



Court File No. CV-18-00605345-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

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WEDNESDAY, THE 5TH

JUSTICE JANET LEIPER

DAY OF NOVEMBER, 2025

B E T W E E N :

STEPHEN POZGAJ

Plaintiff

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
and CIBC TRUST CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(FEES, HONORARIUM AND FUNDING ORDER)

THIS MOTION, made by the Plaintiff and Siskinds LLP (“**Siskinds**”) for an order, *inter alia*, approving the retainer agreement between the Plaintiff and Siskinds, approving the payment of fees, disbursements and applicable taxes to Siskinds and Bates Barristers P.C. (“**Bates Barristers**”), and approving an interim payment of the Funding Commission, was heard on November 5, 2025 at 2:00 pm;

ON READING the materials filed by the Plaintiff and on hearing the submissions of Siskinds;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement between the Plaintiff

and the Defendants dated August 20, 2025 (without schedules) attached to this Order as **Schedule 1** apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that, pursuant to section 32 of the *Class Proceedings Act, 1992*, SO 1992, c 6, as it read immediately before section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2020* came into force (“**CPA**”), the Contingency Fee Retainer Agreement between the Plaintiff and Siskinds dated July 13, 2020 is approved.

3. **THIS COURT ORDERS** that the Amended and Restated Agreement Regarding Trailers Actions between Bates Barristers and Siskinds dated March 8, 2024 is approved in relation to this Action.

4. **THIS COURT ORDERS** that, pursuant to section 33 of the *CPA*, the fees, disbursements and applicable taxes of Siskinds and Bates Barristers are approved and payable to them as a first charge on the Settlement Amount, in the following amounts:

- (a) \$7,280,000 for legal fees;
- (b) \$946,400 for taxes on legal fees;
- (c) \$95,881.90 for disbursements; and
- (d) \$12,391.98 for taxes on disbursements.

5. **THIS COURT ORDERS** that an interim payment of the Funding Commission, payable to the Funder pursuant to the Funding Agreement approved by the Funding Order, in the amount of \$1,075,000 is approved.

6. **THIS COURT ORDERS** that, forthwith after the Effective Date, the Accountant of the Superior Court of Justice shall pay to the Funder, Claims Funding International, PLC, the \$400,015

in cash paid into court by the Funder pursuant to the Funding Order, together with any accrued interest earned on the amounts paid into court.

7. **THIS COURT ORDERS** that an honorarium of \$10,000 be paid to the Plaintiff Stephen Pozgaj out of the Settlement Amount.

Leiper, J.

The Honourable Justice Janet Leiper

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(FEES, HONORARIUM AND FUNDING ORDER)**

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Lawyers for the Plaintiff

Schedule 1 – Settlement Agreement

SETTLEMENT AGREEMENT

Made as of August 20, 2025

Between

STEPHEN POZGAJ

(“Plaintiff”)

and

CANADIAN IMPERIAL BANK OF COMMERCE and CIBC TRUST CORPORATION

(“Defendants”)

SETTLEMENT AGREEMENT

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RECITALS

A. WHEREAS the Action was commenced by the plaintiff, Stephen Pozgaj, in Ontario on September 18, 2018;

B. WHEREAS Class Members were provided an opportunity to opt out of the Action, the deadline for Class Members to opt out of the Action expired on May 26, 2024, and there were no opt-outs from the Action;

C. WHEREAS the Action alleges, among other things, that the Defendants paid trailing commissions out of the assets of the CIBC Mutual Funds to Discount Brokers, and that the Defendants breached their duties as trustees and fiduciaries because the trailing commissions paid to Discount Brokers were excessive, inflated and/or unearned, and further that the Defendants made misrepresentations about the nature of the trailing commission payments;

D. WHEREAS the Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by the Plaintiff in the Action, including any and all allegations that the Plaintiff and/or the Class Members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;

E. WHEREAS the Plaintiff, Class Counsel and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendants;

F. WHEREAS the Plaintiff and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Defendants under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

G. WHEREAS the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Class in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

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

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

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

K. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Action against the Defendants;

