

**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 FRANK C. TORCHIO**

**I, FRANK C. TORCHIO**, of the City of Rochester, in the State of New York, in the United States of America, **MAKE OATH AND SAY:**

1. I am an economist and a Chartered Financial Analyst, and I am the founder and President of Forensic Economics Inc. (“**Forensic Economics**”), which is an economic consulting firm providing and supporting expert witness testimony. I have provided expert opinions in this case on issues related to damages, and I drafted the Distribution Protocol which is described more fully below. As such, I have knowledge of the matters to which I hereinafter depose. Where that knowledge is based on information I have obtained from others, I have indicated the source of that information and believe that information to be true.

2. I swear this affidavit in order to explain to the Court why, in my opinion, the Distribution Protocol will effect a fair and orderly distribution of settlement funds to eligible Class Member claimants in a manner which is consistent with the provisions of Part XXIII.1 of the Ontario *Securities Act* (the “**OSA**”).

3. Attached as **Exhibit “A”** is a copy of the Settlement Agreement in this action which was entered on December 2, 2021 (“**Settlement Agreement**”).

4. In this affidavit I describe the notional entitlement calculation provisions of the Distribution Protocol which is Schedule D to the Settlement Agreement and explain why, in my opinion, the Distribution Protocol will result in a fair distribution of settlement funds to eligible claimants in a manner which is consistent with the damages provisions of section 138.5 of Part XXIII.1 of the *OSA*. Attached as “**Exhibit B**” is a copy of the proposed Distribution Protocol.

### **My background and Forensic Economics**

5. Since its founding in 1989, Forensic Economics’ experts have testified in the United States, Canada, Australia, Switzerland and the United Kingdom on issues in the following practice areas: securities litigation, valuation and contested mergers, lost profits, insider trading, investment mismanagement, transfer pricing, the valuation of intellectual property, wrongful dismissal, and anti-trust.

6. Personally, I have provided expert reports, affidavits, depositions and have testified in numerous securities class actions in Canada, the U.K., the United States, and Australia.

7. I have particular familiarity with the unique provisions of Ontario *Securities Act*, Part XXIII.1, having provided numerous expert opinions on issues of materiality and damages in the context of Part XXIII.1 securities class actions, like this one.

8. In addition to this case, I have provided expert opinion evidence in Canadian securities class actions involving the following issuers: Canadian Solar Inc., Home Capital Group Inc., Valeant Pharmaceuticals International Inc., Manulife Financial Corporation, Detour Gold Corporation, Atlantic Power Corp., Sino-Forest Corporation, Martinrea International Inc., Celestica Inc., Agnico-Eagle Mines Limited, Kinross Gold Corporation, Canadian Royalties Inc., Nevsun Resources Ltd., and IMAX Corporation.

9. Attached as **Exhibit “C”** is a copy of my *c.v.*

**My involvement with this case – preparation of trial reports**

10. At the request of Class Counsel, I prepared an expert report on aggregate damages dated October 6, 2020, and a reply expert report dated May 21, 2021, both of which, I understand, were served on defense counsel in anticipation of the trial of this action (“**Torchio Damages Reports**”).

11. My Damages Reports relied, to some extent, on the expert reports of Economist Professor Gregg Jarrell dated December 21, 2018 and May 22, 2021, where Professor Jarrell opined on a number of things, including the amount of artificial inflation that was present in the price of CIBC shares throughout the Class Period which was attributable to the pleaded misrepresentations (“**Jarrell Artificial Inflation Reports**”). I understand that the Jarrell Artificial Inflation Reports were served on defense counsel in anticipation of the trial of this action.

12. Professor Jarrell has been my colleague for more than 30 years. While I did not work on the Jarrell Artificial Inflation Reports, I am familiar with the methodology used in that report its applications in securities matters, and I relied on aspects of his reports in the formulation of the Torchio Damages Reports.

13. As I explain below, the Torchio Damages Reports and the Jarrell Artificial Inflation Reports informed me in my formulation of the Distribution Protocol.

**The Distribution Protocol**

14. I was informed by Class Counsel that the case had settled, subject to Court approval of the Settlement Agreement and various key documents which were needed in order to give effect

to the settlement. One of those key documents is the Distribution Protocol, which describes a methodology for a fair distribution of settlement funds among class members.

15. Because of the complexity of the economic issues in this case with which I was very familiar, Class Counsel asked me to formulate that part of the Distribution Protocol which establishes the notional entitlement of eligible claimants.

16. Based on my expertise and experience with not only this case, but the preparation of several distribution protocols (sometimes referred to as distribution plans or plan of distribution) on other cases, I was asked to prepare a distribution protocol which:

- (a) would result in a fair distribution of any settlement fund among eligible claimants;
- (b) was consistent with the unique damages formulae provided by section 138.5 of Part XXIII.1 of the *OSA*; and
- (c) could be administered in an efficient and effective manner.

17. As I explain below, I believe the Distribution Protocol achieves these objectives.

### **Calculating the Notional Entitlement**

18. The purpose of a Distribution Protocol is to fairly distribute settlement funds to Eligible Claimants. Because the amount of the settlement fund is less than potentially provable damages, it is necessary to determine the *pro rata* share of the settlement fund to which each Eligible Claimant is entitled.

19. As a first step, there must be a determination of the Notional Entitlement of the Eligible Claimant. This involves a calculation of potential damages based on when the Claimant's shares were purchased and sold, having regard to the provisions of Part XXIII.1 of the *OSA* and the expert economic evidence in this case, namely the Jarrell Artificial Inflation Reports and the Torchio Damages Reports.

20. Then, after no further claims are permitted (*i.e.*, after the Claims Bar Date), the Net Settlement Amount will be distributed among Eligible Claimants *pro rata*, based on the on the relative size of their respective Notional Entitlements.

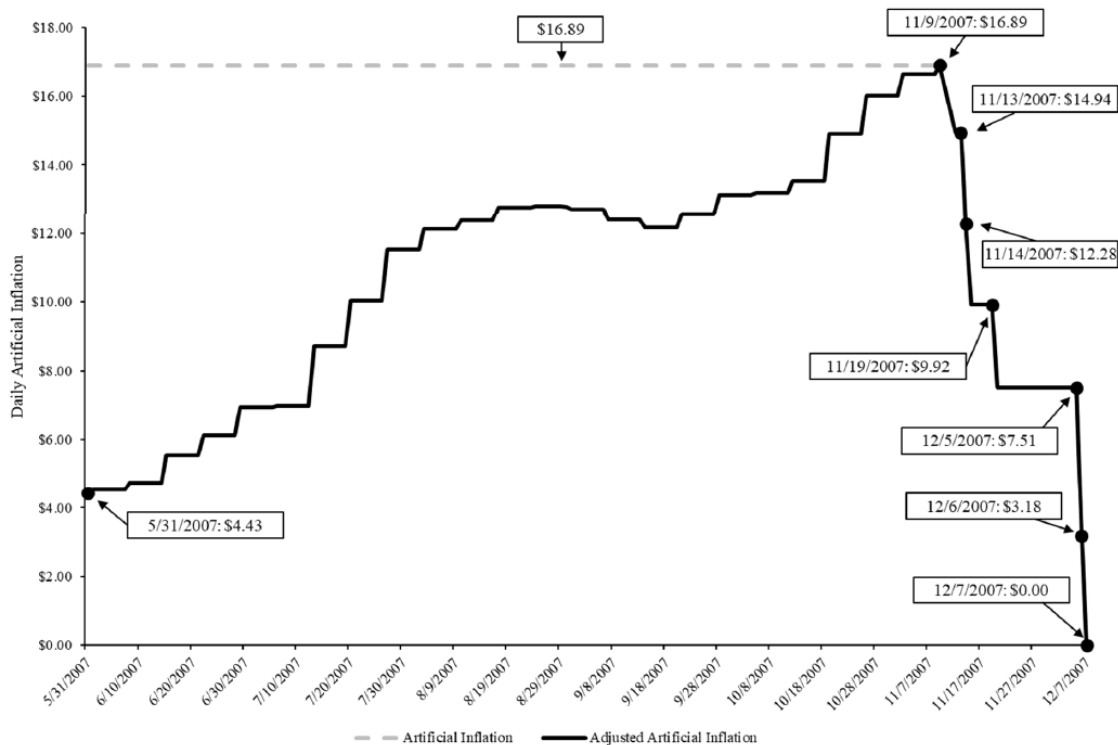
21. The calculation of the Notional Entitlement Amount as set out in paragraph 12 of the Distribution Protocol is intended to calculate individual damages in a manner which is consistent with OSA Part XXIII.1 section 138.5. There are two main elements of a section 138.5 damages determination.

- (a) First, section 138.5(1) measures presumptive damages based upon the purchase price of the share minus the sale price of the share post-correction. The concept of sale price is refined for those shares sold more than 10 days after the correction, or those shares which continue to be held at the time the calculation is made. In those cases, the concept of a notional sale price is introduced, and this is based on the 10-day volume weighted average price (VWAP) after the correction.
- (b) Second, section 138.5(3) requires that the portion of the difference between purchase price and sale price which is unrelated to the misrepresentations must be backed-out. In economic terms, and for the purposes of the Distribution Protocol, in this case, the “backing out” means the removal of the price movement in the subject share unrelated to the misrepresentation, which then yields the artificial inflation from the misrepresentation.

22. Section 138.5(3) is taken into account by subtracting the artificial inflation at the time of sale from the artificial inflation at the time of the purchase of the share. The artificial inflation figures appearing at Table A to the Distribution Protocol are based on the Reply Report of Professor Jarrell dated May 22, 2021, and in particular that Report’s Table 10, “Adjusted Artificial

Inflation” and supporting data. I relied on and duplicated this table in my Reply Damages Report dated May 21, 2021. For ease of reference, the “Table 10 Adjusted Artificial Inflation” from the Jarrell Reply Report dated May 22, 2021 and Figure 1 from the Torchio Damages Report of May 21, 2021 is as follows:

FIGURE 1  
Table 10 “Adjusted Artificial Inflation” of the Jarrell Reply Report



23. Therefore, the rationale for the method for calculating the Notional Entitlement Amount follows section 138.5(1) by first effectively measuring a claimant’s potential damages from the purchase of a CIBC share from May 31, 2007 through December 6, 2007 (the “Relevant Period”) as the purchase price per share minus the effective “sale” price per share.<sup>1</sup> Next, because section

<sup>1</sup> For shares purchased during the Relevant Period and still held as of December 20, 2007, the effective “sale” price cannot be less than the volume weighted average price average price of CIBC

138.5(3) allows potential damages to be limited by eliminating any per share losses not attributable to the misrepresentations, I use Professor Jarrell's computation of artificial inflation, which removes any per share losses not attributable to the misrepresentations and consequently represents only the losses attributable to the misrepresentations. The implementation of the 138.5(3) limitation is that potential damages cannot exceed the artificial inflation per share at purchase minus the artificial inflation per share at "sale".<sup>2</sup>

24. The method of calculating the Notional Entitlement Amount is described in paragraph 12 of the Distribution Protocol and elaborated here:

- (a) For CIBC common shares sold before the close of trading on Friday November 9, 2007, the Notional Entitlement Amount is zero. This is because, according to the expert opinion of Professor Jarrell dated December 21, 2018, the first corrective disclosure event occurred on Monday November 12, 2007. Therefore, if a CIBC common share was purchased after May 31, 2007 and sold before the close of trading on November 9, 2007, that share was both purchased and sold before any corrective disclosure and therefore, no damage attaches to that share.
- (b) For CIBC common shares sold from November 12, 2007 through the close of trading on December 7, 2007, the Notional Entitlement Amount is the lesser of:
  - (i) the purchase price minus the sale price; and (ii) the artificial inflation per share on the date of purchase/acquisition minus the artificial inflation per share

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shares during the 10 trading days following the December 6, 2007 correction, regardless of the actual sale price.

<sup>2</sup> If a share is purchased at an artificially inflated price and not sold on or before December 6, 2007, the inflation at "sale" is zero.

on the date of sale, as stated in Table A to the Distribution Protocol. Subparagraph (b)(i) is intended to capture the requirements of *OSA* section 138.5(1); and subparagraph (b)(ii) considers *OSA* section 138.5(3) where only artificial inflation from the pleaded misrepresentations is taken into account. As stated, the artificial inflation amounts in Table A are taken from the Reply Report of Professor Jarrell dated May 22, 2021 which was filed in this case in anticipation of the trial of this action.

- (c) For CIBC common shares sold from December 7, 2007 through the close of trading on December 20, 2007, the Notional Entitlement Amount is the lesser of: (i) the purchase price minus the sale price; and (ii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A. This calculation is similar to that in subparagraph (b)(ii), except, the disposition occurred after December 7, 2007 at which point, according to the opinion of Professor Jarrell, there is no longer any artificial inflation in the share price which is attributable to the pleaded misrepresentations.
- (d) For CIBC common shares sold on or after December 21, 2007, the Notional Entitlement Amount is the least of: (i) the purchase price minus the sale price; and (ii) the purchase price minus the 10-Day VWAP of \$75.53; and (iii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A. The inclusion of the 10-day VWAP to this calculation takes into account *OSA* section 138.5(1)(ii) which provides for those shares disposed of after the 10<sup>th</sup> trading day after the public correction, then the presumptive damages are the lesser of the purchase price minus the sale price, and the



purchase price minus the 10-day VWAP which is calculated in this case to be \$75.53.


- (e) For CIBC common shares still held as at the date a claim is submitted pursuant to this Distribution Protocol, the Notional Entitlement Amount is equal to the lesser of: (i) the purchase price minus the 10-Day VWAP of \$75.53; and (ii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A. Subparagraph (e)(i) takes into account OSA section 138.5(1)(iii) which provides for damages in respect of those shares which are still held.

25. It is important to note, that the Notional Entitlement Amounts do not represent the amounts to be received by Eligible Claimants. Rather, they approximate a damages calculation used to determine a *pro rata* share of the settlement fund. The damages calculation is, in my opinion, consistent with the unique damages methodology of Part XXIII.1 of the *OSA* and the expert evidence filed by the plaintiffs in this case.

26. As stated earlier, in my opinion the Distribution Protocol:

- (a) would result in a fair distribution of any settlement fund among eligible claimants;
- (b) is consistent with the unique damages methodology provided by section 138.5 of Part XXIII.1 of the *OSA*; and
- (c) can be administered in an efficient and effective manner.

Derek B. LaVigne

  
Frank C. Torchio

**Derek Brian Lavarney**  
**Notary Public, State of New York**  
**Reg. No. 01LA6207948**  
**Qualified in Monroe County**  
**My Commission Expires 06/22/2025**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF FRANK C. TORCHIO**

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**Lawyers for the Plaintiffs**

**CANADIAN IMPERIAL BANK OF COMMERCE SECURITIES LITIGATION SETTLEMENT  
AGREEMENT**

**Made as of December 2, 2021**

**BETWEEN**

**HOWARD GREEN and ANNE BELL**

**(“Plaintiffs”)**

**– and –**

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

**(“Defendants”)**

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## **SETTLEMENT AGREEMENT**

Subject to the approval of the Court as provided herein, the Plaintiffs and the Defendants hereby agree that in consideration of the promises and covenants set forth in this Agreement and upon the Approved Settlement Orders becoming Final Orders, this Action will be settled and the Settlement implemented, pursuant to the terms and conditions described below.

### **SECTION 1- RECITALS**

**WHEREAS**, on July 22, 2008, this Action was commenced as Ontario Superior Court of Justice (Toronto) file Number CV-08-00359335-0000 (the “**Action**”);

**AND WHEREAS**, the Parties to the Action, by this Agreement, intend to fully and finally resolve this Action and all the claims that were or could have been asserted in the Action against the Defendants, without any admission of liability or wrongdoing whatsoever by the Defendants, or any of them, with prejudice and without costs, subject to the approval of this Agreement by the Court;

**AND WHEREAS**, the Class was provided with notice of the Action pursuant to the order of Justice Belobaba dated September 13, 2016 and 75 individuals have opted out of the Class;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases described below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that this Agreement represents the agreement between the Parties to resolve and release, fully and finally, in accordance with the terms more particularly set out herein, all Released Claims, and subject to the approval of the Court as provided herein,

to obtain the Settlement Approved Settlement Order that is a Final Order, dismissing the Action as against the Defendants with prejudice and without costs.

