

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

Made as of September 20, 2019

Between

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA**

(the "Plaintiffs")

and

**HSBC HOLDINGS PLC, HSBC BANK USA, N.A., HSBC SECURITIES (USA) INC., HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK CANADA and HSBC USA, INC.**

(the "Settling Defendants")

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

A. **WHEREAS** the Ontario Action was commenced by the Plaintiffs by Notice of Action in the Ontario Court and the Action was commenced by the Plaintiffs in the Federal Court;

B. **WHEREAS** the statement of claim in the Action alleges, and the notice of action in the Ontario Action alleged, among other things, that the Settling Defendants and others participated in an unlawful conspiracy, contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34, the common law and/or the civil law, to, among other things fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably the price of supranational, sub-sovereign, and agency bonds;

C. **WHEREAS** the Plaintiffs did not serve a statement of claim in the Ontario Action within the prescribed time for so doing, and agree that the Ontario Action has been abandoned and further agree, pursuant to the terms of this Settlement Agreement, to file a notice of abandonment of the Ontario Action and obtain the Ontario Court's approval of such abandonment;

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

E. **WHEREAS** the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any

of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;

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

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

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

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

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

K. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable

to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the class they seek to represent;

L. **WHEREAS** the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all claims that were or could have been asserted against the Releasees, including those named as Settling Defendants in the Proceedings;

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

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

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

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

#### **SECTION 1 - DEFINITIONS**

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

- (1) **Action** means the action styled *Mancinelli et al. v. HSBC Holdings PLC et al.* (Court File No. T-1871-17) as set out in Schedule A.
- (2) **Additional Settlement Disclosure Documents** means documents, including electronic communications and transactional data (relating only to Canadian Counterparties), that have not been provided to the plaintiffs in the U.S. Litigation as of the Effective Date but may be provided to the plaintiffs in the U.S. Litigation at a subsequent date in accordance with the Settling Defendants' cooperation obligations under the U.S. Settlement Agreement.
- (3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Independent Notice Agent or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notice, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (4) **Canadian Counterparties** means Persons with Canadian addresses who can be reasonably identified based on client records that the Settling Defendants have in their possession, custody or control who were or may have been counterparties to SSA Bond Transactions during the Class Period.
- (5) **Class Counsel** means Koskie Minsky LLP, Sotos LLP, Siskinds LLP, and Camp Fiorante Matthews Mogerman LLP.
- (6) **Class Counsel Disbursements** include the disbursements, administration expenses, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (7) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (8) **Class Period** means the period between January 1, 2005 and December 31, 2015.
- (9) **Class Plaintiffs** means the plaintiffs listed in Schedule A.

- (10) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of SSA Bonds?
- (11) **Courts** means the Ontario Court and Federal Court.
- (12) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (13) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants.
- (14) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Federal Court.
- (15) **Effective Date** means the date when the Final Orders have been received.
- (16) **Final Approval Order** means the later of a final judgment pronounced by the Federal Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (17) **Final Dismissal Order** means the later of a final order from the Federal Court dismissing the Action as against the Settling Defendants, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the dismissal order in accordance with its terms, upon a final disposition of all appeals.
- (18) **Final Orders** means the Final Approval Order and the Final Dismissal Order.
- (19) **Independent Notice Agent** means an independent party retained by the Settling Defendants to provide notice and instructions to Persons identified, in accordance with Section 12.2, as Canadian Counterparties.
- (20) **Non-Settling Defendant** means any Defendant that is not a Releasee or any Defendant that has not entered into a binding and approved settlement with the Plaintiffs in the Proceeding,



whether or not such settlement agreement is in existence at the Date of Execution, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(21) **Ontario Action** means the action styled *Mancinelli et al. v. HSBC Holdings PLC et al.* (Court File No. CV-17-586082-00CP) as set out in Schedule A.

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

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

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

(25) **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.

(26) **Plaintiffs** means Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos, and Jack Oliveira in their capacity as The Trustees of the Labourers' Pension Fund of Central and Eastern Canada.

(27) **Proceedings** means collectively the Action and the Ontario Action.