L. WHEREAS the Parties intend to provide a supplemental opt-out right to those Class Members who held units of a Renaissance Mutual Fund through a Discount Broker from September 18, 2003 to January 25, 2024 (but only if they did not also hold units of a CIBC Mutual Fund through a Discount Broker during that period);

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

SECTION 1 - DEFINITIONS

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

- (1) **2022 Actions** means, collectively, *Ciardullo v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-691343-00CP, and *Aizic v. Natcan Trust Company et al.*, Ontario Superior Court of Justice, Court File No. CV-23-00697428-00CP.
- (2) **Action** means *Pozgaj v Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-18-00605345-00CP.
- (3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (4) **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 facilitate dissemination of notices, receive and review claims and administer the Settlement Amount in accordance with the Distribution Protocol, and report to the Parties and the Court on the administration of the Settlement.
- (5) **CAM** means CIBC Asset Management Inc.
- (6) **CIBC** means the Defendant, Canadian Imperial Bank of Commerce.
- (7) **CIBC Mutual Funds** means all mutual fund trusts (including, without limitation, all series of units thereof) of which CIBC Trust is trustee or was trustee at any time from September 18,

2003 to January 25, 2024 (but only in respect of the period during which CIBC Trust is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

(8) **CIBC Trust** means the Defendant, CIBC Trust Corporation.

(9) **Class** means all persons, wherever they may reside or be domiciled, who held or hold, units of a CIBC Mutual Fund or a Renaissance Mutual Fund through a Discount Broker, except for the Excluded Persons, from September 18, 2003 to January 25, 2024.

(10) **Class Counsel** means Siskinds LLP.

(11) **Class Counsel Disbursements** means the disbursements, administration expenses, and applicable taxes incurred by Class Counsel and Bates Barristers P.C. in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiff in the Action.

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

(13) **Class Member** means a member of the Class.

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

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

(16) **Defendant Claims** means claims, including Unknown Claims, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Action.

(17) **Defendants** means, together, CIBC and CIBC Trust.

(18) **Discount Brokers** means entities that are “order execution only account” service providers under the Investment Dealer and Partially Consolidated Rules of the Canadian Investment Regulatory Organization, or providing “order-execution only services” as defined in Rule 3200 of

the former IIROC Dealer Member Rules, or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the former IIROC Dealer Member Rules, including (without limitation) CIBC Investor’s Edge, a division of CIBC Investor Services Inc., a subsidiary of CIBC, or such other discount brokerage business operated by CIBC from time to time.

(19) ***Dismiss Order*** has the meaning given to such term in Section 2.3(1).

(20) ***Distribution Order*** has the meaning given to such term in Section 2.3(1).

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

(22) ***Effective Date*** means the date on which the Dismiss Order has become a Final Order.

(23) ***Excluded Persons*** means:

- (a) the Defendants and CAM; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of each of the Defendants and CAM; and the past and present members of the independent review committee of each CIBC Mutual Fund and each Renaissance Mutual Fund;
- (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Akbarali dated January 25, 2024 providing for certification notice and an opt-out process; or
- (c) any Person who would otherwise be a Class Member and who held units of a Renaissance Mutual Fund through a Discount Broker from September 18, 2003 to January 25, 2024 (but only if they did not also hold units of a CIBC Mutual Fund through a Discount Broker during that period), but who validly excludes themselves from the Action in accordance with the First Order.

(24) ***Final Order*** means an order of the Court 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.

(25) ***First Notice*** means the short-form, long-form, Google ad banner and Stockhouse news link notices of the supplemental opt-out right and pendency of the motion for the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule E, Schedule F, Schedule G** and **Schedule H** hereto or as fixed by the Court.

(26) ***First Order*** has the meaning given to such term in Section 2.2(1).

(27) ***Funder*** means Claims Funding International, PLC.

(28) ***Funder's Security*** means the amounts paid into Court by the Funder as security for its obligations pursuant to the Funding Order.

(29) ***Funding Agreement*** means the agreement entered into on April 30, 2019 between the Plaintiff and the Funder for the provision of, among other things, an indemnity against adverse costs in exchange for the payment of the Funding Commission and subsequently approved by the Court pursuant to the Funding Order.

(30) ***Funding Commission*** means the amount to be paid to the Funder pursuant to the Funding Agreement.

