

# CANADIAN FX NATIONAL CLASS ACTION

## ADMINISTRATION PROTOCOL

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## GENERAL PRINCIPLES OF THE ADMINISTRATION

1. This protocol (the “**Administration Protocol**”) is intended to govern the claims process and administration developed to distribute the Net Proceeds recovered in the Canadian FX National Class Actions in accordance with the Distribution Protocol approved by the Courts.
2. Compensation will be paid to Class Members who file a valid Claim determined in accordance with the claims process established by this Administration Protocol.
3. Generally, the claims administration shall:
  - (a) establish a claims process including a website and electronic web-based systems and procedures for completing, filing, receiving and adjudicating Claims;
  - (b) employ secure, web-based systems with electronic registration and record keeping wherever possible;
  - (c) provide professional and timely support and assistance to Class Members applying for compensation;
  - (d) provide efficient and timely adjudication of all Claims made in accordance with industry standards;
  - (e) provide timely payment of all valid Claims;
  - (f) provide complete and timely reporting in respect of all aspects of the claims process;
  - (g) provide for an interest bearing trust account at a Canadian Schedule 1 bank in Canada to hold the Net Proceeds; and
  - (h) be bilingual in all respects.

## DEFINITIONS

4. For the purpose of this Administration Protocol the following definitions will also apply:
- (a) **"Canadian FX National Class Action"** means the actions commenced in the Ontario Superior Court of Justice bearing Court File No. CV-15-536174 and the Superior Court of Quebec bearing Court File No. 200-06-000189-152.
  - (b) **"Claim"** means the claim forms developed for the claims process that a Class Member must completed and submit by the Claims Filing Deadline.
  - (c) **"Claims Administrator"** means the Garden City Group, LLC and any employees of Garden City Group, LLC.
  - (d) **"Claims Filing Deadline"** means the date by which Claims must be submitted in order for Class Members to make a timely Claim.
  - (e) **"Class Counsel"** means Sotos LLP, Koskie Minsky LLP, Siskinds LLP, and Camp Fiorante Matthews Mogerman.
  - (f) **"Class Members"** means all Persons, except Excluded Persons, in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an FX Instrument.
  - (g) **"Class Period"** means January 1, 2003 and December 31, 2013.
  - (h) **"Courts"** means the Ontario Superior Court of Justice and the Superior Court of Quebec.
  - (i) **"Distribution Protocol"** means the rules and plan for distributing the Net Proceeds as developed by Class Counsel and approved by the Courts.

- (j) **“Excluded Persons”** means each defendant in the Canadian FX National Class Action, their parent companies, subsidiaries, and affiliates; provided, however, that Investment Vehicles shall not be considered Excluded Persons.
- (k) **“FX”** means foreign exchange.
- (l) **“FX Exchange-Traded Instruments”** means any and all FX Instruments that were listed for trading through an exchange, including, but not limited to, FX futures contracts and options on FX futures contracts.
- (m) **“FX Instruments”** means all instruments traded in the FX Market, including FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts and options on FX futures contracts.
- (n) **“FX Market”** means the market for the exchange of currencies, FX Trading, transactions in FX Instruments and/or FX Exchange-Traded Instruments.
- (o) **“FX Trading”** means the trading or exchange of currencies or FX Instruments, regardless of the manner in which such trading occurs or is undertaken, or a decision to withhold bids and offers with respect to FX Instruments.
- (p) **“Investment Vehicles”** means any investment entity or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, and fund of funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but of which a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest.
- (q) **“Net Proceeds”** means the portion of the Proceeds remaining after the payments contemplated by the Settlement Agreements and Orders of the Courts.

- (r) **“Persons”** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (s) **“Proceeds”** means the proceeds of all approved settlements in the Canadian FX National Class Action.
- (t) **“Settlement Agreements”** means the settlement agreements as approved by the Courts in the Canadian FX National Class Action.

#### **THE CLAIMS ADMINISTRATOR’S DUTIES AND RESPONSIBILITIES**

- 5. The Claims Administrator shall administer the Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreements and this Administration Protocol under the ongoing authority and supervision of the Courts.
- 6. The Claims Administrator’s duties and responsibilities shall include the following:
  - (a) providing notice(s) to the Class Members as may be required;
  - (b) receiving the defendants’ customer information, including names and addresses;
  - (c) developing, implementing and operating the claims process including a claims website;
  - (d) performing industry-standard verification procedures on claims made to ensure their validity;
  - (e) making timely decisions in respect of Claims received and notifying the Class Members of the decision promptly thereafter;

- (f) submitting required materials for appeals;
- (g) reporting the results of the claims process and the intended distributions for each claims category to Class Counsel in a timely fashion;
- (h) performing such recalculation of the distributions in those claims categories as may be required by Class Counsel or if ordered by the Courts;
- (i) maintaining the Claims information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Courts;
- (j) arranging payment to Class Members in a timely fashion;
- (k) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;
- (l) remitting the amounts payable to the Fonds d'aide aux recours collectifs;
- (m) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered by the Courts;
- (n) reporting to Class Counsel respecting Claims received and administered and administration expenses;
- (o) holding the Net Proceeds in an interest bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Net Proceeds from that account as authorized;
- (p) cash management and audit control;
- (q) preparing and submitting reports and records as directed by Class Counsel or the Courts; and,

- (r) fulfilling any obligation to report taxable income and make tax payments (including interest and penalties) due with respect to the income earned by the Net Proceeds.

