Release"). (Compl. ¶ 184.) The Fourth Quarter 2007 Pre-Release stated:

> In addition, we have exposures to the U.S. subprime residential mortgage market through derivative contracts which are hedged with investment-grade counterparties. As of October 31, 2007, the notional amount of these hedged contracts was $9.3 billion and the related on-balance sheet fair value was $4.0 billion."

(Compl. ¶ 184.) In an analyst conference call (the "December 6 Conference Call"), McCaughey disclosed that 35 percent of the hedged exposure was with an "A-rated financial guarantor that has recently been placed on credit watch." (Compl. ¶ 187.) CIBC did not reveal that the guarantor was ACA Financial. (Compl. ¶ 188.) Analysts responded that the quality of the hedges on the debt was "much weaker than . . . anticipated." (Compl. ¶ 192.) CIBC shares fell 8.4 percent over the next two trading days. (Compl. ¶ 193.)

f. ACA Financial's Bankruptcy and CIBC's Write-Downs

On December 13, 2007, the NYSE announced that it would suspend trading of ACA Financial common stock before the market opened on December 18, 2007. (Compl. ¶ 198.) Because the market was freighted with speculation that ACA Financial was the unnamed insurer, Plaintiff alleges the NYSE announcement caused CIBC's shares to fall another 3.9 percent on December 14. (Compl. ¶¶ 198-99.) On December 17, an analyst downgraded CIBC from "stable" to "negative," precipitating a further 2.5 percent drop in share price. (Compl. ¶¶ 200-01.) On December 19, ACA Financial announced it was bankrupt. (Compl. ¶ 202.) That day, CIBC disclosed that ACA Financial was the unnamed hedge counterparty for $3.5 billion of its U.S. subprime real estate exposure and stated its belief that "there is a reasonably high probability that [CIBC] will incur a large charge in its financial results for the First Quarter ending January 31, 2008" (the "December 19 Release"). (Compl. ¶ 204.) CIBC's shares fell 2.5 percent following the December 19 Release. (Compl. ¶ 207.)

From January 2008 through the end of the Class Period on May 29, 2008, CIBC announced three separate write-downs related to the U.S. subprime mortgage market. (Compl. ¶¶ 210-226.) First, on January 14, 2008, the company issued a release detailing its write-down of $462 million of its unhedged mortgage-backed portfolio as well as a "fair value adjustment" of $2 billion to its hedged portfolio (the "January 14 Release"). (Compl. ¶ 210.) The January 14 Release further stated that "no additional material fair value adjustments are currently contemplated." (Compl. ¶ 211.) Plaintiff alleges the January 14 Release continued to mislead investors by "materially understat[ing] the impairment of CIBC's structured securities portfolio." (Compl. ¶ 212.) On February 28, 2008, CIBC announced its first quarter 2008 financial results,

describing write-downs totaling $3.379 billion attributable to its subprime mortgage investments (the "First Quarter 2008 Release"). (Compl. ¶¶ 216-17, 220.) On May 29, 2008, the last day of the Class Period, CIBC reported its second quarter 2008 financial results and disclosed an additional $2.48 billion write-down (the "Second Quarter 2008 Release"). (Compl. ¶ 225.) CIBC shares closed at $70.20, an approximate 20 percent decline from the start of the Class Period. (Compl. ¶¶ 214, 225-26.)

g. Value at Risk Misrepresentation

Plaintiff also alleges that CIBC misrepresented its measurement and management of risk using a key metric known as the "Value-at-Risk" ("VaR") indicator.[1] (Compl. ¶¶ 117-19.) The Complaint contrasts the "miniscule size" of CIBC's VaR metric with figures from other financial institutions having significant RMBS exposure. Plaintiff alleges this disparity indicates CIBC's intent to mislead investors. (Compl. ¶ 121.) For example, CIBC's mortgage-backed portfolio was one-third as large as those of comparable financial institutions. Therefore, Plaintiff alleges, its VaR should have approximated one-third of other banks' VaRs. (Compl. ¶ 121.) Instead, CIBC's VaR figures were between 1/50 and 1/100 the magnitude of other firms. (Compl. ¶ 121.) The alleged misrepresentation occurred, in part, because CIBC based its VaR projections on overly optimistic bond default rates leading CIBC to understate its risk. (Compl. ¶ 122.)

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[1] "Value at risk" describes a general class of probabilistic models that measure the risk of loss in market risk sensitive instruments. These models measure the potential loss that could occur in normal markets, over a defined period, within a certain confidence level. VaR can measure the uncorrelated risks of single transactions or the correlated risks of several different exposures in a portfolio. See U.S. Sec. & Exchange Comm'n, "Market Risk Disclosure FAQ," http://www.sec.gov/divisions/corpfin/guidance/derivfaq.htm (last visited Mar. 16, 2010).

h. Defendants' Alleged State of Mind

Plaintiff premises its allegations on Defendants' knowledge or reckless disregard of internal CIBC documents and records controverting their public statements. (Compl. ¶ 227.) Further, Plaintiff alleges that Shaw, as head of CIBC World Markets, knew or should have known that CIBC's statements were false because "[s]ecurities and other instruments tied to subprime were core products, and a large revenue generators [sic], for CIBC World Markets." (Compl. ¶¶ 228-29.) According to Canadian newspaper reports, "from no later than mid-June 2007, McCaughey became an expert on the subject of CIBC's activities related to structured finance instruments and CIBC's exposure to the subprime market," and thus knew or should have known of the deteriorating market situation. (Compl. ¶ 230.) Plaintiff also alleges that Defendants' discussion of CIBC's subprime exposure, risk levels, and counterparty protection during the Class Period suggests they knew or should have known the company's statements on those topics were false and misleading. (Compl. ¶ 231.) Plaintiff maintains the Statements of Financial Accounting Standards ("SFAS") Nos. 94 and 115 and Generally Accepted Accounting Principles (the "GAAP") required CIBC to write-down the value of the mortgage-backed securities earlier than it did. (Compl. ¶¶ 127, 233.)

DISCUSSION

I. Legal Standard

In reviewing a motion to dismiss, this Court accepts all material facts alleged in the complaint as true and construes all reasonable inferences in the plaintiff's favor. ECA Local 134 IBEW Joint Pension Trust Fund of Chicago v. JP Morgan Chase Co., 553 F.3d 187, 196 (2d Cir. 2009); Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital, Inc., 531 F.3d 190, 194 (2d Cir. 2008). Nonetheless, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citation omitted). To survive a motion to dismiss, the Court must find that the claim is more than mere suspicion, but rather rests on "factual allegations sufficient to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). "Determining whether a complaint states a plausible claim for relief will . . . be a context specific task that requires the reviewing court to draw on its judicial experience and common sense." South Cherry St. LLC v. Hennessee Group LLC, 573 F.3d 98, 110 (2d Cir. 2009) (quoting Iqbal, 129 S. Ct. at 1953) (internal quotations omitted). In assessing whether the standard is met, a court may consider "any written instrument attached to the complaint, statements or documents incorporated into the complaint by reference, legally required public disclosure documents filed with the SEC, and documents possessed by or known to the plaintiff

and upon which it relied in bringing the suit." ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007) (citation omitted); see also Allen v. WestPoint-Pepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991).[2]

II. Section 10(b) and Rule 10b-5 Claim

To state a claim for misrepresentation under Section 10(b) and Rule 10b-5, a plaintiff must allege that each defendant "(1) made misstatements or omissions of material fact, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) upon which the plaintiff relied, and (5) that the plaintiff's reliance was the proximate cause of its injury." ATSI Commc'ns, 493 F.3d at 105 (citing Lentell v. Merrill Lynch & Co., 396 F.3d 161, 172 (2d Cir. 2005)); see also Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 318, 321 (2007). A securities fraud complaint must further comply with the heightened pleading standard of Fed. R. Civ. P. 9(b), which requires that "the circumstances constituting fraud . . . shall be stated with particularity." See Novak v. Kasaks, 216 F.3d 300, 306 (2d Cir. 2000). Thus, "[a] plaintiff

[2] Plaintiff moves to strike twenty-one exhibits, internet sources, and news articles referenced in Defendants' motion to dismiss which were not referenced in the Complaint. On a motion to dismiss, a court is generally confined to considering the complaint, documents incorporated in the complaint, and matters of which the court may take judicial notice. See Roth v. Jennings, 489 F.3d 499, 509 (2d Cir. 2007). The Court has reviewed the Defendants' supplemental documents and declines to consider them except to the limited extent that they inform the competing inference analysis required by Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323-24 (2007) ("The strength of an inference cannot be decided in a vacuum. . . . To determine whether the plaintiff has alleged facts that give rise to the requisite 'strong inference' of scienter, a court must consider plausible nonculpable explanations for the defendant's conduct."); see also In re Merrill Lynch & Co. Research Reports Sec. Litig., 289 F. Supp. 2d 416, 421 n.6 (S.D.N.Y. 2003) (Pollack, J.) ("The Court may take judicial notice of the existence of the internet bubble and its subsequent crash." (citations omitted)).

cannot base securities fraud claims on speculation and conclusory allegations." Kalnit v. Eicher, 264 F.3d 131, 142 (2d Cir. 2001).

A well-pled scienter allegation "state[s] with particularity facts giving rise to a strong inference" that the defendants had "'a mental state embracing [the] intent to deceive, manipulate, or defraud.'" Tellabs, 551 U.S. at 319 (quoting Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976)); see also South Cherry, 573 F.3d at 108 (adopting the Court's language in Tellabs); Teamsters, 531 F.3d at 194. In addition, "the scienter element can be satisfied by a strong showing of reckless disregard for the truth." South Cherry, 573 F.3d at 109 (citations omitted). A reckless disregard for the truth means "conscious recklessness—i.e., a state of mind approximating actual intent, and not merely a heightened form of negligence." South Cherry, 573 F.3d at 109 (citing Novak, 216 F.3d at 312) (emphasis in original). Like any allegation of recklessness in tort, the plaintiff need only identify conduct that is "highly unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." South Cherry, 573 F.3d at 109 (citing In re Carter-Wallace, Inc. Sec. Litig., 220 F.3d 36, 39 (2d Cir. 2000)) (quotation marks omitted).

There are four kinds of deceitful behavior that, if well-pled, support a "strong inference" of scienter: where the defendants: (1) benefited in a concrete and personal way from the purported fraud; (2) engaged in deliberately illegal behavior; (3) knew facts or had access to information suggesting that their public statements were not accurate; or (4) failed to check information they had a duty to monitor. See Novak, 216 F.3d at 311. However, "it is not sufficient to allege goals that are 'possessed by virtually all corporate insiders,' such as the desire

to maintain a high credit rating for the corporation or otherwise sustain the appearance of corporate profitability or the success of an investment, or the desire to maintain a high stock price in order to increase executive compensation." South Cherry, 573 F.3d at 109 (citing Novak, 216 F.3d at 308); see also San Leandro Emergency Med. Group Profit Sharing Plan v. Phillip Morris Cos., 75 F.3d 801, 814 (2d Cir. 1996) ("if scienter could be pleaded on that basis alone, virtually every company . . . that experiences a downturn in stock price could be forced to defend securities fraud actions"). Likewise, even an "egregious failure to gather information will not establish . . . liability as long as the defendants did not deliberately shut their eyes to the facts." Hart v. Internet Wire, Inc., 145 F. Supp. 2d 360, 368-69 (S.D.N.Y. 2001) (Pollack, J.) (internal quotation marks and citations omitted).

Moreover, the determination of an inference of scienter must not be conducted "in a vacuum." Tellabs, 551 U.S. at 324. A court "must consider plausible nonculpable explanations for the defendant's conduct." Tellabs, 551 U.S. at 324; ATSI Comm'cns, 493 F.3d at 99. In comparing competing explanations two adversaries offer for an event, the "complaint will survive . . . only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." Tellabs, 551 U.S. at 324 (distinguishing the balancing of inferences in a securities fraud claim with a motion for summary judgment under Rule 56) (emphasis added); South Cherry, 573 F.3d at 111 (applying the "competing inference" principles); Teamsters Local 445, 531 F.3d at 194; ATSI Comm'cns, 493 F.3d at 99.

a. Defendants' Public Statements

The Complaint makes specific allegations of misrepresentation with respect to at least fourteen statements or press releases made by Defendants during the class period: (1) the Second Quarter 2007 Release, (2) the May 31 Conference Call, (3) the July 10 Release, (4) the Third Quarter 2007 Pre-Release, (5) the Third Quarter 2007 Release, (6) the August 30 Conference Call, (7) the Business News Network Statements, (8) the November 5 Conference Call, (9) the November 9 Release, (10) the Fourth Quarter 2007 Pre-Release, (11) the December 6 Conference Call, (12) the January 14 Release, (13) the First Quarter 2008 Release, and (14) the Second Quarter 2008 Release. Plaintiff also alleges misrepresentation in the VaR measurement over the entirety of the Class Period.

Reviewing the entirety of the Complaint, there is no allegation that any Defendant benefited in "a concrete and personal" way from the purported fraud. See Novak, 216 F.3d at 311. Rather, the Complaint incorporates news releases which show that CIBC purchased approximately $300 million of its own stock during the Class Period. Moreover, three of the four Individual Defendants also increased their holdings of CIBC stock during the Class Period. See In re Bristol-Myers Squibb Sec. Litig., 312 F. Supp. 2d 549, 561 (S.D.N.Y. 2004) (defendants' increase in company holdings during class period was "wholly inconsistent with fraudulent intent"). Indeed, the Defendants did not sell their stock just prior to a price drop—a fact suggesting the absence of any nefarious motives. See In re Oxford Health Plans Inc. Sec. Litig., 187 F.R.D. 133, 139 (S.D.N.Y. 1999) ("Trades made a short time before a negative public announcement are suspiciously timed."); see also Acito v. IMCERA Group, Inc., 47 F.3d 47, 53-54 (2d Cir. 1995). It is nonsensical to impute dishonest motives to the Individual Defendants

when each of them suffered significant losses in their stock holdings and executive compensation. See Kalnit, 264 F.3d at 140-41. Because Plaintiff has not alleged that the Defendants had any "motive and opportunity to commit fraud," Shields v. Citytrust Bancorp, Inc., 25 F.3d 1124, 1128 (2d Cir. 1994), and the Complaint makes no allegations of deliberately illegal behavior by the Defendants, this Court turns to the third and fourth Novak categories regarding recklessness.

An inference of scienter may arise where the defendants "knew facts or had access to information suggesting that their public statements were not accurate . . . or . . . failed to check information they had a duty to monitor." Novak, 216 F.3d at 311. To make this showing, a complaint "must specifically identify the reports or statements" that are contradictory to the statements made. Novak, 216 F.3d at 309 (citing San Leandro, 75 F.3d at 812 (finding an unsupported allegation about the existence of a contrary sales report "insufficient to survive a motion to dismiss")) (emphasis added); see also Teamsters Local 445, 531 F.3d at 196 (requiring a "high degree" of specificity).

Notably, the Complaint makes no reference to internal CIBC documents or confidential sources discrediting Defendants' assertions that they were only adapting to a "rapidly changing economic landscape" during a "once-in-a-century credit tsunami." Further, this Court notes that this action is not the first dispute to arise from the subprime mortgage crisis. See In re 2007 Novastar Fin. Inc., Sec. Litig., 579 F.3d 878 (8th Cir. 2009); Kuriakose v. Fed. Home Loan Mortgage Co., --- F. Supp. 2d ----, 2009 WL 4609591 (S.D.N.Y. Dec. 7, 2009) (alleged misrepresentation to investors about the soundness of the company's mortgage portfolio during subprime mortgage crisis); Landmen Partners Inc. v. Blackstone Group, L.P., 659 F.

Supp. 2d 532 (S.D.N.Y. 2009) (failure to disclose adverse information about significant exposure to subprime mortgage market). Plaintiffs should, but do not, provide specific instances in which Defendants received information that was contrary to their public declarations. See In re Oxford Health Plans, 187 F.R.D. at 139 (finding (1) a verbal report from one defendant to another, (2) evidence of an emergency meeting to address the problem, (3) a report from an outside vendor regarding the problem, and (4) access to reports that the company's internal controls and accounting were not followed as factual grounds on which defendants' scienter could be inferred).

Plaintiff alleges perfunctorily that Defendants received information contradicting their public statements because they held management roles and monitored CIBC financial reports. However, that "broad reference to raw data" is not sufficient. See Steinberg v. Ericsson LM Telephone Co., No. 07 Civ. 9615 (RPP), 2008 WL 5170640, at *13-14 (S.D.N.Y. Dec. 10, 2008) ("[T]he Complaint identifies none of this adverse information other than stating, generically, that it was contained in various 'internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof, and via reports' and 'internal non-public reports' provided to Defendants."). Plaintiff has not "specifically identified any reports or statements" or any dates or time frame in which Defendants were put on notice of contradictory information. Teamsters Local 445, 531 F.3d at 196 (citation omitted); In re PXRE Group Ltd. Sec. Litig., 600 F. Supp. 2d 510, 539 (S.D.N.Y 2009). Likewise, Plaintiff's contention that Shaw, as Chairman and CEO of CIBC World Markets, received contradictory information because he "was ultimately in charge of all CIBC's activities related to subprime exposure" is too general an

allegation from which to conclude Shaw had actionable data alerting him to the falsity of his statements. Courts in this Circuit have long held that accusations founded on nothing more than a defendant's corporate position are entitled to no weight. See In re Sotheby's Holdings, Inc., No. 00 Civ. 1041 (DLC), 2000 WL 1234601, at *7 (S.D.N.Y. Aug. 31, 2000) ("It is well established that boilerplate allegations that defendants knew or should have known of fraudulent conduct based solely on their board membership or executive positions are insufficient to plead scienter." (citations omitted)).

Even assuming these events put Defendants on notice of the subprime credit crisis as early as May 2007, knowledge of a general economic trend does not equate to harboring a mental state to deceive, manipulate, or defraud. See In re PXRE Group, 600 F. Supp. 2d at 540 ("it does not follow that the resultant generalized awareness of . . . 'concerns' made it reckless for the Individual Defendants to rely on the prepared loss estimate reports").

Despite opportunistic rummaging through press releases and internal company documents, Plaintiff buttresses its allegation only with citations to newspaper and magazine articles and the website The Motley Fool, http://www.fool.com. Although a plaintiff may use such sources in pleadings, "the news articles cited still must indicate particularized facts about a defendant's conduct in order to support [the] claims." Miller v. Lazard, Ltd., 473 F. Supp. 2d 571, 586 (S.D.N.Y. 2004). With just one exception, the media reports on which Plaintiff relies provide only generalized forecasting and speculation about a looming subprime crisis.

The June 15, 2007 Grant's Interest Rate Observer article stands alone in reporting particularized facts about the Tricadia investment and CIBC's exposure to mezzanine CDOs. Yet CIBC responded to that article in its July 10 Release, stating that its unhedged investments

were less than the reported $2.6 billion. Moreover, the Complaint acknowledges that CIBC's actual unhedged exposure was only $1.7 billion. See Compl. ¶ 115. Thus, Plaintiff offers no specific facts on which to infer an intent to deceive through the July 10 Release. Nor does Plaintiff identify any obligation requiring Defendants to make a complete disclosure of all CIBC's mortgage-backed holdings.

More broadly, Defendants were not obligated to respond to every potentially disparaging news story or to rebut the musings of the financial press. See In re Omnicom Group, Inc. Sec. Litig., --- F.3d ----, 2010 WL 774311, at *11 (2d Cir. Mar. 9, 2010) ("Firms are not required by the securities laws to speculate about distant, ambiguous, and perhaps idiosyncratic reactions by the press or even by directors."); Hershfang v. Citicorp, 767 F. Supp. 1251, 1259 (S.D.N.Y. 1991) ("Plaintiffs have stitched together a patchwork of newspaper clippings and proclaimed the result a tale of securities fraud. . . . Read as a whole, the complaint creates the strong impression that when [the defendant] announced a cut in dividends, plaintiff's counsel simply stepped to the nearest computer console, conducted a global Nexis search, [and] pressed the 'Print' button."). The securities laws do not require—and good business practice does not suggest—that financial institutions respond to every warble of the 24-hour news cycle.

Plaintiff also seeks to engraft a conscious intent to mislead onto the erroneous quantitative prediction—the VaR. That effort is unavailing. Even assuming the VaR metric was neither forward-looking nor accompanied by appropriate cautionary language, Plaintiff cannot show the VaR calculations were both objectively and subjectively false. See In re Salomon Smith Analyst Level 3 Litig., 373 F. Supp. 2d 248, 251 (S.D.N.Y. 2005) ("The Court rejects plaintiffs' characterization of valuation models as 'fact' rather than 'opinion.'"). Adopting

Plaintiff's calculus, CIBC's VaR metric was objectively inaccurate, but Plaintiffs do not allege that Defendants knew of the error and used it to mislead others. One cannot reasonably conclude that, because the VaR calculations were mistaken, Defendants had the subjective intent to defraud.

Under the Tellabs "comparative" inquiry, the inference Plaintiff asks this Court to draw from CIBC's statements must be considered against "cogent" and "compelling" alternative explanations for a deficiency. See 551 U.S. at 323-24. The Complaint describes an unprecedented paralysis of the credit market and a global recession. Major financial institutions like Bear Stearns, Merrill Lynch, and Lehman Brothers imploded as a consequence of the financial dislocation. Looking back, a full turn of the wheel would have been appropriate. That CIBC chose an incremental measured response, while erroneous in hindsight, is as plausible an explanation for the losses as an inference of fraud. See In re PXRE Group, 600 F. Supp. 2d at 546. CIBC, like so many other institutions, could not have been expected to anticipate the crisis with the accuracy Plaintiff enjoys in hindsight—"[t]aking the time necessary to get things right is both proper and lawful." Higginbotham v. Baxter Int'l, Inc., 495 F.3d 753, 761 (7th Cir. 2007) ("Managers cannot tell lies but are entitled to investigate for a reasonable time, until they have a full story to reveal."); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1430-31 (3d Cir. 1997) (Alito, J.).

b. Write-Downs on CIBC's Mortgage-Backed Holdings

Plaintiff also alleges that Defendants intentionally or recklessly failed to take timely write-downs on CIBC's mortgage-backed securities. The Complaint asserts that CIBC should have recorded much larger write-downs earlier than it did. Because the securities laws do

not allow fraud by hindsight claims, after-the-fact "allegations that statements in one report should have been made in earlier reports do not make out a claim of securities fraud." Acito, 47 F.3d at 53; Denny v. Barber, 576 F.2d 465, 470 (2d Cir. 1978). "If all that is involved is a dispute about the timing of the writeoff . . . we do not have fraud; we may not even have negligence." DiLeo v. Ernst & Young, 901 F.2d 624, 627 (7th Cir. 1990). Rather, the inquiry remains framed by the recklessness standard—that is, whether the failure to take a write-down amounted to "highly unreasonable [conduct] which represents an extreme departure from the standards of ordinary care." South Cherry, 573 F.3d at 109 (citing In re Carter-Wallace, Inc. Sec. Litig., 220 F.3d 36, 39 (2d Cir. 2000)) (quotation marks omitted); see also Kriendler v. Chem. Waste Mgmt., Inc., 877 F. Supp. 1140, 1153 (N.D. Ill. 1995) ("[T]he standard is whether the need to write-down . . . was 'so apparent' to [the defendant] before the announcement, that a failure to take an earlier write-down amounts to fraud." (quotation marks omitted)).

As with Defendants' alleged misstatements, the Complaint is bereft of factual allegations from which a reader could infer Defendants intentionally or recklessly failed to take write-downs on U.S. mortgage-backed securities. Because the "size of an alleged fraud alone does not create an inference of scienter," Plaintiff's repeated allegation concerning the magnitude of the write-downs is insufficient to plead scienter. In re PXRE Group, 600 F. Supp. 2d at 545 (quoting In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 21488087, at *7 (S.D.N.Y. June 25, 2003)).

Additionally, CIBC's conduct during the Class Period was not consistent with fraud. See, e.g., Rothman v. Gregor, 220 F.3d 81, 92 (2d Cir. 2000) (where company "suddenly realized" need to take write-downs after becoming source of public scrutiny). Indeed, CIBC

adopted an incremental strategy by taking six write-downs during the Class Period, including pre-announced write-downs expected in two quarterly releases—a fact that contradicts an inference of scienter. See Rombach v. Chang, 355 F.3d 164, 176-77 (2d Cir. 2004) ("Further, the allegation that defendants behaved recklessly is weakened by their disclosure of certain financial problems prior to the deadline to file its financial statements."); In re Nokia Corp. Sec. Litig., No. 96 Civ. 4752 (DC), 1998 WL 150963, at *13 (S.D.N.Y. Apr. 1, 1998) ("If anything, the fact that [the defendant] voluntarily chose to issue a press release earlier than its standard year-end reporting in February undercuts the allegation that defendants were acting recklessly."). If CIBC had a greater obligation to be forthcoming, such a duty is not apparent from the Complaint. See Kalnit, 264 F.3d at 143-44 (requiring facts to be pled in complaint "indicating a clear duty to disclose"). Moreover, Plaintiff has not provided the statements of any corporate insider or confidential informant to buttress its allegations on the fraudulent timing of write-downs. See S.E.C. v. McNulty, 137 F.3d 732, 741 (2d Cir. 1998) (a finding of "reckless disregard for the truth is well supported by . . . [Defendant's own affidavit] . . . that he included false statements in S.E.C. filings"); In re NovaGold Res., Inc. Sec. Litig., 629 F. Supp. 2d 272, 298-300 (S.D.N.Y. 2009) (crediting testimony of confidential informants without requiring specificity as to which documents demonstrated the falsity of defendant's statements).