## **SECTION 2 - DEFINITIONS**

In this Settlement Agreement, including the Recitals and Schedules, the following definitions apply:

- (1) **Action** means the action between Howard Green and Anne Bell as Plaintiffs, and the Canadian Imperial Bank of Commerce, Gerald McCaughey, Tom Woods, Brian G. Shaw, and Ken Kilgour as Defendants, with the Ontario Superior Court of Justice (Toronto) file Number CV-08-00359335-0000;
- (2) **Administration Expenses** means all administrative fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable in relation to the notice, approval, implementation and administration of the Settlement, including the costs of publishing and delivery of notices, administrative fees, disbursements and taxes paid to the Administrator, and any other expenses approved by the Court which shall be paid from the Settlement Funds in accordance with Section 4.1. For greater certainty, Administration Expenses do not include Class Counsel Fees nor do they include the Class Proceedings Fund Levy;
- (3) **Administrator** means the third-party professional firm and any employees of such firm, selected at arm's length by Class Counsel, and appointed by the Court to do any one or more of the following:
  - (a) facilitate dissemination of the First Notice;
  - (b) facilitate dissemination of the Approved Settlement Notice;



- (c) receive and review claims and administer the Settlement Fund in accordance with the Distribution Protocol; and
- (d) report to the Parties and the Court on the administration of the Settlement;
- (4) **Agreement** means this settlement agreement;
- (5) **Approval Motion or Approval Motions** means, as the context requires, the motion or motions before the Court to approve the Notice of Settlement Approval Hearing, the Settlement, the Approved Settlement Notice, the Plan of Notice, The Distribution Protocol, Class Counsel Fees, and any other approvals required to give effect to the Settlement and its administration;
- (6) **Approved Settlement Notice** means the Approved Settlement Notice (Long Form) and the Approved Settlement Notice (Short Form);
- (7) **Approved Settlement Notice (Long Form)** means notice to the Class of the Approved Settlement Order substantially in the form attached as **Schedule “A”** hereto or as fixed by the Court at the Settlement Approval Hearing;
- (8) **Approved Settlement Notice (Short Form)** means summary notice to the Class of the Approved Settlement Order substantially in the form attached as **Schedule “B”** hereto or as fixed by the Court at the Settlement Approval Hearing;
- (9) **Approved Settlement Order** means the order made by the Court, substantially in the form attached as **Schedule “C”**:
  - (a) approving the Settlement;
  - (b) approving the forms of the Approved Settlement Notice;
  - (c) approving the Plan of Notice for the purpose of the publication and dissemination of the Approved Settlement Notice;

- (d) approving a Distribution Protocol;
  - (e) approving Class Counsel Fees; and
  - (f) dismissing the Action as against the Defendants without costs and with prejudice;
- (10) **CIBC** means the Defendant Canadian Imperial Bank of Commerce;
- (11) **Claim Form** means the form to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member's claim for compensation pursuant to the Settlement;
- (12) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all supporting documentation with the Administrator; which date shall be one hundred and twenty (120) days after the Approved Settlement Notice Date or such other date as may be fixed by the Court;
- (13) **Class** or **Class Members** means, as the context requires, all persons or entities, excluding U.S. residents, who purchased CIBC common shares between May 31, 2007 and February 28, 2008 on the Toronto Stock Exchange, but not Excluded Persons;
- (14) **Class Counsel** means Rochon Genova LLP and Himelfarb Proszanski LLP;
- (15) **Class Counsel Fees** means the fees, disbursements in accordance with CPA section 33(7)(c), plus HST and other applicable taxes or charges of Class Counsel as approved by the Court;
- (16) **Class Period** means the period between May 31, 2007 and the close of trading on the TSX on February 28, 2008;

- (17) ***Class Proceedings Fund*** means the Class Proceedings Fund of the Law Foundation of Ontario as provided for by section 59.1 of the *Law Society Act*;
- (18) ***Class Proceedings Fund Levy*** means the levy to be paid to the Class Proceedings Fund as prescribed by section 10 of the *Class Proceedings Regulation* under the *Law Society Act*;
- (19) ***Court*** means the Ontario Superior Court of Justice;
- (20) ***CPA*** means the *Class Proceeding Act, 1992*, S.O. 1992, c. 6, as amended;
- (21) ***Defendant*** means any of the defendants named in the Action;
- (22) ***Distribution Protocol*** means the distribution plan stipulating the proposed distribution of the Net Settlement Amount as approved by the Court substantially in the form attached as **Schedule “D”**;
- (23) ***Effective Date*** means the first date on which the Settlement Approved Settlement Order has become a Final Order;
- (24) ***Eligible Claimant*** means any Class Member who has submitted a completed Claim Form which, pursuant to the terms of the Agreement and the Distribution Protocol, has been approved for compensation by the Administrator in accordance with the Distribution Protocol;
- (25) ***Eligible Securities*** means the common shares of Canadian Imperial Bank of Commerce listed on the Toronto Stock Exchange that were acquired by a Class Member during the Class Period and held through any or all of the following dates:
- November 9, 2007
  - November 13, 2007
  - November 14, 2007

- November 19, 2007
  - December 5, 2007
  - December 6, 2007
  - December 7, 2007;
- (26) ***Escrow Account*** means an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario initially under the control of Rochon Genova, until such time as the Notice of Settlement Approval Hearing. Order is entered following which it shall be transferred to the Administrator appointed pursuant to that Order;
- (27) ***Escrow Settlement Funds*** means the Settlement Amount plus any accrued interest in the Escrow Account;
- (28) ***Excluded Persons*** means CIBC's past and present subsidiaries, affiliates, officers, directors, legal representatives, heirs, predecessors, successors and assigns, and any spouse or child of the Individual Defendants, and any person who validly opted out of the Class;
- (29) ***Final Order*** means any order contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal;
- (30) ***Individual Defendants*** means the Defendants other than CIBC;
- (31) ***Net Settlement Amount*** means the amount available in the Escrow Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Administration Expenses, the Class Proceedings Fund Levy and other amounts contemplated by paragraphs 6(1)(i)-(v) hereof;

- (32) *Notice of Settlement Approval Hearing* means the Notice of Settlement Approval Hearing (Long Form) and the Notice of Settlement Approval Hearing (Short Form);
- (33) *Notice of Settlement Approval Hearing (Long Form)* means notice to the Class of the Settlement Approval Hearing and the terms of the proposed settlement substantially in the form attached as **Schedule “E”** hereto or as fixed by the Court;
- (34) *Notice of Settlement Approval Hearing Motion* means a motion to be brought by the Plaintiff in the Court for approval of the Notice of Settlement Approval Hearing, the appointment of the Administrator, and related relief;
- (35) *Notice of Settlement Approval Hearing Order* means the Order of the Court substantially in the form as the attached **Schedule “F”**, which shall contain provisions:
  - (a) appointing the Administrator;
  - (b) approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing; and
  - (c) fixing the date for the Settlement Approval Hearing Motion, as the context may require, in the Court issuing the Notice of Settlement Approval Hearing Order;
- (36) *Notice of Settlement Approval Hearing (Short Form)* means the summary notice to the Class of the Settlement Approval Hearing and the terms of the proposed settlement substantially in the form attached as **Schedule “G”** hereto or as fixed by the Court;
- (37) *Parties* mean the Plaintiffs and the Defendants;
- (38) *Plaintiff* or *Plaintiffs* means Howard Green and Anne Bell;

- (39) ***Plan of Notice*** means the plan for disseminating the Notice of Settlement Approval Hearing and the Approved Settlement Notice to the Class substantially in the form attached as **Schedule “H”** hereto or as fixed by the Court;
- (40) ***Released Claims*** (or ***Released Claim***) means any and all claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future by any and all of the Plaintiffs or the Class Members, arising out of or relating in any way to the acquisition, purchase, sale, retention, pricing, marketing or distribution of Eligible Securities during the Class Period and any claims which were raised or could have been raised in the Action. Released Claims include, without limitation, all claims for damages including, but not limited to punitive, aggravated, statutory and other multiple damages or penalties of any kind; or remedies of whatever kind or character, known or unknown, that are now recognized by law or equity or that may be created and recognized in the future by statute, regulation, judicial decision, or in any other manner; injunctive and declaratory relief; economic or business losses or disgorgement of revenues or profits; costs or lawyers’ fees; and prejudgment and post-judgment interest;
- (41) ***Releasees*** means the Defendants and, as applicable, each of their respective direct and indirect subsidiaries, affiliates, and divisions, along with each of their respective current and former officers, directors, employees, trustees, representatives, lawyers, agents, insurers, and re-insurers; any and all predecessors, successors, and/or shareholders of the Defendants and each of their direct and

indirect subsidiaries, affiliates, and divisions; and each of the Defendants' respective heirs, executors, trustees, administrators and assigns;

- (42) ***Releasors*** means the Plaintiffs, the Class Members, including any person having a legal and/or beneficial interest in the Eligible Securities purchased or acquired by Class Members, and their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners and insurers and their predecessors, successors, heirs, executors, trustees, administrators and assignees;
- (43) ***Settlement*** means the settlement provided for in this Agreement;
- (44) ***Settlement Amount*** or ***Settlement Fund*** means CAD\$125,000,000.00, inclusive of Administration Expenses, Class Counsel Fees, the Class Proceedings Fund Levy and any other costs or expenses otherwise related to the Actions, which is to be paid by CIBC in the settlement of this action;
- (45) ***Settlement Approval Hearing*** means the hearing of the motion for approval of this Settlement, Class Counsel Fees and related relief;
- (46) ***Rochon Genova*** means Rochon Genova LLP.

## **SECTION 3 –APPROVAL AND NOTICE PROCESS**

### **3.1 Best Efforts**

- (1) The Parties shall use their best efforts to implement this Settlement, secure the prompt complete and final dismissal of the Action, and to secure the Approved Settlement Order.
- (2) Until the Approved Settlement Order becomes a Final Order or the termination of this Agreement, whichever occurs first, the Parties agree to hold in abeyance

all steps in the Action, other than the motions provided for in this Agreement and such other matters required to implement the terms of this Agreement.

### **3.2 Notice of Settlement Approval Hearing**

- (1) The Plaintiffs will, as soon as is reasonably practicable, bring a motion in relation to notice of the Settlement Approval hearing. The Defendants will consent to the issuance of the Notice of Settlement Approval Hearing Order which shall be substantially in the form attached as Schedule “F”.
- (2) Upon entry of the Notice of Settlement Approval Hearing Order, the Administrator shall cause the Notice of Settlement Approval Hearing to be published in accordance with the Plan of Notice and the directions of the Court. The costs of publishing the Notice of Settlement Approval Hearing shall be paid from the Escrow Account as and when incurred.

### **3.3 Approval Motion and Notice**

- (1) The Plaintiffs will subsequently bring the Settlement Approval Motion in accordance with the Court’s directions. The Defendants will consent to the issuance of the Approved Settlement Order which shall be substantially in the form attached as Schedule “C”.
- (2) Upon the granting of the Approved Settlement Order, the Administrator shall cause the Approved Settlement Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. The costs of publishing the Approved Settlement Notice shall be paid from the Escrow Account as and when incurred.



## SECTION 4 - SETTLEMENT BENEFITS

### 4.1 Payment of Settlement Amount

- (1) CIBC shall pay \$125,000,000.00 (the “**Settlement Amount**”) for the benefit of the Class Members in full and final settlement of the Released Claims, within thirty (30) days of execution of the Agreement, to Rochon Genova, in trust, to be deposited into the Escrow Account from which funds shall be paid toward Administration Expenses incurred in relation to the issuance of the Notice of Settlement Approval Hearing Order and the Approved Settlement Order.
- (2) Upon the issuance of the Approved Settlement Order, Rochon Genova shall transfer control of the Escrow Account to the Administrator, in trust, for the benefit of the Class Members to be disbursed in accordance with this Agreement and the Approved Settlement Order.
- (3) The Settlement Amount and other valuable consideration set forth in the Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (4) Neither the Defendants nor the Defendants’ insurers or re-insurers shall have any obligation to pay any further amount to the Plaintiffs, the Class Members or Class Counsel with respect to this Agreement or the Action for any reason, including any additional amounts for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Action, the Released Claims, the Settlement, and Administration Expenses.
- (5) Rochon Genova shall account to the Administrator for all payments, if any, made from the Escrow Account prior to the transfer of the Escrow Account to the

Administrator, which payments may include the payment from the Settlement Fund to cover costs in relation to the issuance of Notice of the Settlement Approval Hearing Order. The Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account, whether made by Rochon Genova or the Administrator. In the event this Agreement is terminated, Rochon Genova or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Parties no later than ten (10) days after the termination.

- (6) Rochon Genova shall not pay out any of the monies in the Escrow Account except in accordance with this Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

#### **4.2 Settlement Amount to be Held in Trust**

- (1) Prior to the issuance of the Settlement Approval Order, Rochon Genova shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Agreement. After the issuance of the Settlement Approval Order, the Administrator shall maintain the Escrow Account at a Canadian Schedule 1 bank in Ontario under the control of the Administrator and hold the Settlement Amount in trust as provided for in this Agreement. No amount shall be paid out from the Escrow Account by either Rochon Genova or the Administrator, except in accordance with this Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

### **4.3 Taxes on Interest**

- (1) Except as expressly provided herein all interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Escrow Account.
- (2) The Defendants and their insurers shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to CIBC who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid.

### **SECTION 5 - NO REVERSION**

- (1) Unless this Agreement is terminated as provided herein, CIBC and the Defendants' Insurers shall not be entitled to the repayment from the Plaintiffs of any portion of the Settlement Amount. In the event this Agreement is terminated, CIBC and the Defendants' Insurers shall be entitled to the repayment only to the extent of and in accordance with the terms provided herein.

### **SECTION 6 - DISTRIBUTION OF THE SETTLEMENT AMOUNT**

- (1) On or after the Effective Date, the Administrator shall distribute the Settlement Amount in accordance with the following priorities:
  - i. to pay Class Counsel Fees to Rochon Genova as awarded by the Court;

- ii. to pay all of the costs and expenses reasonably incurred in connection with the provision of the Approved Settlement Notice;
  - iii. to pay all of the Administration Expenses. For greater certainty, the Defendants and the Class or Class Counsel are specifically excluded from being required to pay any costs and expenses under this subsection. All such notice costs shall be paid from the Settlement Amount;
  - iv. to pay any taxes required by law to any governmental authority;
  - v. to pay the Class Proceedings Fund levy as prescribed by Section 10 of the Class Proceedings regulation under the *Law Society Act*;
  - vi. to pay a *pro rata* share of the Net Settlement Amount to each Eligible Claimant in proportion to their claim as recognized in accordance with the Distribution Protocol.
- (2) Class Counsel shall propose for approval by the Court a Distribution Protocol in the form attached as Schedule “D” or such other form as Class Counsel may advise.

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

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

- (1) Whether or not this Agreement is terminated, this Agreement, anything contained in it, and any and all negotiations, discussions, and communications associated with this Agreement, shall not be deemed, construed or interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in the Action. Neither this Agreement nor anything contained

herein shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with any disclosure document or oral statement at issue in the Action.

## **7.2 Agreement Not Evidence**

- (1) The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to implement this Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in the Action or in any other current or future civil, criminal, quasi- criminal, administrative action, disciplinary investigation or other proceeding as any presumption, concession or admission:
  - i. of the validity of any claim that has been or could have been asserted in the Action by the Plaintiffs against the Defendants, or the deficiency of any defense that has been or could have been asserted in the Action;
  - ii. of wrongdoing, fault, neglect or liability by the Defendants; and
  - iii. that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.
- (2) Notwithstanding Section 7.2(1), this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, in any coverage litigation or proceeding, between or among CIBC, any Individual Defendants, any other past,

present or future directors or officers of CIBC on the one hand, and the Defendants' insurers, on the other hand, or as otherwise required by law.

### **7.3 Restrictions on Further Litigation**

- (1) Upon 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 class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity or other claims over for relief from any Releasee in respect of any Released Claim.