(28) **Preliminary Settlement Disclosure Documents** means electronic documents, data (relating only to Canadian Counterparties) and communications that have been produced to plaintiffs' counsel in the U.S. Litigation pursuant to cooperation obligations in the U.S. Settlement Agreement.

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

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

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

(32) ***Releasees*** means, jointly and severally, individually and collectively, the Settling Defendants and each of their past, present and future, direct and indirect parents (including

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

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

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

(35) **Settlement Amount** means one million three hundred and twenty three thousand, five hundred and twenty nine Canadian dollars and forty one cents (CAD\$1,323,529.41).

(36) **Settlement Class** means all persons in Canada who, between January 1, 2005 and December 31, 2015, entered either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA Bond Transaction. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

(37) **Settlement Class Member** means a member of a Settlement Class.

(38) **Settling Defendants** means HSBC Holdings PLC, HSBC Bank USA, N.A., HSBC Securities (USA) Inc., HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank Canada, and HSBC USA, Inc.

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

(40) **Settlement Disclosure Documents** means Preliminary Settlement Disclosure Documents and Additional Settlement Disclosure Documents.

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

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

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

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

Unknown Claims in the definition of Released Claims and Settling Defendants' Claims was separately bargained for and was a key element of the Settlement Agreement.

(45) *U.S. Litigation* means the class action proceeding, in which certain Defendants are named as parties, currently pending in the United States District Court for the Southern District of New York known as *In Re: SSA Bonds Antitrust Litigation*, Civil Action No. 1:16-cv-03711-ER.

(46) *U.S. Settlement Agreement* means the executed stipulation and agreement of settlement reached with the Settling Defendants in the U.S. Litigation made and entered into on December 20, 2018.

## SECTION 2 - SETTLEMENT APPROVAL

### 2.1 Best Efforts

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

### 2.2 Abandonment of the Ontario Action

(1) The Plaintiffs acknowledge and agree that effective as of the Effective Date, the Ontario Action has been finally and conclusively abandoned and is void and of no further effect. As such, the Plaintiffs shall file materials necessary to obtain the Ontario Court's approval of the abandonment of the Ontario Action no later than ten (10) days after the Federal Court has granted an order approving this Settlement Agreement in the form attached as Schedule C. Failure of the Plaintiffs to obtain such approval shall have no bearing on the fact that the Ontario Action has been abandoned and the parties agree that this Settlement Agreement and the order of the Federal Court approving this Settlement Agreement together shall constitute conclusive evidence of such abandonment.

### 2.3 Motions Seeking Approval of Notice and Certification

(1) The Plaintiffs shall file a motion in the Federal Court, as soon as practicable after the Date of Execution, for an order approving the notice described in Section 11.1(1) and certifying the Action for settlement purposes.

(2) The Federal Court order approving the notice described in Section 11.1(1) and certifying the Action for settlement purposes shall be substantially in the form attached as Schedule B.

#### **2.4 Motions Seeking Approval of the Settlement**

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

- (a) the order referred to in Section 2.3(1) has been granted;
- (b) the notice described in Section 11.1(1) has been published; and
- (c) the deadline for the Settling Defendants to give notice of termination of this Settlement Agreement pursuant to Section 6.1(2) has passed.

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

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

#### **2.5 Pre-Motion Confidentiality**

(1) Until the first of the motions required by Section 2.3 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements, as necessary to give effect to its terms, or as otherwise required by law.

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

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

(1) Within ten (10) days of the order of the Federal Court approving the notices described in section 11.1(1) and certifying the Action for settlement purposes, the Settling Defendants shall pay the Settlement Amount to Class Counsel, for deposit into the Trust Account.

(2) Payment of the Settlement Amount shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the

following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

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

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

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

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

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

### **3.2 Taxes and Interest**

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

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

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

## **SECTION 4 – COOPERATION**

### **4.1 Extent of Cooperation**

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Settling Defendants agree to provide the cooperation set out in this section of the Settlement Agreement, provided, however, that the Settling Defendants shall not be required to provide cooperation: (i) in violation of any law, including without limiting the generality of the foregoing, any privacy, bank secrecy and other laws, regulations, and policies of Ontario, Quebec or any other Canadian or foreign jurisdiction, or in contravention of the terms of any protective order in the U.S. Litigation or similar order(s) in the Proceedings or an instruction or directive to the contrary from the United States Department of Justice (“DOJ”) or any other regulatory authority or governmental body in Canada, the United States, the United Kingdom or any other jurisdiction; or (ii) with regard to conduct outside the scope of the Released Claims.