Finally, Plaintiff's argument that Defendants failed to adhere to two provisions of the GAAP does not advance its allegations. Generally, vague claims of GAAP violations are insufficient to support an inference of "intent to defraud." See Stevelman v. Alias Research, Inc., 174 F.3d 79, 84 (2d Cir. 1999) (citing Chill v. Gen. Elec. Co., 101 F.3d 263, 270 (2d Cir. 1996)). Because the "GAAP is not [a] lucid or encyclopedic set of pre-existing rules . . . [and is]

[f]ar from a single-source accounting rulebook," reasonable disagreements and deference to business judgment is permissible. Shalala v. Guernsey Mem'l Hosp., 514 U.S. 87, 101 (1995). Given the flexibility in interpreting GAAP and financial reporting requirements, deference is afforded executives absent "evidence of 'corresponding fraudulent intent.'" Novak, 216 F.3d at 309 (citing Chill, 101 F.3d at 270); see also ECA Local 134, 553 F.3d at 200 ("Allegations of GAAP violations or accounting irregularities, standing alone, are insufficient to state a securities fraud claim.") (internal quotation marks omitted); In re Bristol-Myers, 312 F.Supp.2d at 565.

Such deference is warranted here. The allegations regarding CIBC's write-downs amount to fundamental disagreements with Defendants' business judgments in a tumultuous economic downturn—claims that are not actionable under Section 10(b) and Rule 10b-5. See Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479 (1977); DiLeo, 901 F.2d at 627 ("Securities laws do not guarantee sound business practices and do not protect investors against reverses.").

c. The ACA Financial Disclosure

Plaintiff's remaining substantive allegations concern Defendants' disclosure (or non-disclosure) that ACA Financial hedged a substantial portion of CIBC's mortgage-backed portfolio. In view of the plunge in ACA Financial's stock price over the summer of 2007, Plaintiff alleges that CIBC should have disclosed that its hedge was a "single A" rated financial guarantor beginning with the July 10 Release.

The allegations regarding ACA Financial are particularly tenuous because they rest on the notion that Defendants failed to disclose internal financial information of a company other than CIBC. See Defer LP v. Raymond James Financial, Inc., 654 F. Supp. 2d 204, 218-19 (S.D.N.Y. 2009) (declining, for purposes of imputing scienter, to aggregate the knowledge of

two separate corporate entities on the basis that they share the same parent). Yet, there is no allegation in the Complaint that Defendants knew of, had access to, or could collect information that ACA Financial was on the verge of bankruptcy. "Even an egregious failure to gather information will not establish 10b-5 liability so long as the defendants did not deliberately shut their eyes to the facts." In re Bayou Hedge Fund Litig., 534 F. Supp. 2d 405, 415 (S.D.N.Y. 2007) (citation omitted), aff'd sub nom. South Cherry, 573 F.3d at 98.

In the three months prior to ACA Financial's bankruptcy, Defendants' only representation even tangentially related to ACA Financial was a statement by McCaughey on the November 5 Conference Call that "the hedges we have [are] good counterparties." This Court declines to extrapolate a year-long fraudulent scheme from this isolated and imprecise remark on a conference call, especially in light of CIBC's subsequent disclosures regarding ACA Financial. See Goplen v. 51job, Inc., 453 F. Supp. 2d 759, 773 (S.D.N.Y. 2006) (noting scienter inference is "most compelling for problems of the 'type and magnitude [that] likely develop over time, and do not become apparent to management all at once.'" (quoting In re Grand Casinos, Inc. Sec. Litig., 988 F.Supp. 1273, 1283 (D. Minn. 1997)).

Accordingly, Plaintiffs have failed to plead scienter and Defendants' motion to dismiss the § 10(b) and Rule 10b-5 claims is granted.

III. Section 20(a) Claim

To allege a prima facie case of liability under § 20(a), a plaintiff must first plead a primary violation by a control person. In re PXRE Group, 600 F. Supp. 2d at 548 (citing Boguslavsky v. Kaplan, 159 F.3d 715, 720 (2d Cir. 1998)). Because this Court has determined

that no primary violation occurred under Section 10(b) and Rule 10b-5, Defendants' motion to dismiss the § 20(a) claim is granted.

IV. Leave to Amend

In the final footnote of Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, Plaintiff requests leave to amend its Consolidated Class Action Complaint if it is deficient in any respect. Under Fed. R. Civ. P. 15(a), a "court should freely give leave when justice so requires." "However, in determining whether leave to amend should be granted, the district court has discretion to consider, inter alia, the apparent 'futility of amendment.'" Grace v. Rosenstock, 228 F.3d 40, 53 (2d Cir. 2000) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). Plaintiff has already been given one opportunity to submit a Consolidated Class Action Complaint detailing its allegations of fraud against CIBC. Any request for leave to file an amended consolidated class action complaint should conform to this Court's Individual Practices.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is granted and the Consolidated Class Action Complaint is dismissed in its entirety. The Clerk of Court is directed to terminate all motions pending and mark this case as closed.

Dated: March 17, 2010
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.

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CITATION: Green v. Canadian Imperial Bank of Commerce, 2016 ONSC 3829
COURT FILE NO.: CV-08-00359335
DATE: 20160610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HOWARD GREEN and ANNE BELL Plaintiffs	*Joel P. Rochon, Peter R. Jervis* and *Remissa Hirji*, for the Plaintiffs
- and -	
CANADIAN IMPERIAL BANK OF COMMERCE, GERALD McCAUGHEY, TOM WOODS, BRIAN G. SHAW, KEN KILGOUR Defendants	*Sheila Block*, *James C. Tory*, *Andrew Gray*, *Gillian B. Dingle* and *Lara Guest*, for the Defendant CIBC
	HEARD: In Writing

REASONS ON COSTS

G.R. Strathy C.J.O. (Ex Officio)

[1] In my reasons released July 3, 2012, reported as *Green v. Canadian Imperial Bank of Commerce*, 2012 ONSC 3637, [2012] O.J. No. 3072, I held that I was bound by the Court of Appeal's decision in *Sharma v. Timminco Ltd.*, 2012 ONCA 107, 109 O.R. (3d) 569, and dismissed this action as time-barred. But for that conclusion, I would have granted leave under the *Securities Act*, R.S.O. 1990, c. S.5, and certified this proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

[2] On appeal from my decision, a five-judge panel of the Court of Appeal reversed *Timminco* and allowed the plaintiffs' appeal. It set aside the order dismissing the action as time-barred and held that the statutory cause of action could be certified: 2014 ONCA 90, 118 O.R. (3d) 641. That decision was affirmed by the Supreme Court of Canada: 2015 SCC 60, [2015] 3 S.C.R. 801.

[3] It now falls to me, in my capacity as a judge *ex officio* of the Superior Court of Justice and as the former case management judge in this proceeding, to assess the costs of the successful plaintiffs on the certification and leave motions.

Governing principles

[4] In assessing the costs, I am guided by the principles governing costs awards contained in Rule 57.01 of the *Rules of Civil Procedure* as explained in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.). The relevant considerations were summarized by Perell J. in *Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp*, 2015 ONSC 6354, at para. 117-129. An important principle, relied on by the defendants, is that the costs should reflect the fair and reasonable expectations of the unsuccessful party. Another is that, to the extent possible, awards should be consistent with those made in comparable cases, recognizing that comparisons will rarely provide clear guidance.

[5] Costs awards in class proceedings must also give effect to the principles underlying the *Class Proceedings Act, 1992*, and in particular the goal of access to justice. The principles have been discussed in such cases as *Pearson v. Inco Ltd.* (2006), 79 O.R. (3d) 427 (C.A.), at para. 13 and *McCracken v. Canadian National Railway*, 2012 ONSC 6838, at paras. 72-73.

The costs claimed

[6] The plaintiffs claim costs on a partial indemnity basis of $2,679,277.82 for the leave and certification motions. This is comprised of fees of $1,505,418.72, disbursements of $932,123.14 and HST. The claim for fees represents a ten percent discount from the partial indemnity amount as an acknowledgment by the plaintiffs of some ongoing benefit of the work required to analyze the complex factual basis of the claim. The costs claimed relate only to the certification and leave motions and do not include fees relating to the action apart from those motions.

The defendants' position

[7] The defendants do not suggest that either the time spent or the disbursements incurred were excessive or unreasonable. Indeed, had they intended to take that position they could reasonably be expected to have produced their own records, which they have not done.

[8] Instead, the defendants say that the amount claimed is well beyond what they could reasonably have expected to pay in the circumstances. In particular, they say that the amount should be reduced to reflect:

a) the fact that the plaintiffs were only permitted to proceed with parts of the action as a result of an indulgence – the *nunc pro tunc* order granted by the Supreme Court of Canada;

b) the reasonable expectations of the defendants, as informed by the following:

(i) some of the costs are not properly claimed in respect of the motions;

(ii) success was divided;

(iii) costs awarded in other cases; and

(iv) the ongoing benefit to the plaintiffs of much of the work done on the leave and certification motions.

[9] The defendants say that a total award of $800,000, with half payable now and half payable in the cause, would be fair and reasonable in the circumstances.

[10] The result is that the costs immediately payable would cover less than fifty percent of the disbursements paid by class counsel and would provide no compensation for their partial indemnity fees in the four years it took to prepare and advance the certification and leave motions.

Discussion

[11] This is an extraordinary case by any standard. In considering a fair and reasonable award, I have regard to all the circumstances, but particularly the following:

a) the plaintiffs put the claim at between $2 billion and $4 billion, amounts that I cannot say are unrealistic;

b) the class is very substantial and includes over 100,000 Canadian shareholders;

c) this was one of the first cases to advance a claim under Part XXIII.1 of the *Securities Act* dealing with secondary market misrepresentation and it is an important landmark case;

d) the facts were extraordinarily complex and required sophisticated expert evidence;

e) the law was both complex and novel;

f) the record was massive: there were a total of 25 affidavits filed by the parties, cross-examinations were conducted over 29 days, and the evidentiary record comprised 45 volumes of material;

g) the hearing before me, which was based entirely on the record, took seven days;

h) the proceeding was vigorously contested by the defendants, who were well-resourced and represented by teams of highly experienced counsel;

i) although the plaintiffs did not achieve everything they sought on the certification motion, they achieved very substantial success; and

j) the motions were skillfully and thoroughly prepared, prosecuted and argued by experienced class counsel.

[12] I also recognize the public interest in ensuring that parties pursuing secondary market misrepresentation claims that are certified and pass successfully through the statutorily-mandated judicial screening process are fairly compensated by realistic costs awards.

[13] This is an access to justice issue. These claims are suitable for class action treatment because no individual class member would take on the risks involved in pursuing individual litigation. The ability of the class to pursue these claims depends on the willingness of class counsel to accept the very substantial risks in exchange for the potential rewards.

[14] The risks are – quite simply – the exposure to substantial personal liability for costs and the risk of receiving no compensation for the time and disbursements invested in the case. There is no funding agreement in this case, but the latter risk exists even where there is a funding agreement to indemnify class counsel for an adverse costs award or for some portion of their disbursements. The efficacy of the statutory remedy depends on incentivizing class counsel to take these formidable risks.

[15] Defence counsel do not face these risks. They are well paid and rightly so. They no doubt bill on an interim basis – as they are entitled to do – and their clients will likely spare no expense in attempting to shut down the proceeding at the initial stages.

[16] If this claim had been defeated there is absolutely no doubt that the defendants would be seeking costs at least as substantial as those claimed by the plaintiffs and probably more substantial. The defendants retained two separate law firms and some of the best class action defence talent in the country. The costs the defendants would claim in the event of their success must inform their reasonable expectations in the event of the plaintiffs' success. In making these observations, I note, of course, that had the defendants been successful the litigation would be over and they would normally have expected to recover all their costs of the proceeding.

[17] Although this claim has passed through the initial screening, the plaintiffs and their lawyers have a long road ahead of them. A failure to award fair costs to the plaintiffs will encourage and reward a defence strategy of wearing down the plaintiffs by wearing down their lawyers. I am not suggesting that this was, or will be, the defendants' strategy in this case, but defendants have everything to gain and little to lose by sparing no expense in this kind of case.

[18] It also bears noting that the $1.5 million sought for fees (before taxes) is on a partial indemnity basis and reflects four years of legal work. The partial indemnity rates are less than half the lawyers' regular hourly rates.

[19] These considerations support the view that plaintiffs who cross the certification and screening thresholds in *Securities Act* cases should normally receive reasonable compensation for their costs incurred in getting there.

The defendants' arguments

[20] I turn to the defendants' arguments that the costs are excessive in the circumstances.

[21] *First*, the "indulgence". The term is the defendants' and not mine. The plaintiffs asked for an order *nunc pro tunc* in their notice of motion. It was purely incidental and procedural and was in addition to all the other relief they requested and were granted. It was the same relief van Rensburg J. granted in *Silver v. Imax Corp.*, 2010 ONSC 4017. With the benefit of the Supreme Court's decision, I would have granted the same relief. This is not a case where the only purpose of the motion was to request an indulgence. The *nunc pro tunc* order, while critically important, was a side issue. I would make no reduction for this factor.

[22] *Second*, required steps. The defendants say that any costs of steps the plaintiffs were required to take to advance their case, including the preparation of the leave and certification records, should be in the cause. They say that this is similar to the costs of preparation of a statement of claim, which are only recoverable if the plaintiff is successful at trial. I am not aware that this proposition has ever been advanced or applied in class proceedings, in which the costs of preparation of the certification motion record are routinely awarded. The distinction with a statement of claim is obvious – a statement of claim can be issued without leave. A class action can only proceed after a certification motion and a class action under the *Securities Act* can only proceed if leave is granted.

[23] *Third*, costs in relation to the limitation period issue. The defendants say that no costs should be awarded on this issue because I found the statutory claim was barred and four members of the Supreme Court of Canada agreed. However, as pointed out above, the Supreme Court granted leave and, had I followed the path taken by van Rensburg J., I would have done the same. The costs incurred by the plaintiffs on this issue were reasonable.

[24] *Fourth*, the costs of expert reports. The defendants say that I should follow Belobaba J. in *Dugal v. Manulife Financial Corporation*, 2013 ONSC 6354, in which he found the amount

claimed for experts to be excessive and reduced them by half with a portion payable forthwith and the balance in the cause. The defendants say that of the approximately $760,000 claimed for expert witnesses and reports, the court should order payment of $350,000, with $250,000 payable forthwith and $100,000 payable in the cause.

[25] In my view, the costs for experts were necessary and reasonable. I cannot find or assume that these expert reports will have any ongoing utility. The reports were necessary, they served their purpose and the defendants should pay the cost.

[26] *Fifth*, divided success. I do not agree that success was divided. The bottom line is that the plaintiffs' key claims have been certified and the plaintiffs have obtained leave to proceed with a class action asserting statutory and common law causes of action. The statutory cause of action relates to misrepresentations in core documents. They prevailed on the limitations issue that would have defeated the statutory claim. I reject a "slice and dice" approach based on the fact that some claims were not certified.

[27] *Sixth*, costs awards in similar cases. Reference has been made to the costs award of $1.85 million to the successful defendant in *Fairview Donut Inc. v. TDL Group Corp.*, 2014 ONSC 776, which I described as "off the chart" in comparison to other cases in terms of its complexity, the amount at issue and the work required of counsel.

[28] I regard this case as more demanding and more significant than *Fairview Donut*. As in that case, billions of dollars are claimed and there is a semblance of reality to the amount – it is not simply a scare tactic. The class is much larger in this case. The evidence and the legal issues are more complex. The jurisprudential issues are far more significant in this case – it raises issues of first impression and public importance.

[29] *Sino-Forest* is distinguishable. There, Perell J. found that it was arguable that less than half the costs claimed were expended for legal services necessary for the certification and leave motions. In his view, it was arguable that "the bulk of Class Counsel's services were services that would otherwise have been performed during the discovery and trial preparation stages of the class proceedings" (at para. 134). He added that "a defendant should not have to pay for legal services tacked on to the certification and leave motion that should more properly be paid for if the plaintiff is successful in the litigation" (at para. 138). It appears that his underlying concern was that it was not fair that the defendants should be expected to finance the plaintiff's litigation expense in attempting to prove the merits of the case against them at trial.

[30] I do not have that concern here. As noted above, the costs claimed relate only to the certification and leave motions.

[31] *Seventh*, the ongoing value of the work. The plaintiffs acknowledge that some of the work done on the leave motion will have value at trial and suggest a ten percent discount of the value of this time. The net amount claimed reflects this. In my view, this is a reasonable discount and I would not make any further discount. The argument that costs should not be paid now

because the work will have ongoing value is purely speculative, because it assumes that dated work, carried out for a different purpose, is going to have value at some time in the distant future.

[32] The work was done for two specific purposes – certification and leave. Those purposes were unique to this type of action. I would follow the course charted by van Rensburg J. in *Imax* and order the costs paid now. I respectfully agree with her observation that "[i]f the plaintiffs are successful at trial, the defendants will ensure that costs paid in relation to the leave motion will not be awarded a second time" (at para. 27). If the plaintiffs are successful at trial, the court can ensure there is no double recovery by noting what this award is intended to cover.

[33] If the plaintiffs are not successful at trial, I see no reason why they should be deprived of the costs of achieving the important milestones of certification and leave.

Conclusion

[34] For the foregoing reasons, I do not accept the defendants' submissions that the amounts claimed should be reduced. I would therefore order that CIBC pay the plaintiffs' costs as claimed, in the amount of $2,679,277.82, within 30 days.

[35] CIBC having undertaken that it will pay the costs, no costs are awarded against the individual defendants.

G.R. STRATHY C.J.O.

Released: 20160610

CITATION: Green v. Canadian Imperial Bank of Commerce, 2016 ONSC 3829
COURT FILE NO.: CV-08-00359335
DATE: 20160610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HOWARD GREEN and ANNE BELL

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE,
GERALD McCAUGHEY,
TOM WOODS, BRIAN G. SHAW, KEN KILGOUR

Defendants

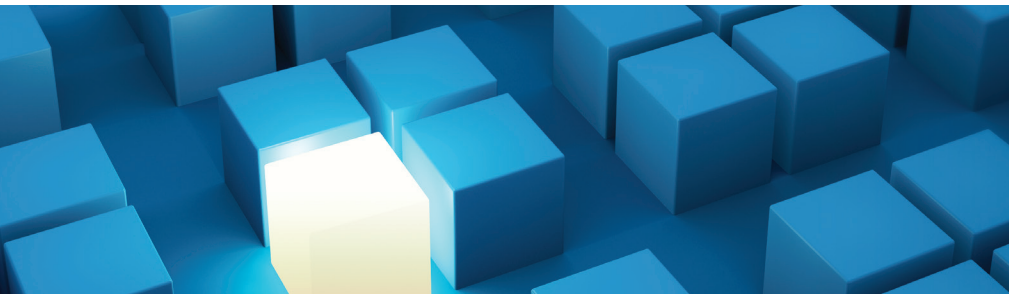
COSTS ENDORSEMENT

G.R. STRATHY C.J.O.

Released: 20160610

NERA
ECONOMIC CONSULTING

2 March 2021



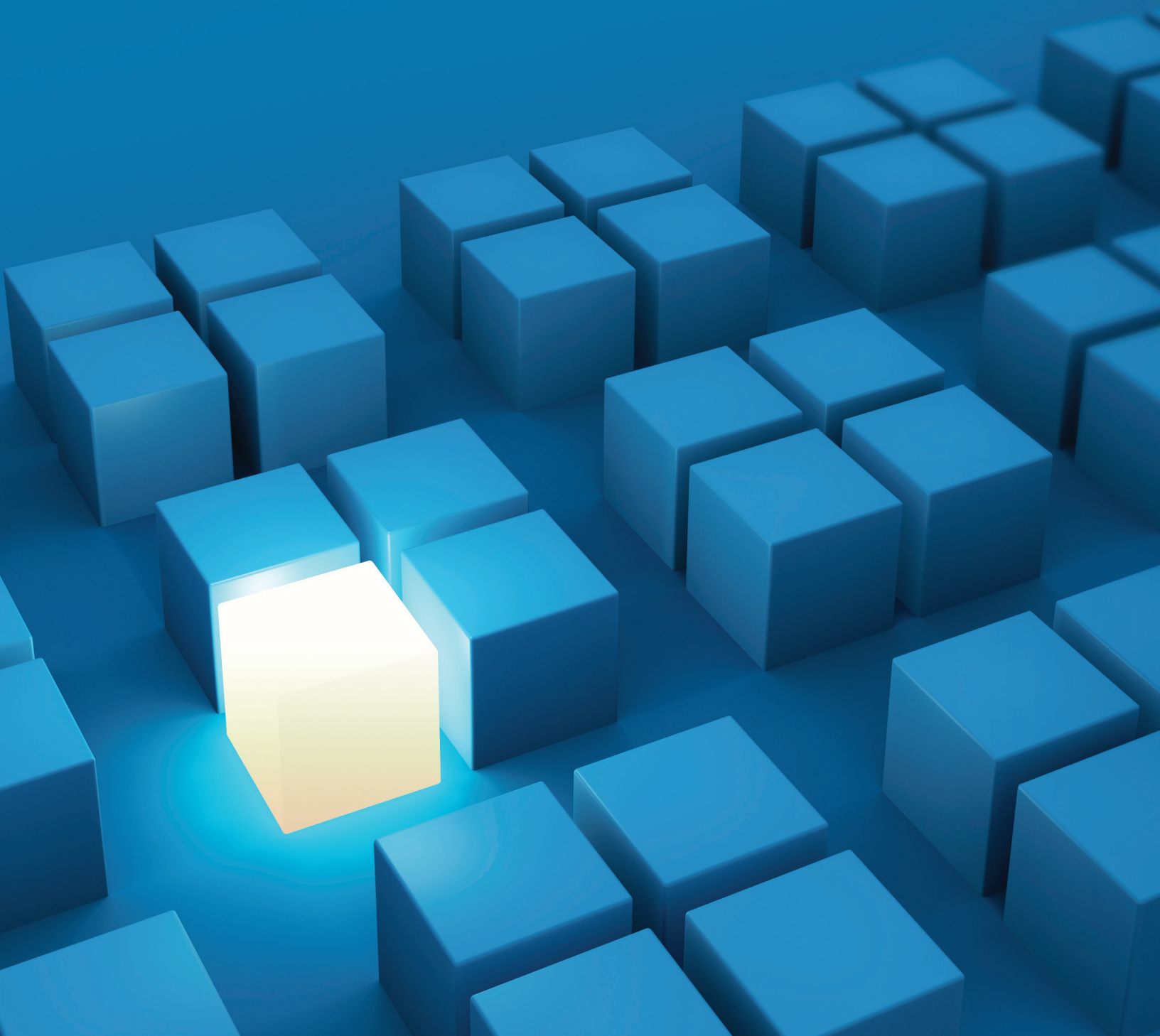
Trends in Canadian Securities Class Actions: 2020 Update

Filings in the Time of COVID: New Cases Remain at Historically High Levels

By Bradley A. Heys, Robert Patton, and Jielei Mao

Insight in Economics™

Fifteen new securities class actions were filed during 2020, one more than in 2019 and matching the all-time high of 15 cases filed in 2011.



Trends in Canadian Securities Class Actions: 2020 Update

Pace of Filings at a High in the Year of the COVID-19 Pandemic

By Bradley A. Heys, Robert Patton, Jielei Mao[1]

2 March 2021

Introduction

NERA Economic Consulting maintains a proprietary database of information regarding Canadian securities class actions (the NERA Canadian Securities Class Action database).[2]

We are pleased to present our 2020 update on trends in Canadian securities class actions, highlighting the key trends we observed in 2020. Interested readers looking for more information or who have specific questions are invited to contact the authors directly.

Trends in Filings

Cases Filed by Year

- Fifteen new securities class actions were filed during 2020, one more than in 2019 and matching the all-time high of 15 cases filed in 2011. See Figure 1.