## **SECTION 8- TERMINATION OF THE AGREEMENT**

### **8.1 General**

- (1) This Agreement shall automatically terminate if:
  - i. following the return of the Settlement Approval Hearing, the Court issues an order or orders which is or are not substantially in the form of the Approved Settlement Order, and such orders become Final Orders; or
  - ii. an Approved Settlement Order is reversed on appeal and the reversal becomes a Final Order.
- (2) In the event this Agreement is terminated in accordance with its terms:
  - i. the Parties will be restored to their respective positions prior to the execution of this Agreement;
  - ii. any Approved Settlement Order which has been granted will be null and void and set aside on the consent of the Parties;

- iii. subject to 8.1(2)(v), the Escrow Settlement Funds will be returned to CIBC;
  - iv. this Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
  - v. any costs reasonably incurred and paid out of the Escrow Account for performing the services required to prepare to implement this Settlement, and amounts paid for the publication and dissemination of notices are non-recoverable from the Plaintiffs, the Class Members, the Administrator or Class Counsel; and
  - vi. this Agreement will not be introduced into evidence or otherwise referred to in any litigation against any party to this Agreement except in respect of a dispute over the enforcement of any terms of this Agreement including any purported termination of this Agreement;
- (3) Notwithstanding the provisions of Section 8.1(2)(iv), if this Agreement is terminated, the provisions of this Section 8 and Sections 1, 2, 4.1(4), 4.3(2), 5, 7.1, 7.2, and 13 shall survive termination and shall continue in full force and effect.

## **8.2 Allocation of Monies in the Escrow Account Following Termination**

- (1) In the event this Agreement is terminated, Rochon Genova or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Plaintiffs and CIBC no later than ten (10) days after the termination.
- (2) If this Agreement is terminated, CIBC shall apply to the Court for orders:

- i. declaring this Agreement null and void and of no force or effect except for the provisions listed in subsection 8.1(3);
- ii. giving directions as to whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice including who should pay for such notice; and
- iii. authorizing the repayment of all remaining funds in the Escrow Account, including accrued interest, to CIBC, less any amounts required for the dissemination of notice to the Class, if any, under subsection 8.2(2)(ii).

### **8.3 Disputes Relating to Termination**

- (1) If there is any dispute about the termination of this Agreement, the Court shall determine any dispute by motion made by a Party on notice to the other Parties.

### **8.4 No Right to Terminate**

- (1) For greater certainty, no dispute or disagreement among the Plaintiff and/or members of the Class or any of them about the proposed distribution of the Settlement Funds or the Distribution Protocol shall give rise to a right to terminate this Agreement.

## **SECTION 9- DETERMINATION THAT THE SETTLEMENT IS FINAL**

- (1) The Settlement shall be considered final on the Effective Date.



## **SECTION 10 - RELEASES AND JURISDICTION OF THE COURT**

### **10.1 Release of Releasees**

- (1) As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors forever and absolutely release, waive and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, or in any other capacity ever had, now have or hereafter can, shall or may have.
- (2) The Releasors acknowledge that they may hereafter discover facts in addition to or different from those facts which they know or believe to be true with respect to the Action and the subject matter of this Agreement, and that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, this release and, subject to the provisions of Section 8, this Agreement shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

### **10.2 No Further Claims**

- (1) As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees in respect of any Released Claim.

- (2) For further certainty, nothing in this Agreement shall be construed as releasing any claim that each of the Releasees may have against any other Releasee.

### **10.3 Dismissal of the Actions**

- (1) As of the Effective Date, the Action shall be dismissed as against the Defendant CIBC with prejudice and without costs.
- (2) As of the Effective Date, the Action shall be dismissed as against the Individual Defendants with prejudice and without costs.

## **SECTION 11- ADMINISTRATION**

### **11.1 Appointment of the Administrator**

- (1) By order of the Court, the Administrator will be appointed to serve until such time as the Settlement Fund is distributed in accordance with the Distribution Protocol, to implement this Agreement and the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Agreement and in the Distribution Protocol.

### **11.2 Information and Assistance from the Defendants**

- (1) CIBC shall, forthwith and prior to the hearing of the Notice of Settlement Approval Hearing Motion, authorize and direct its transfer agent to deliver an electronic list of all registered shareholders of CIBC common shares, except for U.S. residents, as at November 8, 2007, November 12, 2007, November 13, 2007, November 18, 2007, December 4, 2007 and December 5, 2007, along with such information as may be available to facilitate the delivery of notice to those

persons to the Administrator. The reasonable fees and expenses required to be paid to CIBC's transfer agent so as to accomplish this shall be paid as an Administration Expense from the Escrow Account.

- (2) The Administrator may use the information obtained under Section 11.2(1) for the purpose of delivering the Notice of Settlement Approval Hearing and the Approved Settlement Notice and for the purposes of administering and implementing this Agreement, the Plan of Notice and the Distribution Protocol.
- (3) Any information obtained or created in the administration of this Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Agreement and the Distribution Protocol.

### **11.3 Claims Process**

- (1) In order to seek payment from the Settlement Fund, a Class Member shall submit a completed Claim Form to the Administrator, in accordance with the provisions of the Distribution Protocol, on or before the Claims Bar Deadline. From and after the Effective Date, Class Members shall be bound by the terms of the Settlement regardless of whether they submit a completed Claim Form or receive payment from the Settlement Fund.
- (2) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of sixty (60) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person

who does not respond to such a request for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary; but will in all other respects be subject to and bound by the provisions of this Agreement and the releases contained herein.

- (3) By agreement between the Administrator and Class Counsel and on Notice to Counsel for CIBC, the Claims Bar Deadline may be extended. Class Counsel and the Administrator shall agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

#### **11.4 Disputes Concerning the Decisions of the Administrator**

- (1) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, a Class Member may appeal the decision to the Court. The decision of the Court will be final with no right of appeal.
- (2) No action shall lie against Class Counsel, the Defendants or the Administrator for any decision made in the administration of this Agreement and Distribution Protocol without an order from a Court authorizing such an action.

#### **11.5 Conclusion of the Administration**

- (1) Following the Claims Bar Deadline, and in accordance with the terms of this Agreement, the Distribution Protocol, and such further approval or order of the Court as may be necessary, or as circumstances may require, the Administrator shall distribute the Net Settlement Amount to Eligible Claimants.

- (2) No claims or appeals shall lie against Class Counsel, the Defendants or the Administrator based on distributions made substantially in accordance with this Agreement, the Distribution Protocol, or with any other order or judgment of the Court.
- (3) If the Escrow Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Net Settlement Amount to the Eligible Claimants, any balance sufficient, in the opinion of Class Counsel and the Administrator acting reasonably, to warrant further distribution shall be allocated among the Eligible Claimants to the extent reasonably possible, up to each Eligible Claimant's Notional Entitlement, in aggregate. In no case shall an Eligible Claimant receive a total distribution that is greater than their Notional Entitlement. In the event that the balance remaining in the Escrow Account is not sufficient to warrant a further distribution, the balance shall be distributed *cy pres* to a recipient approved by the Court.
- (4) Upon conclusion of the administration, the Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account.

## **SECTION 12 – THE FEE AGREEMENT AND CLASS COUNSEL FEES**

### **12.1 Motion for Approval of Class Counsel Fees**

- (1) As part of the Approval Motions, it is anticipated that Class Counsel will seek the approval of Class Counsel Fees to be paid from the Settlement Fund. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement.

- (2) The Defendants acknowledge that they have no interest in relation to the approval of Class Counsel Fees and as such will have no involvement in the fee approval process to determine the amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees, except as specifically requested and required by the Court.
- (3) The approval, or denial, by the Court of any requests for Class Counsel Fees to be paid out of the Settlement Fund are not part of the Settlement provided for herein, except as expressly provided in section 6, and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.
- (4) Any order or proceeding relating to Class Counsel Fees, or any appeal from any such order shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approved Settlement Order and the Settlement of this Action provided herein.

## **12.2 Payment of Class Counsel Fees**

- (1) In accordance with section 6(1)(i) herein, on or after the Effective Date the Administrator shall pay from the Escrow Account to Rochon GenovaLLP in trust the Class Counsel Fees approved by the Court.

## **SECTION 13 - MISCELLANEOUS**

### **13.1 Motions for Directions**

- (1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Agreement and the Distribution Protocol.
- (2) All motions contemplated by this Agreement shall be on notice to the Parties.

### **13.2 Defendants Have No Responsibility or Liability for Administration**

- (1) Except for the obligations in respect of the performance of the obligations under subsections 4.1(1) and 11.2(1), the Defendants and their insurers shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Agreement and the Distribution Protocol, including without limitation, the processing and payment of claims by the Administrator.

### **13.3 Publicity**

- (1) Except as otherwise required for the purposes of approving the Settlement, the Parties agree that:
  - i. The Parties shall not issue any press releases or make any other communication to the media regarding the Settlement, except those that: (1) are limited to the facts as disclosed in the Settlement Agreement; (2) may be agreed to by the Parties; (3) are required by law or regulation; (4) in the case of CIBC, form part of its disclosure in its quarterly or annual Management's Discussion & Analysis; or (5) are in response to media requests for comment directed to the Parties or any of them.

- ii. The Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Court or as may be required under any applicable law or regulation, or as may be required by Counsel, in their discretion, in seeking the approval of this Settlement;
- iii. The Parties shall act in good faith to ensure that any public statements, comments or communications regarding the Action or the Settlements are balanced, fair, accurate and free from disparagement.

#### **13.4 Governing Law**

- (1) This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (2) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the members of the Class to interpret and enforce the terms, conditions and obligations under this Agreement and the Approved Settlement Order.

#### **13.5 Entire Agreement**

- (1) 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. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court.

### **13.5 Binding Effect**

- (1) If the Settlement is approved by the Court and becomes final as contemplated in Section 9(1), this Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendants, Class Counsel, the Releasees and the Releasors, the insurers, 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 Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

### **13.6 Survival**

- (1) The representations and warranties contained in this Agreement shall survive its execution and implementation.

### **13.7 Negotiated Agreement**

- (1) This Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of 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 shall have no bearing upon the proper interpretation of this Agreement.

### **13.8 Schedules**

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

### **13.9 Acknowledgements**

- (1) Each Party hereby affirms and acknowledges that:
  - i. 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;
  - ii. the terms of this Agreement and the effects thereof have been fully explained to it by counsel;
  - iii. he, she or its representative fully understands each term of this Agreement and its effect; and
  - iv. no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party beyond the terms of the Agreement, with respect to the Party's decision to execute this Agreement.

### 13.10 Counterparts

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

### 13.11 Notice

- (1) 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 personally or by e-mail during normal business hours as follows

**Notice to the Plaintiffs:**

Joel P. Rochon  
Rochon Genova LLP

Telephone:

(416) 367-1867

E-Mail:

[jrochon@rochongenova.com](mailto:jrochon@rochongenova.com)

**Notice to CIBC:**

Sheila Block  
Torys LLP

Telephone:

(416) 865-7319

E-Mail:

[sblock@torys.com](mailto:sblock@torys.com)

**Notice to Individual Defendants:**

David Conklin  
Goodmans LLP

Telephone:


416-597-5164


E-Mail:

[dconklin@goodmans.ca](mailto:dconklin@goodmans.ca)


**13.12 Date of Execution**


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


  
 Witness  
 Per: Danielle Sousa

  
 Witness  
 Per: Gillian Dingle

  
 Witness  
 Per: Sanya Kambally

  
 ROCHON GENOVA LLP  
 Joel Rochon  
 Managing Partner  
 On behalf of the Plaintiffs Howard Green  
 and Anne Bell

  
 TORYS LLP  
 Sheila Block  
 Partner  
 On behalf of the Defendant Canadian  
 Imperial Bank of Commerce

  
 GOODMAN'S LLP  
 David Conklin  
 Partner  
 On behalf of the Individual Defendants  
 Gerald McCaughey, Tom Woods, Brian G.  
 Shaw and Ken Kilgour

**SCHEDULE “A”:           Approved Settlement Notice (Long Form)**

**NOTICE OF SETTLEMENT APPROVAL IN THE CANADIAN IMPERIAL BANK  
OF COMMERCE (“CIBC”) SECURITIES CLASS ACTION**

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL  
RIGHTS. YOU MAY NEED TO TAKE PROMPT ACTION.**

**This notice is directed to:** All persons, wherever they may reside or be domiciled (except residents of the United States of America) who purchased common shares\* of CIBC on the Toronto Stock Exchange during the period from and including May 31, 2007 to and including February 28, 2008 (the “Class Period”) and still held any of those acquired CIBC common shares at the close of trading on the Toronto Stock Exchange on any or all of November 9, 2007, November 13, 2007, November 14, 2007, November 19, 2007, December 5, 2007, December 6, 2007, and December 7, 2007 (“Public Disclosure Dates”), other than certain **Excluded Persons**\* and those who validly opted out pursuant to the notice of certification issued on ●, 2014 (“Class Members”)

\*Purchased common shares includes CIBC common shares purchased through the CIBC dividend re-investment plan

\***Excluded Persons** include CIBC and its past and present subsidiaries, affiliates, officers, directors, legal representatives, heirs, predecessors, successors and assigns, and any spouse or child of the Individual Defendants, and any person who validly opted out of the Class

**Important Deadline:**

**Claims Bar Deadline**

(to file a claim for compensation):

11:59 pm Toronto (Eastern) time on ●, 2022 *Claims Forms may not be accepted after the Claims Bar Deadline. As a result, it is necessary that you act without delay.*

**Purpose of this Notice**

The purpose of this Notice is to advise Class Members of the approval of the Settlement of a class action brought on behalf of Class Members. The notice provides Class Members with information about how to apply for compensation from the Settlement.

**Court Approval of the Settlement**

In 2008, a class action was commenced in the Ontario Superior Court of Justice (the “Court”) against CIBC and certain of its officers (the “Individual Defendants”, the “Action”).

The Action alleged that, during the Class Period, CIBC misrepresented or failed to disclose in certain public oral statements and filings with securities regulators, material information relating to CIBC’s investments in and exposure to United States residential mortgage-backed securities (“US RMBS”). The Action alleged that these public oral statements and filings with securities regulators by CIBC during the Class Period contained statements that were false or materially

misleading. It was alleged that CIBC's own common shares therefore traded at artificially inflated prices during the Class Period, resulting in damage to Class Members when information relating to those alleged misrepresentations was publicly disclosed. CIBC and the Individual Defendants denied all allegations.

By order dated February 3, 2014, the Court of Appeal for Ontario granted the Plaintiffs leave to proceed with the Action under Part XXIII.1 of the Ontario *Securities Act* and certified the Action as a class proceeding on behalf of the Class Members.

By order of the Ontario Superior Court of Justice dated September 13, 2016, Class Members were afforded the right to exclude themselves or "opt out" of the Class by no later than January 3, 2017. **Persons who validly exercised the right to opt out are not Class Members, are not affected by this notice and may not participate in the Settlement.**

The Action has been vigorously litigated over the last +13 years including multiple appearances before the Ontario Superior Court of Justice, the Court of Appeal for Ontario and the Supreme Court of Canada, dealing with numerous contested motions and appeals. The parties have produced hundreds of thousands of pages of documentary discovery, and there has been more than 47 days of oral discovery and cross-examinations, and hundreds of pages of written follow-up discovery questions and answers. On ●, the Plaintiffs and CIBC executed a Settlement Agreement providing for the settlement the Action (the "Settlement"), which is subject to approval by the Court. The Settlement Agreement provides for the payment of CAD\$125,000,000.00 (the "Settlement Amount") in consideration of the full and final settlement of the claims of Class Members. The Settlement Amount includes all legal fees, disbursements, taxes, administration expenses, and the levy payable to the Class Proceedings Fund of the Ontario Law Foundation.

In exchange for the payment of the Settlement Amount, the Settlement provides that the claims of all Class Members alleged or which could have been alleged in the Actions will be fully and finally released and the Actions will be dismissed. The Settlement is not an admission of liability, wrongdoing or fault on the part of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

On ●, 2021 the Ontario Superior Court of Justice approved the Settlement and ordered that it be implemented in accordance with its terms.

The Court also awarded Rochon Genova LLP ("**Class Counsel**") total legal fees, expenses and applicable taxes in the amount of \$● ("**Class Counsel Fees**") inclusive of disbursements of \$●, plus HST.

Class Counsel conducted the class action entirely on a contingent fee basis. Class Counsel Fees will be deducted from the Settlement Amount before it is distributed to Class Members.