(2) All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

(3) Subject to the foregoing paragraphs, and subject to being satisfied of the sufficiency of Class Counsel’s data security systems and procedures in accordance with Section 4.2(2), the Settling Defendants will provide Class Counsel the following cooperation:

- (a) the Settling Defendants shall produce the Preliminary Settlement Disclosure Documents to Class Counsel within thirty (30) days of the Effective Date.
- (b) within ten (10) days of providing Additional Settlement Disclosure Documents, if any, to the plaintiffs in the U.S. Litigation, the Settling Defendants will notify Class Counsel. To the extent that Class Counsel confirms that they wish to receive



them, the Settling Defendants shall provide the same Additional Settlement Disclosure Documents to Class Counsel and shall do so within thirty (30) days of receiving such confirmation.

(4) Within sixty (60) days after the Effective Date, or at a time mutually agreed upon by the Parties, subject to the other provisions of this Settlement Agreement, counsel for the Settling Defendants will meet with Class Counsel in Toronto, or at a location mutually agreed to by the Parties, to provide an evidentiary proffer which will include information, if any, originating with the Settling Defendants that is not covered by privilege, including solicitor-client, litigation, attorney work product, settlement, common-interest or joint defence privilege, or any other privilege, doctrine or law, relating to the allegations in the Proceedings. The Parties agree that there shall be no audio or video recording or written transcription or record of any statements made or information provided by counsel for the Settling Defendants at the proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Classes. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that any such written notes, and all statements made and information provided by counsel for the Settling Defendants are privileged, will be kept strictly confidential, may not be directly or indirectly disclosed to any other Person, and shall not be used by Class Counsel for any purpose other than for their own internal use in connection with the prosecution of the Action against the Non-Settling Defendants and for no other purpose whatsoever.

(5) The Settling Defendants shall not object to the Plaintiffs' participation in any attorney proffers and/or interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreement, so long as Plaintiffs comply with the provisions in section 4.1(4). The Settling Defendants shall, where possible, provide notice to Class Counsel thirty (30) days before any attorney proffer or interview of representatives of the Settling Defendants that occurs in the U.S. Litigation pursuant to the U.S. Settlement Agreement.

(6) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to produce at trial or through acceptable affidavits for use at trial: (i) a current

representative qualified to establish for admission into evidence the Settlement Disclosure Documents (after Class Counsel has used best efforts to authenticate documents for use at trial without a live witness); and (ii) a maximum of three representatives qualified to establish for admission into evidence information provided in cooperation pursuant to Section 4 of this Settlement Agreement, provided that Class Counsel shall use all reasonable efforts to limit this requirement to a single witness. To the extent reasonably possible, a single witness will be used both to authenticate documents and provide the information at trial contemplated by this paragraph. The failure of a specific officer, director, employee or former employee to agree to make him or herself available shall not constitute a violation of this Settlement Agreement. To the extent any of the Settling Defendants' cooperation obligations require any current or former employees of the Settling Defendants to travel from their principal place of business to another location, Class Counsel shall reimburse the Settling Defendants for half of the reasonable travel expenses incurred by any such person in connection with fulfilling the Settling Defendants' cooperation obligations. Such reimbursement of travel expenses as set forth herein shall not exceed CAD\$10,000 per person per event requiring travel. In no event shall Class Counsel be responsible for reimbursing such persons for time or services rendered.