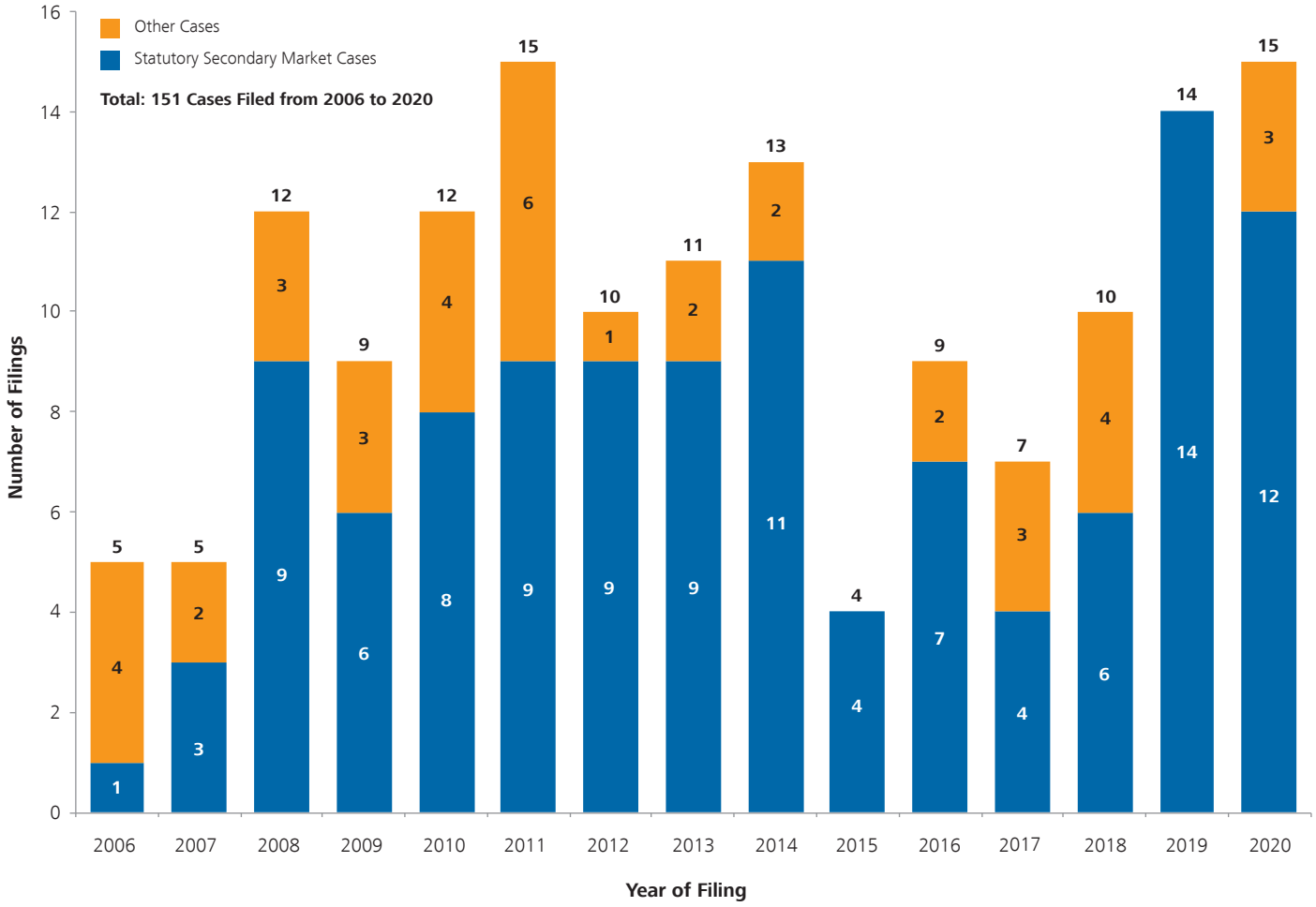
- Thirteen of the 15 new filings in 2020 involve companies with shares listed on public stock exchanges. Twelve of those involve allegations of misrepresentations and/or omissions in violation of the continuous disclosure obligations pursuant to the statutory secondary market civil liability provisions of the provincial securities acts (i.e., Statutory Secondary Market cases).

- Two of the 15 new filings in 2020 are brought on behalf of classes of investors in investment funds.

- Eight of the 15 new cases were filed in Ontario, one of which also has a corresponding action filed in Quebec. Four cases were filed only in Quebec, one case was filed in Alberta, and one case was filed in British Columbia. One case was filed in Nova Scotia, the first ever filing of a securities class action in that province.

- Only two of the 15 new filings appear to relate to the COVID-19 pandemic.

Figure 1. **Canadian Securities Class Actions Filed by Year**
2006–2020

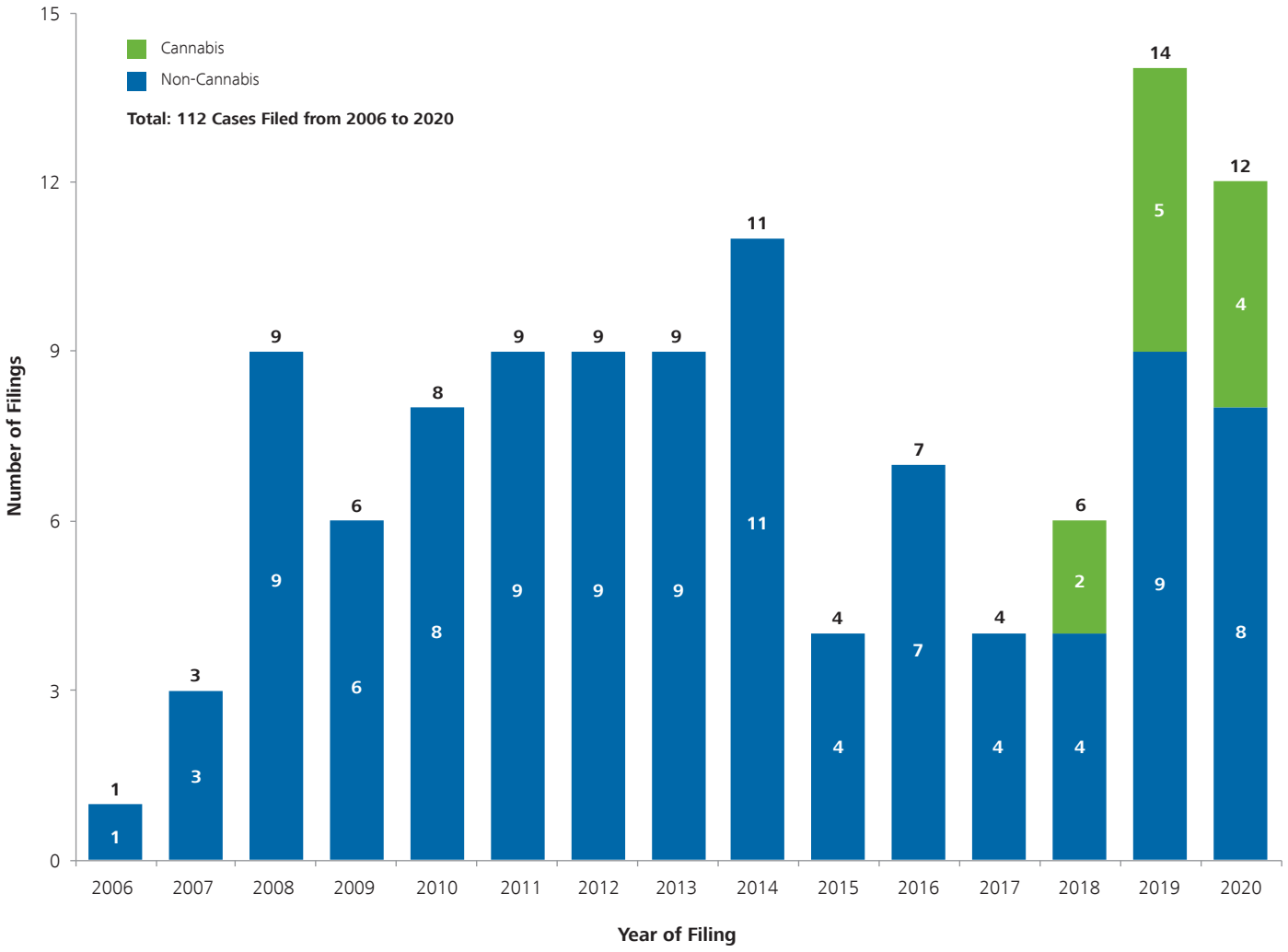


- In the 15 years since the new Securities Act provisions came into effect, there have been 112 Statutory Secondary Market cases filed in Canada—an average of about 7.5 cases per year.[3] The 12 Statutory Secondary Market cases filed in 2020 is down from the 14 such filings in 2019, but still higher than the relatively small number of such cases filed each year from 2015 through 2018 and greater than the average of 8.7 new cases filed per year over the seven-year period from 2008 to 2014.

Filings by Industry and Economic Sector

- The increase in the number of Statutory Secondary Market cases in the last two years was driven in large part by several cannabis-related filings. The first two cannabis-related cases were filed in 2018, and nine additional cannabis cases were filed over the following two years. Excluding the cannabis-related filings, there were eight Statutory Secondary Market cases in 2020—still higher than the average of five such filings per year over the period from 2015 to 2018. See Figure 2.

Figure 2. **Filings Involving Statutory Secondary Market Claims**
2006–2020



- Three of the 15 new filings in 2020 (20%) involve companies in the Finance sector. Over the five-year period from 2016 to 2020, 12 of the 55 cases filed (22%) involve companies in this sector, up from eight cases filed in the previous five-year period from 2011 to 2015 (representing 15% of the 53 cases filed during that period), and matching the 12 cases involving Finance-sector companies filed during the period from 2006 to 2010 (28% of the 43 cases filed in that period).

- Two of the new filings in 2020 involve companies in the Health Technology sector. Over the last five years, there have been six new cases involving companies in the Health Technology or Health Services sectors, as compared to only two such cases filed in the five years prior.[4]

- New cases filed in 2020 include several involving defendants in industries that have not seen securities class actions in several years: two involve issuers in the Consumer Non-Durables sector (the first filings in this sector since 2014); one case involves an issuer in the Consumer Services sector (the first filing in this sector since 2016); and one case involves a company in the Process Industries sector (the first filing in this sector since 2014).[5]

- Continuing the recent trend of fewer filings in the Energy and Non-Energy Minerals sector (which includes mining and oil and gas companies), only three of the 15 cases filed in 2020 involve companies in this sector. Over the last five years, only 20% of cases have involved this sector, well below the level seen in prior periods. See Figure 3.

Figure 3. **Filings by Industry and Economic Sector**
2006–2010, 2011–2015, and 2016–2020

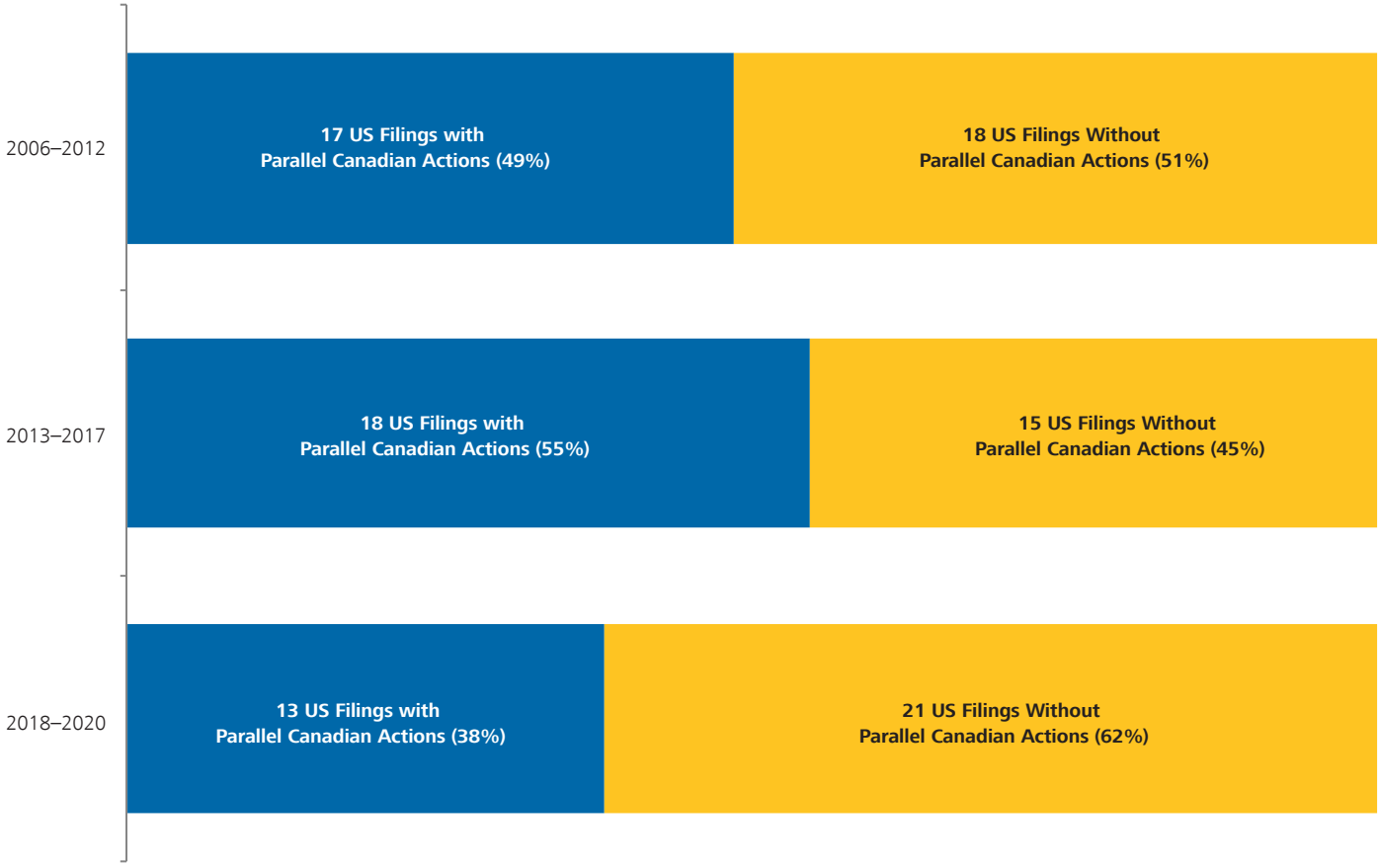
Cross-Border Cases

- There are parallel US shareholder class actions corresponding to nine of the 15 new cases filed in Canada during 2020.

- In total during 2020, 14 Canadian-domiciled companies were named as defendants in US shareholder class actions, only five of which had corresponding Canadian cases filed during the year (US filings in other cross-border cases were filed in prior years). Five of these Canadian-domiciled companies operate in the cannabis industry.

- In the three-year period from 2018 to 2020, only 38% of the cases filed in the US against Canadian-domiciled companies also involved a parallel filing in Canada, down from 51% for cases filed in the preceding 12-year period from 2006 to 2017. To the extent some of the more recent cases filed only in the US will see corresponding Canadian filings in subsequent years, this ratio may ultimately trend toward the historical average. See Figure 4.

Figure 4. **US Filings Involving Canadian-Domiciled Companies With and Without Parallel Canadian Actions**
2006–2012, 2013–2017, and 2018–2020



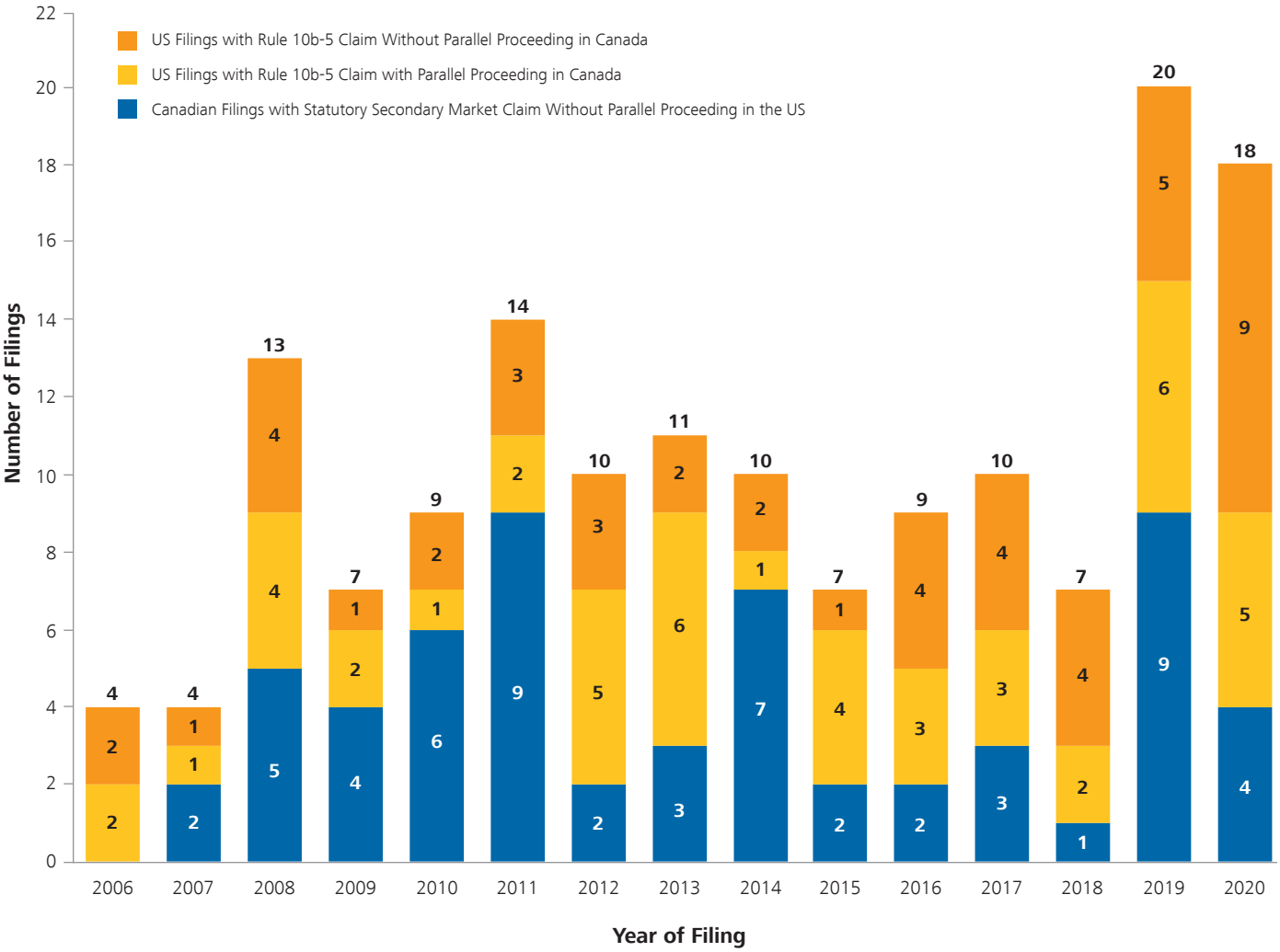
US and Canadian Secondary Market Securities Class Actions Involving Canadian-Domiciled Companies

- The total volume of new class action cases brought on behalf of classes of purchasers of securities of Canadian-domiciled issuers in the secondary market—whether filed only in Canada, only in the US, or in both countries—has increased substantially in the last two years: 18 new cases in 2020 and 20 new cases in 2019, more than doubling the average number of such cases over the preceding four years, and rising well above the previous high of 14 cases filed in 2011.

- Considering the number of annual new filings of both US and Canadian securities class actions involving Canadian-domiciled issuers conveys a more complete picture of the trend in total exposure of Canadian companies to such litigation. It also better conveys the timing of initial litigation exposure: in 81% of US-Canadian cross-border securities class actions involving Canadian-domiciled companies filed from 2006 to 2020, the parallel Canadian case was filed after the initial US filing, in some cases with a substantial time lag.[6] For example, if only secondary market securities class actions filed in Canada are considered, exposure to such litigation appears to have declined in 2020 to a level closer to the levels that prevailed in prior years (see Figure 2 above); however, if US securities class actions are also considered, then the exposure of Canadian companies to new securities class actions is near its all-time peak.[7]

- Only five of the 18 new secondary market securities class actions against Canadian-domiciled companies filed in 2020 (28%) involve filings in both countries, as compared to 18 of 53 cases (34%) filed in the five-year period from 2015 to 2019. This may reflect, in part, the typically longer time it takes for actions to be filed in Canada as compared to in the US.[8] See Figure 5.

Figure 5. **Filings of Securities Class Actions Involving Canadian-Domiciled Companies with Rule 10b-5 Claims in US and/or Statutory Secondary Market Claims in Canada, by Year of First Claim Filed**
2006–2020

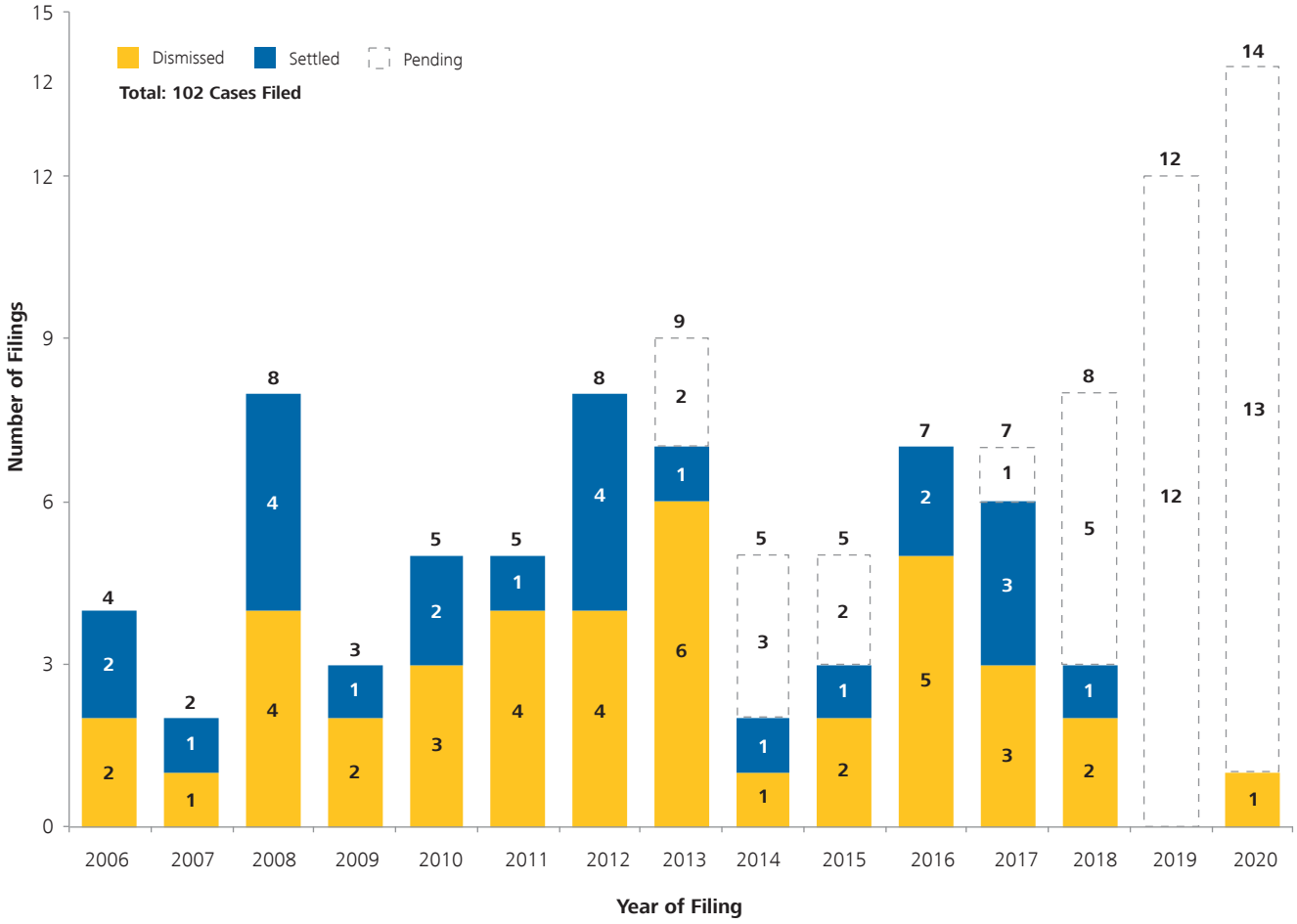


Note: Year of filing reflects the first filing, whether in Canada or the US, involving an issuer in respect of a particular set of allegations.

Status of US Filings Against Canadian-Domiciled Companies

- Thirty-eight of the 102 securities class actions filed in the US against Canadian-domiciled companies between 2006 and 2020 remained active at the end of 2020. Twenty-five of these 38 active cases were filed within the last two years.
- Of these 102 filings, 94 have included claims under US Rule 10b-5.[9]
- Of the 64 cases that had been resolved by the end of 2020, 24 cases (37.5%) were resolved by way of settlement and 40 cases (62.5%) were dismissed.
- The status of all 102 US securities class actions involving Canadian-domiciled companies by year of filing is illustrated in Figure 6.