Funding of major expenses (such as expert fees but not Class Counsel Fees) and any adverse costs awards was provided by the Class Proceedings Fund of the Law Foundation of Ontario. Pursuant to section 10 of Ontario Regulation 771/92 of the *Law Society Act*, the Class Proceedings Fund is entitled to payment of a levy from the Settlement Amount which is equal to the sum of the financial support that it provided throughout the Class Action and 10% of the Settlement Amount (less Class Counsel Fees, Settlement Administration Expenses and the

amount returned to the Class Proceedings Fund for its ongoing adverse costs and disbursement funding). The Class Proceedings Fund levy is expected to be approximately \$●, and will be deducted from the Settlement Amount before there is a distribution to Class Members. It is not possible to definitively state what the Class Proceedings Fund Levy will be at this time because the final amount is dependent on variables not known at this time.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members

### **Class Members’ Entitlement to Compensation**

Pursuant to the Court order approving the Settlement, the claims of Class Members which were or could have been alleged in the Action are now released and the Action has now been dismissed. Class Members may not pursue individual or class actions for those claims, regardless of whether or not they file a claim for compensation from the Settlement. **The Settlement therefore represents the only means of compensation available to Class Members in respect of the claims raised in the Actions.**

Class Members will be eligible for compensation pursuant to the Settlement if they submit a completed Claim Form, including any supporting documentation, with the Administrator, and their claim satisfies the criteria set out in the Plan of Allocation.

To be eligible for compensation under the Settlement, Class Members must submit their Claim Form **no later than** 11:59 ET on ● (the “**Claims Bar Deadline**”). Only Class Members are permitted to recover from the Settlement.

After deduction of Class Counsel Fees, the Class Proceedings Fund Levy, and Administration Expenses, the balance of the Settlement Amount (the “**Net Settlement Amount**”), will be distributed to Class Members in accordance with the Plan of Allocation.

Each Class Member who has filed a valid claim will receive a portion of the Net Settlement Amount calculated in accordance with the Plan of Allocation. In order to determine the individual entitlements of Class Members who make claims, the Plan of Allocation provides for the calculation of the notional losses of each claimant in accordance with a formula based on the statutory damages provisions contained in the Ontario *Securities Act*. Once the notional allocations of all Class Members who have filed valid claims have been calculated, the Net Settlement Amount will be allocated to those Class Members in proportion to their percentage of the total notional allocations calculated for all valid claims filed. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

In the event any amounts remain undistributed 180 days after the distribution of the Net Settlement Amount (because of uncashed cheques or for other administrative reasons), those amounts will be distributed to eligible Class Members (if sufficient to warrant a further distribution) or allocated in a manner approved by the Court.

### **Administrator**



The Court has appointed • as the Administrator of the Settlement. The Administrator will, among other things: (i) receive and process the Claim Forms; (ii) determine Class Members' eligibility for and entitlement to compensation pursuant to the Plan of Allocation; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the order of the Court. The Administrator can be contacted at:

Telephone:

Mailing Address:

Website:

### **Filing a Claim**

All claims for compensation from the Settlement must be received by no later than [date].

The most efficient way to file a claim is to visit the Administrator's website at [site]. The website provides step by step instructions on how to file a claim. In order to verify claims, the Administrator will require supporting documentation, including brokerage statements or confirmations evidencing the claimed transactions in CIBC common shares.

Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

The Claims Administrator will also accept Claim Forms filed by mail or courier. To obtain a copy of the Claim Form, Class Members may print one from the Administrator's website or contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to: •

**Class Members with questions about how to complete or file a Claim Form, or the documentation required to support a claim should contact the Administrator at the above coordinates.**

### **Copies of the Settlement Documents**

Copies of the Settlement Agreement, the Plan of Allocation, sample calculations demonstrating how the Plan of Allocation works, the Claim Form and the order of the Court approving the Settlement and Class Counsel's fees may be found on the Administrator's website above, at Class Counsel's website (•) or by contacting Class Counsel at the contact information provided below:

### **Class Counsel**

Rochon Genova LLP is Class Counsel.

Inquiries may be directed to:

Rochon Genova LLP  
121 Richmond Street, West



Suite #900  
Toronto, ON M5H 2K1  
Tel: 1-866-881-2292  
Fax: 416-363-0263

**Attention:** Jon Sloan – e-mail: [jsloan@rochongenova.com](mailto:jsloan@rochongenova.com)

**Interpretation**

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

PLEASE DO NOT CONTACT THE COURT WITH INQUIRIES ABOUT THE CLASS ACTIONS OR THE SETTLEMENT.

All inquiries should be directed to the Administrator or to Class Counsel.

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE  
ONTARIO SUPERIOR COURT OF JUSTICE

## **SCHEDULE B :      Approved Settlement Notice (Short Form)**

**Did you purchase shares of Canadian Imperial Bank of Commerce (“CIBC”) on the TSX from May 31, 2007 to and including and February 28, 2008? Are you a non-U.S. resident?**

A settlement has been reached in the class action against CIBC and certain of its former officers alleging misrepresentations made in certain of CIBC’s public disclosures released between May 31, 2007 and February 28, 2008. CIBC and the other Defendants have denied all allegations against them.

The settlement provides for the payment by CIBC of the total amount of CAD \$125,000,000 to resolve those claims. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by CIBC or any of the other Defendants.

The Settlement has been approved by the Ontario Superior Court of Justice. The Court has appointed ● as the Administrator of the Settlement. To be eligible for compensation, Class Members must submit a completed Claim Form to the Administrator no later than ●. If you do not file a claim by this deadline, you may not be able to claim a portion of the Settlement and your claim will be extinguished.

For more information about your rights and how to exercise them, see the long-form notice available online at ● or call toll-free at: ●.

**SCHEDULE “C”: Approved Settlement Order**

Court File No.: CV-08-359335

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	, THE
	)	
JUSTICE FREDERICK MYERS	)	DAY OF , 2021
	)	

**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***ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving: (i) the Settlement Agreement reached between the Plaintiffs and the Defendants dated ●, 2021; (ii) approving the Distribution Protocol; (iii) approving the form, method of publication and dissemination of the Notices of Settlement Approval; and (iv) approving Class Counsel Fees and expenses was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**ON READING** the materials filed and on hearing the submissions of Class Counsel and counsel for the Defendants;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been no written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the Plaintiffs and the Defendants consent to this Order:

1. **THIS COURT ORDERS** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement, attached hereto as Schedule “A”.
2. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
4. **THIS COURT ORDERS** that Class Counsel Fees in the amount of \$\*\*\* plus applicable taxes of \$\*\*\*, plus [\$\*\*\*] in incurred disbursements and applicable taxes (“Class Counsel Fees and Disbursements”), is fair and reasonable.
5. **THIS COURT ORDERS** that Class Counsel Legal Fees and Disbursements are hereby approved pursuant to sections 32 and 33 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
6. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon CIBC and the Individual Defendants in accordance with the terms thereof, and upon the Plaintiffs and all Class Members

that did not opt-out of this Action in accordance with the Order of the Ontario Superior Court of Justice in this Action dated September 13, 2016 (and entered on September 14, 2016), including those persons that are minors or mentally incapable.

7. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

8. **THIS COURT ORDERS** that compliance with requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 is hereby dispensed with.

9. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms.

10. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as Schedule “B” is fair and appropriate.

11. **THIS COURT ORDERS** that the Distribution Protocol is approved and that the Settlement Amount shall be distributed in accordance with the terms of the Settlement Agreement, following payment of Class Counsel Fees and Disbursements, Administration Expenses, and the levy payable to the Class Proceedings Fund of the Ontario Law Foundation.

12. **THIS COURT ORDERS** that the Plan of Notice, substantially in the form attached hereto as Schedule “C”, is hereby approved for the purpose of the publication and dissemination of the Short Form Notice of Settlement, Long Form Notice of Settlement and Claim Form.

13. **THIS COURT ORDERS** that the form and content of the Short Form Notice of Settlement substantially in the form attached hereto as Schedule “D” is hereby approved.

14. **THIS COURT ORDERS** that the form and content of the Long Form Notice of Settlement substantially in the form attached hereto as Schedule “E” is hereby approved.

15. **THIS COURT ORDERS** that the form and content of the Claim Form, substantially in the form attached hereto as Schedule “F” is hereby approved.

16. **THIS COURT ORDERS** that the Plaintiffs and Defendants may, on notice to the Court but without the need for further order of the Court, agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement

17. **THIS COURT ORDERS** that, other than that which has been provided in Section 4 of the Settlement Agreement, the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

18. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors under the Settlement Agreement forever and absolutely release, waive, and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims that any of them whether directly or indirectly or in any other capacity ever had, now have, or hereafter can, shall or will have, as provided by the Settlement Agreement.

19. **THIS COURT ORDERS** that, upon 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 class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claims or any matter related thereto.

20. **THIS COURT ORDERS** that upon the Effective Date, the Action shall be dismissed against all Defendants with prejudice and without costs.

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The Honourable Justice Frederick Myers

**HOWARD GREEN et al**  
Plaintiffs

- and -

**CANADIAN IMPERIAL BANK OF COMMERCE et al**  
Defendants

Court File No: CV-08-359335

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**  
(Approved Settlement Order)

**ROCHON GENOVA LLP**

Barristers • Solicitors  
121 Richmond Street West  
Suite 900  
Toronto, ON M5H 2K1

Joel P. Rochon (LSUC#: 28222Q)  
Peter R. Jervis (LSUC#: 22774A)  
Douglas Worndl (LSO#: 30170P)  
Ronald Podolny (LSO#: 56908C)  
Golnaz Nayerahmadi (LSO #: 68204C)

Tel: 416.363-1867

*Lawyers for the Plaintiffs*



**SCHEDULE D: DISTRIBUTION PROTOCOL****DISTRIBUTION PROTOCOL**

This Distribution Protocol should be read in conjunction with the Settlement Agreement **dated •** ("Settlement Agreement").

**DEFINED TERMS**

1. The terms "**Administration Expenses**", "**Administrator**", "**Claim Form**", "**Claims Bar Deadline**", "**Class Counsel Fees**", "**Class Members**", "**Class Period**", "**Distribution Protocol**", "**Eligible Securities**", "**Net Settlement Amount**", "**Settlement Amount**", and "**CIBC**", as used herein, are defined in the Settlement Agreement, which definitions apply to and are incorporated herein. In addition, the following definitions apply to this Distribution Protocol:

- (a) "**Acquisition Expense**" means,
  - (i) the price per share paid to acquire Eligible Securities plus brokerage commissions actually paid; or
  - (ii) where Eligible Securities are acquired by Class Members as a payment in kind (including, but not limited to, pursuant to CIBC's Shareholder Investment Plan), the price per share of those Eligible Securities at the close of market when such Eligible Securities were acquired by the Class Member;
- (b) "**Authorized Claimant**" means a Claimant who has a Notional Entitlement greater than zero in respect of transactions of Eligible Securities;

- (c) "**Claimant**" means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline;
- (d) "**Corrective Dates**" means each date on which a corrective disclosure was made:
  - (i) November 12, 2007;
  - (ii) November 14, 2007;
  - (iii) November 15, 2007;
  - (iv) November 20, 2007;
  - (v) December 6, 2007;
  - (vi) December 7, 2007;
- (e) "**Disposition Proceeds**" means the price per share actually received by a Claimant on the disposition of Eligible Securities, without deducting any commissions paid in respect of the dispositions;
- (f) "**FIFO**" means "first in, first out" inventory matching methodology, whereby for the purpose of determining Claimants' Notional Entitlement, securities are deemed to be sold in the same order that they were purchased (e.g. the first securities of CIBC purchased by a Class Member are deemed to be the first securities of CIBC sold); and which requires, in the case of a Claimant who acquired CIBC securities before the Class Period and held those securities at the commencement of the Class Period, that those securities be deemed to have been sold completely before Eligible Securities are sold or deemed sold;
- (g) "**Notional Entitlement**" means an Authorized Claimant's damages as calculated pursuant to the formulae set forth herein, and which forms the basis upon which each Authorized Claimant's *pro rata* share of the Net Settlement Amount is determined.

- (h) “**10 Day VWAP**” means the 10-day Volume Weighted Average Price starting after the December 7, 2007 correction, which is calculated to be \$75.53 pursuant to the Part XXIII.1 of the Ontario *Securities Act*.

## **OBJECTIVE**

2. The objective of this Distribution Protocol is to equitably distribute the Net Settlement Amount among Authorized Claimants in a manner analogous to the damages provisions of Part XXIII.1 of the Ontario *Securities Act*.

## **PROCESSING CLAIM FORMS**

3. The Administrator shall review each Claim Form and verify that the Claimant is eligible for compensation from the Net Settlement Amount, as follows:
- (a) For a Claimant claiming as a Class Member, the Administrator shall be satisfied that the Claimant is a Class Member;
  - (b) For a Claimant claiming on behalf of a Class Member or a Class Member's estate, the Administrator shall be satisfied that:
    - (i) the Claimant has authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs;
    - (ii) the person or estate on whose behalf the claim was submitted was a Class Member; and
    - (iii) the Claimant has provided all supporting documentation required by the Claim Form or alternative documentation acceptable to the Administrator.
4. The Administrator shall ensure that only claims for compensation in respect of Eligible Securities in the Claim Form are approved.

**CALCULATION OF NOTIONAL ENTITLEMENT**

5. The Net Settlement Amount will be distributed in accordance with this Distribution Protocol.
6. The Administrator will apply FIFO to identify the sale of CIBC securities held prior to the beginning of the Class Period. The Administrator will then apply FIFO to the sale of CIBC securities purchased during the Class Period and sold prior to November 9, 2007 (inclusive). These matched transactions are not Eligible Securities.
7. The Administrator will then continue to apply FIFO to determine the purchase transactions which correspond to the sale of Eligible Securities, *i.e.* those purchases that were subsequently held over a Corrective Event.
8. The date of a purchase, sale or deemed disposition shall be the trade date, as opposed to the settlement date of the transaction or the payment date.
9. The Administrator shall account for any splits or consolidations that occurred during and may occur after the Class Period, such that Claimants' holdings for the purposes of the calculations are completed in units equivalent to those traded during the Class Period.
10. The Administrator will use the data, derived from applying FIFO, in the calculation of an Authorized Claimant's Notional Entitlement according to the formulae below.
11. Based on the formulae stated below, the Notional Entitlement will be calculated for each purchase of CIBC common stock during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Notional Entitlement Amount is determined to be a negative number or zero under the formulae below, the Notional Entitlement Amount for that transaction will be deemed to be zero.

12. For each share of publicly traded CIBC common stock purchased or otherwise acquired during the period from May 31, 2007, through December 6, 2007, inclusive, and
- (a) sold before the close of trading on November 9, 2007, the Notional Entitlement Amount is zero;
  - (b) sold from November 12, 2007 through the close of trading on December 7, 2007, the Notional Entitlement Amount is the lesser of: (i) the purchase price minus the sale price; and (ii) the artificial inflation per share on the date of purchase/acquisition minus the artificial inflation per share on the date of sale, as stated in Table A;
  - (c) sold from December 7, 2007 through the close of trading on December 20, 2007, the Notional Entitlement Amount is the lesser of: (i) the purchase price minus the sale price; and (ii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A;
  - (d) sold after December 21, 2007, the Notional Entitlement Amount is the least of: (i) the purchase price minus the sale price; and (ii) the purchase price minus the 10-Day VWAP of \$75.53; and (iii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A;
  - (e) still held as at the date a claim is submitted pursuant to this Distribution Protocol, the Notional Entitlement Amount is equal to the lesser of: (i) the purchase price minus the 10-Day VWAP of \$75.53; and (ii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A.