(7) Other than providing the Settlement Disclosure Documents to Class Counsel, participating in any proffer under s. 4.1(4), permitting the Plaintiffs to participate in any attorney proffers and/or interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreement, and making available witnesses for trial as set out above, the Settling Defendants shall not be obligated to provide any additional cooperation. The Settling Defendants, acting reasonably, agree to meet and confer in good faith regarding future requests from Class Counsel for additional cooperation in the event that documents, data, testimony, and/or other information are necessary for Class Counsel to obtain Court approval of the settlement or to administer the settlement. The Settling Defendants need not agree to requests that are unreasonable or unduly burdensome, and need not agree to requests for which the Plaintiffs cannot demonstrate a substantial need that cannot be reasonably met through alternative means. In the event they cannot agree, such disputes shall be resolved by the Court. Nothing in this subparagraph shall prohibit Class Counsel from making additional informal requests for information from the Settling Defendants related to the Settlement Disclosure Documents, which the Settling Defendants shall consider in good faith. In the event

that the Settling Defendants decline to provide such information, Class Counsel reserves all rights to seek formal third-party discovery of such information, with the Settling Defendants reserving all rights to object to such discovery.

(8) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any documents or information prepared by or for counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, instruction or policy, rule or law of Ontario or any other Canadian or foreign jurisdiction, or subject to any privilege, including solicitor-client, litigation, attorney work product, settlement, common-interest or joint defence privilege, or any other privilege, doctrine or law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

(9) If any documents protected by any privilege, including solicitor-client, litigation, attorney work product, settlement, common-interest or joint defence privilege, or any other privilege, doctrine or law, and/or any privacy law or other rule or law of Ontario or any other Canadian or foreign jurisdiction, are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(10) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate shall cease at the date of final judgments in the Proceedings against all Defendants.

(11) Subject to Sections 4.1(12) and 4.1(13), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees or their current or former

officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(12) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against the officers, directors and/or employees of the Settling Defendants put forward to provide testimony at trial or otherwise pursuant to Section 4.1(4), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

(13) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Federal Court to enforce the terms of this Settlement Agreement.

(14) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is the desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

(15) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.

(16) The Settling Defendants make no representation regarding, and shall bear no liability with respect to, the accuracy of documents or information described in this Section 4, nor do they represent that they have, can or will produce a complete set of any of such documents or information. A failure to produce a complete set of any documents or any inaccuracy in such documents or information shall not constitute a breach or violation of this Settlement Agreement.

#### **4.2 Limits on Use of Documents and Data Security**

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Action, and

shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are publicly available. The Plaintiffs and Class Counsel agree they shall not disclose the documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Action or as otherwise required by law, and acknowledge that they are bound by the deemed undertaking and the *Federal Courts Rules* and the equivalent rules in other Provinces, except to the extent that the documents or information are publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality and security of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

(2) Class Counsel shall treat any documents received from the Settling Defendants pursuant to this Settlement Agreement as highly confidential and shall, before the transmission of Settlement Disclosure Documents pursuant to this Section 4, furnish evidence of the data security systems and procedures in place to protect such confidentiality to counsel for the Settling Defendants. The Settling Defendants, acting reasonably, may require Class Counsel to make improvements to its data security systems and/or procedures prior to transmitting any Settlement Disclosure Documents.

(3) The Settling Defendants' obligations with respect to cooperation, including the timing and substance of cooperation shall be subject to such limitations as are ordered by the Federal Court.

(4) If, in the course of the Action, the Plaintiffs, the Settlement Class or Class Counsel, acting reasonably, conclude that it is reasonably necessary to disclose or provide information or documents obtained from the Settling Defendants which are not otherwise publicly available, or to file such information or documents in the Action, and such disclosure is not otherwise prohibited by this Settlement Agreement, then the Plaintiffs, the Settlement Class or Class Counsel shall provide the Settling Defendants with an advance written description of the documents or information to be disclosed or provided at least sixty (60) days in advance of the proposed disclosure, in order that the Settling Defendants may obtain a confidentiality order, or take such other steps as they deem necessary, to protect their interests in respect of such information or documents being disclosed or produced. In the event the Settling Defendants take

such steps, the Plaintiffs, the Settlement Class and Class Counsel shall not oppose reasonable positions taken by the Settling Defendants.

(5) In the event that a Person applies for an order requiring the Plaintiffs, the Settlement Class or Class Counsel to disclose or produce any documents or other information provided by the Settling Defendants as cooperation under this Settlement Agreement, Class Counsel shall notify the Settling Defendants of such application promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for, consent to, or make submissions in support of such an application for disclosure or production.