Figure 6. **Status of US Filings Against Canadian-Domiciled Companies**
2006–2020



COVID-19

- While the global pandemic was a major theme of 2020 generally and has led to a significant volume of litigation, only two securities class actions relating to COVID-19 had been filed prior to the end of the year:

  – A case brought on behalf of unitholders in Horizons BetaPro Crude Oil Leveraged Daily Bull ETF (Horizons HOU ETF) seeking damages that are alleged to have been exacerbated by the oil-price impacts of the pandemic;[10] and

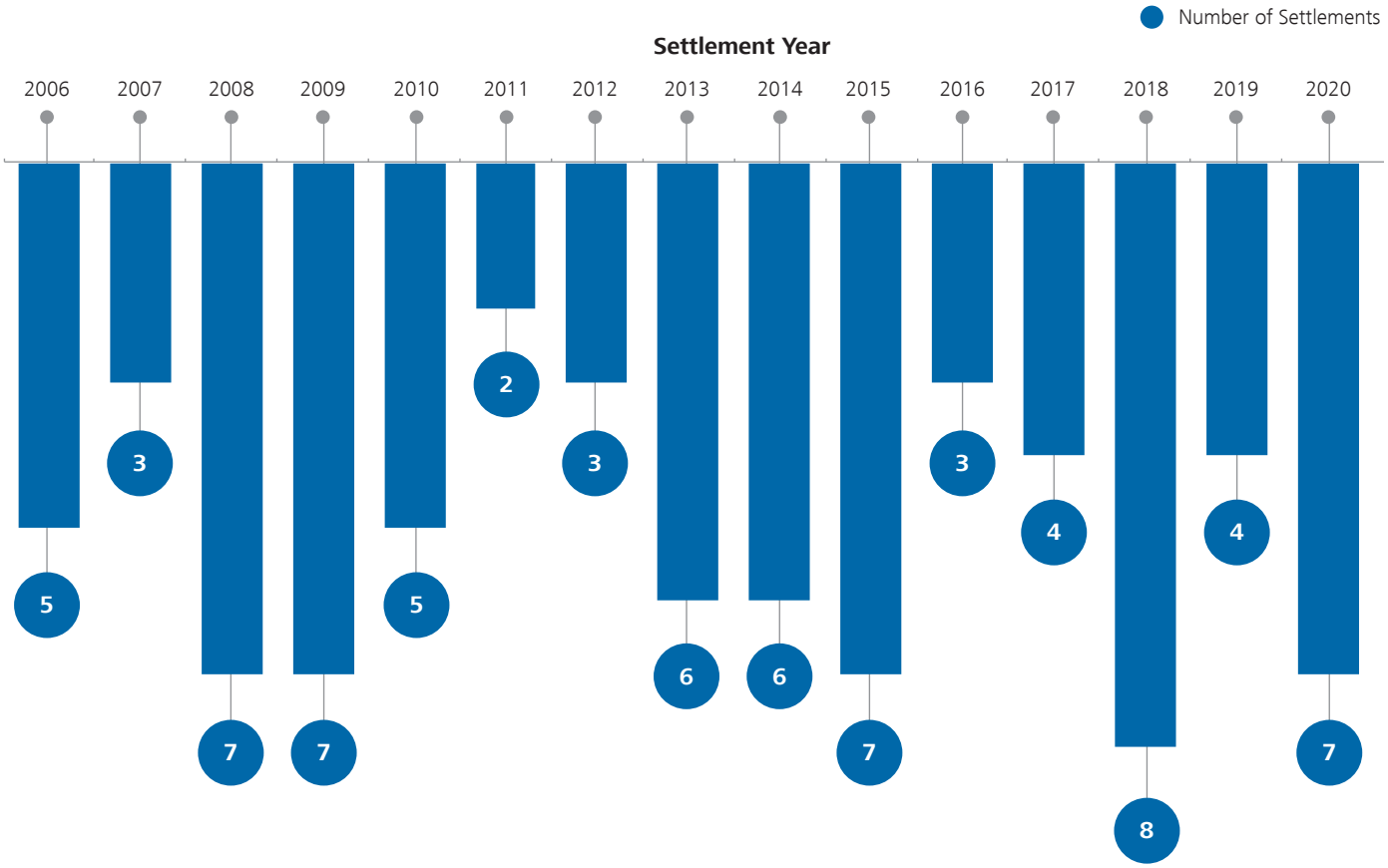
  – A cross-border class action brought on behalf of shareholders of Sona Nanotech Inc., a Canadian-domiciled company, that includes allegations stemming from the US Food and Drug Administration's rejection of the company's request for an emergency use authorization for its rapid COVID-19 antigen test.

Trends in Resolutions

Number of Settlements and Median Settlement Amount by Year

- Seven Canadian securities class actions were settled in 2020, three more than were settled in 2019 and one fewer than in 2018. See Figure 7.

Figure 7. **Settlements**
2006–2020



Note: Includes settlements of cases filed in 1997 or later. 2016 settlements include a partial settlement in the case relating to Sino-Forest Corporation.

- Settlement amounts in the seven cases settled in 2020 range from $1.0 million to more than $1.7 billion, with an average settlement of $265.6 million and a median settlement of $5.5 million.

- The largest settlement relates to the cross-border case involving Valeant Pharmaceuticals International Inc. (Valeant).[11] Settlements reached in this case during 2020, together with earlier partial settlements, bring the total amount defendants have agreed to pay to more than $1.7 billion, making it one of largest-ever settlements of a Canada-US cross-border securities class action (without adjusting for inflation). The $124 million in total settlements in the Canadian action (including settlements with both the issuer and its auditor) alone would make it the sixth largest settlement across all fully or partially settled cases in our database.

- Among Statutory Secondary Market cases, the case involving Valeant is the largest-ever settlement if both the Canadian and US settlements are considered. The settlements in the Canadian action alone make it the second largest Statutory Secondary Market case after the partial settlements in the case involving Sino-Forest Corporation.

- A $110 million settlement in the cross-border case involving Endo International plc also ranks within the top ten settlements in our database, although almost all of this amount relates to the settlement of the US action.

- The top 20 settlements in our database by global settlement amount (expressed in Canadian dollars), along with the Canadian- and US-specific settlement amounts (where available) are shown in Table 1.

Table 1. **Top 20 Settlements as of 31 December 2020, Ranked by Global Settlement Amount**

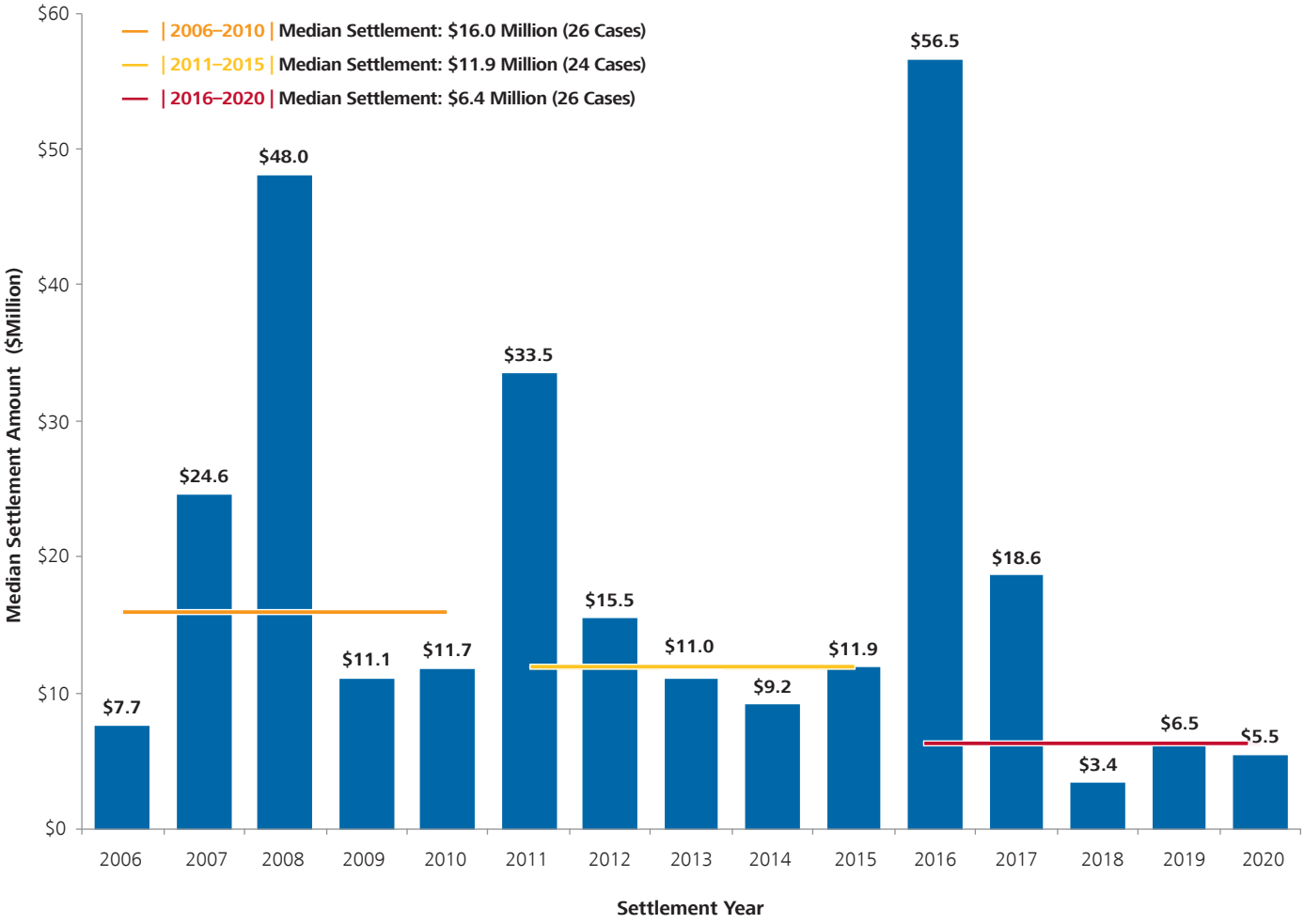
			Settlement Amount ($Million)		
Rank	Case	Settlement Year	Global	Canada	US
1	Valeant Pharmaceuticals International Inc.†	2020	$1,719.1	$124.0	US $1,210.0
2	Nortel Networks Corp.	2006	$1,318.3	n.a.	n.a.
3	Nortel Networks Corp. (II)	2006	$1,197.8	n.a.	n.a.
4	Portus Alternative Asset Management	2008	$611.1	$611.1	-
5	Sino-Forest Corporation*†	2012–2016	$163.5	$163.5	-
6	Biovail Corp.	2008	$140.7	n.a.	n.a.
7	YBM Magnex International, Inc.	2002	$120.0	n.a.	n.a.
8	Endo International plc†	2020	$110.4	$0.7	US $82.5
9	SNC-Lavalin Group Inc.†	2018	$110.0	$110.0	-
10	Manulife Financial Corporation†	2017	$69.0	$69.0	-
11	Norbourg Asset Management Inc.	2011	$55.0	$55.0	-
12	Kinross Gold Corporation†	2015	$53.8	$12.5	US $33.0
13	Penn West Petroleum Ltd.†	2016	$53.0	$26.5	$26.5
14	Transamerica Life Canada*	2009	$52.0	$52.0	-
15	Hollinger International, Inc.	2008	$47.9	n.a.	n.a.
16	Mount Real Corp.*	2016	$43.0	$43.0	-
17	Cinar Corp.	2003	$42.9	n.a.	n.a.
18	Atlas Cold Storage Holdings Inc.	2008	$40.0	$40.0	-
19	Amaya Inc.†	2019	$37.7	$30.0	US $5.8
20	Poseidon Concepts Corp.†	2018	$36.6	n.a.	n.a.

* Case is only partially settled. Settlement amount shown is the total of all partial settlements as of the end of 2020. Settlement year is determined by the year of the final settlement in Canada for fully resolved cases. "Global" and "Canada" settlement amounts originally expressed in US dollars are converted to Canadian dollars at the exchange rate prevailing at the time of the settlement.

† Indicates Statutory Secondary Market case.

- Median settlement amounts have trended down over time. The median settlement across the 26 settlements reached over the last five years is $6.4 million—this is 46% lower than the median settlement of $11.9 million for the 24 settlements reached between 2011 and 2015, and 60% lower than the median settlement of $16.0 million for 26 cases settled during the five-year period 2006 to 2010.[12] See Figure 8.

Figure 8. **Median Settlement Amounts**
2006–2020



Notes: Based on 75 out of 76 cases settled during the period from 2006 to 2020 for which we have information regarding the settlement amount. Settlement amounts have been adjusted for inflation to 2020 dollars. This figure also includes the cumulative partial settlement amount to date for the case involving Sino-Forest Corporation in 2016.

Other Resolutions

- In 2020, leave to proceed was denied in a case against Imperial Metals Corporation and certification was denied in a case involving claims brought by investors in certain Crystal Wealth Management System Ltd. investment funds.[13]

- A case against Volkswagen AG filed in Quebec was dismissed in 2020 for lack of jurisdiction, following the dismissal in 2018 of an Ontario action on similar grounds.

- Two other cases were discontinued during 2020, both of which had been filed in 2019.

Status of Cases at 2020 Year-End: Leave and Certification

- During 2020, the Ontario Superior Court of Justice granted leave to pursue statutory secondary market civil liability claims in a case involving FSD Pharma Inc. The case subsequently settled during the year.

- Of the 112 Statutory Secondary Market cases filed through the end of 2020:

  - Leave applications have been contested in 27 cases, with leave being granted in 13 cases (48%) and denied in 14 cases (52%). In 16 other cases, leave applications were not contested by defendants, with six of those being granted leave for the purposes of settlement.

  - Twenty-five cases have settled prior to any decision regarding leave of the court.

  - Ten Statutory Secondary Market cases were discontinued prior to any leave decision.

  - Thirty-one cases had not yet reached the leave stage of the litigation as of the end of 2020 and remain unresolved.

  - Three other cases which have not reached the leave stage appear to be no longer active based on the publicly available information.

Looking Forward

- Cases involving cannabis companies continued to drive filings of securities class actions in 2020 as the industry failed to realize the rate of growth many had expected to follow legalization of cannabis products for non-medical use in Canada. Whether the sector continues to be a target for these cases in the future will depend on whether early expectations for this industry eventually materialize and the extent of the consolidation that has been underway in recent months.

- The global pandemic continues as this paper goes to press. While very few Canadian securities class actions relating to the pandemic have been filed to date, it will be interesting to see whether 2021 will see more such cases, either in relation to events in 2020 or as a result of future events relating to the pandemic.

- Finally, the relatively high number of US filings against Canadian-domiciled companies in 2020 might be a leading indicator that we will see more filings of Canadian securities class actions in 2021.

Notes

[1] Bradley A. Heys is a Director, Robert Patton is an Associate Director, and Jielei Mao is a Senior Analyst with NERA Economic Consulting. We also thank David Ogilvie and Mattia Dolci for valuable research assistance with this paper. We appreciate the contributions of Svetlana Starykh to this and previous editions of this study. These individuals receive credit for improving this paper. All errors and omissions are our own.

[2] The NERA Canadian Securities Class Action database includes information relating to 184 securities class action cases filed in Canada since 1997.

[3] The new provisions of the provincial securities acts which enabled Statutory Secondary Market cases first came into force in Ontario as at the end of 2005, and in other provinces in subsequent years.

[4] The Health Technology sector is comprised of health care service providers, pharmaceuticals, health care instruments, devices and equipment manufacturers and wholesalers, as well as entities that provide support and professional services to the health care industry. The Health Services sector consists of a wide array of health care providers and related treatment facilities, medical laboratories, and managed care providers, as well as other entities that provide support and professional services to the health care industry.

[5] The Consumer Non-Durables sector consists of farmers and entities that produce and package food, including tobacco products, manufacturers and distributors of various beverages, establishments that provide various consumer services, and manufacturers of consumer textile goods, including apparel, footwear and accessories. The Consumer Services sector consists of companies that provide business and personal services including publishing, broadcasting, entertainment, travel, casinos, restaurants, and other leisure activities. The Process Industries sector consists of businesses that produce basic raw materials used for further high value-added products such as chemicals, textiles, forest products, various packaging materials, and industry specialties.

[6] In total, 47 Statutory Secondary Market cases filed since 2006 were accompanied by a parallel US Rule 10b-5 action. In nine of these cases (19%), a Canadian filing came first or on the same day as the US filing; in 14 cases (30%), the first Canadian filing followed within a month of the first US filing; in 18 cases (38%), the Canadian filing came between one and 12 months after the US filing; and in six cases (13%), more than one year elapsed between the first Rule 10b-5 filing in the US and the first parallel filing in Canada.

[7] As Figure 2 shows, 12 Statutory Secondary Market cases were filed in 2020. However, two of these filings were preceded by a parallel US filing *prior* to 2020 and one filing does not involve a Canadian-domiciled company. Thus, Figure 5 shows nine Statutory Secondary Market cases for which the first filing of any action against a Canadian-domiciled company (either in the US or Canada) occurred in 2020. Of these, five had a parallel US Rule 10b-5 action also filed in 2020, and four had no parallel US action. In addition, nine other US shareholder class actions were filed against Canadian-domiciled issuers in 2020 for which there has not yet been a parallel Canadian filing.

[8] Nearly all of the US filings involving Canadian-domiciled companies in 2020 where there has not (yet) been a Canadian filing (eight out of nine) involve issuers with shares listed for trading in both the US and Canada.

[9] Of the 94 filings that include claims under US Rule 10b-5, six also include claims under Section 11 of the Securities Act of 1933. Of the other eight filings, seven involve claims under Section 11, Section 12 of the Securities Act of 1933, and/or Section 14 of the Securities Exchange Act of 1934, and one includes breach of fiduciary duty claims.

[10] Horizons HOU ETF was formerly known as BetaPro Crude Oil Daily Bull ETF (prior to 9 July 2020) and as BetaPro Crude Oil 2x Daily Bull ETF (prior to 22 April 2020).

[11] Valeant is now known as Bausch Health Companies Inc.

[12] The settlement amount is not available for one settlement reached in the 2006 to 2010 period. The cumulative partial settlement amount to date for the case involving Sino-Forest Corporation is included in 2016. If each partial settlement amount for the case involving Sino-Forest Corporation is included by the year of settlement, the median settlement amount over the last five years would be lower than what is shown and the median settlement amount for 2011 to 2015 would be higher than what is shown.

[13] Plaintiffs have filed appeals in both of these cases. A motion for summary judgment in the case involving Pretium Resources Inc., which was argued in December 2020, was granted in a decision dated 2 February 2021.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

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SUPERIOR COURT

(Class action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000783-163

DATE: November 12, 2019

PRESIDING : THE HONOURABLE PETER KALICHMAN, S.C.J.

CELSO CATUCCI
and
NICOLE AUBIN, *ES QUALITÉ* TRUSTEE OF THE AUBIN FAMILY TRUST

Plaintiffs

vs.

VALEANT PHARMACEUTICALS INTERNATIONAL INC.
-and-
J. MICHAEL PEARSON, HOWARD B. SCHILLER, ROBERT L. ROSIELLO, ROBERT A. INGRAM, RONALD H. FARMER, THEO MELAS-KYRIAZI, G. MASON MORFIT, DR. LAURENCE PAUL, ROBERT N. POWER, NORMA A. PROVENCIO, LLOYD M. SEGAL, KATHARINE B. STEVENSON, FRED HASSAN, COLLEEN GOGGINS, ANDERS O. LONNER, JEFFREY W. UBBEN
-and-
PRICEWATERHOUSECOOPERS LLP
-and-
GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., DEUTSCHE BANK SECURITIES INC., BARCLAYS CAPITAL INC., HSBC SECURITIES (USA) INC., MITSUBISHI UFJ SECURITIES (USA) INC., DNB MARKETS INC., RBC CAPITAL MARKETS LLC, MORGAN STANLEY & CO. LLC, SUNTRUST ROBINSON HUMPHREY INC., CITIGROUP GLOBAL MARKETS INC., CIBC WORLD MARKETS CORP., SMBC NIKKO SECURITIES AMERICA INC., TD SECURITIES (USA) LLC, J.P. MORGAN SECURITIES LLC, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BMO CAPITAL MARKETS CORP., AIG INSURANCE COMPANY OF CANADA; ALLIANZ GLOBAL RISKS US INSURANCE COMPANY; EVEREST INSURANCE COMPANY OF CANADA; ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA; TEMPLE INSURANCE COMPANY;

XL INSURANCE COMPANYSE; CHUBB INSURANCE COMPANY OF CANADA; IRONSHORE CANADA LTD AND IRONSHORE LTD; LIBERTY MUTUAL INSURANCE COMPANY; LLOYD'S UNDERWRITERS SYNDICATE NUMBERS: AWH 2232, QBE 1886, CONSORTIUM 9885, AML 1200, MIT 3210, SJC 2003, ANV 1861, NAV 1221, AMA 1200, HCC 4141, AWH 2232, BARBICAN PROFESSIONAL AND FINANCIAL LINES CONSORTIUM 9562, STARR FINANCIAL LINES CONSORTIUM 9885 AND ASP 4711;

Defendants

-and-

CLASS ACTION ASSISTANCE FUND

Mise en cause

JUDGMENT APPROVING SETTLEMENT AGREEMENT WITH PRICEWATERHOUSECOOPERS LLP

---

[1] **CONSIDERING** that the Petitioners request that the Court approve the settlement agreement in the present proceeding reached with PricewaterhouseCoopers LLP ("**PwC**" or the "**Settling Defendant**") dated May 28, 2019 (the "**Settlement Agreement**"), as appears from the attached **Schedule "A"**;

[2] **CONSIDERING** that the appropriate notices were published in French and in English, in compliance with Article 590 CCP and as ordered by the Court on September 5, 2019;

[3] **CONSIDERING** that no objection to the Settlement Agreement was received by Siskinds LLP by the deadline of November 5, 2019 set out in the Order of this Court dated September 5, 2019 (the "**September 2019 Order**"), and therefore no sworn statement was filed in the Court record to that effect;

[4] **CONSIDERING** the materials filed in the Court record, including the sworn statement from Class Counsel confirming compliance with paragraph 16 of the September 2019 Order;

[5] **CONSIDERING** that RicePoint Administration Inc. was appointed to receive any opt-out forms from the Supplementary Class by November 14, 2019, and will report by sworn statement to the Court in this regard by November 21, 2019, pursuant to the September 2019 Order;

[6] **CONSIDERING** the submissions of counsel for the Plaintiffs and counsel for the Settling Defendant as well as the negotiations between them which were extensive, conducted in good faith and at arm's length;

[7] **CONSIDERING** that this Court is of the opinion that the Settlement Agreement is fair, reasonable and in the best interests of Settlement Class Members and complies with Article 590 CCP;

[8] **CONSIDERING** that the parties either consent to or do not oppose this Judgment;

FOR THESE REASONS, THE COURT:

[9] **ORDERS** that, except as otherwise specified in or modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement.

[10] **ORDERS** that, in the event of a conflict between this Judgment and the Settlement Agreement, this Judgment shall prevail;

[11] **ORDERS AND DECLARES** that the Settlement Agreement:

(a) is fair, reasonable and in the best interests of the Settlement Class Members;

(b) is hereby approved pursuant to Article 590 CCP; and

(c) shall be implemented in accordance with all of its terms;

[12] **ORDERS** that the Settlement Amount is in full satisfaction of the Released Claims against the Releasees, and is all-inclusive of, without limitation, interests, costs, Class Counsel Fees and Administration Expenses;

[13] **ORDERS** that Siskinds LLP and the Claims Administrator shall manage the Escrow Account as provided for in the Settlement Agreement. While in control of the Escrow Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with the Settlement Agreement, or in accordance with an order of this Court obtained after notice to the Parties;

[14] **ORDERS** that the Settling Defendant shall have no responsibility for and no liability whatsoever related to:

(a) the administration of the Settlement Agreement;

(b) the Escrow Account (other than as expressly set out in the Settlement Agreement); or

(c) the Plan of Allocation;

[15] **DECLARES** that the Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the CCQ.