13. The applicable Share Inflation amounts are as follows:

**TABLE A**

Period Start	Period End	Inflation at Time of Purchase or Sale
May 31, 2007	May 31, 2007	\$4.43
June 1, 2007	June 7, 2007	\$4.53
June 8, 2007	June 14, 2007	\$4.75
June 15, 2007	June 21, 2007	\$5.55
June 22, 2007	June 28, 2007	\$6.13
June 29, 2007	July 5, 2007	\$6.93
July 6, 2007	July 12, 2007	\$6.99
July 13, 2007	July 19, 2007	\$8.72
July 20, 2007	July 26, 2007	\$10.03
July 27, 2007	August 2, 2007	\$11.51
August 3, 2007	August 9, 2007	\$12.13
August 10, 2007	August 16, 2007	\$12.38
August 17, 2007	August 23, 2007	\$12.74
August 24, 2007	August 30, 2007	\$12.79
August 31, 2007	September 6, 2007	\$12.69
September 7, 2007	September 13, 2007	\$12.41
September 14, 2007	September 20, 2007	\$12.16
September 21, 2007	September 27, 2007	\$12.57
September 28, 2007	October 4, 2007	\$13.12
October 5, 2007	October 11, 2007	\$13.19
October 12, 2007	October 18, 2007	\$13.53
October 19, 2007	October 25, 2007	\$14.91
October 26, 2007	November 1, 2007	\$16.00
November 2, 2007	November 8, 2007	\$16.63
November 9, 2007	November 9, 2007	\$16.89
November 12, 2007	November 13, 2007	\$14.94
November 14, 2007	November 14, 2007	\$12.28
November 15, 2007	November 19, 2007	\$9.92
November 20, 2007	December 5, 2007	\$7.51
December 6, 2007	December 6, 2007	\$3.18
December 7, 2007	December 7, 2007	\$0.00

14. In calculating an Authorized Claimant's Notional Entitlement, transactions in Eligible Shares in any foreign currency shall be converted to Canadian currency, based on the Bank of Canada noon exchange rate between the Canadian dollar and the foreign currency on

the date on which the Administrator calculates the Notional Entitlements of Authorized Claimants. All Notional Entitlements shall be recorded in Canadian currency.

### **COMPLETION OF CLAIM FORM**

15. If, for any reason, a Claimant is unable to complete the Claim Form then it may be completed by the Claimant's personal representative or a member of the Claimant's family duly authorized by the Claimant to the satisfaction of the Administrator.

### **IRREGULAR CLAIMS**

16. The claims process is intended to be expeditious, cost effective and "user friendly" to minimize the burden on Claimants. The Administrator shall, in the absence of reasonable grounds to the contrary, assume Claimants to be acting honestly and in good faith.
17. Where a Claim Form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.
18. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Administrator believes that the claim contains unintentional errors which would materially exaggerate the Notional Entitlement awarded to the Claimant, then the Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate Notional Entitlement is awarded to the Claimant. If the Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the Notional Entitlement to be awarded to the Claimant, then the Administrator shall disallow the claim in its entirety.
19. Where the Administrator disallows a claim in its entirety, the Administrator shall send to

the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the Claimant disputes the determination of Notional Entitlement or his, her or its individual compensation.

20. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
21. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
22. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination. In the event the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.
23. The determination of the Administrator in an administrative review is final and is not subject to further review by any court or other tribunal.
24. Any matter not referred to above shall be determined by analogy by the Administrator in consultation with Class Counsel.



**ADDITIONAL RULES**

25. The Administrator shall not make payments to Authorized Claimants whose *pro rata* entitlement under this Plan of Allocation is less than CAD\$10.00. Such amounts shall instead be allocated *pro rata* to other Authorized Claimants in accordance with the "Final Distribution" section of this Plan of Allocation.
26. Eligible Shares transferred between accounts belonging to the same Claimant(s) during the Class Period shall not be deemed to be Eligible Securities for the purpose of calculating Notional Entitlement unless those securities were initially purchased by the Claimant(s) during the Class Period. The Acquisition Expense shall be calculated based on the price initially paid for the Eligible Securities.
27. The Administrator shall make payment to an Authorized Claimant by either bank transfer or by cheque at the address provided by the Authorized Claimant or the last known postal address for the Authorized Claimant. If, for any reason, an Authorized Claimant does not cash a cheque within six months after the date on which the cheque was sent to the Authorized Claimant, the Authorized Claimant shall forfeit the right to compensation and the funds shall be distributed in accordance with the "Final Distribution" section of this Plan of Allocation.

**FINAL DISTRIBUTION**

28. Each Authorized Claimant's actual compensation shall be the portion of the Net Settlement Amount equivalent to the ratio of his, her or its Notional Entitlement to the total Notional Entitlements of all Authorized Claimants multiplied by the Net Settlement Amount, as calculated by the Administrator.

29. Compensation shall be paid to Authorized Claimants in Canadian currency.
30. If, one hundred eighty (180) days from the date on which the Administrator distributes the Net Settlement Amount to Authorized Claimants, the Escrow Account remains in a positive balance (whether due to tax refunds, uncashed cheques, or otherwise), the Administrator shall, if feasible, reallocate such balance among the Authorized Claimants in an equitable and economic fashion, up to each Authorized Claimant's Notional Entitlement, in aggregate. In no case shall an Authorized Claimant receive a total distribution that is greater than their Notional Entitlement. In the event any such remaining balance is less than may practically be distributed to Authorized Claimants in the opinion of Class Counsel and the Administrator, such balance shall be allocated *cy pres* to one or more recipients to be approved by the Court.
31. By agreement between the Administrator and Class Counsel, any deadline contained in this Distribution Protocol may be extended. Class Counsel and the Administrator shall agree to extend a deadline(s) if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

-END-

## **SCHEDULE “E”: Notice of Settlement Approval Hearing (Long Form)**

### **CANADIAN IMPERIAL BANK OF COMMERCE (“CIBC”) SECURITIES CLASS ACTION NOTICE OF SETTLEMENT APPROVAL HEARING**

**Read this notice carefully as it may affect your legal rights**

**This notice is directed to:** All persons, wherever they may reside or be domiciled (except residents of the United States of America) who purchased common shares\* of CIBC on the Toronto Stock Exchange during the period from and including May 31, 2007 to and including February 28, 2008 (the “Class Period”) and still held any of those acquired CIBC common shares at the close of trading on the Toronto Stock Exchange on any or all of November 9, 2007, November 13, 2007, November 14, 2007, November 19, 2007, December 5, 2007 and, or December 6, 2007 (“Public Disclosure Dates”), other than certain **Excluded Persons**\* and those who validly opted out pursuant to the notice of certification issued on ●, 2014 (“Class Members”).

\***Purchased common shares** includes CIBC common shares purchased through the CIBC dividend re-investment plan

\***Excluded Persons** include CIBC and its past and present subsidiaries, affiliates, officers, directors, legal representatives, heirs, predecessors, successors and assigns, and any spouse or child of the Individual Defendants, and any person who validly opted out of the Class.

#### **Purpose of this Notice**

A class action which was brought on behalf of Class Members has settled, subject to Court Approval. This Notice provides Class Members with information about the Settlement and their rights to participate in the court proceeding considering whether to approve it.

#### **The Action**

In 2008, a class action was commenced in the Ontario Superior Court of Justice (the “Court”) against CIBC and certain of its officers (the “Individual Defendants”, the “Action”).

The Action alleged that, during the Class Period, CIBC misrepresented or failed to disclose in certain quarterly financial statements and MD&A, public oral statements and filings with securities regulators, material information relating to CIBC’s investments in and exposure to United States residential mortgage-backed securities (“US RMBS”). The Action alleged that these public oral statements and filings with securities regulators by CIBC during the Class Period contained statements that were false or materially misleading. It was alleged that CIBC’s own common shares therefore traded at artificially inflated prices during the Class Period, resulting in damage to Class Members when information relating to those alleged misrepresentations was publicly disclosed. CIBC and the Individual Defendants denied all allegations.

By order dated February 3, 2014, the Court of Appeal for Ontario granted the Plaintiffs leave to proceed with the Action under Part XXIII.1 of the Ontario *Securities Act* and certified the Action as a class proceeding on behalf of the Class Members.

By order of the Ontario Superior Court of Justice dated September 13, 2016, Class Members were afforded the right to exclude themselves or “opt out” of the Class by no later than January 3, 2017. **Persons who validly exercised the right to opt out are not Class Members, are not affected by this notice and may not participate in the Settlement.**

Since then, the Action has been vigorously litigated. On ●, the Plaintiffs and CIBC executed a Settlement Agreement providing for the settlement the Action (the “Settlement”), which is subject to approval by the Court. The Settlement Agreement provides for the payment of CAD\$125,000,000.00 (the “Settlement Amount”) in consideration of the full and final settlement of the claims of Class Members. The Settlement Amount includes all legal fees, disbursements, taxes, administration expenses, and the levy payable to the Class Proceedings Fund of the Ontario Law Foundation.

The Settlement provides that if it is approved by the Court, the claims of all Class Members asserted or which could have been asserted in the Action will be fully and finally released and the Action will be dismissed. The Settlement is not an admission of liability, wrongdoing or fault on the part of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

#### **Settlement Approval Hearing:**

The Settlement is conditional on approval by the Court. The Settlement will be approved if the Court determines that it is fair and reasonable and in the best interests of Class Members to approve it.

The Court will hear a motion for approval of the Settlement on ●, 2022 at ● a.m. at the Ontario Superior Court of Justice Courthouse, ●, Toronto, ON, M5G 1E6. Depending on COVID-19 protocols in place on the hearing date, the Settlement approval hearing will be held in-person and/or remotely via ZOOM. For those wishing to attend the hearing via ZOOM, the Court will publish a ZOOM link on the day before the scheduled hearing date at the following website: ●

#### **Release of Claims and Effect on Other Proceedings**

If the Settlement Agreement is approved by the Court, the claims of Class Members which were asserted or which could have been asserted in the Action will be released and the Action will be dismissed. Class Members will not be able to pursue individual or class actions in relation to the matters alleged in the Action regardless of whether or not they file a claim for compensation from the Settlement. **If approved, the Settlement will therefore represent the only means of compensation available to Class Members in respect of the claims asserted in the Action.**

### **Distribution Protocol**

If the Settlement Agreement is approved by the Court, the Settlement Amount, after deduction of Class Counsel Fees and expenses, payments owed to the Ontario Class Proceedings Fund and Administration Expenses (the “Net Settlement Amount”) will be distributed to Class Members in accordance with the Distribution Protocol, subject to the Court’s approval.

The Settlement provides that to qualify for compensation, Class Members will be required to submit a properly completed Claim Form to the Administrator within the time prescribed by the Court. Each Class Member who submits a valid and timely Claim Form will be entitled to receive compensation calculated in accordance with the Distribution Protocol. If the Settlement is approved by the Court, a further notice will be published which will include instructions on how Class Members can file their Claim Forms and the deadline for doing so. This information will be readily available at the following website ●

The proposed Distribution Protocol provides that in order to determine the individual entitlements of Class Members who make claims, the losses of each claimant will be calculated in accordance with a formula based on the statutory damages provisions contained in the Ontario *Securities Act*. Once the notional losses of all Class Members who have filed valid claims have been calculated, the Net Settlement Amount will be allocated to those Class Members in proportion to their percentage of the total notional losses calculated for all valid claims filed. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

In the event any amounts remain undistributed 180 days after the distribution of the Net Settlement Amount (because of uncashed cheques or for other administrative reasons), those amounts will be distributed to eligible Class Members (if sufficient to warrant a further distribution) or allocated in a manner approved by the Court.

The approval of the Settlement is not contingent on the approval of the Distribution Protocol. The Court may still approve the Settlement even if it does not approve the Distribution Protocol.

### **Approval of Class Counsel Fees and Expenses:**

In addition to seeking the Court’s approval of the Settlement Agreement, Class Counsel will seek the Court’s approval of legal fees not to exceed 30 ●% of the Settlement Fund (“Class Counsel Fees”), plus disbursements not exceeding \$● and applicable taxes. This fee request is in accordance with the retainer agreements entered into between Class Counsel and the Representative Plaintiffs at the beginning of the litigation. Class Counsel conducted this Class Action on a contingent fee basis

Class Counsel was not paid as the matter proceeded and will remain unpaid until Class Counsel Fees are approved by the Court.

Funding of certain major expenses (including, some, but not all, expert fees but not Class Counsel Fees) and any adverse costs awards was provided by the Class Proceedings Fund of the Law Foundation of Ontario. Pursuant to section 10 of Ontario Regulation 771/92 of the *Law Society Act*, the Class Proceedings Fund is entitled to payment of a levy from the Settlement Amount which is equal to the sum of the financial support that it provided to the Class Action plus 10% of the Settlement Amount (less counsel fees, administration expenses and the disbursement funding which is returned to the Class Proceedings Fund). If the Settlement Agreement is approved, this amount will be approximately \$●. This amount cannot be more precisely calculated at this time because of undetermined variables such as Administration Expenses and Class Counsel Fees).

The approval of the Settlement is not contingent on the approval of the Class Counsel Fees requested. The Settlement may still be approved even if the requested Class Counsel Fees are not approved.

The fees of the Administrator, together with any other costs relating to approval, notification, implementation and administration of the settlement (“Administration Expenses”), will also be paid from the Settlement Fund.

### **Class Members’ Right to Participate in the Motions for Approval**

Class Counsel has posted or will post the following material on its website (www.●.com) on or before the dates set out below:

1. The Settlement Agreement (including the proposed Distribution Protocol) ([posted prior to or at time of notice publication]);
2. A summary of the basis upon which Class Counsel recommends the Settlement and Distribution Protocol [at time of notice publication];
3. Sample calculations of notional entitlement calculated using the Distribution Protocol [at time of notice publication];
4. The Plaintiffs’ evidence and written argument in support of the approval of the Settlement and Distribution Protocol [15 days before the settlement approval hearing]; and
5. Class Counsel’s evidence and written argument in support of the request for approval of Class Counsel’s fees and disbursements [15 days before the settlement approval hearing].

Class Members who wish to comment on, or make an objection to, the approval of the Settlement Agreement, Distribution Protocol, or requested Class Counsel Fees may deliver a written submission to Class Counsel, at the address listed below, no later than [5 days before the Settlement approval hearing] ●, 2022. Any objections delivered by that date will be filed with the Court.

Class Members may attend at the hearings in-person or via ZOOM depending on COVID-19 protocols which may be in place on the date of the Settlement approval hearing, whether or not they deliver an objection. The Courts may permit Class Members to participate in the hearings whether or not they deliver an objection. Class Members who wish a lawyer to speak on their behalf at those hearings may retain one to do so at their own expense.

### **Class Counsel**

For further information please visit [www.●.com](http://www.●.com) or contact Class Counsel at:

Rochon Genova LLP  
121 Richmond Street West  
Suite #900  
Toronto, ON M5H 2K1

Attention: Joel P. Rochon

Tel: 1-866-881-2292

Email: •

### **Interpretation**

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED  
BY THE ONTARIO SUPERIOR COURT OF JUSTICE**

**SCHEDULE “F”: NOTICE OF SETTLEMENT APPROVAL HEARING ORDER**

Court File No. CV-08-359335

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	•, THE DAY OF ,
	)	
JUSTICE FREDERICK MYERS	)	2021
	)	

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***ORDER**

**THIS MOTION**, made by the Plaintiffs for, *inter alia*, an Order fixing the date of a Settlement Approval Hearing, appointing Epiq Class Action Services Canada Inc. as the Administrator of the proposed Settlement and the proposed Notice Plan and approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing, was heard this day, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.



**ON READING** the materials filed, including the Settlement Agreement, dated ●, 2021, attached hereto as **Schedule “A”** (the “Settlement Agreement”) and on hearing the submissions of Counsel for the Plaintiffs and Counsel for the Defendants; and

**AND ON BEING ADVISED** that the Defendants consent to this Order.

1. **THIS COURT ORDERS** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.
2. **THIS COURT ORDERS** that the hearing of the Plaintiffs’ motion to approve the Settlement and Class Counsel Fees shall take place on , 2021.
3. **THIS COURT ORDERS** that the form and content of the Notice of Settlement Approval Hearing (Short Form), substantially in the form attached hereto as **Schedule “B”**, is hereby approved.
4. **THIS COURT ORDERS** that the form and content of the Notice of Settlement Approval Hearing (Long Form), substantially in the form attached hereto as **Schedule “C”**, is hereby approved.
5. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (Short Form) and the Notice of Settlement Approval Hearing (Long Form) shall be published and disseminated in accordance with the Plan of Notice attached hereto as **Schedule “D”**.
6. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection or comment on the Settlement, Plan of Allocation or the request for approval of Class Counsel Fees and expenses shall deliver a written statement to Class Counsel no later than 14 days prior to the

Settlement Approval Hearing.