(31) ***Funding Order*** means the Order of the Honourable Justice Belobaba dated October 28, 2019 approving the Funding Agreement.

(32) ***Implementation Date*** means the date on which both the Dismiss Order and the Distribution Order have become Final Orders.

(33) ***Other 2018 Actions*** means, collectively, *Sage v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-18-600380-00CP, *Gilani v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-611748-00CP, *Pozgaj v. Mackenzie Financial Corporation et al.*, Ontario Superior Court of Justice, Court File No. CV-18-610311-00CP, *Pozgaj v. National Bank Investments Inc. et al.*, Ontario Superior Court of Justice, Court

File No. CV-18-611745-00CP, and *Ross v. RBC Global Asset Management Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-18-611743-00CP.

(34) ***Net Settlement Amount*** means the amount available in the Trust Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Funding Commission and any other amounts approved by the Court.

(35) ***Parties*** means the Defendants, the Plaintiff and, where necessary, the Class Members.

(36) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(37) ***Plaintiff*** means Stephen Pozgaj.

(38) ***Plan of Notice*** means the plan for disseminating the First Notice and the Second Notice to the Class substantially in the form attached as **Schedule D** hereto or as fixed by the Court.

(39) ***Released Claims*** mean any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, lawyers' fees, disgorgement, restitution and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several, and solidarily in the Province of Quebec), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to any concerns relating to trailing commissions paid by the Defendants and CAM to Discount Brokers in respect of the CIBC Mutual Funds and Renaissance Mutual Funds.

(40) ***Releasees*** means, jointly and severally, individually and collectively, the Defendants, CAM and each of their past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

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

(42) ***Renaissance Mutual Funds*** means all mutual fund trusts (including, without limitation, all series of units thereof) of which CAM is trustee or was trustee at any time from September 18, 2003 to January 25, 2024 (but only in respect of the period during which CAM is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

(43) ***Second Notice*** means the short-form, long-form, Google ad banner and Stockhouse news link notices of the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule I, Schedule J, Schedule K and Schedule L** hereto or as fixed by the Court.

(44) ***Settlement*** means the settlement of the Action on the terms provided in this Settlement Agreement.

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

(46) ***Settlement Amount*** means twenty-six million Canadian dollars (C\$26,000,000.00).

(47) ***Termination Notice*** has the meaning given to such term in Section 6.1(1).

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

(49) ***Unknown Claims*** means any and all Released Claims against the Releasees which Releasors do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Defendant Claims against Releasors which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasors or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasors and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Defendant Claims. Nevertheless, the Plaintiff and the Releasees shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Dismiss Order (when it becomes a Final Order) shall have, fully, finally, and forever settled and released, any and all Released Claims and Defendant Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff and the Releasees acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Defendant Claims was separately bargained for and was a key element of the Settlement Agreement.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

SECTION 2 – APPROVAL AND NOTICE PROCESS

2.1 Commercially Reasonable Efforts

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

2.2 Motion for First Order

- (1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order substantially in the form attached as **Schedule A (“First Order”)**.
- (2) The Defendants will consent to the issuance of the First Order.
- (3) As soon as practicable following entry of the First Order, Class Counsel shall cause the First Notice to be published and distributed in accordance with the Plan of Notice and the direction of the Court. The costs of publishing and distributing the First Notice shall be paid from the Trust Account as and when incurred.

2.3 Motion for Dismiss Order and Distribution Order

- (1) The Plaintiff shall file a motion before the Court for orders substantially in the form attached as **Schedule B (“Dismiss Order”)** and **Schedule C (“Distribution Order”)** as soon as practicable after:
 - (a) the First Order has been granted; and
 - (b) the notices described in Section 2.2(3) have been published.
- (2) The Defendants will consent to the issuance of the Dismiss Order. The Defendants will not oppose the issuance of the Distribution Order.
- (3) At the motion for the Dismiss Order and the Distribution Order, Class Counsel shall propose for approval by the Court the Distribution Protocol or such other plan for distributing the Net Settlement Amount to the Class as Class Counsel may advise. The Distribution Protocol is the responsibility of Class Counsel and the Defendants have no involvement in its design. Accordingly, the approval of the Distribution Protocol shall be considered separately from the approval of the Settlement and is not a condition of the approval of the Settlement itself and the dismissal of the Action as against the Defendants without costs and with prejudice in accordance with the Dismiss Order.
- (4) The Defendants will take no position or make any submission to the Court concerning the Distribution Protocol, except as requested or required by the Court.