[16] **DECLARES** that all provisions of the Settlement Agreement (including Recitals and Definitions) are binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendant, Plaintiffs' counsel, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made in the Settlement Agreement by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made in the Settlement Agreement by the Settling Defendant shall be binding upon all of the Releasees;

[17] **DECLARES** that all Settlement Class Members shall be bound by the Settlement Agreement and this Judgment;

[18] **ORDERS AND DECLARES** that:

(a) as of the Effective Date, the Releasors forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have;

(b) upon the Effective Date, 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;

(c) upon the Effective Date, the Action shall be declared settled out of Court, and without costs, as against the Settling Defendant; and

(d) upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Proceedings against the Releasees;

[19] **DECLARES** that:

(a) the Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees, and the Non-Settling Defendants are thereby released with respect to the

proportionate liability of the Releasees determined at trial or otherwise, if any;

(b) 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 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;

(c) the Plaintiffs and the Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of the Non-Settling Defendants;

(d) in this Action, any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void;

(e) in accordance with and subject to the Settlement Agreement, the Settling Defendant will have one representative attend for examination for discovery by the Plaintiffs in accordance with the schedule pursuant to the case protocol in the Action, and the Non-Settling Defendants who are defendants in the Action will have the same right to examine that representative in accordance with, and in the manner and to the extent permitted by, the CCP and the CCQ, and this sub-paragraph shall not limit the rights of the Non-Settling Defendants;

(f) in accordance with and subject to the Settlement Agreement, the Plaintiffs may issue a subpoena requiring one representative of the Settling Defendant, who is a partner of the Settling Defendant at the time of the application, to attend to give evidence at a trial of the Action in Québec, and the Non-Settling Defendants who are defendants in the Action will have the same right to cross-examine that representative in accordance with, and in the manner and to the extent permitted by, the CCP, and this sub-paragraph shall not limit the rights of the Non-Settling Defendants;

(g) any future right the Non-Settling Defendants may have to request the production of any records from the Settling Defendant as part of any right to ask questions of the Settling Defendant in accordance with subsection [19](e) hereof will be determined on at least thirty (30) days' notice to the Settling Defendant and otherwise according to the provisions of the CCP, and the Settling Defendant will have the right to oppose such a request;

[20] **DECLARES** that, as set out in the Settlement Agreement, Other Actions (each, an Other Action) means:

(a) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. v. Valeant Pharmaceuticals International, Inc. et al.* (Court File No. CV-15-541082-00CP), commenced in the Ontario Superior Court of Justice on November 23, 2015 by way of Notice of Action, with Statement of Claim filed on December 17, 2015;

(b) *Lorraine O'Brien v. Valeant Pharmaceuticals International Inc. et al.* (Court File No. CV-15-543678-00CP), commenced in the Ontario Superior Court of Justice on December 30, 2015;

(c) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. and Lorraine O'Brien v. Valeant Pharmaceuticals International, Inc. et al.*, which consolidated actions (a) and (b) above by Fresh As Amended Statement of Claim dated September 15, 2016 pursuant to the Order of Justice Paul Perell dated September 15, 2016;

(d) *Misuzu Sukenaga v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. CV-15-540567-00CP), commenced in the Ontario Superior Court of Justice on October 27, 2015;

(e) *Randy Okeley v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159991), commenced before the British Columbia Supreme Court on December 2, 2015;

(f) *Mirza Alladina v Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159486), commenced before the British Columbia Supreme Court on November 15, 2015; and

[21] **ORDERS AND DECLARES** that nothing in the Settlement Agreement shall require, or be construed to require, the Settling Defendant, or any of its present, former or future officers, partners, principals, directors or employees, to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any other jurisdiction, or any court order (including the U.S. Confidentiality Order);

[22] **ORDERS AND DECLARES** that nothing in the Settlement Agreement shall require, or shall be construed to require, the Settling Defendant or any representative or employee of the Settling Defendant to disclose or produce any documents or information prepared by or for counsel for the Settling Defendant, or that is not within the possession, custody or control of the Settling Defendant, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or

produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee;

[23] **ORDERS AND DECLARES** that the scope of the Settling Defendant's obligations relating to the provision of any evidence pursuant to the Settlement Agreement shall be limited to the allegations asserted in the Action as presently filed;

[24] **ORDERS** that the Plaintiffs, Class Counsel and the Non-Settling Defendants who are defendants in the Action shall continue to abide by the confidentiality agreement entered into by the parties to the Action dated July 5, 2019, and that the Confidentiality Agreement shall also apply to any documents provided by the Settling Defendant pursuant to the Settlement Agreement;

[25] **ORDERS AND DECLARES** that this Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under the Settlement Agreement and this Judgment;

[26] **ORDERS** that this Judgment shall be declared null and void and of no force and effect, *nunc pro tunc*, on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

THE WHOLE, without legal costs.

THE HONOURABLE JUSTICE PETER KALICHMAN, S.C.J.

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Hearing Date: November 11, 2019

VALEANT CLASS ACTION SETTLEMENT AGREEMENT

Made as of the 28th day of May, 2019

Between

Celso Catucci and Nicole Aubin
Representative plaintiffs in Québec Superior Court Action No.: 500-06-000783-163
In their personal and representative capacities

- and -

PricewaterhouseCoopers LLP

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RECITALS

A. **WHEREAS** the Action was commenced by the Plaintiffs on behalf of putative class members for, *inter alia*, damages for misrepresentation under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and for civil fault pursuant to article 1457 of the CCQ;

B. **AND WHEREAS** the Other Actions, which were commenced in Ontario and British Columbia, arise out of the same circumstances as the Action, and counsel for the Plaintiffs in the Action and each of the Other Actions have agreed to work co-operatively to pursue the settlement of Settlement Class Members' claims in Québec and will be seeking dismissals of the Other Actions (except the Alladina Action) as against PwC, and discontinuances without costs as against the Non-Settling Defendants who are defendants in the relevant Other Actions;

C. **AND WHEREAS** the Non-Settling Defendants who are defendants in the Action remain named defendants in the Action;

D. **AND WHEREAS** PwC denies any alleged misrepresentation, fault and resulting damages;

E. **AND WHEREAS** in the Action, the Québec Court authorized the bringing of a class action under articles 574 to 577 of the CCQ and the bringing of an action pursuant to section 225.4 of the QSA in the Authorization Decision;

F. **AND WHEREAS** the Court of Appeal of Québec dismissed the defendants' respective applications for leave to appeal from the Authorization Decision in judgments dated November 30, 2017;

G. **AND WHEREAS** the opt-out period in the Action in respect of the class authorized in the Authorization Decision concluded on June 19, 2018;

H. **AND WHEREAS** counsel for the Parties have engaged in arm's length settlement discussions and negotiations over several years, including mediations before Ronald Slaght, Q.C. on April 11, 2017 and before Joel Wiesenfeld on May 28, 2019, the latter of which resulted in the Settlement;

I. **AND WHEREAS** documentary discovery has occurred in the Action, and examinations of the defendants are scheduled to take place in the fall of 2019;

J. **AND WHEREAS** the Action continues as against the Non-Settling Defendants who are defendants in the Action, and the Plaintiffs, on behalf of the authorized class in the Action, reserve all rights against the Non-Settling Defendants who are defendants in the Action, other than as may be provided for in Section 11;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of Court without costs as with PwC only, and the Other Actions (except the Alladina Action), be dismissed on their merits with prejudice as against PwC and without costs, subject to the approval of the Québec Court, on the following terms and conditions.

SECTION 1 - DEFINITIONS

1.1 For the purposes of this Agreement, including the Recitals:

(a) **Action** means *Catucci and Aubin v. Valeant International Pharmaceuticals Inc. et al.*, brought in the Québec Superior Court of Justice, Court File No. No.: 500-06-000783-163.

(b) **Administration Expenses** means all fees, disbursements, expenses, costs, tax and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Administrator or otherwise for the approval, implementation and operation of this Agreement, including the costs of notices and claims administration but not Class Counsel Fees.

(c) **Agreement** means this settlement agreement, including the recitals.

(d) **Alladina Action** means *Mirza Alladina v Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159486), commenced before the British Columbia Supreme Court on November 15, 2015, in which PwC is not a named defendant.

(e) **Authorization Decision** means the Judgement of the Honourable Justice Chantal Chatelain of the Québec Court in the Action dated August 29, 2017.

(f) **B.C. Court** means the Supreme Court of British Columbia.

(g) **CCP** means the *Code of Civil Procedure* CQRL, c. 25.01.

(h) **CCQ** means the *Civil Code of Québec*.

(i) **Class Counsel** means Siskinds LLP, Koskie Minsky LLP, Faguy & Co., Strosberg Sasso Sutts LLP, Rochon Genova LLP, Morganti Legal P.C., Siskinds Desmeules s.e.n.c.r.l. and Investigation Counsel P.C.

(j) **Claims Administrator** means a third-party professional firm appointed by the Québec Court to administer this Agreement and the Plan of Allocation and any employees of such firm.

(k) **Class Counsel Fees** means the fees and accrued interest thereon, disbursements, costs, holdbacks, GST/PST/HST and other applicable taxes or charges of Class Counsel.

(l) **Common Issue** means: Is PwC liable to the Settlement Class Members for damages for misrepresentation under Title VIII, Chapter II, Divisions 1 or 11 of the QSA, the concordant provisions of the other Securities Legislation, or for civil fault pursuant to article 1457 of the CCQ? If so, in what amount?

(m) **Effective Date** means the date when both of the following have occurred: (i) the Final Order has been issued by the Québec Court approving the Agreement; and (ii) each of the Other Actions (except the Alladina Action) has been dismissed with prejudice as against PwC and discontinuances as against the Non-Settling Defendants who are defendants in the relevant Other Action, by the Ontario Court or the B.C. Court, as applicable, have been sought.

(n) **Escrow Account** means an interest-bearing Escrow Account at a Canadian Schedule I bank under the control of Class Counsel for the benefit of Settlement Class Members.

(o) **Excluded Persons** means PwC and the Non-Settling Defendants, members of the immediate families of the Individual Defendants, and the directors, officers, subsidiaries and affiliates of Valeant and its subsidiaries.

(p) **Execution Date** means the date on the execution pages as of which the Parties have fully executed this Agreement.

(q) **Final Order** means the later of a final judgment entered by the Québec Court approving this Agreement, the time to appeal such judgment having expired without any appeal being taken, if an appeal lies, and the approval of this Agreement upon a final disposition of all appeals.

(r) **Individual Defendants** means J. Michael Pearson, Howard B. Schiller, Robert L. Rosiello, Robert A. Ingram, Ronald H. Farmer, Laizer D. Kornwasser, Theo Melas-Kyriazi. G. Mason Morfit, Dr. Laurence Paul, Robert N. Power, Norma A. Provencio, Lloyd M. Segal, Katherine B. Stevenson, Fred Hassan, Colleen Goggins, Anders O. Lonner and Jeffrey W. Ubben.

(s) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 2.8 of the Agreement to be paid from the Settlement Amount.

(t) **Non-Settling Defendants** means Valeant, the Individual Defendants and the Underwriter Defendants.

(u) **Notes** means Valeant's: (i) 6.75% senior notes due 2018; (ii) 7.50% senior notes due 2021; (iii) 5.625% senior notes due 2021; (iv) 5.50% senior unsecured notes due 2023; (v) 5.375% senior unsecured notes due 2020; (vi) 5.875% senior unsecured notes due 2023; (vii) 4.50% senior unsecured notes due 2023; and (viii) 6.125% senior unsecured notes due 2025.

(v) **Notice of Hearing** means the form or forms of notice, as agreed to by the Plaintiffs and PwC, or such other form or forms of notice as agreed to by the Plaintiffs and PwC and approved by the Québec Court, which inform(s) the Settlement Class Members of: (i) the authorization of the Action as a class proceeding for settlement purposes for the Supplementary Québec Class Members; (ii) the date and location of the Settlement Approval Hearing (iii) the principal elements of the Agreement; (iv) the process by which Settlement Class Members may object to the Settlement; (v) the process by which the Supplementary Québec Class Members may opt out; and (vi) Class Counsel Fees requested by Class Counsel.

(w) **Offering Memoranda** (each, "**Memorandum**" or "**Circular**") means Valeant's: (i) Offering Circular dated June 27, 2013; (ii) Offering Circular dated November 15, 2013; (iii) Offering Memorandum dated January 15, 2015; and, (iv) Offering Memorandum dated March 13, 2015.

(x) **Offerings** (each, an "**Offering**") means the offerings of Valeant's Securities during the period February 28, 2013 to October 26, 2015 by way of the Offering Memoranda and the Prospectuses.

(y) **Ontario Court** means the Ontario Superior Court of Justice.

(z) **Other Actions** (each, an **Other Action**) means:

(i) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. v. Valeant Pharmaceuticals International, Inc. et al.* (Court File No. CV-15-541082-00CP), commenced in the Ontario Superior Court of Justice on November 23, 2015 by way of Notice of Action, with Statement of Claim filed on December 17, 2015;

(ii) *Lorraine O'Brien v. Valeant Pharmaceuticals International Inc. et al.* (Court File No. CV-15-543678-00CP), commenced in the Ontario Superior Court of Justice on December 30, 2015;

(iii) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. and Lorraine O'Brien v. Valeant Pharmaceuticals International, Inc. et al.*, which consolidated actions (i) and (ii) above by Fresh As Amended Statement of Claim dated September 15, 2016 pursuant to the Order of Justice Paul Perell dated September 15, 2016;

(iv) *Misuzu Sukenaga v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. CV-15-540567-00CP), commenced in the Ontario Superior Court of Justice on October 27, 2015;

(v) *Randy Okeley v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159991), commenced before the British Columbia Supreme Court on December 2, 2015; and

(vi) the Alladina Action.

(aa) **Parties** means PwC and the Plaintiffs and, where necessary, the Québec Class Members.

(bb) **Plaintiffs** means Celso Catucci and Nicole Aubin.

(cc) **Plan of Allocation** means the plan for allocating and distributing the Settlement Amount and accrued interest, net of court-approved deductions, in whole or in part, as established by Class Counsel and approved by the Québec Court.

(dd) **Proceedings** means actions or proceedings, other than the Action or the Other Actions, solely advancing Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(ee) **Prospectuses** means Valeant's: (i) Short Form Base Shelf Prospectus dated and filed on SEDAR on June 14, 2013; (ii) Prospectus Supplement dated and filed on SEDAR on June 18, 2013; (iii) Prospectus dated June 10, 2013, filed on EDGAR on June 19, 2013; (iv) Prospectus Supplement dated June 18, 2013, filed on EDGAR on June 19, 2013; (v) Prospectus dated June 10, 2013, filed on EDGAR on March 18, 2015; and, (vi) Prospectus Supplement dated March 17, 2015, filed on EDGAR on March 18, 2015.

(ff) **PwC** means PricewaterhouseCoopers LLP, the U.S. member firm in the PwC network of firms.

(gg) **Québec Class or Québec Class Members** means, other than Excluded Persons and any person who validly opted out of the Action before the opt-out period concluded on June 19, 2018:

(i) **Primary Market Sub-Class:** All persons and entities, wherever they made reside or be domiciled, who, during the period February 28, 2013 to October 26, 2015, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's' Securities acquired in the United States (but not excluding any claims in

respect of Valeant's 4.5% Senior Notes due 2023 offered in March 2015); and,

(ii) **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 28, 2013 to October 26, 2015, acquired Valeant's Securities in the secondary market and held some or all such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States.

(hh) **Québec Court** means Québec Superior Court of Justice.

(ii) **QSA** means Québec *Securities Act*, CQLR c. V-1.1, as amended.

(jj) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that 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, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action or Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with alleged misrepresentations or performance of professional services regarding Valeant in respect thereof. For greater certainty, "costs" above includes all outstanding costs awards payable by PwC to the Plaintiffs with the share of any such costs awards allocable to PwC to be determined by the Québec Court.

(kk) **Releasees** means, jointly and severally, individually and collectively, PwC and each of the other firms in the PricewaterhouseCoopers network of firms, and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(ll) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class and Settlement Class Members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.

(mm) **Securities** means Valeant's common shares and Notes.

(nn) **Securities Legislation** means, collectively, the QSA; the Securities Act, RSO 1990, c S.5, as amended; the Securities Act, RSA 2000, c S-4, as amended; the Securities Act, RSBC 1996, c 418, as amended; the Securities Act, CCSM c S50, as amended; the Securities Act, SNB 2004, c S-5.5, as amended; the Securities Act, RSNL 1990, c S-13, as amended; the Securities Act, SNWT 2008, c 10, as amended; the Securities Act, RSNS 1989, c 418, as amended; the Securities Act, S Nu 2008, c 12, as amended; the Securities Act, RSPEI 1988, c S-3.1, as amended; the Securities Act, 1988, SS 1988-89, c S-42.2, as amended; and the Securities Act, SY 2007, c 16, as amended.

(oo) **Settlement** means the settlement provided for in this Agreement.

(pp) **Settlement Amount** means the all-inclusive sum of thirty million dollars (CAD $30,000,000.00) to be paid in full and final settlement of the claims against PwC, inclusive of class counsel fees, notice and administration costs, fees, costs, expenses related to the litigation or the settlement, and all outstanding costs

awards with the share of any such costs awards allocable to PwC to be determined by the Québec Court.

(qq) **Settlement Approval Hearing** means the hearing for the Québec Court's approval of the Settlement.

(rr) **Settlement Approval Order** means the order of the Québec Court to be requested by the Plaintiffs, with the consent of PwC, approving the Agreement.

(ss) **Settlement Class or Settlement Class Members** means, other than Excluded Persons and any person who validly opted out of the Action or who is deemed to have opted out of the Action pursuant to article 580 of the CCP before the opt-out period concluded on June 19, 2018, or who validly opts out pursuant to the process set out in Section 7:

(i) **Primary Market Sub-Class:** All persons and entities, wherever they made reside or be domiciled, who, during the period February 28, 2013 to November 12, 2015, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and November 12, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States (but not excluding any claims in respect of Valeant's 4.5% Senior Notes due 2023 offered in March 2015); and,

(ii) **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 27, 2012 to November 12, 2015, acquired Valeant's Securities in the secondary market and held some or all such Securities at any point in time between October 19, 2015 and November 12, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States.

(tt) **Settling Defendant** means PwC.

(uu) **Supplementary Québec Class or Supplementary Québec Class Members** means all persons and entities, wherever they may reside or may be domiciled who, during the periods of February 27, 2012 to February 27, 2013 and October

27, 2015 to November 12, 2015, acquired Valeant's Securities in the secondary market, excluding (a) any claims in respect of Valeant's Securities acquired in the United States; and (b) Excluded Persons.

(vv) **Underwriter Defendants** means Goldman Sachs & Co., Goldman Sachs Canada Inc., Deutsche Bank Securities Inc., Barclays Capital Inc., HSBC Securities (USA) Inc., Mitsubishi UFJ Securities (USA) Inc., DNB Markets Inc., RBC Capital Markets LLC, Morgan Stanley & Co. LLC, Suntrust Robinson Humphrey Inc., Citigroup Global Markets Inc., CIBC World Markets Corp., SMBC Nikko Securities America Inc., TD Securities (USA) LLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and BMO Capital Markets Corp.

(ww) **U.S. Confidentiality Order** means the Stipulation and Confidentiality Order dated July 18, 2017 in the U.S. proceeding in *In re Valeant Pharmaceuticals International, Inc. Securities Litigation* Master No. 3:15-cv-07658-MAS-LHG.

(xx) **Valeant** means the corporation formerly known as Valeant Pharmaceuticals International Inc. which, as of July 13, 2018, changed its name to Bausch Health Companies Inc.

SECTION 2 - SETTLEMENT BENEFITS

Payment of Settlement Amount

2.1 Subject to Section 13, within thirty (30) days of the Execution Date, PwC shall pay the Settlement Amount to Siskinds LLP for deposit into the Escrow Account.

2.2 PwC shall deposit the Settlement Amount into the Escrow Account by wire transfer. Siskinds LLP shall provide the necessary wire transfer information to counsel for PwC on or before the Execution Date so that PwC has a reasonable period of time to comply with section 2.1.

2.3 The Settlement Amount shall be provided in full satisfaction of the Released Claims against the Releasees.

2.4 The Settlement Amount shall be all-inclusive of all amounts, including without limitation, interest, costs, Class Counsel Fees and Administration Expenses. PwC shall take no position on the Plaintiffs' motion for approval of Class Counsel Fees.

2.5 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 Agreement or the Action or any Other Actions.

2.6 Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Escrow Account, net of Class Counsel Fees and Non-Refundable Expenses, as approved by the Québec Court, to the Claims Administrator.

2.7 Siskinds LLP and the Claims Administrator shall maintain the Escrow Account as provided for in this Agreement. While in control of the Escrow Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Agreement, or in accordance with an order of the Québec Court obtained after notice to the Parties.

Non-Refundable Expenses

2.8 The following Administration Expenses, reasonably incurred, and as approved by the Québec Court, shall be the Non-Refundable Expenses, and shall be payable from the Settlement Amount in the Escrow Account (the **"Escrow Settlement Amount"**), when incurred:

(a) the costs incurred in connection with establishing and operating the Escrow Account;

(b) all costs incurred in publishing and distributing the Notice of Hearing, or other steps taken in respect of administration of this Agreement, up to the date of the termination of the Agreement;

(c) if necessary, the costs incurred by the Administrator in publishing notice to the Settlement Class that the Agreement has been terminated.

2.9 In no event shall Non-Refundable Expenses totaling more than CAD $200,000 be incurred or paid prior to the Effective Date.

2.10 Class Counsel shall account to the Québec Court and to the Parties for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this account shall be delivered no later than ten (10) days after such termination.

2.11 Any disputes concerning the Non-Refundable Expenses shall be dealt with by a motion to the Québec Court on notice to the Parties.

SECTION 3 - CLASS COUNSEL FEES

Class Counsel Fees Approval

3.1 At the Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Unless this Agreement is terminated pursuant to Section 13, all amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

3.2 PwC acknowledges that it is not a party to the motion concerning the approval of Class Counsel Fees, it will have no involvement in the approval process to determine the amount of Class Counsel Fees and it will not make any submissions to the Québec Court concerning Class Counsel Fees.

3.3 Any order in respect of Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the Settlement of the Action as provided herein.

3.4 Forthwith after the Settlement becomes final, Class Counsel Fees approved by the Court shall be paid to Class Counsel from the Escrow Account.

Taxes and Interest

3.5 Except as expressly provided herein, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Escrow Settlement Amount.

3.6 Subject to Section 3.7, all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Settlement Amount shall be the responsibility of the Plaintiffs and the Settlement Class. Class Counsel or a Claims Administrator, as may later be appropriate, shall be solely responsible to fulfil all tax reporting and payment

requirements arising from the Escrow Settlement Amount, 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 Escrow Account.

3.7 PwC shall have no responsibility in any way related to the Escrow Account other than as expressly set out herein, including but not limited to, making any filings relating to the Escrow Account, paying tax on any income earned by the Settlement Amount, or paying any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case any interest earned on the Settlement Amount shall be paid to PwC who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid by Class Counsel or a Claims Administrator.

No Reversion

3.8 Unless this Agreement is terminated as provided herein, PwC shall not be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT

Distribution of the Net Settlement Amount

4.1 The formula for distribution of the Settlement Amount shall be contained in the Plan of Allocation.

4.2 In conjunction with the Plaintiffs' motion to the Québec Court for approval of this Settlement, on notice to PwC, Class Counsel will make an application seeking an order from the Québec Court approving the Plan of Allocation.

4.3 PwC shall not have any responsibility, financial obligations or liability whatsoever with respect to the Plan of Allocation, or the investment, distribution or administration of monies in the Escrow Account, including, but not limited to, Administration Expenses and Class Counsel Fees.

SECTION 5 - EFFECT OF SETTLEMENT

No Admissions or Concessions

5.1 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, and any action taken to implement this Agreement, shall not be deemed, construed or interpreted to be:

(a) an admission or concession by PwC of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Action or the Other Actions, or the application of the law of Québec to any of the claims made in the Action; or

(b) an admission or concession by the Plaintiffs, Class Counsel or the Settlement Class of any weakness in the claims of the Plaintiffs and the Settlement Class, including those against the Non-Settling Defendants, or that the consideration to be given hereunder represents the amount that could or would have been recovered from PwC after trial of the Action.

Agreement Not Evidence Nor Presumption

5.2 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, documents, discussions and proceedings associated with this Agreement (including, but not limited to, the Plan of Allocation), and any action taken to implement this Agreement, shall not be offered or received in the continuing Action, the Other Actions, any pending or future civil, criminal, quasi-criminal, administrative action or disciplinary investigation or proceeding in any jurisdiction:

(a) against PwC, as evidence, or a presumption, of a concession or admission of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made against it in the Action or the Other Actions; or

(b) against the Plaintiffs, Class Counsel or the Settlement Class, as evidence, or a presumption, of a concession or admission:

(i) of any weakness in the claims of the Plaintiffs and the Settlement Class, including those against the Non-Settling Defendants; or

(ii) that the consideration to be given hereunder represents the amount that could or would have been recovered from PwC after trial of the Action.

5.3 Notwithstanding Section 5.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Québec Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 6 - STEPS TO EFFECTUATE AGREEMENT

Reasonable Efforts

6.1 The Parties shall take all reasonable steps to effectuate the Agreement and to secure its approval and have the Action declared settled out of Court, and to secure the prompt, complete and final dismissal with prejudice of the Other Actions (except the Alladina Action) on a without costs basis as against PwC, including cooperating in the Plaintiffs' efforts to obtain the approval and orders required from the Québec Court and, as necessary, the Ontario Court and the B.C. Court, regarding the dismissals with prejudice as against PwC and the discontinuances without costs as against the Non-Settling Defendants who are defendants in the relevant Other Actions, and the implementation of this Agreement. This Agreement shall only become final on the Effective Date.

6.2 With the exception of the materials contemplated in Section 3 regarding Class Counsel Fees, the Plaintiffs will provide all materials to be filed with or provided to the Québec Court, the Ontario Court or the B.C. Court in connection with this Agreement to PwC in advance for review and comment.

6.3 The Parties agree that, if necessary to give effect to this Agreement in provinces outside of Québec, they will co-operate in entering into such further documentation and agreements using language as required to effect the agreed-upon results, and applying to the Ontario Court and/or the B.C. Court for directions.