7. **THIS COURT ORDERS** that Epiq Class Action Services Canada Inc. is appointed as the Administrator of the proposed Notice Plan and the proposed Settlement pursuant to the Settlement Agreement.

8. **THIS COURT ORDERS** that there be no costs on this consent motion.

**December \*\*, 2021**

The Honourable Frederick Myers



**HOWARD GREEN et al**  
Plaintiffs

- and -

**CANADIAN IMPERIAL BANK OF COMMERCE et al**  
Defendants

Court File No: CV-08-359335

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

Notice of Settlement Approval Hearing Order

**ROCHON GENOVA LLP**

Barristers • Solicitors  
121 Richmond Street West  
Suite 900  
Toronto, ON M5H 2K1

Joel P. Rochon (LSUC#: 28222Q)  
Peter R. Jervis (LSUC#: 22774A)  
Douglas Worndl (LSO#: 30170P)  
Ronald Podolny (LSO#: 56908C)  
Golnaz Nayerahmadi (LSO #: 68204C)

Tel: 416.363-1867

*Lawyers for the Plaintiffs*

## **SCHEDULE “G”: Notice of Settlement Approval Hearing (Short Form)**

**Did you purchase shares of Canadian Imperial Bank of Commerce (“CIBC”) on the TSX from May 31, 2007 to and including and February 28, 2008? Are you a non-U.S. resident?**

A settlement has been reached in the class action against CIBC and certain of its former officers alleging misrepresentations made by CIBC and certain of its officers between May 31, 2007 and February 28, 2008. These alleged misrepresentations were in CIBC quarterly financial statements and MD&A, public oral statements and filings with securities regulators, regarding material information relating to CIBC’s investments in and exposure to United States residential mortgage-backed securities (“US RMBS”). CIBC and the other Defendants have denied all allegations against them.

The settlement provides for the payment by CIBC of the total amount of CAD \$125,000,000 to resolve those claims. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by CIBC or any of the other Defendants.

The Settlement must be approved by the Ontario Superior Court of Justice. A Settlement Approval Hearing has been set for ●, 2022 in Toronto. At the hearing, the Court will also address motions to approve Class Counsel’s fees, which will not exceed 30% of the recovery plus reimbursement for expenses incurred in the litigation.

Class Members may express their views about the proposed settlement to the Court or object to the settlement. If you wish to do so, you must do so in writing prior to ●, 2021. For more information about your rights and how to object to the settlement, please see the long-form notice available online at ● or call toll-free: ●

**SCHEDULE “H”: Plan of Notice****PLAN OF NOTICE**

Capitalized terms used in this Plan of Notice have the meanings ascribed to them in the Settlement Agreement.

*Subject to such alternative or additional direction by the Court, notices provided for as contemplated in the Settlement Agreement will be disseminated as follows:*

**PART 1 - NOTICE OF SETTLEMENT APPROVAL HEARING**

**(A) The Notice of Settlement Approval Hearing (Short Form) will be disseminated as follows:**

Newspaper Publication

Print publication of the Short Form Notice of Settlement Approval Hearing will be at least a 1/2 page in size and will, as soon as possible following the issuance of the Notice of the Approval Hearing Order. Print publication will be made in Canada, in the English language national editions of *The Globe and Mail*, the *Gazette*, and in the French language of *La Presse* on two occasions.

Newswire Publication

The English and French language versions of the Short Form Notice of Settlement Approval Hearing will also be issued (with necessary formatting modifications) across North America wide CNW/Cision Newswire, a major business newswire in Canada and sent to *Institutional Shareholder Services Inc. (ISS)*.

**(B) The Notice of Settlement Approval Hearing (Long Form) will be disseminated as follows:**

Internet Publication

Electronic publication of the Notice of Settlement Approval Hearing (Long Form) will occur in both the English and French languages on a dedicated Canadian Imperial Bank of Commerce ("CIBC") class action website maintained by the Administrator.

Class Counsel

The Notice of Settlement Approval Hearing (Long Form) will be mailed, electronically or physically, as may be required, to those persons and entities who have previously contacted Class Counsel for the purposes of receiving notice of developments in the Action.

In addition, Class Counsel shall make a toll-free number and email address available to the public that will enable Class Members to contact Class Counsel in order that they may, amongst other things:

- (a) obtain more information about the Settlement or how to object to it; and/or
- (b) request that a copy of the Settlement Agreement be electronically or physically mailed to them.

Class Counsel will also post on its website:

1. the Settlement Agreement;
2. the Long-Form Notice of Settlement Approval Hearing;
3. a short summary of the rationale for the Settlement;
4. sample calculations of notional entitlement calculated pursuant to the Plan of Allocation;
5. its evidence and written submissions in support of the motion for approval of the Settlement (no less than 15 days prior to the motion to approve the Settlement); and
6. its evidence and written submissions in support of the motion for approval of Class Counsel Fees and disbursements (no less than 15 days prior to the motion to approve Class Counsel Fees and disbursements).

## **PART 2 - NOTICE OF SETTLEMENT**

**(A) The Approved Settlement Notice (Short Form) will be disseminated as follows:**

### Newspaper Publication

Print publication of the Approved Settlement Notice (Short Form) will be at least a 1/2 page in size and will occur as soon as possible following the date of the Approved Settlement Order becoming a Final Order, and, in any event, no later than fourteen (14) days following that date. Print publication will be made in Canada, in the English language in the business section of the national weekend edition of *The Globe and Mail*, the Gazette, and in the French language in the business section of *La Presse*.

### Newswire Publication

The English and French language versions of the Approved Settlement Notice (Short Form) will also be issued (with necessary formatting modifications) across *Canada Newswire*, a major business newswire in Canada, in *Stockhouse*, an online investing forum and community, and sent to *Institutional Shareholder Services Inc. (ISS)*.

**(B) The Approved Settlement Notice (Long Form) will be disseminated as follows:**

Individual Notice

Within thirty (30) days of the date of the Approved Settlement Order becoming a Final Order, Class Counsel shall direct the Administrator to send the Approved Settlement Notice (Long Form) and the Claim Form to all putative Class Members as follows:

1. The Administrator shall mail the Approved Settlement Notice (Long Form) and the Claim Form to individuals and entities identified as a result of CIBC's counsel delivering to the Administrator an electronic list in the possession of CIBC's transfer agent containing the names and addresses of registered shareholders of CIBC common shares, except for U.S. residents, as at November 8, 2007, November 12, 2007, November 13, 2007, November 18, 2007, December 4, 2007 and December 5, 2007; and
2. The Administrator shall send the Approved Settlement Notice (Long Form) and the Claim Form to the brokerage firms in the Administrator's proprietary databases requesting that the brokerage firms either send a copy of the Approved Settlement Notice (Long Form) and the Claim Form to all individuals and entities identified by the brokerage firms as being Class Members, or to send the names and addresses of all known Class Members to the Administrator who shall mail the Approved Settlement Notice (Long Form) and the Claim Form to the individuals and entities so identified.

Internet Publication

Electronic publication of the Approved Settlement Notice (Long Form) will occur in both the English and French languages on a dedicated CIBC class action website maintained by the Administrator.

Class Counsel

Class Counsel shall mail or email the Approved Settlement Notice (Long Form) and the Claim Form to those persons that have contacted Class Counsel as of the publication date regarding this class action and have provided Class Counsel with their contact information.

Class Counsel shall make a toll-free number and email address available to the public that will enable Class Members to obtain more information about the settlement, the claims process, and to request that a copy of the Settlement Agreement, Approved Settlement Notice (Long Form) and the Claim Form be sent electronically or physically to them directly.

Class Counsel will also post the Settlement Agreement and the Approved Settlement Notice (Long Form) on Class Counsel's website.



**SCHEDULE D: DISTRIBUTION PROTOCOL****DISTRIBUTION PROTOCOL**

This Distribution Protocol should be read in conjunction with the Settlement Agreement **dated •** ("Settlement Agreement").

**DEFINED TERMS**

1. The terms "**Administration Expenses**", "**Administrator**", "**Claim Form**", "**Claims Bar Deadline**", "**Class Counsel Fees**", "**Class Members**", "**Class Period**", "**Distribution Protocol**", "**Eligible Securities**", "**Net Settlement Amount**", "**Settlement Amount**", and "**CIBC**", as used herein, are defined in the Settlement Agreement, which definitions apply to and are incorporated herein. In addition, the following definitions apply to this Distribution Protocol:

- (a) "**Acquisition Expense**" means,
  - (i) the price per share paid to acquire Eligible Securities plus brokerage commissions actually paid; or
  - (ii) where Eligible Securities are acquired by Class Members as a payment in kind (including, but not limited to, pursuant to CIBC's Shareholder Investment Plan), the price per share of those Eligible Securities at the close of market when such Eligible Securities were acquired by the Class Member;
- (b) "**Authorized Claimant**" means a Claimant who has a Notional Entitlement greater than zero in respect of transactions of Eligible Securities;

- (c) "**Claimant**" means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline;
- (d) "**Corrective Dates**" means each date on which a corrective disclosure was made:
  - (i) November 12, 2007;
  - (ii) November 14, 2007;
  - (iii) November 15, 2007;
  - (iv) November 20, 2007;
  - (v) December 6, 2007;
  - (vi) December 7, 2007;
- (e) "**Disposition Proceeds**" means the price per share actually received by a Claimant on the disposition of Eligible Securities, without deducting any commissions paid in respect of the dispositions;
- (f) "**FIFO**" means "first in, first out" inventory matching methodology, whereby for the purpose of determining Claimants' Notional Entitlement, securities are deemed to be sold in the same order that they were purchased (e.g. the first securities of CIBC purchased by a Class Member are deemed to be the first securities of CIBC sold); and which requires, in the case of a Claimant who acquired CIBC securities before the Class Period and held those securities at the commencement of the Class Period, that those securities be deemed to have been sold completely before Eligible Securities are sold or deemed sold;
- (g) "**Notional Entitlement**" means an Authorized Claimant's damages as calculated pursuant to the formulae set forth herein, and which forms the basis upon which each Authorized Claimant's *pro rata* share of the Net Settlement Amount is determined.

- (h) “**10 Day VWAP**” means the 10-day Volume Weighted Average Price starting after the December 7, 2007 correction, which is calculated to be \$75.53 pursuant to the Part XXIII.1 of the Ontario *Securities Act*.

## **OBJECTIVE**

2. The objective of this Distribution Protocol is to equitably distribute the Net Settlement Amount among Authorized Claimants in a manner analogous to the damages provisions of Part XXIII.1 of the Ontario *Securities Act*.

## **PROCESSING CLAIM FORMS**

3. The Administrator shall review each Claim Form and verify that the Claimant is eligible for compensation from the Net Settlement Amount, as follows:
- (a) For a Claimant claiming as a Class Member, the Administrator shall be satisfied that the Claimant is a Class Member;
  - (b) For a Claimant claiming on behalf of a Class Member or a Class Member's estate, the Administrator shall be satisfied that:
    - (i) the Claimant has authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs;
    - (ii) the person or estate on whose behalf the claim was submitted was a Class Member; and
    - (iii) the Claimant has provided all supporting documentation required by the Claim Form or alternative documentation acceptable to the Administrator.
4. The Administrator shall ensure that only claims for compensation in respect of Eligible Securities in the Claim Form are approved.

**CALCULATION OF NOTIONAL ENTITLEMENT**

5. The Net Settlement Amount will be distributed in accordance with this Distribution Protocol.
6. The Administrator will apply FIFO to identify the sale of CIBC securities held prior to the beginning of the Class Period. The Administrator will then apply FIFO to the sale of CIBC securities purchased during the Class Period and sold prior to November 9, 2007 (inclusive). These matched transactions are not Eligible Securities.
7. The Administrator will then continue to apply FIFO to determine the purchase transactions which correspond to the sale of Eligible Securities, *i.e.* those purchases that were subsequently held over a Corrective Event.
8. The date of a purchase, sale or deemed disposition shall be the trade date, as opposed to the settlement date of the transaction or the payment date.
9. The Administrator shall account for any splits or consolidations that occurred during and may occur after the Class Period, such that Claimants' holdings for the purposes of the calculations are completed in units equivalent to those traded during the Class Period.
10. The Administrator will use the data, derived from applying FIFO, in the calculation of an Authorized Claimant's Notional Entitlement according to the formulae below.
11. Based on the formulae stated below, the Notional Entitlement will be calculated for each purchase of CIBC common stock during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Notional Entitlement Amount is determined to be a negative number or zero under the formulae below, the Notional Entitlement Amount for that transaction will be deemed to be zero.

12. For each share of publicly traded CIBC common stock purchased or otherwise acquired during the period from May 31, 2007, through December 6, 2007, inclusive, and
- (a) sold before the close of trading on November 9, 2007, the Notional Entitlement Amount is zero;
  - (b) sold from November 12, 2007 through the close of trading on December 7, 2007, the Notional Entitlement Amount is the lesser of: (i) the purchase price minus the sale price; and (ii) the artificial inflation per share on the date of purchase/acquisition minus the artificial inflation per share on the date of sale, as stated in Table A;
  - (c) sold from December 7, 2007 through the close of trading on December 20, 2007, the Notional Entitlement Amount is the lesser of: (i) the purchase price minus the sale price; and (ii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A;
  - (d) sold after December 21, 2007, the Notional Entitlement Amount is the least of: (i) the purchase price minus the sale price; and (ii) the purchase price minus the 10-Day VWAP of \$75.53; and (iii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A;
  - (e) still held as at the date a claim is submitted pursuant to this Distribution Protocol, the Notional Entitlement Amount is equal to the lesser of: (i) the purchase price minus the 10-Day VWAP of \$75.53; and (ii) the artificial inflation per share on the date of purchase/acquisition, as stated in Table A.

13. The applicable Share Inflation amounts are as follows:

**TABLE A**

Period Start	Period End	Inflation at Time of Purchase or Sale
May 31, 2007	May 31, 2007	\$4.43
June 1, 2007	June 7, 2007	\$4.53
June 8, 2007	June 14, 2007	\$4.75
June 15, 2007	June 21, 2007	\$5.55
June 22, 2007	June 28, 2007	\$6.13
June 29, 2007	July 5, 2007	\$6.93
July 6, 2007	July 12, 2007	\$6.99
July 13, 2007	July 19, 2007	\$8.72
July 20, 2007	July 26, 2007	\$10.03
July 27, 2007	August 2, 2007	\$11.51
August 3, 2007	August 9, 2007	\$12.13
August 10, 2007	August 16, 2007	\$12.38
August 17, 2007	August 23, 2007	\$12.74
August 24, 2007	August 30, 2007	\$12.79
August 31, 2007	September 6, 2007	\$12.69
September 7, 2007	September 13, 2007	\$12.41
September 14, 2007	September 20, 2007	\$12.16
September 21, 2007	September 27, 2007	\$12.57
September 28, 2007	October 4, 2007	\$13.12
October 5, 2007	October 11, 2007	\$13.19
October 12, 2007	October 18, 2007	\$13.53
October 19, 2007	October 25, 2007	\$14.91
October 26, 2007	November 1, 2007	\$16.00
November 2, 2007	November 8, 2007	\$16.63
November 9, 2007	November 9, 2007	\$16.89
November 12, 2007	November 13, 2007	\$14.94
November 14, 2007	November 14, 2007	\$12.28
November 15, 2007	November 19, 2007	\$9.92
November 20, 2007	December 5, 2007	\$7.51
December 6, 2007	December 6, 2007	\$3.18
December 7, 2007	December 7, 2007	\$0.00

14. In calculating an Authorized Claimant's Notional Entitlement, transactions in Eligible Shares in any foreign currency shall be converted to Canadian currency, based on the Bank of Canada noon exchange rate between the Canadian dollar and the foreign currency on

the date on which the Administrator calculates the Notional Entitlements of Authorized Claimants. All Notional Entitlements shall be recorded in Canadian currency.

### **COMPLETION OF CLAIM FORM**

15. If, for any reason, a Claimant is unable to complete the Claim Form then it may be completed by the Claimant's personal representative or a member of the Claimant's family duly authorized by the Claimant to the satisfaction of the Administrator.