(5) The Plaintiff may make any amendments to the Distribution Protocol, the Distribution Order, the Second Notice or the Plan of Notice as it relates to the Second Notice requested or directed by the Court.

(6) As soon as practicable following the Implementation Date, Class Counsel and the Administrator shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. The costs of publishing the Second Notice shall be paid from the Trust Account as and when incurred.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) calendar days of the Date of Execution, the Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account.

(2) Payment of the amount specified in Section 3.1(1) shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

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

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

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

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

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

(8) Within thirty (30) days of the Effective Date, Class Counsel shall transfer control of the Trust Account to the Administrator, but before doing so Class Counsel may deduct and retain from the monies in the Trust Account the Class Counsel Fees and the Class Counsel Disbursements approved by the Court.

3.2 Taxes and Interest

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

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

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

SECTION 4 – NO REVERSION

4.1 No Reversion

(1) Unless this Settlement Agreement is terminated as provided herein, the Defendants shall

not be entitled to the repayment from the Plaintiff of any portion of the Settlement Amount or any interest earned on the Settlement Amount in the Trust Account. In the event this Settlement Agreement is terminated, the Defendants shall be entitled to the repayment only to the extent of and in accordance with Section 6.3(1).

SECTION 5 – OPTING-OUT

5.1 Opt-Outs

(2) An opt-out right was provided by the Order of the Honourable Justice Akbarali dated January 25, 2024. The opt-out deadline expired on May 26, 2024 pursuant to that Order. The Parties acknowledge and confirm that RicePoint Administration Inc., the notice and opt-out administrator appointed by the Court pursuant to the Order of the Honourable Justice Akbarali dated January 25, 2024, confirmed that no Person opted out of the Action.

(3) A supplemental opt-out right will be provided to those Class Members who held units of a Renaissance Mutual Fund through a Discount Broker from September 18, 2003 to January 25, 2024 (but only if they did not also hold units of a CIBC Mutual Fund through a Discount Broker during that period), as set out in the First Order.

(4) The Plaintiff, through Class Counsel, expressly waived his right to opt out of the Action.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

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

- (a) the Court declines to dismiss the Action against the Defendants;
- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;

- (d) the Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as **Schedule B**, and such order becomes a Final Order; or
- (e) the Dismiss Order is reversed on appeal and the reversal becomes a Final Order.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by the Court with respect to the Distribution Order, Class Counsel Fees or Class Counsel Disbursements, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

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

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed; and
- (b) any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

6.3 Return of Settlement Amount Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Defendants the amount the Defendants have paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 2.2(3), and any costs of translation required by Section 15.12, such costs in total not to exceed one hundred and fifty thousand Canadian dollars (CAD \$150,000).

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(2), 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1 and 9.2 (the “**Surviving Provisions**”), and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The recitals, definitions and Schedules shall survive only for the limited purpose of the interpretation of the Surviving Provisions within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

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

(2) Upon the Effective Date, subject to Section 7.2, each of the Releasors: (i) shall be deemed to have, and by operation of the Dismiss Order, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Releasees, regardless of whether such Releasor executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (iii) agrees and covenants not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasee related in any way to any Released Claims.

7.2 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any

claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasors shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this Section 7.3(1) does not apply to the Other 2018 Actions or the 2022 Actions. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Action

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

7.5 Releases a Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – CLAIMS AGAINST OTHER ENTITIES

8.1 Claims Against Other Entities Reserved

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

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

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

9.2 Agreement Not Evidence

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

9.3 No Further Litigation

(1) Neither Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court. For the avoidance of doubt, this Section 9.3(1) does not apply to the Other 2018 Actions or the 2022 Actions.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Appointment of the Administrator

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

10.2 Information and Assistance from the Defendants

(1) By order of the Court in the Distribution Order, the Defendants will deliver, or will cause to be delivered, to the Administrator an electronic copy of reasonably available account-level or customer-level data showing the trailing commissions paid to Discount Brokers in respect of the CIBC Mutual Funds and the Renaissance Mutual Funds held by Class Members (or similar information that would permit the calculation of such trailing commissions), along with the name and available contact information for those Class Members.