## **SECTION 5 – OPTING-OUT**

### **5.1 Opt-Outs**

(1) If Settlement Class members have not otherwise been afforded an opportunity to opt-out of the Action, Class Counsel will seek approval from the Federal Court of the following opt-out process as part of the motion contemplated in Section 2.3:

- (a) Persons seeking to opt-out of the Action must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 2.3 (1).
- (b) Any potential Settlement Class Member who validly opts out of the Action shall not be able to participate in the Action and no further right to opt-out of the Action will be provided.
- (c) An election to opt-out will only be valid if it is postmarked on or before the Opt-Out Deadline (as described in the notice described in section 2.3(1)) to the designated address in the notice described in Section 2.3 (1). When the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.

- (d) The written election to opt-out must contain the following information in order to be valid:
  - (i) the Person's full name, current address and telephone number;
  - (ii) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
  - (iii) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
  - (iv) the reasons for opting out.
- (e) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants copies of the written elections to opt-out.
- (f) With respect to any potential Settlement Class Member who validly opts out from the Action, the Settling Defendants reserve all of their legal rights and defences.
- (g) The Plaintiffs through their respective Class Counsel expressly waive their right to opt- out of the Action.

## **SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT**

### **6.1 Right of Termination**

- (1) The Plaintiffs and the Settling Defendants shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of the date on which:
  - (a) the Federal Court declines to certify the Action for the purposes of the Settlement Agreement within five months of the date of this Settlement Agreement;
  - (b) the Federal Court declines to approve this Settlement Agreement or any material part hereof within eight months of the date of this Settlement Agreement;

- (c) the Federal Court approves this Settlement Agreement in a materially modified form;
- (d) the Federal Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as Schedule C;
- (e) any order approving this Settlement Agreement made by the Federal Court does not become a Final Approval Order;
- (f) the Ontario Court declines to approve the abandonment of the Ontario Action.

(2) The Settling Defendants may terminate this Settlement Agreement in their sole discretion, acting reasonably, if Persons who have excluded themselves from the Action by opting out would likely have been eligible to receive collectively, but for their exclusion, a material part of the distribution from the Settlement Amount. In the event that the Settling Defendants intend to exercise this termination right, they will provide written notice of that intention to Class Counsel within thirty (30) days following receipt of the report referred to in Section 5.1(5) above.

(3) 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.

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

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the Distribution Protocol,

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 certify the Action as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying the Action as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (c) any prior certification of the Action as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any other litigation;
- (d) any order dismissing the Proceedings against the Settling Defendants shall be set aside and declared null and void and of no force or effect;
- (e) within ten (10) days of such termination having occurred, Class Counsel shall return or destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide counsel to the Settling Defendants with a written certification by Class Counsel of such return or destruction within ten (10) days of such termination having occurred. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps

and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

### **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 Settling Defendants the amount the Settling Defendants have paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notice required by Section 11.1(1), and any costs of translation required by Section 15.12, such costs in total not to exceed one hundred thousand Canadian dollars (CAD \$100,000).

### **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(3), 6.1, 6.2, 6.3, 6.4, 9.1, 9.2, 10.1(4), and 11.1(2), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1, 9.2, 10.1(4), and 11.1(2) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

## **SECTION 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 Proceedings against the Settling Defendants; and (ii) any and all Released Claims as against all Released Parties.

(2) Upon the Effective Date, subject to Section 7.3, each of the Releasers: (i) shall be deemed to have, and by operation of the Final Orders shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or

hereafter can, shall or may have against the Released Parties, regardless of whether such Releasor executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

## **7.2 Covenant Not To Sue**

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

## **7.3 No Further Claims**

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

## **7.4 Dismissal of the Action**

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

### **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 Federal 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.