### **IRREGULAR CLAIMS**

16. The claims process is intended to be expeditious, cost effective and "user friendly" to minimize the burden on Claimants. The Administrator shall, in the absence of reasonable grounds to the contrary, assume Claimants to be acting honestly and in good faith.
17. Where a Claim Form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.
18. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Administrator believes that the claim contains unintentional errors which would materially exaggerate the Notional Entitlement awarded to the Claimant, then the Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate Notional Entitlement is awarded to the Claimant. If the Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the Notional Entitlement to be awarded to the Claimant, then the Administrator shall disallow the claim in its entirety.
19. Where the Administrator disallows a claim in its entirety, the Administrator shall send to

the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the Claimant disputes the determination of Notional Entitlement or his, her or its individual compensation.

20. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
21. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
22. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination. In the event the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.
23. The determination of the Administrator in an administrative review is final and is not subject to further review by any court or other tribunal.
24. Any matter not referred to above shall be determined by analogy by the Administrator in consultation with Class Counsel.



**ADDITIONAL RULES**

25. The Administrator shall not make payments to Authorized Claimants whose *pro rata* entitlement under this Plan of Allocation is less than CAD\$10.00. Such amounts shall instead be allocated *pro rata* to other Authorized Claimants in accordance with the "Final Distribution" section of this Plan of Allocation.
26. Eligible Shares transferred between accounts belonging to the same Claimant(s) during the Class Period shall not be deemed to be Eligible Securities for the purpose of calculating Notional Entitlement unless those securities were initially purchased by the Claimant(s) during the Class Period. The Acquisition Expense shall be calculated based on the price initially paid for the Eligible Securities.
27. The Administrator shall make payment to an Authorized Claimant by either bank transfer or by cheque at the address provided by the Authorized Claimant or the last known postal address for the Authorized Claimant. If, for any reason, an Authorized Claimant does not cash a cheque within six months after the date on which the cheque was sent to the Authorized Claimant, the Authorized Claimant shall forfeit the right to compensation and the funds shall be distributed in accordance with the "Final Distribution" section of this Plan of Allocation.

**FINAL DISTRIBUTION**

28. Each Authorized Claimant's actual compensation shall be the portion of the Net Settlement Amount equivalent to the ratio of his, her or its Notional Entitlement to the total Notional Entitlements of all Authorized Claimants multiplied by the Net Settlement Amount, as calculated by the Administrator.

29. Compensation shall be paid to Authorized Claimants in Canadian currency.
30. If, one hundred eighty (180) days from the date on which the Administrator distributes the Net Settlement Amount to Authorized Claimants, the Escrow Account remains in a positive balance (whether due to tax refunds, uncashed cheques, or otherwise), the Administrator shall, if feasible, reallocate such balance among the Authorized Claimants in an equitable and economic fashion, up to each Authorized Claimant's Notional Entitlement, in aggregate. In no case shall an Authorized Claimant receive a total distribution that is greater than their Notional Entitlement. In the event any such remaining balance is less than may practically be distributed to Authorized Claimants in the opinion of Class Counsel and the Administrator, such balance shall be allocated *cy pres* to one or more recipients to be approved by the Court.
31. By agreement between the Administrator and Class Counsel, any deadline contained in this Distribution Protocol may be extended. Class Counsel and the Administrator shall agree to extend a deadline(s) if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

-END-

**FRANK C. TORCHIO, CFA**

Business Address:	School Address:	Home Address:
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**Employment and Education**

- 9/97-present **Simon Business School**, University of Rochester, Rochester, NY. Adjunct Professor and Former Executive Professor of Finance.
- 8/89-present **Forensic Economics, Inc.** (incorporated in 1993), Rochester, NY. President. Consulting in financial valuations and financial-economic analysis in securities litigation and business disputes.
- 6/82-8/89 **Rochester Gas and Electric Corporation**, Rochester, NY.
- 6/88-8/89 Vice President for Utilicom, an RG&E venture subsidiary.
- 4/87-6/88 Economist - Strategic Planning Department.
- 6/82-3/87 Financial Analyst - Treasury Department.
- 9/80-12/81 **M.B.A., Economics and Finance**, Simon Business School, University of Rochester, Rochester, NY.
- 9/78-8/80 **Insurance Services Office**, New York, NY. Statistician - Commercial Lines.
- 9/74-5/78 **B.A., Mathematics**, Niagara University, Niagara Falls, NY.

**Publications**

- “Benchmarking Market Efficiency Indicators for Securities Litigation,” with Bharat Bhole and Sunita Surana, 2020 *University of Illinois Law Review Online* 96, May 4, 2020.
- “Effect of Liquidity on Size Premium and its Implications for Financial Valuations,” with Sunita Surana, *The Journal of Business Valuation and Economic Loss Analysis*, Vol. 9, Issue 1, Jan 2014.

“Event Study Analysis in Securities Litigation and the Bonferroni Correction,” Working Paper, 2010.

“Proper Event Study Analysis in Securities Litigation,” *The Journal of Corporation Law*, 35:1, 2009, pp.159-168.

“The Circularity of Life in Securities Class Actions,” Working Paper, 2008.

“A Comparison of Trading Models Used for Calculating Aggregate Damages in Securities Litigation,” with Michael Barclay, *Law and Contemporary Problems: Complex Litigation at the Millennium*, Vol. 64, Nos. 2 & 3, Spring/Summer 2001.

“University of Rochester’s Endowment Fund Review,” with Gregg A. Jarrell, University of Rochester Simon School Working Paper, 11/93.

“The Longer-Term Relation Between Accounting Performance and Stock Returns,” with Gregg A. Jarrell, Working Paper - Bradley Policy Research Center, 8/92.

“Calculating Proper Transfer Prices,” with Gregg A. Jarrell, *Public Utilities Fortnightly*, 1/1/91.

“Proper Transfer Pricing Aids Success,” with Gregg A. Jarrell, *Rochester Business Journal*, 7/30/90.

### **Awards**

Awarded the Chartered Financial Analyst (CFA)<sup>®</sup> designation by the CFA Institute (2002).

William E. Simon Graduate School of Business Administration Alumni Service Award (1992).

The Richard L. Rosenthal Fellowship at the University of Rochester (1991).

### **Activities**

Presenter on Class Actions – Expert Event Study Evidence in Shareholder Class Actions at Judicial Education Seminar, Adelaide, Australia, March 23, 2018.

Speaker and Panelist on Damages at DRRT’s 9th Annual European Global Investor Protection Conference, Frankfurt, Germany, February 6, 2017.

Speaker and Panelist on Damages at DRRT’s 8th Annual European Global Investor Protection Conference, Frankfurt, Germany, February 1, 2016.

Panelist on the Market Efficiency segment of the 2015 Winter Bench and Bar Conference (Feb. 14-21, 2015) sponsored by the *Federal Bar Council*.

Participant at Roundtable Discussion at Duke University Law School composed of 30 judges, academics, practitioners, and policy makers designed to examine the future landscape of

corporate and securities law private and public enforcement in the aftermath of recent U.S. Supreme Court and Delaware decisions, September 26, 2014.

Presenter for “Business Litigation and Regulatory Agency Review in the Era of the Roberts Court” for Institute for Law & Economic Policy, April 4, 2014.

Panelist for “Fraud on the Market” for the Federal Bar Council, February 25, 2014.

Speaker at 1<sup>st</sup> DRRT Conference on securities class actions around the world for institutional investors, Oct. 28-29, 2013

Chairperson and speaker on Transfer Pricing Economics at the International Institute of Manufacturing.

Former adjunct faculty for economics and finance at Rochester Institute of Technology Graduate School of Business.

Member of the National Association of Forensic Economics.

Volunteer for entertaining at nursing homes and senior citizen communities to raise funds for the American Cancer Society.

### **Expert Testimony and Expert Consulting Experience**

Testimony of Frank Torchio in Lei Guan, Novamax Financial Group Corp., 10109266 Canada, Inc., Juan Du, Zhuhua Xu, Weixuan Zhou, Wenbo Guo, Mofei Li, and Ruyu Yan vs. EDE Capital Inc. in the Matter of an Arbitration (November 8, 2021).

Witness Statement of Frank Torchio in Lei Guan, Novamax Financial Group Corp., 10109266 Canada, Inc., Juan Du, Zhuhua Xu, Weixuan Zhou, Wenbo Guo, Mofei Li, and Ruyu Yan vs. EDE Capital Inc. in the Matter of an Arbitration (October 1, 2021).

Trial Testimony of Frank C. Torchio in Daniel Kleeberg, Lisa Stein, and Aubrey Hays v. Lester Eber, Alexbay, LLC f/k/a Lester Eber, LLC., Elliot W. Gumaer, Wendy Eber, et al. in the United States District Court for the Southern District of New York, Civil Action No. 16-CV-9517(LAK) (KDP) (September 22, 2021).

Declaration of Frank C. Torchio in Daniel Kleeberg, Lisa Stein, and Aubrey Hays v. Lester Eber, Alexbay, LLC f/k/a Lester Eber, LLC., Elliot W. Gumaer, Wendy Eber, et al. in the United States District Court for the Southern District of New York, Civil Action No. 16-CV-9517(LAK) (KDP) (September 6, 2021).

Expert Reply Report of Frank C. Torchio in re: Bofl Holdings, Inc. Securities Litigation, in the United States District Court for the Southern District of California, Case No. 3:15-cv-02324-GPC-KSC (July 23, 2021).

Deposition of Frank C. Torchio in re: Bofl Holdings, Inc. Securities Litigation, in the United States District Court for the Southern District of California, Case No. 3:15-cv-02324-GPC-KSC (June 18, 2021).

Expert Report of Frank C. Torchio in re: Bofl Holdings, Inc. Securities Litigation, in the United States District Court for the Southern District of California, Case No. 3:15-cv-02324-GPC-KSC (May 28, 2021).

Expert Reply Report of Frank C. Torchio in re: Howard Green, et al. v. Canadian Imperial Bank of Commerce, et al., in Ontario Superior Court of Justice, Court File No: CV-08-359335 (May 21, 2021).

Expert Report of Frank C. Torchio in re: Howard Green, et al. v. Canadian Imperial Bank of Commerce, et al., in Ontario Superior Court of Justice, Court File No: CV-08-359335 (October 6, 2020).

Expert Report of Frank C. Torchio in Allianz Global Investors, et al. v. Toshiba Corporation in the Tokyo District Court, Civil Affairs 8, No. 2016 (Wa) No. 20446 Damages Claim Case (August 27, 2020).

Joint Report of Share Price Inflation/Valuation Experts in Mastoris & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 52431 of 2018 and Findlay & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 294069 of 2017 (June 19, 2020).

Expert Report of Frank C. Torchio in Excel Texel Pty LTD V. Quintis LTD in the Federal Court of Australia, New South Wales District Registry, General Division, No. NSD1983/2017 (June 12, 2020).

Expert Response Report of Frank C. Torchio in Mastoris & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 52431 of 2018 and Findlay & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 294069 of 2017 (April 16, 2020).

Expert Response Report of Frank C. Torchio in Mastoris & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 52431 of 2018 and Findlay & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 294069 of 2017 (December 19, 2019).

Trial Testimony of Frank C. Torchio in Larry Crowley v WorleyParsons Limited ACN 096 090 158 in the Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1292 of 2015 (September 19-20, 2019).

Deposition of Frank C. Torchio in Daniel Kleeberg, Lisa Stein, and Aubrey Hays v. Lester Eber, Alexbay, LLC f/k/a Lester Eber, LLC., Elliot W. Gumaer, Wendy Eber, et al. in the United States District Court for the Southern District of New York, Civil Action No. 16-CV-9517(LAK) (KDP) (August 23, 2019).

Expert Reply Report of Frank C. Torchio in Tajdin Abdulla v. Canadian Solar Inc., Shawn Xiaohua Qu, and Arthur Chien in the Superior Court of Justice, Ontario, Canada, Court File No. C-710-10 (August 19, 2019).

Joint Report of the Economic Experts in Larry Crowley v WorleyParsons Limited ACN 096 090 158 in the Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1292 of 2015 (August 4, 2019).

Joint Report of the Economic Experts in Larry Crowley v WorleyParsons Limited ACN 096 090 158 in the Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1292 of 2015 (July 26, 2019).

Expert Report of Frank C. Torchio in Clime Capital Limited v. UGL Pty Limited in the Federal Court of Australia, Victoria Registry, No. VID 1390/2017 (June 28, 2019).

Expert Report of Frank C. Torchio in Daniel Kleeberg, Lisa Stein, and Aubrey Hays v. Lester Eber, Alexbay, LLC f/k/a Lester Eber, LLC., Elliot W. Gumaer, Wendy Eber, et al. in the United States District Court for the Southern District of New York, Civil Action No. 16-CV-9517(LAK) (KDP) (June 28, 2019).

Expert Report of Frank C. Torchio in Mastoris & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 52431 of 2018 and Findlay & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 294069 of 2017 (June 23, 2019).

Expert Report of Frank C. Torchio in Tajdin Abdulla v. Canadian Solar Inc., Shawn Xiaohua Qu, and Arthur Chien in the Superior Court of Justice, Ontario, Canada, Court File No. C-710-10 (May 27, 2019).

Deposition of Frank C. Torchio in Pedro Ramirez, Jr., Individually and on Behalf of All Others Similarly Situated v. Exxon Mobil Corporation et al. in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:16-CV-3111-K (March 20, 2019).

Expert Rebuttal Report of Frank C. Torchio in Pedro Ramirez, Jr., Individually and on Behalf of All Others Similarly Situated v. Exxon Mobil Corporation et al. in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:16-CV-3111-K (March 1, 2019).

Expert Report of Frank C. Torchio in Clime Capital Limited v. UGL Pty Limited in the Federal Court of Australia, Victoria Registry, No. VID 1390/2017 (February 5, 2019).

Expert Response Report of Frank C. Torchio in Larry Crowley v WorleyParsons Limited ACN 096 090 158 in the Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1292 of 2015 (January 31, 2019).

Expert Report of Frank C. Torchio in Pedro Ramirez, Jr., Individually and on Behalf of All Others Similarly Situated v. Exxon Mobil Corporation et al. in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:16-CV-3111-K (December 21, 2018).

Expert Response Report of Frank C. Torchio in Inabu Pty Ltd as trustee for Alidas Superannuation Fund CIMIC Group Limited in Federal Court of Australia, Australian Capital Territory District Registry, General Division, Case No. ACD 93 of 2016 (November 28, 2018).

Expert Report of Frank C. Torchio in Mastoris & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 52431 of 2018 and Findlay & Another v DSHE Holdings Limited (receivers and managers appointed) (in liquidation) & Others, Supreme Court of New South Wales Proceedings No. 294069 of 2017 (October 31, 2018).

Expert Supplemental Report of Frank C. Torchio in Larry Crowley v WorleyParsons Limited ACN 096 090 158 in the Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1292 of 2015 (October 18, 2018).

Expert Report of Frank C. Torchio in Inabu Pty Ltd as trustee for Alidas Superannuation Fund CIMIC Group Limited in Federal Court of Australia, Australian Capital Territory District Registry, General Division, Case No. ACD 93 of 2016 (June 29, 2018).

Expert Report of Frank C. Torchio in David Scott Hopkins (As Trustee of the David Hopkins Super Fund) v. Macmahon Holdings Limited in Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1346 of 2015 (April 6, 2018).

Expert Report of Frank C. Torchio in Larry Crowley v WorleyParsons Limited ACN 096 090 158 in the Federal Court of Australia, New South Wales District Registry, General Division, Case No. NSD 1292 of 2015 (April 2, 2018).

Expert Report of Frank C. Torchio in Findlay & Anor v DSHE Holdings Limited & Ors in the Supreme Court of New South Wales, Equity Division, Case No. 2017/294069 (February 27, 2018).

Trial Testimony of Frank C. Torchio in The Lloyds/HBOS Litigation in the High Court of Justice, Chancery Division, London, England, Case No. HC 2014 002092, HC 2014 001010, HC 2014 001387, HC 2014 001388, HC 2014 001389, HC 2015 000103, and HC 2015 000105 (December 21, 2017).

Statement of Opinions By Mr Torchio and Dr Unni in The Lloyds/HBOS Litigation in the High Court of Justice, Chancery Division, London, England, Case No. HC 2014 002092, HC 2014 001010, HC 2014 001387, HC 2014 001388, HC 2014 001389, HC 2015 000103, and HC 2015 000105 (October 6, 2017).