Action in Abeyance

6.4 Other than in accordance with section 11.1(e), until the Parties have obtained the Final Order or this Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel agree to hold in abeyance all other steps in the Action and the Other Actions as they relate to PwC, other than the settlement approval motion and dismissal, amendment and discontinuance motions contemplated by this Agreement and such other matters required to implement the terms of this Agreement, unless otherwise agreed in writing by the Parties.

Pleading Amendment

6.5 On or as soon as practicable after the Québec Court's approval of this Agreement, Class Counsel shall seek: (i) the approval of the Québec Court to amend the Judicial Application Originating Class Proceeding in the Action and, (ii) the approval of the Ontario Court and the B.C. Court, as necessary, to cause to be amended the claims in the Other Actions, as the case may be, to:

(a) remove PwC as a party to the Action and each of the Other Actions (except the Alladina Action); and

(b) limit the scope of the Plaintiffs' claims in the Action and the claims of the plaintiffs in each of the Other Actions against the Non-Settling Defendants who are defendants in each of those actions to their proportionate liability.

SECTION 7 - AUTHORIZATION FOR SETTLEMENT APPROVAL ONLY

Authorization for Settlement Approval on behalf of Supplementary Québec Class and Common Issue

7.1 The Action shall be authorized as a class proceeding on behalf of the Supplementary Québec Class as against PwC solely for purposes of settlement of the Action and the approval of this Agreement by the Québec Court.

7.2 In the Plaintiffs' motion for authorization of the Action as a class proceeding on behalf of the Supplementary Québec Class for settlement purposes and for the approval of this

Agreement, the only common issue that they will seek to define is the Common Issue and the only class they will assert is the Supplementary Québec Class.

7.3 Authorization of the Action as against PwC for the purpose of implementing the Agreement on behalf of the Supplementary Québec Class shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants who are defendants in the Action except as expressly set out in this Agreement.

7.4 Following authorization of the Action as against PwC for the purpose of implementing the Agreement on behalf of the Supplementary Québec Class, notice of authorization shall be disseminated as follows:

(a) by Class Counsel posting the notice on their websites and by delivering a copy of the notice of authorization electronically to all individuals and entities who have contacted Class Counsel about this action and all individuals and entities who request it;

(b) by Class Counsel placing the notice online in abbreviated form with a URL leading to more information on a number of websites for a period of 60 days;

(c) disseminated once through Canada NewsWire in English and French;

(d) by publishing the notice once in French in a weekday tablet (online) edition of La Presse+;

(e) by publishing the notice on the Québec Class Action Registry; and

(f) by publishing the notice once in English in the national print edition of The Globe and Mail, Report on Business section and in English in the national print edition of the National Post, Financial Post section.

7.5 The Parties shall, acting reasonably, agree on the form and content of an opt-out form for the Supplementary Québec Class.

7.6 The opt-out period for the Supplementary Québec Class shall begin on the date of the order approving authorization of the Action as against PwC for the purpose of

implementing the Agreement on behalf of the Supplementary Québec Class and conclude sixty (60) days thereafter.

SECTION 8 - NOTICE TO SETTLEMENT CLASS

8.1 The proposed Settlement Class shall be given the following notices: (i) the Notice of Hearing; (ii) notice of the proposed dismissals, amendments and discontinuances in Ontario and British Columbia; (iii) notice if this Agreement is approved; (iv) notice if this Agreement is not approved, is terminated, or otherwise fails to take effect; and (v) such further notice as may be directed by the Québec Court.

8.2 The form of notices referred to in Section 8.1 and the manner and extent of publication and distribution shall be in the manner set out in Section 7, or in such form or manner as approved by the Québec Court.

SECTION 9 - SETTLEMENT APPROVAL

Motions for Approval and Dismissals/Discontinuances

9.1 As soon as practicable after this Agreement is executed, the Plaintiffs shall bring motions before the Québec Court for orders authorizing the Action as a class proceeding (for settlement purposes) on behalf of the Supplementary Québec Class as against PwC, and then approving the Agreement.

9.2 The form of orders referred to in Section 9.1, and any notices attached thereto, shall be as agreed to by the Plaintiffs and PwC or in such form or manner as agreed to by the Plaintiffs and PwC and approved by the Québec Court.

9.3 As soon as practicable after the Settlement Approval Order is obtained, the plaintiffs in the Other Actions shall also bring motions before the Ontario Court and the B.C. Court, respectively, for orders dismissing each of the Other Actions (except the Alladina Action) as against PwC with prejudice and without costs, amending the claims in the Other Actions as set out in Section 6.5, and seeking leave to discontinue without costs as against the Non-Settling Defendants who are named as defendants in the Other Actions.

9.4 The Approval Order shall also contain a term providing that no action may be taken against PwC, Class Counsel or the Administrator without leave of the Québec Court with respect to any issues arising from the Settlement.

Pre-Motion Confidentiality

9.5 Until the first of the motions required by Section 9.1 is brought, the Parties shall keep all of the terms of the Agreement confidential and shall not disclose them without the prior consent of counsel for PwC or Class Counsel, as the case may be, except as required for the purposes of financial reporting, communications with insurers, or the preparation of financial records (including tax returns and financial statements), as otherwise required by law, or as otherwise required to give effect to the terms of this Agreement.

No Press Release

9.6 The Parties agree that, other than in connection with any court-approved notice arising from this Agreement, they will not issue any press release, whether joint or individual, concerning this Agreement or anything related thereto. The Parties further agree that they will not seek to obtain media coverage in relation to the Agreement, with the exception that Class Counsel will post this Agreement on their websites and on the Registry of Class Actions.

9.7 The Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. The Parties' obligations under this subsection shall not prevent them, or any of them, from reporting to their clients, or from complying with any order of the Québec Court, or from making any disclosure or comment otherwise required by the Agreement, or from making any necessary disclosure or comment for the purposes of any applicable legislation or professional obligation.

9.8 If comment is solicited by the press, Class Counsel and the Plaintiffs agree and undertake to describe the Settlement and the terms of this Agreement only as fair, reasonable and in the best interests of the Settlement Class.

SECTION 10 - RELEASES

10.1 As of the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Agreement, the Releasors forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have.

10.2 The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

10.3 Notwithstanding section 10.1, upon the Effective Date, 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.

10.4 As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit cause of action, claim or demand against any Releasee in respect of any Released Claims or any matter related thereto.

10.5 As of the date of this Agreement, Class Counsel do not and will not represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action or the Other Actions as against PwC.

10.6 Upon the Effective Date, the Action shall be declared settled out of Court, and without costs, as against PwC.

10.7 Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Proceedings against the Releasees.

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

10.9 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsections 13.2 and 13.3), the releases and reservation of rights contemplated in this Section 10 shall be considered a material term of the Agreement and the failure of the Québec Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to section 13.1 of the Agreement.

SECTION 11 - RENUNCIATION OF SOLIDARITY AND WAIVER ORDER (QUÉBEC) / BAR ORDER

Renunciation of Solidarity and Waiver (Québec)

11.1 The Parties agree that the Settlement Approval Order shall include a renunciation of solidarity and waiver order ("**Renunciation of Solidarity and Waiver Order**") providing for the following:

(a) the Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees, and the Non-Settling Defendants are thereby released with respect to the proportionate liability of the Releasees proven at trial or otherwise, if any;

(b) the Québec 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 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;

(c) the Plaintiffs and the Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of the Non-Settling Defendants;

(d) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void;

(e) in accordance with and subject to Section 12, the Settling Defendant will have one representative attend for examination for discovery by the Plaintiffs in accordance with the schedule pursuant to the case protocol in the Action, and the Non-Settling Defendants who are defendants in the Action will have the same right to examine that representative in accordance with, and in the manner and to the extent permitted by, the CCP and the CCQ.

(f) in accordance with and subject to Section 12, the Plaintiffs may issue a subpoena requiring one representative of the Settling Defendant, who is a partner of the Settling Defendant at the time of the application, to attend to give evidence at a trial of the Action in Québec, and the Non-Settling Defendants who are defendants in the Action will have the same right to cross-examine that representative in accordance with, and in the manner and to the extent permitted by, the CCP and the CCQ.

11.2 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsections 13.2 and 13.3), the Renunciation of Solidarity and Waiver Order contemplated in this Section 11 shall be considered a material term of the Agreement and the failure of the Québec Court to approve the Renunciation of Solidarity and Waiver Order contemplated herein shall give rise to a right of termination pursuant to section 13.1 of the Agreement.

Bar Order

11.3 The Parties agree that the Settlement Approval Order shall contain a bar order, which will be operative only in the event that the Other Actions are not amended as contemplated in Section 6.5 above and discontinued as against the Non-Settling Defendants (the "**Bar Order**").

11.4 The Bar Order shall be in a form agreed to by the Parties and shall provide the following with respect to each of the Other Actions:

(a) 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 the Other Action, or otherwise, by any Non-Settling Defendant or any other person or party against a Releasee or by a Releasee against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section;

(b) the plaintiffs in the Other Action and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants 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 that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;

(c) the plaintiffs in the Other Action and the Settlement Class Members shall limit their claims against the Non-Settling Defendants 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 any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest, and costs attributable to the aggregate of the several liability of the Non-Settling Defendants and/or any other person or party that is not a Releasee to the plaintiffs in the Other Action and the 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 any other person or party that is not a Releasee, if permitted by law;

(d) the Ontario Court or the B.C. Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Other Action, whether or not the Releasees remain in the Other 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 Other Action and any determination by the Ontario Court or the B.C. Court, as applicable, in respect of the proportionate liability of the Releasees shall only apply in the Other Action and shall not be binding on the Releasees in any other proceeding;

(e) if, in the absence of (a) hereof, the Non-Settling Defendants who are defendants in the Other Action would not have the right to make claims for contribution and indemnity or other claims, whether in equity or in law, by statute or otherwise, from or against the Settling Defendant, then nothing in the order is intended to or shall limit, restrict or affect any arguments which those Non-Settling Defendants may make regarding the reduction of any judgment against them in the Other Action;

(f) a Non-Settling Defendant may, on application to the Ontario Court or the B.C. Court, as applicable, in an Other Action in which the Non-Settling Defendant is a party, and on at least thirty (30) days' notice to counsel for the Settling Defendant, and not to be brought until after all appeals or times to appeal certification have been exhausted, seek orders for the following:

(i) the right to use the documents produced by the Settling Defendant in the Action for purposes of the Other Action;

(ii) the right to use the oral discovery evidence of the Settling Defendant in the Action for purposes of the Other Action, the transcript of which may be read in at a trial of the Other Action;

(iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or

(iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to examination by counsel for the Non-Settling Defendants in the Other Action.

(g) the Settling Defendant retains all rights to oppose any application brought pursuant to subsection (f), including any such application brought at trial seeking

an order requiring the Settling Defendant to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of any documents ordered to be produced and/or for information obtained from discovery in accordance with section (f);

(h) on any application brought pursuant to subsection (f), the Ontario Court or the B.C. Court, as applicable, may make such orders as to costs and other terms as it considers appropriate;

(i) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendant to Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;

(j) the Québec Court will have an ongoing supervisory role over the discovery process in the Action and the Settling Defendant will attorn to the jurisdiction of that court only for this purpose; and

(k) a Non-Settling Defendant may effect service of the application(s) referred to in subsection (f) on a Settling Defendant by service on counsel for the Settling Defendant.

11.5 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsections 13.2 and 13.3), the Bar Order contemplated in Sections 11.3 to 11.4 shall be considered a material term of the Agreement and the failure of the Québec Court to approve the Bar Order contemplated herein shall give rise to a right of termination pursuant to section 13.1 of the Agreement.

SECTION 12 - LIMITATIONS ON EVIDENCE

12.1 Nothing in this Agreement shall require, or be construed to require, the Settling Defendant, or any of its present, former or future officers, partners, principals, directors or employees, to provide any further answers to the documentary requests made by the

Plaintiffs in the Action, nor to provide answers to any additional documentary requests that may be made in the future, either in writing or on examination for discovery.

12.2 Any future right the Non-Settling Defendants may have to request the production of any records from the Settling Defendant as part of any right to ask questions of the Settling Defendant in accordance with subsection 11.1(e) will be determined on at least thirty (30) days' notice to the Settling Defendant and otherwise according to the provisions of the CCP, and the Settling Defendant will have the right to oppose such a request under the CCP.

12.3 The Plaintiffs confirm and agree that they accept the documents already produced in the Action by the Settling Defendant as the full and complete documentary production by the Settling Defendant, and that they accept and will not challenge or dispute the objections made in the Action by the Settling Defendant to the Plaintiffs' documentary requests.

12.4 Nothing in this Agreement shall require, or be construed to require, the Settling Defendant, or any of its present, former or future officers, partners, principals, directors or employees, to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any other jurisdiction, or any court order (including the U.S. Confidentiality Order).

12.5 Nothing in this Agreement shall require, or shall be construed to require, the Settling Defendant or any representative or employee of the Settling Defendant to disclose or produce any documents or information prepared by or for counsel for the Settling Defendant, or that is not within the possession, custody or control of the Settling Defendant, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

12.6 The Settling Defendant shall not seek to quash a subpoena issued by the Plaintiffs in accordance with section 11.1(f), unless the subpoena is not legally valid or is broader than permitted by that section.

12.7 The Settling Defendant's obligations under this section shall not be affected by the release provisions in Section 10 of this Agreement. Unless this Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligations under this section and subsections 11.1(e) and 11.1(f) shall cease at the date of the Plaintiffs' settlement with all Non-Settling Defendants who are defendants in the Action, or final judgment in the Action against all Non-Settling Defendants who are defendants in the Action.

12.8 The provisions set forth in this section are the exclusive means by which the Plaintiffs, the Settlement Class Members and Class Counsel may obtain discovery, information, or documents from the Releasees or their current or former officers, directors or employees. The Plaintiffs, the Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

12.9 The scope of the Settling Defendant's obligations under this section shall be limited to the allegations asserted in the Action as presently filed.

SECTION 13 - TERMINATION

Right of Termination

13.1 In the event that:

(a) the Québec Court declines to grant authorization on behalf of the Supplementary Québec Class for settlement purposes as contemplated by Section 7;

(b) the Québec Court declines to approve this Agreement or any material part hereof;

(c) the Québec Court approves this Agreement in a materially modified form;

(d) the Québec Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Agreement;

(e) the Settlement Approval Order does not become a Final Order;

(f) the Settlement Approval Order is reversed on appeal and the reversal becomes a Final Order;

(g) the Québec Court declines to declare the Action settled out of court against PwC;

(h) the Ontario Court and/or the B.C. Court, as applicable, decline to dismiss the Other Actions (except the Alladina Action) with prejudice and without costs against PwC;

(i) Class Counsel fail to seek or the Québec Court, the Ontario Court and/or the B.C. Court, as applicable, fail to approve the amendments to the pleadings in the Action or the Other Actions which are contemplated by Section 6.5;

(j) discontinuances without costs as against the Non-Settling Defendants who are defendants in the relevant Other Actions, have not been sought from the Ontario Court or the B.C. Court, as applicable;

(k) the Québec Court declines to approve the releases, covenants (including the covenant not to sue), dismissals, granting of consent, and reservations of rights contemplated in Section 10, or approves them in a materially modified form; or

(l) the Québec Court declines to approve the Renunciation of Solidarity and Waiver Order and Bar Order clauses contemplated in Section 11, or approves them in a materially modified form;

the Plaintiffs and PwC shall have the right to terminate this Agreement (except that only PwC shall have the right to terminate this Agreement under subsection (g) through (l) above) by delivering a written notice in accordance with subsection 15.17 of same within thirty (30) days following an event described above.

13.2 For greater certainty, if the Ontario Court or the B.C. Court does not grant the motions for discontinuance of the Other Actions without costs as against the Non-Settling Defendants, this Settlement remains effective.

13.3 Any order, ruling or determination made (or rejected) by the Québec Court with respect to Class Counsel Fees or Class Counsel Disbursements shall not be deemed to be a

material modification of all, or a part, of this Agreement and shall not provide any basis for the termination of this Agreement.

13.4 Except as provided for in section 13.9, if the Plaintiffs or PwC exercise their right to terminate, the Settling Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

Steps Required on Termination

13.5 If this Agreement is terminated, either PwC or the Plaintiffs shall, within thirty (30) days after termination, apply to the Québec Court, on notice to the Plaintiffs (or PwC, as the case may be) and the Non-Settling Defendants who are defendants in the Action, for an order:

(a) declaring this Agreement null and void and of no force or effect except for the provisions of those sections listed in Section 13.9;

(b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments entered by a court in accordance with the terms of this Agreement; and

(c) authorizing the payment of the Escrow Settlement Amount, plus all accrued interest thereon, less taxes paid on interest, and less the Non-Refundable Expenses, to PwC.

13.6 Subject to Section 13.9, the Plaintiffs shall consent to the orders sought in any motion made by PwC under Section 13.5.

Notice of Termination

13.7 If this Agreement is terminated, a notice of the termination will be given to the Settlement Class. Plaintiffs' counsel will cause the notice of termination, in a form approved by the Québec Court, to be published and disseminated as the Québec Court directs.

Effect of Termination

13.8 In the event this Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

(a) the Parties will be restored to their respective positions prior to the execution of this Agreement, except as expressly provided for herein;

(b) no motion for authorization for settlement purposes or motion to approve this Agreement which has not been decided shall proceed;

(c) the Parties will cooperate in seeking to have all prior orders or judgments entered by a court in accordance with the terms of this Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;

(d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by 13.5(b), return to PwC the Settlement Amount, plus all accrued interest thereon, less taxes paid on interest, and less the Non-Refundable Expenses;

(e) this Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;

(f) all statutes of limitation applicable to the claims asserted in the Action shall be deemed to have been tolled during the period beginning with the execution of this Agreement and ending with the day on which the orders contemplated by Section 13.5 are entered;

(g) all Administration Expenses are non-recoverable from the Plaintiffs, the Settlement Class Members and Class Counsel; and

(h) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against PwC.

13.9 Notwithstanding the provisions of Section 13.5, if this Agreement is terminated, the provisions of Sections 2.8, 2.9, 2.10, 2.11, 3.6, 3.7, 4.3, 5.1, 5.2, 5.3, 6.2, 8.1 (iv) and (v), 9.6, 9.7, 12.4, 13.4, 13.5, 13.6, 13.7, 13.8, 13.10, 14.1, 14.4, 15.3, 15.4, 15.5, 15.6, 15.7,

15.8, 15.12, 15.13, 15.15, 15.16, and 15.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

Disputes Relating to Termination

13.10 If there is a dispute about the termination of this Agreement, the Parties agree that the Québec Court shall determine the dispute on a motion made by a Party on notice to the other Party.

SECTION 14 - LIMITS ON USE OF DOCUMENTS

14.1 The confidentiality agreement entered into by the parties to the Action dated July 5, 2019 (the "**Confidentiality Agreement**"), provides that its terms shall survive, *inter alia*, any settlement of the Action. The Plaintiffs, Class Counsel and the Non-Settling Defendants who are defendants in the Action shall continue to abide by the Confidentiality Agreement. For the avoidance of doubt, the Confidentiality Agreement shall also apply to any documents provided by PwC pursuant to this Agreement.

14.2 Class Counsel shall provide notice forthwith to PwC of any intention to renegotiate the Confidentiality Agreement.

14.3 Class Counsel shall provide at least thirty (30) days' notice to PwC of any future application to the court by any party to the Action to seek any sealing or confidentiality or other order pursuant to the terms of the Confidentiality Agreement or that would in any way affect the Confidentiality Agreement. The Plaintiffs and the Settlement Class will support any request by PwC to intervene to make submissions before the court on any such application and the Plaintiffs will not oppose PwC's standing to bring an application for a sealing or confidentiality order in the Action.

14.4 It is understood and agreed that all documents and information made available or provided by PwC to the Plaintiffs and Class Counsel, whether previously in the Action or pursuant to this Agreement, shall be used only in connection with the prosecution of the claims in the Action, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are or become publicly available. The Plaintiffs and Class Counsel agree they will not disclose the documents and

information provided by PwC beyond what is reasonably necessary for the prosecution of the Action or as otherwise required by law, except to the extent that the documents or information were, are or become publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

SECTION 15 - MISCELLANEOUS

Motions for Directions

15.1 Any of the Parties may apply to the Québec Court for directions in respect of any matter in relation to this Agreement.

15.2 All motions contemplated by this Agreement shall be on notice to the Parties.

Headings, etc.

15.3 In this Agreement:

(a) the division into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation;

(b) the terms "the Agreement", "this Agreement", "herein", "hereto" and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement; and

(c) "person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

Computation of Time

15.4 In the computation of time in this Agreement, except where a contrary intention appears:

(a) where there is a reference to a number of days between two events, they 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, the act may be done on the next day that is not a holiday.

Governing Law

15.5 The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec, without prejudice to PwC's position as to the law applicable to the issues in the Action and the Other Actions.

15.6 The Parties agree that the Québec Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Agreement and the Settlement Approval Order.

Severability

15.7 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Entire Agreement

15.8 This 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 Agreement, unless expressly incorporated herein.

Amendments

15.9 This Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Québec Court.

Binding Effect

15.10 If the settlement is approved by the Québec Court and becomes final, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, PwC, Plaintiffs' counsel, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without

limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by PwC shall be binding upon all of the Releasees.

Survival

15.11 The representations and warranties contained in this Agreement shall survive its execution and implementation.

Negotiated Agreement

15.12 This Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties 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 drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

Transaction

15.13 This Agreement constitutes a transaction in accordance with articles 2631 and following of the CCQ, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

Recitals

15.14 The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

Acknowledgements

15.15 Each Party hereby affirms and acknowledges that:

(a) her, his or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;

(b) the terms of this Agreement and the effects thereof have been fully explained to her, him or it by her, his or its counsel; and

(c) her, his or its representative fully understands each term of this Agreement and its effect.

Counterparts

15.16 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an emailed pdf. signature shall be deemed an original signature for purposes of executing this Agreement.

Notice

15.17 Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email to:

For Plaintiffs and the Settlement Class:

Michael G. Robb
Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8

Email: michael.robb@siskinds.com

For PwC:

Laura F. Cooper and Sarah J. Armstrong
Fasken
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6

Email: lcooper@fasken.com; sarmstrong@fasken.com

This Agreement is effective as of May 28, 2019.

Date: July 25/2019

Per
Siskinds LLP as counsel for the Plaintiffs and the Settlement Class and on behalf of the plaintiffs in the Other Actions

Date: July 25, 2019

Fasken LLP as counsel for PwC

SUPERIOR COURT

(Class action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000783-163

DATE: November 12, 2019

PRESIDING : THE HONOURABLE PETER KALICHMAN, S.C.J.

CELSO CATUCCI
and
NICOLE AUBIN, *ES QUALITÉ* TRUSTEE OF THE AUBIN FAMILY TRUST

Plaintiffs

vs.

VALEANT PHARMACEUTICALS INTERNATIONAL INC.
-and-
J. MICHAEL PEARSON, HOWARD B. SCHILLER, ROBERT L. ROSIELLO, ROBERT A. INGRAM, RONALD H. FARMER, THEO MELAS-KYRIAZI, G. MASON MORFIT, DR. LAURENCE PAUL, ROBERT N. POWER, NORMA A. PROVENCIO, LLOYD M. SEGAL, KATHARINE B. STEVENSON, FRED HASSAN, COLLEEN GOGGINS, ANDERS O. LONNER, JEFFREY W. UBBEN
-and-
PRICEWATERHOUSECOOPERS LLP
-and-
GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., DEUTSCHE BANK SECURITIES INC., BARCLAYS CAPITAL INC., HSBC SECURITIES (USA) INC., MITSUBISHI UFJ SECURITIES (USA) INC., DNB MARKETS INC., RBC CAPITAL MARKETS LLC, MORGAN STANLEY & CO. LLC, SUNTRUST ROBINSON HUMPHREY INC., CITIGROUP GLOBAL MARKETS INC., CIBC WORLD MARKETS CORP., SMBC NIKKO SECURITIES AMERICA INC., TD SECURITIES (USA) LLC, J.P. MORGAN SECURITIES LLC, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BMO CAPITAL MARKETS CORP., AIG INSURANCE COMPANY OF CANADA; ALLIANZ GLOBAL RISKS US INSURANCE COMPANY; EVEREST INSURANCE COMPANY OF CANADA; ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA; TEMPLE INSURANCE COMPANY;

XL INSURANCE COMPANYSE; CHUBB INSURANCE COMPANY OF CANADA; IRONSHORE CANADA LTD AND IRONSHORE LTD; LIBERTY MUTUAL INSURANCE COMPANY; LLOYD'S UNDERWRITERS SYNDICATE NUMBERS: AWH 2232, QBE 1886, CONSORTIUM 9885, AML 1200, MIT 3210, SJC 2003, ANV 1861, NAV 1221, AMA 1200, HCC 4141, AWH 2232, BARBICAN PROFESSIONAL AND FINANCIAL LINES CONSORTIUM 9562, STARR FINANCIAL LINES CONSORTIUM 9885 AND ASP 4711;

Defendants

v.