### **8.2 Bar Order**

- (1) Class Counsel shall seek bar orders from the Federal Court providing for the following:
- (a) to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
  - (b) if the Federal Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise,
    - (i) the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed

co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only claims for damages (including punitive damages, if any), restitutionary awards, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and
- (iii) the Federal Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceedings, whether or not the Releasees remain in the Proceedings or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and any determination by the Federal Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceedings and shall not be binding on the Releasees in any other proceeding; and

- (iv) a Non-Settling Defendant may, on motion to the Federal Court, determined as if the Settling Defendants remained parties to the Action, and on at least ten (10) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
  - (A) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Federal Courts Rules*;
  - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (C) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (v) that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to Section 8.2. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of information obtained from discovery in accordance with Section 8.1(b)(iv). Notwithstanding any provision in the Court order approving this Settlement Agreement, on any motion brought pursuant to Section 8.2, the Federal Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (vi) that a Non-Settling Defendant may serve the motion(s) referred to in Section 8.2 on the Settling Defendants by service on counsel for the Settling Defendants in the Action.
- (vii) to the extent that such an order is granted pursuant to Section 8.2 and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel

within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).

(c) the Settling Defendants shall retain and reserve all rights to oppose any motion by Non-Settling Defendants to seek discovery from the Settling Defendants.

(2) The Parties acknowledge that the bar orders shall be considered a material term of the Settlement Agreement and the failure of the Federal Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

## **SECTION 9- EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

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

### **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) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Action against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Action is not certified, the continuation of the claims asserted in the Action on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings 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, subject to Section 4.2 of this Settlement Agreement.

(2) Section 9.3(1) shall be inoperative to the extent that it is inconsistent with BC Class Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

## **SECTION 10 - CERTIFICATION FOR SETTLEMENT ONLY**

### **10.1 Certification Solely for the Purposes of Settlement**

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

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

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



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

## **SECTION 11 - NOTICE TO SETTLEMENT CLASS**

### **11.1 Notice Required**

(1) The proposed Settlement Class shall be given a notice of their opt out rights and the hearing at which the Federal Court will be asked to approve the Settlement Agreement and Class Counsel Fees.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

### **11.2 Form and Distribution of Notice**

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

(2) Subject to Section 12, notice shall be disseminated by a method agreed upon by the Parties and approved by the Federal Court or, if the Parties cannot agree on a method for disseminating the notice, the notice shall be disseminated by a method ordered by the Federal Court.

## SECTION 12 - ADMINISTRATION AND IMPLEMENTATION

### 12.1 Mechanics of Administration

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

### 12.2 Information and Assistance

(1) Subject to the privacy, bank secrecy and other laws, regulations, and policies of Ontario, Quebec or any other Canadian or foreign jurisdiction, including, where determined by the Settling Defendants to be required by such laws, regulations or policy, an order of the Federal Court compelling such production, which shall be obtained by the Plaintiffs at their expense and which shall not be opposed by the Settling Defendants, the Settling Defendants will make best efforts to provide to the Independent Notice Agent, a list in electronic format of the names and addresses of Canadian Counterparties who can be reasonably identified based on client records that the Settling Defendants have in their possession, custody or control. In providing this list to the Independent Notice Agent, the Settling Defendants make no representation or admission that Canadian Counterparties whose names and addresses appear on the list are class members and make no representation as to the accuracy or completeness of the list. Any information provided pursuant to this provision shall be maintained as confidential by the Independent Notice Agent and used only for the purposes of :

- (a) providing Canadian Counterparties with notice in accordance with Section 11 of this Agreement;
- (b) providing Canadian Counterparties with instructions about the process they may follow should they choose to receive subsequent notices or communications in the Action and/or participate in the settlement administration process; and
- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Action.

(2) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 12.2.

**SECTION 13 – DISTRIBUTION OF THE SETTLEMENT AMOUNT  
AND ACCRUED INTEREST**

**13.1 Distribution Protocol**

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

**13.2 No Responsibility for Administration or Fees**

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

**SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION  
EXPENSES**

**14.1 No Liability for Fees**

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

**14.2 Costs of Notice**

(1) Class Counsel shall pay the costs of the notice required by Section 11 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 notice or translation.

**14.3 Court Approval**

(1) Class Counsel may seek the Federal Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be

reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

**14.4 Administrative Expenses**

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

**SECTION 15- MISCELLANEOUS**

**15.1 Motions for Directions**

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

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

**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 *Federal Courts Rules*, the act may be done on the next day that is not a holiday.