Expert Report of Frank C. Torchio in Isabel Newson v. OnX USA, LLC, et al. in the United States District Court, District of New Jersey (Newark Vicinage), Civil Action No. 3:16-CV-0276-MAS-DEA (August 14, 2017).

Expert Report of Frank C. Torchio in The Lloyds/HBOS Litigation in the High Court of Justice, Chancery Division, London, England, Case No. HC 2014 002092, HC 2014 001010, HC 2014 001387, HC 2014 001388, HC 2014 001389, HC 2015 000103, and HC 2015 000105 (June 22, 2017).

Testimony of Frank C. Torchio at hearing in Deka Investment Gmbh v. Santander Consumer USA Holdings Inc. in the United States District Court, Northern District of Texas, Dallas Division, Case No. 3:15-CV-2129-K (May 31, 2017).

Expert Report of Frank C. Torchio in Claire R. McDonald v. Home Capital Group, Inc., Gerald M. Soloway, Robert Morton, and Robert J. Blowes in the Superior Court of Justice, Ontario, Canada, Court File No. 349/17CP (May 16, 2017).

Expert Report of Frank C. Torchio in Hemlock Semiconductor Corporation v. Kyocera Corporation and Hemlock Semiconductor, LLC v. Kyocera Corporation in the United States District Court, Eastern District of Michigan, Northern Division, Case No. 15-CV-11236-BC (March 15, 2017).

Deposition of Frank C. Torchio in Deka Investment Gmbh v. Santander Consumer USA Holdings Inc. in the United States District Court, Northern District of Texas, Dallas Division, Case No. 3:15-CV-2129-K (January 31, 2017).

Expert Report of Frank C. Torchio in Deka Investment Gmbh v. Santander Consumer USA Holdings Inc. in the United States District Court, Northern District of Texas, Dallas Division, Case No. 3:15-CV-2129-K (December 2, 2016).

Joint Report of the Economic Experts in Blairgowrie Trading Ltd v. Allco Finance Group Ltd in the Federal Court of Australia, New South Wales District Registry, General Division, No. NSD 1609 of 2013 (October 30, 2016).

Expert Report of Frank C. Torchio in Caason Investments Pty Limited v. Simon Xiao Fan Cao & ORS in the Federal Court of Australia, New South Wales District Registry, General Division, No. NSD 1558 of 2012 (October 20, 2016).

Expert Response Report of Frank C. Torchio in Blairgowrie Trading Ltd v. Allco Finance Group Ltd in the Federal Court of Australia, New South Wales District Registry, General Division, No. NSD 1609 of 2013 (September 22, 2016).

Deposition of Frank C. Torchio in Terry Wright v. Detour Gold Corporation and Gerald Panneton in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-14-504010 (September 21, 2016).

Expert Report of Frank C. Torchio in Celso Catucci and Nicole Aubin, Es Qualité Trustee of the Aubin Family Trust v. Valeant Pharmaceuticals International Inc. et al., before the Superior Court of Justice, Province of Quebec, District of Montreal, Court File No. 500-06-000783-163 (July 21, 2016).

Expert Report of Frank C. Torchio in Le Mouvement d'Education et de Defense des Actionnaires (Medac), and Marc Lamoureux, as a person designated for Le Mouvement d'Education et de Defense des Actionnaires (Medac) v. Manulife Financial Corporation, et al., before the Superior Court of Justice, Province of Quebec, District of Quebec City, Court File No. 200-06-000117-096 (July 8, 2016).

Joint Report of the Valuation Experts in Tobias Mitic v. OZ Minerals Limited in the Federal Court of Australia, Victoria Registry, No. VID114/2014 (June 3, 2016).

Joint Report of the Economic Experts in Tobias Mitic v. OZ Minerals Limited in the Federal Court of Australia, Victoria Registry, No. VID114/2014 (May 25, 2016).

Expert Response Report of Frank C. Torchio in Tobias Mitic v. OZ Minerals Limited in the Federal Court of Australia, Victoria Registry, No. VID114/2014 (April 8, 2016).

Expert Report of Frank C. Torchio in Blairgowrie Trading Ltd v. Allco Finance Group Ltd in the Federal Court of Australia, New South Wales District Registry, General Division, No. NSD 1609 of 2013 (March 17, 2016).

Deposition of Frank C. Torchio in Bausch & Lomb Inc., v. Faezeh Mona Sarfarazi, Western District of New York, Case No. 6:09-cv-06041-EAW (February 29, 2016).

Expert Response Report of Frank C. Torchio in Earglow Pty Limited v. Newcrest Mining Ltd in the Federal Court of Australia, Victoria District Registry, No. VID 406 of 2014 (January 21, 2016).

Supplemental Affidavit of Frank C. Torchio in Terry Wright v. Detour Gold Corporation and Gerald Panneton, in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-14-504010 (January 8, 2016).

Declaration of Frank C. Torchio in Securities and Exchange Commission against CR Intrinsic Investors, et al., United States District Court for the Southern District of New York, No. 12 Civ. 8466 (VM) (December 10, 2015).

Trial Testimony of Frank C. Torchio in United States of America v. Donald L. Blankenship, United States District Court for the Southern District of West Virginia, Case No. 5:14-cr-00244 (November 9, 2015).

Expert Report of Frank C. Torchio in Tobias Mitic v. OZ Minerals Limited in the Federal Court of Australia, Victoria Registry, No. VID114/2014 (October 27, 2015).

Expert Report of Frank C. Torchio in Earglow Pty Limited v. Newcrest Mining Ltd in the Federal Court of Australia, Victoria District Registry, No. VID 406 of 2014 (October 6, 2015).

Expert Report of Frank C. Torchio in Bausch & Lomb Inc., v. Faezeh Mona Sarfarazi, Western District of New York, Case No. 6:09-cv-06041-EAW (September 30, 2015).

Joint Memorandum of Experts in Ipay Express Pte Limited & Ors v Macquarie Equities Limited in the Federal Court of Australia, New South Wales District Registry, NSD508/2012 (August 21, 2015).

Trial Testimony of Frank C. Torchio in Niall Iain MacFirbhisgh et al. v. CI Trustees & Executors Limited et al. in the Royal Court of the Island of Jersey, File no: 2009/448, (July 21, 2015).

Expert Rebuttal Report of Frank C. Torchio in David M. Loritz v. Exide Technologies, et al., Central District of California, Case Nos. 2:13-cv-02607-SVW-E, 2:13-cv-03194-SVW-E , and 2:13-cv-03991-SVW-E (May 26, 2015).

Joint Memorandum of Experts in Niall Iain MacFirbhisgh et al. v. CI Trustees & Executors Limited et al. in the Royal Court of the Island of Jersey, File no: 2009/448, (April 28, 2015).

Deposition of Frank C. Torchio in David M. Loritz v. Exide Technologies, et al., Central District of California, Case Nos. 2:13-cv-02607-SVW-E, 2:13-cv-03194-SVW-E , and 2:13-cv-03991-SVW-E (April 17, 2015).

Expert Report of Frank C. Torchio in Niall Iain MacFirbhisgh et al. v. CI Trustees & Executors Limited et al. in the Royal Court of the Island of Jersey, File no: 2009/448, (April 10, 2015).

Expert Report of Frank C. Torchio in David M. Loritz v. Exide Technologies, et al., Central District of California, Case Nos. 2:13-cv-02607-SVW-E, 2:13-cv-03194-SVW-E , and 2:13-cv-03991-SVW-E (March 30, 2015).

Deposition of Frank C. Torchio in Jacqueline Coffin and Sandra Lowry v. Atlantic Power Corp. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-13-480939 -00CP (March 19 and 24, 2015).

Reply Affidavit of Frank C. Torchio in Jacqueline Coffin and Sandra Lowry v. Atlantic Power Corp. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-13-480939 -00CP (January 14, 2015).

Expert Reply Report of Frank C. Torchio in Ipay Express Pte Limited & Ors v Macquarie Equities Limited in the Federal Court of Australia, New South Wales District Registry, NSD508/2012 (November 25, 2014).

Affidavit of Frank C. Torchio in Terry Wright v. Detour Gold Corporation and Gerald Panneton. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-14-504010 (November 4, 2014).

Affidavit of Frank C. Torchio in Jacqueline Coffin and Sandra Lowry v. Atlantic Power Corp. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-13-480939 -00CP (November 3, 2014).

Declaration of Frank C. Torchio in In Re Gentiva Securities Litigation in the United States District Court, Eastern District of New York, Case No. 10-CV-5064 (ADS)(SIL) (October 15, 2014).

Expert Report of Frank C. Torchio in Countrywide Financial Corp. Mortgaged-Backed Securities Litigation, Central District of California Western Division, Case No. ML-02265-MRP (September 8, 2014).

Deposition of Frank C. Torchio in Bluegreen Corporation Shareholder Litigation in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida, Case No. 502011CA018111 (September 3, 2014).

Cross-Examination of Frank C. Torchio in The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde AP-Fonden, David Grant and Robert Wong v. Sino-Forest Corporation, et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-11-431153-00CP (July 18, 2014).

Supplemental Affidavit of Frank C. Torchio in Scott Bardwell v. Martinrea International, Inc. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV13-20310 CP (July 9, 2014).

Affidavit of Frank C. Torchio in Scott Bardwell v. Martinrea International, Inc. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV13-20310 CP (June 13, 2014).

Expert Report of Frank C. Torchio Responding to Bluegreen Experts in Bluegreen Corporation Shareholder Litigation in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida, Case No. 502011CA018111 (June 3, 2014).

Expert Report of Frank C. Torchio in Ipay Express Pte Limited & Ors v Macquarie Equities Limited in the Federal Court of Australia, New South Wales District Registry, NSD508/2012 (May 29, 2014).

Expert Report of Frank C. Torchio in Bluegreen Corporation Shareholder Litigation in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida, Case No. 502011CA018111 (May 19, 2014).

Declaration of Frank C. Torchio in The City of Farmington Hills Employees Retirement System and the Board of Trustees of the Arizona State Carpenters Pension Trust Fund and the Arizona State Carpenters Defined Contribution Trust Fund, Individually and on Behalf of All Others Similarly Situated v. Wells Fargo Bank, N.A. in the United States District Court, Northern District of Minnesota, Court File No. 0:10-CV-04372-DWF/JJG (March 13, 2014).

Expert Report of Frank C. Torchio in In Re Charles Hodges and Mark Hodges v. Waters & Ors and Wellington Capital Limited v. Waters & Anor in the Federal Court of Australia, New South Wales District Registry, No. NSD 324 of 2009 and No. NSD 557 of 2013 (December 23, 2013).

Affidavit of Frank C. Torchio in The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde AP-Fonden, David Grant and Robert Wong v. Sino-Forest Corporation, et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-11-431153-00CP (November 7, 2013).

Deposition of Frank C. Torchio in Trustees of the Mill Wright Regional Council of Ontario Pension Fund v. Celestica Inc., Stephen W. Delaney and Anthony P. Puppi; Nabil Berzi v. Celestica Inc., Stephen W. Delaney and Anthony P. Puppi; and Huacheng Xing v. Celestica Inc., Stephen W. Delaney and Anthony P. Puppi, in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-11-424069-00CP (October 24, 2013).

Declaration of Kenneth N. Kotz and Frank C. Torchio in In Re Fannie Mae Securities Litigation in the United States District Court, District of Columbia, Consolidated Civil Action No. 1:04-CV-01639 (October 11, 2013).

Affidavit of Frank C. Torchio in Jacqueline Coffin and Sandra Lowry v. Atlantic Power Corp. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: CV-13-480939 -00CP (October 2, 2013).

Deposition of Frank C. Torchio in David D. Schumann, Keith W. Schumann and Heidi Schumann v. Douglas D. Schumann and P-Q Controls, Inc. in the United States District Court, District of Connecticut, Civil Action No. 3:11-cv-00888 (WWE) (September 24, 2013).

Amended Expert Report of Frank C. Torchio in David D. Schumann, Keith W. Schumann and Heidi Schumann v. Douglas D. Schumann and P-Q Controls, Inc. in the United States District Court, District of Connecticut, Civil Action No. 3:11-cv-00888 (WWE) (September 11, 2013).

Deposition of Frank C. Torchio in Tuckerbrook Alternative Investments, LP, Tuckerbrook Global Special Situations GP, LLC, and Tuckerbrook S/B Global Special Situations Fund, LP. v. Alkek & Williams, Ltd, Alkek and Margaret Alkek Foundation, and Scott B. Seaman in the Superior Court Department, State of Connecticut, Stamford-Norwalk County, Docket No. CV-11-6010952-S (September 6, 2013).

Expert Report of Frank C. Torchio in David D. Schumann, Keith W. Schumann and Heidi Schumann v. Douglas D. Schumann and P-Q Controls, Inc. in the United States District Court, District of Connecticut, Civil Action No. 3:11-cv-00888 (WWE) (September 3, 2013).

Deposition of Frank C. Torchio in Stichting Pensioenfond ABP, et al. v. Bank of America Corp., et al., No. 10-CV-2284 (PKC); Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Sole Trustee of the New York State Common Retirement Fund, et al. v. Bank of America Corp., et al., No. 10-CV-5563 (PKC); Steve R. Graber, individually and as assignee of claims of the SRG 2008 Trust v. Bank of America Corp., et al., No. 11-CV-7070 (PKC); and Schwab S&P 500 Index Fund, et al. v. Bank of America Corp., et al., No. 11-CV-7779 (PKC) in the United States District Court, Southern District of New York (July 25, 2013).

Rebuttal Expert Report of Frank C. Torchio in Stichting Pensioenfonds ABP, et al. v. Bank of America Corp., et al., No. 10-CV-2284 (PKC); Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Sole Trustee of the New York State Common Retirement Fund, *et al. v. Bank of America Corp., et al.*, No. 10-CV-5563 (PKC); Steve R. Graber, individually and as assignee of claims of the SRG 2008 Trust v. Bank of America Corp., *et al.*, No. 11-CV-7070 (PKC); and Schwab S&P 500 Index Fund, *et al. v. Bank of America Corp., et al.*, No. 11-CV-7779 (PKC) in the United States District Court, Southern District of New York (July 8, 2013).

Expert Report of Frank C. Torchio in Tuckerbrook Alternative Investments, LP, Tuckerbrook Global Special Situations GP, LLC, and Tuckerbrook S/B Global Special Situations Fund, LP. v. Alkek & Williams, Ltd, Alkek and Margaret Alkek Foundation, and Scott B. Seaman in the Superior Court Department, State of Connecticut, Stamford-Norwalk County, Docket No. CV-11-6010952-S (June 17, 2013).

Expert Report of Frank C. Torchio in Stichting Pensioenfonds ABP, et al. v. Bank of America Corp., et al., No. 10-CV-2284 (PKC); Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Sole Trustee of the New York State Common Retirement Fund, *et al. v. Bank of America Corp., et al.*, No. 10-CV-5563 (PKC); Steve R. Graber, individually and as assignee of claims of the SRG 2008 Trust v. Bank of America Corp., *et al.*, No. 11-CV-7070 (PKC); and Schwab S&P 500 Index Fund, *et al. v. Bank of America Corp., et al.*, No. 11-CV-7779 (PKC) in the United States District Court, Southern District of New York (May 24, 2013).

Declaration of Frank C. Torchio in The City of Farmington Hills Employees Retirement System Individually and on Behalf of All Others Similarly Situated v. Wells Fargo Bank, N.A. in the United States District Court, Northern District of Minnesota, Court File No. 0:10-CV-04372-DWF/JJG (May 6, 2013).

Rebuttal Declaration of Frank C. Torchio in K B Partners I, L.P., Individually and on Behalf of All Others Similarly Situated v. Pain Therapeutics, Inc., Remi Barbier, Nadav Friedman, and Peter S. Roddy in the United States District Court, Western District of Texas, Case No. 1-11-CV-01034 (SS) (April 22, 2013).

Affidavit of Frank C. Torchio in Elizabeth Fricke And Maryanne Mallinos v. Nevsun Resources Ltd. et al. in the Superior Court of Justice, Ontario, Canada, Court File No.: 12-CV-17903 (April 19, 2013).

Deposition of Frank C. Torchio in The City of Farmington Hills Employees Retirement System Individually and on Behalf of All Others Similarly Situated v. Wells Fargo Bank, N.A. in the United States District Court, Northern District of Minnesota, Court File No. 0:10-CV-04372-DWF/JJG (March 22, 2013).

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