(2) The Administrator may use the information obtained under Section 10.2(1) for the purpose of administering and implementing this Settlement Agreement, the Plan of Notice and the Distribution Protocol, but the Administrator shall otherwise keep confidential the information obtained under Section 10.2(1).

(3) For greater certainty, any information obtained or created in the administration of this Settlement 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 Settlement Agreement and the Distribution Protocol.

10.3 No Responsibility for Administration or Fees

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

SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses

- (1) The Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's or Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) Class Counsel shall pay the costs of the notices required by Sections 2.2(3) and 2.3(6) and any costs of translation required by Section 15.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.
- (3) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Fees and Class Counsel Disbursements shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Trust Account prior to the Effective Date.
- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (5) The Defendants shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

SECTION 12 – FUNDING AND HONORARIUM

12.1 Funding and Honorarium

- (1) Immediately following the motion for the Dismiss Order and the Distribution Order, Class Counsel may seek orders from the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.
- (2) Class Counsel are not precluded from making additional motions to the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(3) The Defendants acknowledge that they are not parties to any motion concerning the payment of the Funding Commission or the payment of an honorarium to the Plaintiff, they will have no involvement in any such motion, and they will not take any position or make any submissions to the Court concerning any such motion, except as requested and required by the Court.

(4) Any order or proceeding relating to payment of the Funding Commission or the payment of an honorarium to the Plaintiff, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the Effective Date and the settlement of this Action provided herein.

12.2 Release of the Funder's Security

(1) After the Effective Date, the Parties shall cooperate in taking all reasonably required steps to secure the prompt payment out of Court to the Funder of the Funder's Security.

SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS

13.1 Definitions

(1) For the purposes of sections 13.1 and 13.2 hereof:

- (a) “**Material Adverse Litigation Event**” means an event that has a material adverse effect on the quantum of potential recovery and/or overall likelihood of success against the defendant(s) in the Other 2018 Action in which there is a Subsequent Settlement and meets the following criteria. This event would only occur if there is a decision of a Court in any of the Other 2018 Actions (“**Adverse Decision**”) or a change in the financial circumstances of the defendant(s) in the applicable Other 2018 Action that would cause Class Counsel, acting reasonably and in good faith, to materially alter its assessment of its client's position in settlement negotiations with the defendant(s) and (a) has a material adverse effect upon the quantum of potential recovery and/or overall likelihood of success and/or enforcement against the defendant(s), or (b) has the effect of materially decreasing the valuation of the applicable Other 2018 Action. An “Adverse Decision” might include, but is not limited to, a judgment dismissing a motion for certification in the applicable Other 2018 Action, a judgment that materially reduces the size of the class relative to the

class proposed in the applicable Other 2018 Action, a judgment that materially reduces the class period relative to the proposed class period in the applicable Other 2018 Action, and a judgment dismissing (in whole or in part) the applicable Other 2018 Action;

- (b) “**Subsequent Settlement**” means any settlement of any of the Other 2018 Actions; and
- (c) “**Subsequent Settlement Amount**” means the amount that the defendant(s) in any of the Other 2018 Actions agrees to pay pursuant to a Subsequent Settlement.

13.2 Obligations in the Event of a Subsequent Settlement

(1) Class Counsel acknowledges its professional obligations and that it intends to maximize the recovery of damages alleged in the Other 2018 Actions. As such, Class Counsel will endeavour to, acting reasonably and in good faith, negotiate terms in any Subsequent Settlement that are at least as favourable to the class members in the Other 2018 Actions as the settlement in this Settlement Agreement.