CLASS ACTION ASSISTANCE FUND

Mise en cause

JUDGMENT APPROVING CLASS COUNSEL FEES

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[1] **CONSIDERING** that this Court approved the settlement agreement in the present proceeding reached with PricewaterhouseCoopers LLP ("**PwC**" or the "**Settling Defendant**") dated May 28, 2019 (the "**Settlement Agreement**").

[2] **CONSIDERING** that the appropriate notices were published in French and in English, in compliance with Article 590 CCP and as ordered by the Court on September 5, 2019, and that no opposition was filed in due time;

[3] **CONSIDERING** that no objection to Class Counsel fees or ancillary matters was received by Siskinds LLP by the deadline of November 5, 2019 set out in the Order of this Court dated September 5, 2019 (the "**September 2019 Order**"), and therefore no affidavit was filed in the Court record to that effect;

[4] **CONSIDERING** the materials filed in the Court record, including the affidavits from Plaintiffs and Class Counsel, with the attached Exhibits, confirming compliance with paragraph 16 of the September 2019 Order;

[5] **CONSIDERING** the submissions of counsel for the Plaintiffs;

[6] **CONSIDERING** that this Court is of the opinion that Class Counsel fees, disbursements and a holdback to fund future disbursements are fair, reasonable and in the best interests of Settlement Class Members and complies with Article 593 CCP;

[7] **CONSIDERING** that the parties either consent to or do not oppose this Judgment;

[8] **CONSIDERING** that Class Counsel are required to collect and remit applicable taxes on fees and certain disbursements.

FOR THESE REASONS, THE COURT:

[9] **ORDERS** that, except as otherwise specified in or modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement.

[10] **ORDERS** that the amount payable to Class Counsel out of the Settlement Amount is hereby set at $9,000,000.00 in respect of legal fees, $1,347,750.00 for tax on fees, $2,049,832.89 for disbursements and $239,606.40 for tax on disbursements.

[11] **ORDERS** that $2,000,000.00 in the Settlement Amount shall be held back from the Plan of Allocation and maintained in trust by Class Counsel for future disbursements.

[12] **ORDERS** that the levy payable to the Ontario Class Proceedings Fund pursuant to section 10(3) of Regulation 771/92 of the *Law Society Act* (the "**Levy**") shall be set at: (a) $43,000; plus (b) 3.875% of the Settlement Amount less the amounts set out in paragraphs 9 and 10, notice costs, administration expenses, and taxes. No amounts shall be distributed to any class member until the Ontario Class Proceedings Committee has had an opportunity to review and confirm the calculation of the Levy. Where there is any dispute as to the calculation of the levy, the parties shall appear before this Court to determine that dispute, and pending that appearance, no amounts shall be distributed to any class member.

THE WHOLE, without legal costs.

THE HONOURABLE JUSTICE PETER KALICHMAN, S.C.J.

For Plaintiffs and the Settlement Class:
Shawn Faguy
Faguy & Co., Barristers & Solicitors Inc.
329, de la Commune West, Suite 200
Montréal, Québec, H2Y 2E1
Email: sfaguy@faguyco.com

For PwC:
Laura F. Cooper, Sarah J. Armstrong and Noah Boudreau
Fasken LLP
800 Rue du Square-Victoria, Bureau 3700
Montréal, QC H4Z 1E9

Email: lcooper@fasken.com, sarmstrong@fasken.com;
nboudreau@fasken.com

Hearing Date: November 11, 2019

SUPERIOR COURT

(Class action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000783-163

DATE: November 16, 2020

PRESIDING : THE HONOURABLE PETER KALICHMAN, S.C.J.

CELSO CATUCCI
and
NICOLE AUBIN, *ES QUALITÉ* TRUSTEE OF THE AUBIN FAMILY TRUST

Petitioners

vs.

VALEANT PHARMACEUTICALS INTERNATIONAL INC. (NOW BAUSCH HEALTH COMPANIES INC.)
-and-
J. MICHAEL PEARSON, HOWARD B. SCHILLER, ROBERT L. ROSIELLO, ROBERT A. INGRAM, RONALD H. FARMER, THEO MELAS-KYRIAZI, G. MASON MORFIT, DR. LAURENCE PAUL, ROBERT N. POWER, NORMA A. PROVENCIO, LLOYD M. SEGAL, KATHARINE B. STEVENSON, FRED HASSAN, COLLEEN GOGGINS, ANDERS O. LONNER, JEFFREY W. UBBEN
-and-
GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., DEUTSCHE BANK SECURITIES INC., BARCLAYS CAPITAL INC., HSBC SECURITIES (USA) INC., MITSUBISHI UFJ SECURITIES (USA) INC., DNB MARKETS INC., RBC CAPITAL MARKETS LLC, MORGAN STANLEY & CO. LLC, SUNTRUST ROBINSON HUMPHREY, INC. (NOW TRUIST SECURITIES, INC.), CITIGROUP GLOBAL MARKETS INC., CIBC WORLD MARKETS CORP., SMBC NIKKO SECURITIES AMERICA INC., TD SECURITIES (USA) LLC, J.P. MORGAN SECURITIES LLC, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BMO CAPITAL MARKETS CORP., AIG INSURANCE COMPANY OF CANADA, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, EVEREST INSURANCE COMPANY OF CANADA, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, TEMPLE INSURANCE COMPANY, XL INSURANCE COMPANY SE, CHUBB

INSURANCE COMPANY OF CANADA, IRONSHORE CANADA LTD. AND IRONSHORE LTD., LIBERTY MUTUAL INSURANCE COMPANY, LLOYD'S UNDERWRITERS SYNDICATE NUMBERS: AWH 2232, QBE 1886, CONSORTIUM 9885, AML 1200, MIT 3210, SJC 2003, ANV 1861, NAV 1221, AMA 1200, HCC 4141, AWH 2232, BARBICAN PROFESSIONAL AND FINANCIAL LINES CONSORTIUM 9562, STARR FINANCIAL LINES CONSORTIUM 9885 AND ASP 4711

Respondents

-and-

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mis en cause

JUDGMENT APPROVING A SETTLEMENT AGREEMENT

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[1] **CONSIDERING** that the Petitioners request that the Court approve the Settlement Agreement dated August 4, 2020 in the present proceeding between the Petitioners and Valeant Pharmaceuticals International Inc., now known as Bausch Health Companies Inc. ("**Valeant**") for the benefit of all of the Respondents (the "**Settlement Agreement**"), as appears from the attached **Schedule "1"**;

[2] **CONSIDERING** that the Defendant, Sun Trust Robinson Humphrey, Inc., is now doing business as Truist Securities, Inc. and that this name change did not reach the parties prior to the execution of the Settlement Agreement on August 4, 2020;

[3] **CONSIDERING** that the appropriate notices were published in French and in English, in compliance with Article 590 CCP and as ordered by the Court on October 6, 2020 (the "**October 2020 Order**");

[4] **CONSIDERING** that no objection to the Settlement Agreement was received by Siskinds LLP by the deadline of November 9, 2020 set out in the October 2020 Order, and therefore no sworn statement was filed in the Court record to that effect;

[5] **CONSIDERING** the materials filed in the Court record, including the sworn statement from Class Counsel confirming compliance with paragraph 20 of the October 2020 Order;

[6] **CONSIDERING** the submissions of counsel for the Petitioners and counsel for Valeant, as well as the negotiations between them which were extensive, conducted in good faith and at arm's length;

[7] **CONSIDERING** that this Court is of the opinion that the Settlement Agreement is fair, reasonable and in the best interests of Settlement Class Members and complies with Article 590 CCP;

[8] **CONSIDERING** that the parties either consent to or do not oppose this Judgment;

FOR THESE REASONS, THE COURT:

[9] **ORDERS** that, except as otherwise specified in or modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement.

[10] **ORDERS** that, in the event of a conflict between this Judgment and the Settlement Agreement, this Judgment shall prevail;

[11] **ORDERS AND DECLARES** that the Settlement Agreement:

(a) is fair, reasonable and in the best interests of the Settlement Class Members;

(b) is hereby approved pursuant to Article 590 CCP; and

(c) shall be implemented in accordance with all of its terms;

[12] **ORDERS** that the Settlement Amount is in full satisfaction of the Released Claims against the Releasees, including, without limitation, SunTrust Robinson Humphrey, Inc., now known as Truist Securities, Inc., and is all-inclusive of, without limitation, interest, taxes, and Class Counsel Fees;

[13] **ORDERS** that Siskinds LLP and the Claims Administrator shall manage the Escrow Account as provided for in the Settlement Agreement. While in control of the Escrow Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with the Settlement Agreement, or in accordance with an order of this Court obtained after notice to the Parties;

[14] **ORDERS** that Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants, including, without limitation, SunTrust Robinson Humphrey, Inc., now known as Truist Securities, Inc., shall have no responsibility for and no liability whatsoever related to:

(a) the administration of the Settlement Agreement;

(b) the Escrow Account (other than as expressly set out in the Settlement Agreement); or

(c) the Plan of Allocation;

[15] **DECLARES** that the Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the CCQ;

[16] **DECLARES** that all provisions of the Settlement Agreement (including Recitals and Definitions) are binding upon, and enure to the benefit of, the Petitioners, the Settlement Class Members, Valeant, Class Counsel, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made in the Settlement Agreement by the Petitioners shall be binding upon all Releasors and each and every covenant and agreement made in the Settlement Agreement by Valeant shall be binding upon all of the Releasees;

[17] **DECLARES** that all Settlement Class Members shall be bound by the Settlement Agreement and this Judgment;

[18] **ORDERS AND DECLARES** that:

(a) as of the Effective Date, the Releasors forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have;

(b) upon the Effective Date, 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;

(c) upon the Effective Date, the Action shall be declared settled out of Court, and without costs; and

(d) upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of the Action;

[19] **ORDERS** that the Plaintiffs and Class Counsel shall continue to abide by the confidentiality agreement entered into by the parties to the Action dated July 5, 2019;

[20] **ORDERS AND DECLARES** that this Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under the Settlement Agreement and this Judgment, including any issues relating to the return or destruction of the documents produced by the Underwriter Defendants in the Action;

[21] **ORDERS** that this Judgment shall be declared null and void and of no force and effect, *nunc pro tunc*, on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

THE WHOLE, without legal costs.

THE HONOURABLE JUSTICE PETER KALICHMAN, S.C.J.

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Hearing Date: November 16, 2020

VALEANT CLASS ACTION SETTLEMENT AGREEMENT

Made as of the 4th day of August, 2020

Between

Celso Catucci and Nicole Aubin (as trustee of the Aubin Family Trust)
Representative plaintiffs in Québec Superior Court Action No.: 500-06-000783-163
in their personal and representative capacities

- and -

Valeant Pharmaceuticals International, Inc. (N/K/A Bausch Health Companies Inc.)

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RECITALS

A. **WHEREAS** the Action was commenced by the Plaintiffs on behalf of putative class members for, *inter alia*, damages for misrepresentation under Title VIII, Chapter II, Divisions 1 and 11 of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and for civil fault pursuant to article 1457 of the CCQ;

B. **AND WHEREAS** Valeant, its present and former directors, officers, employees, agents, representatives, underwriters and insurers continue to deny any liability with respect to the allegations made, or which could have been made, in the Action or the Other Actions;

C. **AND WHEREAS** in the Action, the Superior Court authorized the bringing of a class action under articles 574 to 577 of the CCQ and the bringing of an action pursuant to section 225.4 of the QSA in the Authorization Decision;

D. **AND WHEREAS** the Court of Appeal of Québec dismissed the defendants' respective applications for leave to appeal from the Authorization Decision in judgments dated November 30, 2017;

E. **AND WHEREAS** the opt-out period in the Action in respect of the Original Class concluded on June 19, 2018;

F. **AND WHEREAS** in connection with a settlement between the Plaintiffs and PwC, on September 5, 2019, the Superior Court authorized the Supplementary Class;

G. **AND WHEREAS** the opt-out period in respect of the Supplementary Class concluded on November 14, 2019;

H. **AND WHEREAS** counsel for the Parties have engaged in arm's length settlement discussions and negotiations over several years, including mediations before Joel Wiesenfeld, the latter of which ultimately resulted in the Settlement;

I. **AND WHEREAS** documentary discovery and the examination of certain defendants has occurred in the Action, and was to continue;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are

hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of Court without costs, subject to the approval of the Superior Court , on the following terms and conditions.

SECTION 1 - DEFINITIONS

1.1 For the purposes of this Agreement, including the Recitals:

(a) **Action** means *Catucci and Aubin v. Valeant Pharmaceuticals International Inc. et al.*, brought in Superior Court (District of Montreal) File No. No.: 500-06-000783-163.

(b) **Administration Expenses** means all fees, disbursements, expenses, costs, tax and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Administrator or otherwise for the approval, implementation and operation of this Agreement, including the costs of notices and claims administration, but not Class Counsel Fees.

(c) **Administration Expenses & Litigation Disbursements Amount** means the amount of three million dollars (CAD $3,000,000.00).

(d) **Agreement** means this settlement agreement, including the recitals.

(e) **Authorization Decision** means the Judgement of the Honourable Justice Chantal Chatelain of the Superior Court in the Action dated August 29, 2017.

(f) **CCP** means the *Code of Civil Procedure* CQRL, c. 25.01.

(g) **CCQ** means the *Civil Code of Québec*.

(h) **Claims Administrator** means a third-party professional firm appointed by the Superior Court to administer this Agreement and the Plan of Allocation and any employees of such firm.

(i) **Class Counsel** means Siskinds LLP, Koskie Minsky LLP, Faguy & Co., Strosberg Sasso Sutts LLP, Rochon Genova LLP, Morganti Legal P.C., Siskinds Desmeules s.e.n.c.r.l. and Investigation Counsel P.C.

(j) **Class Counsel Fees** means the fees and any proportionate amount of accrued interest on the Settlement Amount, Administration Expenses and Litigation Disbursements Amount, holdbacks, GST/PST/HST and other applicable taxes or charges of Class Counsel.

(k) **Common Issues** means the issues to be dealt with collectively in the Action as set out in paragraph 352 of the Authorization Decision.

(l) **Effective Date** means the date when the Final Order has been issued by the Superior Court approving the Agreement;

(m) **Escrow Account** means an interest-bearing Escrow Account at a Canadian Schedule 1 bank under the control of Siskinds LLP for the benefit of Settlement Class Members.

(n) **Excluded Persons** means Valeant, the Individual Defendants, the Insurer Defendants, PwC, the Underwriter Defendants, members of the immediate families of the Individual Defendants, and the directors, officers, subsidiaries and affiliates of Valeant.

(o) **Execution Date** means the date on the execution pages as of which the Parties have fully executed this Agreement.

(p) **Final Order** means the later of a final judgment entered by the Superior Court approving this Agreement, the time to appeal such judgment having expired without any appeal being taken, if an appeal lies, and the approval of this Agreement upon a final disposition of all appeals.

(q) **Individual Defendants** means J. Michael Pearson, Howard B. Schiller, Robert L. Rosiello, Robert A. Ingram, Ronald H. Farmer, Laizer D. Kornwasser, Theo Melas-Kyriazi, G. Mason Morfit, Dr. Laurence Paul, Robert N. Power, Norma A. Provencio, Lloyd M. Segal, Katherine B. Stevenson, Fred Hassan, Colleen Goggins and Jeffrey W. Ubben.

(r) **Insurer Defendants** means AIG Insurance Company of Canada, Allianz Global Risks US Insurance Company, Everest Insurance Company of Canada, Royal & Sun Alliance Insurance Company of Canada, Temple Insurance Company, XL

Insurance Company, Chubb Insurance Company of Canada (formerly ACE INA Insurance), Ironshore Canada Ltd., Ironshore Ltd., Liberty Mutual Insurance Company, and Lloyd's Underwriters Syndicate Numbers AWH 2232, QBE 1886, Consortium 9885, AML 1200, MIT 3210, SJC 2003, ANV 1861, NAV 1221, AMA 1200, HCC 4141, AWH 2232, Barbican Professional and Financial Lines Consortium 9562, Starr Financial Lines Consortium 9855 and ASP 4711, having a designated attorney (*fondé de pouvoir*), Sean Murphy, at 1155, Metcalfe Street, Suite 220, Montreal, Quebec, H3B 2V6.

(s) **Litigation Disbursements** means disbursements made by Class Counsel in connection with the prosecution of the Action or the Other Actions including, but not limited to, any disbursements that were the subject of an outstanding costs award.

(t) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 2.10 of the Agreement to be paid from the portion of the Settlement Amount allocated to Non-Refundable Expenses.

(u) **Notes** means Valeant's: (i) 6.75% senior notes due 2018; (ii) 7.50% senior notes due 2021; (iii) 5.625% senior notes due 2021; (iv) 5.50% senior unsecured notes due 2023; (v) 5.375% senior unsecured notes due 2020; (vi) 5.875% senior unsecured notes due 2023; (vii) 4.50% senior unsecured notes due 2023; and (viii) 6.125% senior unsecured notes due 2025.

(v) **Notice of Hearing** means the form or forms of notice, as agreed to by the Plaintiffs and Valeant, and approved by the Superior Court , which inform(s) the Settlement Class Members of: (i) the date and location of the Settlement Approval Hearing; (ii) the principal elements of the Agreement; (iii) the process by which Settlement Class Members may object to the Settlement; and (iv) Class Counsel Fees requested by Class Counsel.

(w) **Offering Memoranda** (each, "**Memorandum**" or "**Circular**") means Valeant's: (i) Offering Circular dated June 27, 2013; (ii) Offering Circular dated November 15, 2013; (iii) Offering Memorandum dated January 15, 2015; and, (iv) Offering Memorandum dated March 13, 2015.

(x) **Offerings** (each, an "**Offering**") means the offerings of Valeant's Securities during the period February 28, 2013 to October 26, 2015 by way of the Offering Memoranda and the Prospectuses.

(y) **Original Class or Original Class Members** means, other than Excluded Persons and any person who validly opted out of the Action:

(i) **Primary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled, who, during the period February 28, 2013 to October 26, 2015, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States (but not excluding any claims in respect of Valeant's 4.5% Senior Notes due 2023 offered in March 2015); and,

(ii) **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 28, 2013 to October 26, 2015, acquired Valeant's Securities in the secondary market and held some or all such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States.

(z) **Other Actions** (each, an **Other Action**) means:

(i) *Maxime Rousseau-Godbout v Valeant Pharmaceuticals International et al* (Court File No. 500-06-000770-152), commenced in the Superior Court (District of Montreal) on October 27, 2015;

(ii) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. v. Valeant Pharmaceuticals International, Inc. et al.* (Court File No. CV-15-541082-00CP), commenced in the Ontario Superior Court of Justice on November 23, 2015 by way of Notice of Action, with Statement of Claim filed on December 17, 2015;

(iii) *Lorraine O'Brien v. Valeant Pharmaceuticals International Inc. et al.* (Court File No. CV-15-543678-00CP), commenced in the Ontario Superior Court of Justice on December 30, 2015;

(iv) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. and Lorraine O'Brien v. Valeant Pharmaceuticals International, Inc. et al.*, which consolidated actions (i) and (ii) above by Fresh As Amended Statement of Claim dated September 15, 2016 pursuant to the Order of Justice Paul Perell dated September 15, 2016;

(v) *Misuzu Sukenaga v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. CV-15-540567-00CP), commenced in the Ontario Superior Court of Justice on October 27, 2015;

(vi) *Randy Okeley v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159991), commenced in the British Columbia Supreme Court on December 2, 2015; and

(vii) *Mirza Alladina v Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159486), commenced in the British Columbia Supreme Court on November 15, 2015.

(aa) **Parties** means Valeant, the Individual Defendants, the Insurer Defendants, the Underwriter Defendants, and the Plaintiffs and, where necessary, the Settlement Class Members.

(bb) **Plaintiffs** means Celso Catucci and Nicole Aubin (as trustee of the Aubin Family Trust).

(cc) **Plan of Allocation** means the plan for allocating and distributing the Settlement Amount and accrued interest, net of court-approved deductions, in whole or in part, as established by Class Counsel and approved by the Superior Court.

(dd) **Proceedings** means any action or proceeding, other than the Action, solely advancing Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(ee) **Prospectuses** means Valeant's: (i) Short Form Base Shelf Prospectus dated and filed on SEDAR on June 14, 2013; (ii) Prospectus Supplement dated and filed on SEDAR on June 18, 2013; (iii) Prospectus dated June 10, 2013, filed on EDGAR on June 19, 2013; (iv) Prospectus Supplement dated June 18, 2013, filed on EDGAR on June 19, 2013; (v) Prospectus dated June 10, 2013, filed on EDGAR on March 18, 2015; and, (vi) Prospectus Supplement dated March 17, 2015, filed on EDGAR on March 18, 2015.

(ff) **PwC** means PricewaterhouseCoopers LLP, the U.S. member firm in the PwC network of firms.

(gg) **Superior Court** means Superior Court of Québec.

(hh) **QSA** means Québec *Securities Act*, CQLR c. V-1.1, as amended.

(ii) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, whether a claim (including a proof of claim) is filed under the Plan of Allocation, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that 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, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action or Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition, holding, sale, disposition or other transactions in relation to Securities by Plaintiffs or any other Class Member during the period between February 27, 2012 and November 12, 2015; and (ii) the allegations, transactions, acts, facts, matters, occurrences,

disclosures, statements, filings, representations, omissions, or events that were or could have been alleged or asserted in the Action or the Other Actions. For greater certainty, "costs" above includes all outstanding costs awards payable by Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants to the Plaintiffs.

(jj) **Releasees** means, jointly and severally, individually and collectively, Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants, and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(kk) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and Settlement Class Members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.

(ll) **Securities** means Valeant's common shares and Notes.

(mm) **Securities Legislation** means, collectively, the QSA; the *Securities Act*, RSO 1990, c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the Securities Act, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended.

(nn) **Settlement** means the settlement provided for in this Agreement.

(oo) **Settlement Amount** means the sum of ninety-four million dollars (CAD $94,000,000.00).

(pp) **Settlement Approval Hearing** means the hearing for the Superior Court's approval of the Settlement.

(qq) **Settlement Approval Order** means the order of the Superior Court to be requested by the Plaintiffs, with the consent of Valeant, the Individual Defendants, the Underwriter Defendants and the Insurer Defendants, approving the Agreement.

(rr) **Settlement Class or Settlement Class Members** means, other than Excluded Persons and any person who validly opted out of the Action or who is deemed to have opted out of the Action pursuant to article 580 of the CCP:

(i) **Primary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled, who, during the period February 28, 2013 to November 12, 2015, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and November 12, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States (but not excluding any claims in respect of Valeant's 4.5% Senior Notes due 2023 offered in March 2015); and,

(ii) **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 27, 2012 to November 12, 2015, acquired Valeant's Securities in the secondary market and held some or all such Securities at any point in time between October 19, 2015 and November 12, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States.

(ss) **Supplementary Class or Supplementary Class Members** means all persons and entities, wherever they may reside or may be domiciled who, during the periods of February 27, 2012 to February 27, 2013 and October 27, 2015 to November 12, 2015, acquired Valeant's Securities in the secondary market, excluding (a) any

claims in respect of Valeant's Securities acquired in the United States; and (b) Excluded Persons.

(tt) **Underwriter Defendants** means Goldman Sachs & Co., Goldman Sachs Canada Inc., Deutsche Bank Securities Inc., Barclays Capital Inc., HSBC Securities (USA) Inc., MUFG Securities Americas Inc. (formerly Mitsubishi UFJ Securities (USA) Inc.) Mitsubishi UFG Securities International plc., DBS Bank Ltd., DNB Markets Inc., RBC Capital Markets LLC, Morgan Stanley & Co. LLC, Suntrust Robinson Humphrey Inc., Citigroup Global Markets Inc., CIBC World Markets Corp., SMBC Nikko Securities America Inc., TD Securities (USA) LLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and BMO Capital Markets Corp.

(uu) **U.S. Confidentiality Order** means the Stipulation and Confidentiality Order dated July 18, 2017 in the U.S. proceeding captioned *In re Valeant Pharmaceuticals International, Inc. Securities Litigation,* Master No. 3:15-cv-07658-MAS-LHG (U.S. District Court for the District of New Jersey).

(vv) **Valeant** means the corporation formerly known as Valeant Pharmaceuticals International Inc. which, as of July 13, 2018, changed its name to Bausch Health Companies Inc.

SECTION 2 - SETTLEMENT BENEFITS

Payment of Settlement Amount

2.1 Subject to Section 11, upon the earlier of: (i) sixty (60) days from the Execution Date; and (ii) ten (10) business days from the Effective Date, Valeant or its insurers shall pay the Settlement Amount and the Administration Expenses & Litigation Disbursements Amount to Siskinds LLP for deposit into the Escrow Account.

2.2 Valeant or its insurers shall deposit the Settlement Amount into the Escrow Account by wire transfer. Siskinds LLP shall provide the necessary wire transfer information to counsel for Valeant on or before the Execution Date so that Valeant or its insurers have a reasonable period of time to comply with section 2.1.

2.3 The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.

2.4 The Settlement Amount shall be inclusive of interest, taxes, and Class Counsel Fees. Valeant shall take no position on the Plaintiffs' motion for approval of Class Counsel Fees.