## **THE CLAIMS PROCESS**

- 7. The Claims Administrator shall create and maintain a claims website for the purposes of providing Class Members with relevant information pertaining to the claims process.
- 8. Where one or more defendants have identified a Class Member and provided customer information about that Class Member, the Claims Administrator may use that customer information to provide notice to the Class Member.
- 9. Generally, the Claim shall require:
  - (a) information about the Class Member and the Class Member's FX Trading that will allow the Claims Administrator to verify that FX Trades were made and are properly categorized;
  - (b) such proof of FX Trading as are acceptable to the Claims Administrator upon request from the Claims Administrator. Class Members are not required to file transaction records unless and until the Claims Administrator chooses to audit said claim;
  - (c) disclosure as to whether the Class Member or any person or entity related to the Class Member has received compensation through other proceedings or settlements pertaining to FX trading, the documents and details of the compensation received, and the claims released;
  - (d) authorization to the Claims Administrator to contact the Class Member or its representative for clarification, information and/or to audit the Claim;

- (e) a declaration that the information submitted in the Claim is true and correct and that the FX Trades comprising the Claim have not been submitted for any other compensation claim; and,
- (f) such further and other information as the Claims Administrator may require to process Claims.

***Claims Filing Deadline***

- 10. The completed Claim together with the required supporting proof must be submitted to the Claims Administrator electronically no later than the Claims Filing Deadline.
- 11. Any Claim not submitted on or before the Claims Filing Deadline will be rejected by the Claims Administrator and such rejection shall not form the basis for any appeal.

***Claims Audit***

- 12. The Claims Administrator shall perform such checks and balances as are industry standard to ensure the validity of the Claims made and, in its sole discretion, may elect to audit any Claim. The Claims Administrator shall reject a Claim, in whole or in part, where, in the Claims Administrator's view, the Class Member has submitted insufficient information or false information or has otherwise engaged in fraudulent conduct.

***Deficiencies***

- 13. If the Claims Administrator finds that deficiencies exist in a Claim, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member will have sixty (60) days after being informed of a deficiency to correct the deficiencies to the satisfaction of the Claims Administrator (the "Deficiency Response Deadline").



***Claims Administrator's Decision***

14. In respect of each Claim, the Claims Administrator shall:
  - (a) determine whether the claimant is a Class Member;
  - (b) determine whether the Class Member has satisfied the Claims requirements;
  - (c) calculate the Class Member's compensation based on the Distribution Protocol; and,
  - (d) advise the Class Member of its approval or rejection of the Claim within ninety (90) days of the Claims Filing Deadline or the Deficiency Response deadline, whichever is later (the "**Decision Notice**").
15. Where the Claims Administrator has rejected or re-categorized all or part of the Claim, the Claims Administrator shall include in the Decision Notice its grounds for so doing.
16. The Claims Administrator's decision will be final and binding upon the Class Member, subject to the limited right of appeal afforded to the Class Members in paragraph 17.

***Appeal of the Claims Administrator's Decision***

17. Class Members may appeal the rejection or re-categorization of their Claim. Any such appeal must be electronically submitted within thirty (30) days of the date of the Decision Notice.
18. Appeals will be determined by a bilingual arbitrator appointed by the Courts.
19. The arbitrator shall apply the rules provided herein to any appeals. There shall be no right of appeal in respect of:
  - (a) Claims filed after the Claims Filing Deadline; and

- (b) Claims entitled to the fixed compensation of \$50 or less pursuant to paragraph 29 of the Distribution Protocol.
20. Appeals shall be on the basis of written submissions of the Class Member supported by any documentation provided to the Claims Administrator as part of an audit and any other material provided by the Class Member in support of the appeal. Notwithstanding the foregoing, the arbitrator, in his or her sole discretion, may request oral submissions to be made via teleconference or establish additional procedures to be followed during the appeal in cases where he or she determines that is warranted.
21. The arbitrator, in his or her sole discretion, may mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, continue to arbitrate the appeal.
22. Costs of a successful appeal will be paid from the Net Proceeds. Costs of an unsuccessful appeal will be borne by the Class Member, subject to the discretion of the Claims Administrator.
23. The arbitrator's decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **THE CLAIMS DISTRIBUTION PROCESS**

24. As soon as practicable after all valid claims are processed, the Claims Administrator shall report to Class Counsel stating the particulars of the proposed distribution of the Net Proceeds.
25. Upon receipt of the Claims Administrator's report, Class Counsel shall forthwith take such steps as they determine may be required pursuant to the provisions of the Distribution Protocol to finalize compensation payments to Class Members including, if necessary, an application to the Courts.

26. Once all steps contemplated by paragraph 25 are complete, Class Counsel will instruct the Claims Administrator to make any recalculations of compensation which may be required and pay approved Claims.
27. The Claims Administrator shall make arrangements to pay approved Claims as expeditiously as possible following receipt of Class Counsel's instruction.

#### **CLASS COUNSEL**

28. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol, the Distribution Protocol and the claims process.
29. Class Counsel may, on notice to the Courts and in consultation with the Claims Administrator, modify provisions of this Administration Protocol, including any time limits or deadlines, during the claims process to enhance the efficacy of the claims process if they consider it is necessary and reasonable for the fair administration of the Distribution Protocol.

#### **CONFIDENTIALITY**

30. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.