(2) As soon as possible and in the event that such disclosure is permitted pursuant to the terms of a Subsequent Settlement, Class Counsel shall advise the Defendants in writing of the Subsequent Settlement and the Subsequent Settlement Amount. Class Counsel shall also advise the Defendants in writing whether in Class Counsel’s opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action as the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the following factors:

- (a) the Subsequent Settlement Amount, compared to the Settlement Amount under this Settlement Agreement;
- (b) the percentage equal to the Subsequent Settlement Amount as a percentage of Class Counsel’s estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the defendant(s) in the applicable Other 2018 Action, compared to the percentage equal to the Settlement Amount as

a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the Defendants;

- (c) differences in the facts of the applicable Other 2018 Action and this Action that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action;
- (d) whether in Class Counsel's opinion, acting reasonably and in good faith, a Material Adverse Litigation Event has occurred; and
- (e) any other factor that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action.

(3) The Defendants acknowledge and understand that the quantification of the trailing commissions paid to Discount Brokers by the Defendants or the defendant(s) in the applicable Other 2018 Action under Section 13.2(2)(b) may not be able to be precisely and accurately determined because of, among other things, incomplete or insufficient data. In such circumstances, Class Counsel's estimate, acting reasonably, in good faith and relying on expert evidence, of the amount of the trailing commissions paid to Discount Brokers shall be accepted by the Defendants as a reasonable estimation of the trailing commissions for the purposes of Sections 13.1 and 13.2.

(4) In advising the Defendants under Section 13.2(2), Class Counsel, acting reasonably and in good faith, shall provide the Defendants with a written summary of the factors considered by Class Counsel under Sections 13.2(2)(a) to 13.2(2)(e), subject to any legal privilege owed to its client(s) in the applicable Other 2018 Action or confidentiality obligations to the defendant(s) in the applicable Other 2018 Action.

(5) On the motion for Court approval of a Subsequent Settlement, Class Counsel shall include in the evidence filed in support of the motion a statement as to whether in Class Counsel's opinion,

acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the applicable Other 2018 Action as the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the factors set out in Sections 13.2(2)(a) to 13.2(2)(e).

(6) None of the provisions of this Section 13 shall be interpreted to impose any obligation on Class Counsel to (i) disclose any information which it would not otherwise be legally permitted to disclose in the course of seeking approval of a Subsequent Settlement, (ii) waive any settlement, litigation, solicitor-client or other privilege absent the requisite permission or instructions to do so, or (iii) do anything in the Other 2018 Actions other than comply with its professional obligations and seek to maximize the recovery of damages alleged in those proceedings.

(7) Other than what is expressly provided in this section, this section and this Settlement Agreement confer no rights of standing to the Defendants in respect of the Other 2018 Actions.

SECTION 14 – CONFIDENTIALITY AND NON-DISPARAGEMENT

14.1 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep the fact of the Settlement and all of the terms of the Settlement Agreement strictly confidential and shall not disclose them to anyone, issue any press releases or make any other public statements, including to the media regarding the Settlement, except as follows:

- (a) as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) pursuant to regulatory requirements as necessary to give effect to the terms of the Settlement;
- (b) as required by law or regulation;
- (c) in the case of the Defendants, as part of their disclosure in their quarterly or annual Management's Discussion & Analysis;
- (d) as the Parties agree otherwise;
- (e) by Class Counsel to the Plaintiff, the Plaintiff's experts and the Funder;

(f) by any of the Parties to Kalloghlian Myers LLP, counsel for the plaintiff in *Woodard v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-22-690374-00CP; or

(g) by Class Counsel for purposes of soliciting an Administrator,

on condition that any disclosure to the individuals or entities referred to in (e) or (g) above be made on condition that those individuals or entities are advised that such information as disclosed is to remain strictly confidential prior to the bringing of the motion required by Section 2.2.