2.5 The Administration Expenses & Litigation Disbursements Amount shall be paid in satisfaction of Administration Expenses and Litigation Disbursements.

2.6 If the Administration Expenses & Litigation Disbursements Amount exceeds the total amount of Administration Expenses and Litigation Disbursements approved by the Superior Court, any remaining balance shall be distributed to Settlement Class Members in accordance with the Plan of Allocation. If the amount of the Administration Expenses and Litigation Disbursements approved by the Superior Court exceeds the Administration Expenses & Litigation Disbursements Amount, any remaining balance will be paid from the Settlement Amount.

2.7 The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount and the Administration Expenses & Litigation Disbursements Amount, for any reason, pursuant to or in furtherance of this Agreement or the Action. Under no circumstances are the Individual Defendants or Underwriter Defendants responsible for the payment of any part of the Settlement Amount or the Administration Expenses & Litigation Disbursements Amount.

2.8 Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Escrow Account, net of Class Counsel Fees as approved by the Superior Court, to the Claims Administrator.

2.9 Siskinds LLP and the Claims Administrator shall maintain the Escrow Account as provided for in this Agreement. While in control of the Escrow Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Agreement, or in accordance with an order of the Superior Court obtained after notice to the Parties.

Non-Refundable Expenses

2.10 Non-Refundable Expenses, reasonably incurred, and as approved by the Superior Court, shall be payable by Siskinds LLP from the Administration Expenses & Litigation Disbursement Amount in the Escrow Account, when incurred. Non-Refundable Expenses shall include:

(a) costs incurred in connection with establishing and operating the Escrow Account;

(b) all costs incurred in publishing and distributing the Notice of Hearing, or other steps taken in respect of administration of this Agreement, up to the date of the termination of the Agreement;

(c) if necessary, the costs incurred by the Administrator in publishing notice to the Settlement Class that the Agreement has been terminated.

2.11 Siskinds LLP shall account to the Superior Court and to the Parties for all payments it makes from the Escrow Account prior to the appointment of the Claims Administrator. In the event that the Agreement is terminated, this account shall be delivered no later than ten (10) days after such termination.

2.12 Any disputes concerning the Non-Refundable Expenses shall be dealt with by a motion to the Superior Court on notice to the Parties.

SECTION 3 - CLASS COUNSEL FEES

Class Counsel Fees Approval

3.1 At the Settlement Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount and Administration Expenses & Litigation Disbursements Amount. Unless this Agreement is terminated pursuant to Section 11, all amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount and/or Administration Expenses & Litigation Disbursements Amount.

3.2 At the Settlement Approval Hearing, Class Counsel shall seek the approval of Litigation Disbursements to be paid as a first charge on the Administration Expenses & Litigation Disbursements Amount. In the event that the Litigation Disbursements exceed the Administration Expenses and Litigation Disbursements Amount, the balance of the

Litigation Disbursements shall be paid from the Settlement Amount. Unless this Agreement is terminated pursuant to Section 11, all amounts awarded on account of Litigation Disbursements shall be paid from the Administration Expenses & Litigation Disbursements Amount and, if necessary the Settlement Amount.

3.3 Valeant acknowledges that it is not a party to the motion concerning the approval of Class Counsel Fees and Litigation Disbursements, will have no involvement in the approval process to determine the amount of Class Counsel Fees and will not make any submissions to the Québec Court concerning Class Counsel Fees and Litigation Disbursements.

3.4 Any order in respect of Class Counsel Fees and Litigation Disbursements, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the Settlement of the Action as provided herein.

3.5 Forthwith after the Settlement becomes final, Class Counsel Fees approved by the Superior Court shall be paid to Class Counsel from the Escrow Account.

Taxes and Interest

3.6 Except as expressly provided herein, all interest earned on the Settlement Amount and the Administration Expenses & Litigation Disbursement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the amount held in escrow pursuant to this Agreement (together with the Settlement Amount and the Administration Expenses & Litigation Disbursements Amount, the "Escrow Amount").

3.7 Subject to Section 3.8, all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Amount shall be the responsibility of the Plaintiffs and the Settlement Class. Class Counsel or a Claims Administrator, as may later be appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Escrow Amount, 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 Escrow Amount shall be paid from the Escrow Account.

3.8 Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants shall have no responsibility in any way related to the Escrow Account including

but not limited to, making any filings relating to the Escrow Account, paying tax on any income earned by the Escrow Amount, or paying any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case any interest earned on the Escrow Amount shall be paid to Valeant who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid by Class Counsel or a Claims Administrator.

No Reversion

3.9 Unless this Agreement is terminated as provided herein, Valeant shall not be entitled to the repayment of any portion of the Escrow Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT

Distribution of the Net Settlement Amount

4.1 The formula for distribution of the Settlement Amount, and any remaining balance of the Administration Expenses & Litigation Disbursements Amount after the payment of Administration Expenses and Litigation Disbursements, to Settlement Class Members shall be contained in the Plan of Allocation.

4.2 In conjunction with the Plaintiffs' motion to the Superior Court for approval of this Settlement, on notice to Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants, Class Counsel will make an application seeking an order from the Superior Court approving the Plan of Allocation, if necessary.

4.3 Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the Plan of Allocation, or the investment, distribution or administration of monies in the Escrow Account.

SECTION 5 - EFFECT OF SETTLEMENT

No Admissions or Concessions

5.1 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, and any action taken to implement this Agreement, shall not be deemed, construed or interpreted to be:

(a) an admission or concession by Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Action or the Other Actions, or the application of the law of Québec to any of the claims made in the Action; or

(b) an admission or concession by the Plaintiffs, Class Counsel or the Settlement Class of any weakness in the claims of the Plaintiffs and the Settlement Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action.

Agreement Not Evidence Nor Presumption

5.2 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, documents, discussions and proceedings associated with this Agreement (including, but not limited to, the Plan of Allocation), and any action taken to implement this Agreement, shall not be offered or received in the Action or any pending or future civil, criminal, quasi-criminal, administrative action or disciplinary investigation or proceeding in any jurisdiction:

(a) against Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants, as evidence, or a presumption, of a concession or admission of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made against it in the Action or the Other Actions; or

(b) against the Plaintiffs, Class Counsel or the Settlement Class, as evidence, or a presumption, of a concession or admission:

(i) of any weakness in the claims of the Plaintiffs and the Settlement Class; or

(ii) that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action.

5.3 Notwithstanding Section 5.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Superior Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 6 - STEPS TO IMPLEMENT AGREEMENT

Reasonable Efforts

6.1 The Parties shall take all reasonable steps to implement the Agreement and to secure its approval and have the Action declared settled out of Court. This Agreement shall only become final on the Effective Date.

6.2 With the exception of the materials contemplated in Section 3 regarding Class Counsel Fees, the Plaintiffs will provide all materials to be filed with or provided to the Superior Court in connection with this Agreement to Valeant in advance for review and comment.

Action in Abeyance

6.3 Until the Parties have obtained the Final Order or this Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel agree to hold in abeyance all other steps in the Action, other than the settlement approval motion and dismissal motion contemplated by this Agreement and such other matters required to implement the terms of this Agreement, unless otherwise agreed in writing by the Parties.

SECTION 7- AUTHORIZATION FOR SETTLEMENT APPROVAL ONLY

Authorization for Settlement Approval on behalf of Supplementary Class and Common Issues

7.1 The Action shall be authorized as a class proceeding on behalf of the Supplementary Class solely for purposes of settlement of the Action and the approval of this Agreement by the Superior Court.

7.2 In the Plaintiffs' motion for authorization of the Action as a class proceeding on behalf of the Supplementary Class for settlement purposes and for the approval of this Agreement, the only common issues that they will seek to define are the Common Issues and the only class they will assert is the Supplementary Class.

7.3 Given that the Supplementary Class were provided the opportunity to opt-out in the context of the approval of the Plaintiffs' settlement with PwC, no further opt-out period will be provided in connection with this Agreement, unless so required by the Superior Court.

SECTION 8 - NOTICE TO SETTLEMENT CLASS

8.1 The proposed Settlement Class shall be given the following notices: (i) the Notice of Hearing; (ii) notice if this Agreement is approved; (iii) notice if this Agreement is not approved, is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Superior Court.

8.2 The form of notices referred to in Section 8.1 and the manner and extent of publication and distribution shall be as follows:

(a) by Class Counsel posting the notice on their websites and by delivering a copy of the notice of authorization electronically to all individuals and entities who have contacted Class Counsel about this action and all individuals and entities who request it;

(b) by Class Counsel placing the notice online in abbreviated form with a URL leading to more information on a number of websites for a period of 45 days;

(c) disseminated once through Canada NewsWire in English and French;

(d) by publishing the notice once in French in a weekday tablet (online) edition of *La Presse*;

(e) by publishing the notice on the Québec Class Action Registry; and

(f) by publishing the notice once in English in the national print edition of The Globe and Mail, Report on Business section and in English in the national print edition of the National Post, Financial Post section.

or in such form or manner as approved by the Superior Court.

SECTION 9 - SETTLEMENT APPROVAL

Motions for Approval and Dismissals/Discontinuances

9.1 As soon as practicable after the Execution Date and in any event no later than five (5) business days thereafter, the Plaintiffs shall institute a motion before the Superior Court for an order: (i) authorizing the Action as a class proceeding for settlement purposes on behalf of the Supplementary Québec Class; (ii) approving the Notice of Hearing and the plan for disseminating the Notice of Hearing; and (iii) establishing the date of the Settlement Approval Hearing.

9.2 The form of order referred to in Section 9.1, and any notices attached thereto, shall be as agreed to by the Plaintiffs and Valeant or in such form or manner as approved by the Superior Court.

9.3 As soon as practicable after obtaining the order referred to in section 9.1, Plaintiffs shall institute a motion before the Superior Court for the Settlement Approval Order

9.4 The form of Settlement Approval Order shall be as agreed to by the Plaintiffs and Valeant or in such form or manner as approved by the Superior Court.

9.5 The Approval Order shall also contain a term providing that no action may be taken against Valeant, the Individual Defendants, the Insurer Defendants, the Underwriter Defendants, Class Counsel or the Claims Administrator without leave of the Superior Court with respect to any issues arising from the Settlement.

No Press Release

9.6 Plaintiffs and Class Counsel agree that, other than in connection with any court-approved notice arising from this Agreement, they will not issue any press release, whether joint or individual, concerning this Agreement or anything related thereto and that they will not seek to obtain media coverage in relation to the Agreement, with the exception that Class Counsel will post this Agreement on their websites and on the Quebéc Class Action Registry.

9.7 The Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. The Parties' obligations under this subsection shall not prevent them, or any of them, from reporting to their clients, or from complying with any order of the Superior Court, or from making any disclosure or comment otherwise required by the Agreement, or from making any necessary disclosure or comment for the purposes of any applicable legislation or professional obligation, or from preparing and filing the materials necessary to obtain the Superior Court's approval of the Settlement. For greater certainty, nothing in this section prohibits Valeant from issuing a press release disclosing the fact of this Agreement and describing its terms or from responding to 3rd party inquiries from, *inter alia*, analysts, investors or media regarding same.

9.8 If comment is solicited by the press, Class Counsel and the Plaintiffs agree and undertake to describe the Settlement and the terms of this Agreement only as fair, reasonable and in the best interests of the Settlement Class.

SECTION 10 - RELEASES

10.1 As of the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Agreement, the Releasors forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have.

10.2 The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

10.3 As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit cause of action, claim or demand against any Releasee or against any other person who may seek

contribution or indemnity from any Releasee in respect of any Released Claims or any matter related thereto.

10.4 Class Counsel do not as of the date of this Agreement and will not in the future represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action or the Other Actions.

10.5 Upon the Effective Date, the Action shall be declared settled out of Court, and without costs.

10.6 Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of the Action.

10.7 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsection 11.2), the releases and reservation of rights contemplated in this Section 10 shall be considered a material term of the Agreement and the failure of the Superior Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to section 11.1 of the Agreement.

SECTION 11- TERMINATION

Right of Termination

11.1 In the event that:

(a) the Superior Court declines to grant authorization on behalf of the Supplementary Québec Class for settlement purposes as contemplated by Section 7;

(b) the Superior Court declines to approve this Agreement or any material part hereof;

(c) the Superior Court approves this Agreement in a materially modified form;

(d) the Superior Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Agreement;

(e) the Settlement Approval Order does not become a Final Order;

(f) the Settlement Approval Order is reversed on appeal and the reversal becomes a Final Order;

(g) the Superior Court declines to declare the Action settled out of Court; or

(h) the Superior Court declines to approve the releases, covenants (including covenants not to sue), dismissals, and granting of consent contemplated in Section 10, or approves them in a materially modified form;

each of the Plaintiffs and Valeant shall have the right to terminate this Agreement by delivering a written notice in accordance with subsection 13.17 of same within thirty (30) days following an event described above.

11.2 Any order, ruling or determination made (or rejected) by the Superior Court with respect to Class Counsel Fees or Class Counsel Disbursements shall not be deemed to be a material modification of all, or a part, of this Agreement and shall not provide any basis for the termination of this Agreement.

11.3 Except as provided for in section 11.8 and subject to section 11.9, if the Plaintiffs or Valeant exercise their right to terminate, the Settling Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

Steps Required on Termination

11.4 If this Agreement is terminated, either Valeant or the Plaintiffs shall, within thirty (30) days after termination, apply to the Superior Court, on notice to the Parties, for an order:

(a) declaring this Agreement null and void and of no force or effect except for the provisions of those sections listed in Section 11.8;

(b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments entered by a court in accordance with the terms of this Agreement; and

(c) authorizing the payment to Valeant of the Escrow Amount less taxes paid on interest and less the Non-Refundable Expenses.

11.5 Subject to Section 11.9, the Plaintiffs shall consent to the orders sought in any motion made by Valeant under Section 11.4 and Valeant shall consent to the orders sought in any motion made by the Plaintiffs under Section 11.4.

Notice of Termination

11.6 If this Agreement is terminated, a notice of the termination will be given to the Settlement Class. Plaintiffs' counsel will cause the notice of termination, in a form approved by the Superior Court, to be published and disseminated as the Superior Court directs.

Effect of Termination

11.7 In the event this Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

(a) the Parties will be restored to their respective positions prior to the execution of this Agreement, except as expressly provided for herein;

(b) no motion for authorization for settlement purposes or motion to approve this Agreement which has not been decided shall proceed;

(c) the Parties will cooperate in seeking to have all prior orders or judgments entered by a court in accordance with the terms of this Agreement set aside and declared null and void and of no force or effect, and any of the Plaintiffs and Valeant shall be estopped from asserting otherwise;

(d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by 11.4(b), return to Valeant the Escrow Amount less taxes paid on interest and less the Non-Refundable Expenses;

(e) this Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;

(f) all Non-Refundable Expenses are non-recoverable from the Plaintiffs, the Settlement Class Members and Class Counsel; and

(g) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants.

11.8 Notwithstanding the provisions of Section 13.5, if this Agreement is terminated, the provisions of Sections 2.10, 2.11, 2.12, 3.7, 3.8, 4.3, 5.1, 5.2, 5.3, 6.2, 8.1(iv), 9.6, 9.7, 11.3, 11.4, 11.5, 11.6, 11.7, 11.9, 12.1, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.12, 13.13, 13.15, 13.16, and 13.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

Disputes Relating to Termination

11.9 If there is a dispute about the termination of this Agreement, the Parties agree that the Superior Court shall determine the dispute on a motion made by Valeant or the Plaintiffs on notice to the Parties.

SECTION 12 - LIMITS ON USE OF DOCUMENTS

12.1 The confidentiality agreement entered into by the parties to the Action dated July 5, 2019 provides that its terms shall survive, *inter alia*, any settlement of the Action. The Parties shall continue to abide by the confidentiality agreement.

SECTION 13 - MISCELLANEOUS

Motions for Directions

13.1 Any of the Parties may apply to the Superior Court for directions in respect of any matter in relation to this Agreement.

13.2 All motions contemplated by this Agreement shall be on notice to the Parties.

Headings, etc.

13.3 In this Agreement:

(a) the division into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation;

(b) the terms "the Agreement", "this Agreement", "herein", "hereto" and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement; and

(c) "person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

Computation of Time

13.4 In the computation of time in this Agreement, except where a contrary intention appears:

(a) where there is a reference to a number of days between two events, they 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, the act may be done on the next day that is not a holiday.

Governing Law

13.5 The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec, without prejudice to the position of Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants as to the law applicable to the issues in the Action.

13.6 The Parties agree that the Superior Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Agreement and the Settlement Approval Order.

Severability

13.7 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Entire Agreement

13.8 This 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 Agreement, unless expressly incorporated herein.

Amendments

13.9 This Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Superior Court.

Binding Effect

13.10 If the settlement is approved by the Superior Court and becomes final, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, Class Counsel, Valeant, the Individual Defendants, the Insurer Defendants, the Underwriter Defendants, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by Valeant shall be binding upon all of the Releasees.

Survival

13.11 The representations and warranties contained in this Agreement shall survive its execution and implementation.

Negotiated Agreement

13.12 This Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties 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 drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

Transaction

13.13 This Agreement constitutes a transaction in accordance with articles 2631 and following of the CCQ, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

Recitals

13.14 The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

Acknowledgements

13.15 Each Party hereby affirms and acknowledges that:

(a) her, his or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;

(b) the terms of this Agreement and the effects thereof have been fully explained to her, him or it by her, his or its counsel; and

(c) her, his or its representative fully understands each term of this Agreement and its effect.

Counterparts

13.16 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an emailed pdf. signature shall be deemed an original signature for purposes of executing this Agreement.

Notice

13.17 Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email to:

For Plaintiffs and the Settlement Class:

Michael G. Robb
Siskinds LLP

680 Waterloo Street
London, ON N6A 3V8

Email: michael.robb@siskinds.com

For Valeant and the Individual Defendants (other than Michael J. Pearson and Howard B. Schiller):

Allan Coleman
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
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Email: acoleman@osler.com

For Michael J. Pearson:

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Blake, Cassels & Graydon LLP
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Email: Robert.torralbo@blakes.com

For Howard B. Schiller:

André Ryan
BCF Business Law
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Email: andre.ryan@bcf.ca

For the Underwriter Defendants:

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Email: wmcnamara@torys.com

For AIG Insurance Company of Canada:

Nick Krnjevic
Benoit Bourgon

Robinson Sheppard Shapiro LLP
800 Square Victoria - Suite 4600
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bbourgon@rsslex.com

For Allianz Global Risks US Insurance Company:

Laurent Nahmiash
Marianne Ignacz
INF LLP
255 Saint-Jacques Street – 3rd Floor
Montréal, QC, H2Y 1M6

Emails: lnahmiash@infavocats.com
ignacz@infavocats.com

For Everest Insurance Company of Canada, Royal & Sun Alliance Insurance Company of Canada, Chubb Insurance Company of Canada (formerly ACE INA Insurance), Liberty Mutual Insurance Company and Lloyd's Underwriters Syndicate numbers QBE 1886, Consortium 9885, MIT 3210, ANV 1861, NAV 1221, AMA 1200, HCC 4141, Barbican Professional and Financial Lines Consortium 9562:

Mary Delli Quadri
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Fadi Amine
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lbambara@millerthomson.com
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For Lloyd's Underwriters Syndicate number AWH 2232 AND ASP 4711:

Me Trevor McCann
Me Roderic McLauchlan
Me Laurent Lacas
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For Temple Insurance Company:

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cvilleneuve@woods.qc.ca

For XL Insurance Company SE and Lloyd's Underwriters Syndicate number SJC 2003:

Nicolas Plourde
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For Ironshore Canada Ltd and Ironshore Ltd:

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Sebastian Fernandez
RATELLE, RATELLE & ASSOCIÉS
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Emails: francois.marseille@avocatsratelle.com
sebastian.fernandez@avocatsratelle.com

For AML 1200, Starr Financial Lines Consortium 9885:

Sean Murphy (designated attorney)
1155, Metcalfe Street – Suite 220,
Montreal, Qc, H3B 2V6

Third Party Beneficiaries

13.18 The Individual Defendants, the Insurer Defendants and the Underwriter Defendants are stipulated to be third party beneficiaries of the obligations in sections Section 5, Section 9, Section 10 and Section 12 of this Agreement for the purpose of Art 1444 CCQ, and as such,

the Individual Defendants, the Insurer Defendants and the Underwriter Defendants have the right to exact performance of said obligations directly.

This Agreement is executed as of August 4, 2020.

Date: Aug 4, 2020

Siskinds LLP as counsel for the Plaintiffs and the Settlement Class

Date: August 4, 2020

Osler, Hoskin & Harcourt LLP as counsel for Valeant

SUPERIOR COURT

(Class action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000783-163

DATE: November 16, 2020

PRESIDING : THE HONOURABLE PETER KALICHMAN, S.C.J.

CELSO CATUCCI
and
NICOLE AUBIN, *ES QUALITÉ* TRUSTEE OF THE AUBIN FAMILY TRUST

Petitioners

vs.

VALEANT PHARMACEUTICALS INTERNATIONAL INC. (NOW BAUSCH HEALTH COMPANIES INC.)
-and-
J. MICHAEL PEARSON, HOWARD B. SCHILLER, ROBERT L. ROSIELLO, ROBERT A. INGRAM, RONALD H. FARMER, THEO MELAS-KYRIAZI, G. MASON MORFIT, DR. LAURENCE PAUL, ROBERT N. POWER, NORMA A. PROVENCIO, LLOYD M. SEGAL, KATHARINE B. STEVENSON, FRED HASSAN, COLLEEN GOGGINS, ANDERS O. LONNER, JEFFREY W. UBBEN
-and-
GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., DEUTSCHE BANK SECURITIES INC., BARCLAYS CAPITAL INC., HSBC SECURITIES (USA) INC., MITSUBISHI UFJ SECURITIES (USA) INC., DNB MARKETS INC., RBC CAPITAL MARKETS LLC, MORGAN STANLEY & CO. LLC, SUNTRUST ROBINSON HUMPHREY, INC. (NOW TRUIST SECURITIES, INC.), CITIGROUP GLOBAL MARKETS INC., CIBC WORLD MARKETS CORP., SMBC NIKKO SECURITIES AMERICA INC., TD SECURITIES (USA) LLC, J.P. MORGAN SECURITIES LLC, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BMO CAPITAL MARKETS CORP., AIG INSURANCE COMPANY OF CANADA, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, EVEREST INSURANCE COMPANY OF CANADA, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, TEMPLE INSURANCE COMPANY, XL INSURANCE COMPANY SE, CHUBB INSURANCE COMPANY OF CANADA, IRONSHORE CANADA LTD. AND IRONSHORE LTD., LIBERTY MUTUAL INSURANCE COMPANY, LLOYD'S

UNDERWRITERS SYNDICATE NUMBERS: AWH 2232, QBE 1886, CONSORTIUM 9885, AML 1200, MIT 3210, SJC 2003, ANV 1861, NAV 1221, AMA 1200, HCC 4141, AWH 2232, BARBICAN PROFESSIONAL AND FINANCIAL LINES CONSORTIUM 9562, STARR FINANCIAL LINES CONSORTIUM 9885 AND ASP 4711

Respondents

-and-

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mis en cause

JUDGMENT APPROVING CLASS COUNSEL FEES

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[1] **CONSIDERING** that this Court approved the settlement agreement dated August 4, 2020 in the present proceeding between the Petitioners and Valeant Pharmaceuticals International Inc., now known as Bausch Health Companies Inc. ("**Valeant**") for the benefit of all Respondents (the "**Settlement Agreement**").

[2] **CONSIDERING** that the appropriate notices were published in French and in English, in compliance with Article 590 CCP and as ordered by the Court on October 6, 2020 (the "**October 2020 Order**"), and that no opposition was filed in due time;

[3] **CONSIDERING** that no objection to Class Counsel fees or ancillary matters was received by Siskinds LLP by the deadline of November 9, 2020 set out in the October 2020 Order, and therefore no sworn statement was filed in the Court record to that effect;

[4] **CONSIDERING** the materials filed in the Court record, including the sworn statement from Class Counsel confirming compliance with paragraph 20 of the October 2020 Order;

[5] **CONSIDERING** the submissions of counsel for the Petitioners;

[6] **CONSIDERING** that this Court is of the opinion that Class Counsel Fees and funding for Litigation Disbursements are fair, reasonable and in the best interests of Settlement Class Members and comply with Article 593 CCP;

[7] **CONSIDERING** that the parties either consent to or do not oppose this Judgment;

[8] **CONSIDERING** that Class Counsel are required to collect and remit applicable taxes on fees and certain disbursements;

FOR THESE REASONS, THE COURT:

[9] **ORDERS** that, except as otherwise specified in or modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement.

[10] **ORDERS** that the amount payable to Class Counsel out of the Settlement Amount is hereby set at $29,100,00.00 in respect of Class Counsel Fees, $4,357,725.00 for tax on Class Counsel Fees, $2,251,153.50 for Litigation Disbursements and $266,760.44 for tax on Litigation Disbursements.

THE WHOLE, without legal costs.

THE HONOURABLE JUSTICE PETER KALICHMAN, S.C.J.

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Hearing Date: November 16, 2020