14.2 Post-Motion Confidentiality and Non-Disparagement

(1) After the motion required by Section 2.2 is brought, the Parties agree that, except as otherwise required to obtain approval of the Settlement, to seek and comply with the First Order, the Dismiss Order and the Distribution Order, and to seek and comply with the orders contemplated by Sections 11 and 12, that:

- (a) the Parties shall not issue any press releases or make any other public statements, including to the media, regarding the Settlement, except those that are:
 - (i) the First Notice and the Second Notice;
 - (ii) required by law or regulation;
 - (iii) statements or communications by Class Counsel to the Class Members (which the Parties acknowledge are privileged) informing them about the Settlement, the proposed distribution process and the reasonableness of the Settlement, which are made in circumstances in which they may reasonably be expected to be viewed, reviewed or received by the general public beyond the Class Members, including informing the Class Members or answering inquiries from the Class Members by way of virtual town hall meetings or internet available recordings (or other similar more public means). Such statements or communications shall accord with subsection 14.2(1)(d) below, and Class Counsel shall share in advance with the Defendants (through their counsel) for their review and approval a copy

of any such statements or communications, including any slides or slide deck to be presented at a town hall, to ensure that the content is fair, balanced, accurate and free from disparagement; provided, however, that information posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/> shall comply with subsection 14.2(1)(d) below but Class Counsel shall not be required to share in advance with the Defendants (through their counsel) for their review and approval a copy of such information; or

- (iv) in response to media inquiries directed to either of the Parties (or their counsel), in which case the Parties (and their counsel) shall act in good faith to agree in advance on responses that accord with subsection 14.2(1)(d) below. With respect to any unanticipated media inquiry, or any anticipated media inquiry in respect of which the Parties did not agree to a response in advance, the Parties (or their counsel) may refer the inquirer to the public court file, or to the First Notice or the Second Notice, or answer the inquiry in accordance with subsection 14.2(1)(d) below.
- (b) For the avoidance of doubt, subsection 14.2(1)(a) does not apply to emails, telephone calls and similar communications between Class Counsel and individual Class Members about the Settlement.
- (c) Notwithstanding anything to the contrary set out above, 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:
 - (i) as may be required for the Parties to comply with any order of the Court;
 - (ii) as may be required under any applicable law or regulation;
 - (iii) as may be agreed by counsel for the Parties in seeking the approval of the Settlement (or Class Counsel Fees or Class Counsel Disbursements) or the dismissal of the Action; or

- (iv) as may be required for Class Counsel and their client in *Westwood v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-595380-00CP to comply with section 13 of the Settlement Agreement dated September 11, 2024 in that action. To the extent any such disclosure is made, it shall be made on the condition that TDAM is advised that such information as disclosed is to remain strictly confidential. Class Counsel shall share in advance with counsel for the Defendants a copy of the proposed written disclosure to TDAM.
- (d) The Parties shall act in good faith to ensure that any public statements, comments or communications regarding the Action or the Settlement are balanced, fair, accurate and free from disparagement.

SECTION 15 – MISCELLANEOUS

15.1 Motions for Directions

- (1) Class Counsel or the Defendants may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

15.2 Releasees Have No Liability for Administration

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

15.3 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

15.4 Computation of Time

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

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

- (1) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the Class Members to interpret and enforce the terms, conditions and obligations under this Settlement Agreement, the First Order, the Dismiss Order and the Distribution Order.

15.6 Governing Law

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

15.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or

representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

15.8 Amendments

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

15.9 Binding Effect

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

15.10 Counterparts

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

15.11 Negotiated Agreement

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

15.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Recitals

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

15.14 Schedules

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

15.15 Acknowledgements

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

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

15.16 Authorized Signatures

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

15.17 Notice

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

For the Plaintiff and for Class Counsel:

Anthony O'Brien
Siskinds LLP
65 Queen Street West, Suite 400
Toronto, ON M5H 2M5
Tel: 416-594-4394
Fax: 519-672-6065
Email: anthony.obrien@siskinds.com

For the Defendants:

Gillian Dingle
Torys LLP
79 Wellington Street West, 30th Floor
Box 270, TD South Tower
Toronto ON M5K 1N2
Tel: 416-865-8229
Fax: 416-865-7380
Email: gdingle@torys.com

15.18 Date of Execution

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

STEPHEN POZGAJ on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory:

Anthony O'Brien

Signature of Authorized Signatory:



Siskinds LLP

CANADIAN IMPERIAL BANK OF COMMERCE and CIBC TRUST CORPORATION
by their counsel:

Name of Authorized Signatory:

Gillian Dingle

Signature of Authorized Signatory:



Torys LLP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(FEES, HONORARIUM AND FUNDING ORDER)

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Lawyers for the Plaintiff