### **15.5 Ongoing Jurisdiction**

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

### **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 Federal Court.

### **15.9 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasers, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made by the Settling 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 Federal Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

**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 Plaintiffs and for Class Counsel in the Proceedings:**

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

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

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

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

**For the Settling Defendants:**

Robb Heintzman, Mark Evans and  
Adam S. Goodman  
DENTONS CANADA LLP  
77 King Street West, Suite 400  
Toronto ON M5K 0A1  
Tel: 416.863.4453  
Fax: 416.863.4592  
Email: [robb.heintzman@dentons.com](mailto:robb.heintzman@dentons.com)  
[mark.evans@dentons.com](mailto:mark.evans@dentons.com),  
[adam.goodman@dentons.com](mailto:adam.goodman@dentons.com)

**15.18 Date of Execution**

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

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND**



**EASTERN CANADA** on their own behalf and on behalf of the Settlement Class, by their counsel:

Name of Authorized Signatory:

Alex Dimson

Signature of Authorized Signatory:



Sotos LLP  
Class Counsel

Name of Authorized Signatory:

Alex Dimson

Signature of Authorized Signatory:



Koskie Minsky LLP  
Class Counsel

Name of Authorized Signatory:

Alex Dimson

Signature of Authorized Signatory:



Siskinds LLP  
Class Counsel

Name of Authorized Signatory:

Alex Dimson

Signature of Authorized Signatory:



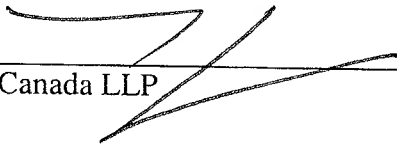
Camp Fiorante Matthews Mogeran LLP  
Class Counsel

**HSBC HOLDINGS PLC, HSBC BANK USA, N.A., HSBC SECURITIES (USA) INC., HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK CANADA, HSBC USA, INC.,** by their counsel, Dentons LLP

Name of Authorized Signatory:

M. EVANS / DENTONS CANADA LLP

Signature of Authorized Signatory:

 Dentons Canada LLP

**SCHEDULE "A"**  
**Proceedings**

Court File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
<b>The Ontario Action</b>				
CV-17-586082-00CP	Sotos LLP, Koskie Minsky LLP, Siskinds LLP, and Camp Fiorante Matthews Mogergerman LLP.	JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA	BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA, NATIONAL ASSOCIATION, BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED, MERRILL LYNCH INTERNATIONAL, MERRILL LYNCH, PIERCE, FENNER & SMITH INC., MERRILL LYNCH CANADA INC., MERRILL LYNCH INTERNATIONAL SERVICES LIMITED, MERRILL LYNCH FINANCIAL ASSETS INC., MERRILL LYNCH BENEFITS LTD., BNP PARIBAS S.A., BNP PARIBAS GROUP, BNP PARIBAS (CANADA), BNP PARIBAS NORTH AMERICA INC., BNP PARIBAS, CITIGROUP INC., CITIBANK N.A., CITIGROUP GLOBAL MARKETS INC., CITIGROUP GLOBAL MARKETS LIMITED, CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC., CRÉDIT AGRICOLE S.A., CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK (CANADA BRANCH), CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (EUROPE) LTD., CREDIT SUISSE INTERNATIONAL, CREDIT SUISSE SECURITIES (CANADA), INC., CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC., DEUTSCHE BANK SECURITIES LIMITED, HSBC HOLDINGS PLC, HSBC BANK USA, N.A., HSBC SECURITIES (USA) INC., HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK CANADA, HSBC USA, INC., NOMURA HOLDINGS, INC., NOMURA SECURITIES INTERNATIONAL, INC., NOMURA INTERNATIONAL PLC, ROYAL BANK OF CANADA, RBC EUROPE LIMITED, RBC CAPITAL MARKETS LLC, TORONTO-DOMINION BANK GROUP, TD BANK, N.A., TD SECURITIES LIMITED, TD GROUP US HOLDINGS, LLC, and TD BANK USA, N.A.	N/A
<b>"The Action" or the "Proceeding"</b>				

Court File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
T-1871-17	Sotos LLP, Koskie Minsky LLP, Siskinds LLP, and Camp Fiorante Matthews Moger LLP.	JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA	BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA, NATIONAL ASSOCIATION, BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED, MERRILL LYNCH INTERNATIONAL, MERRILL LYNCH, PIERCE, FENNER & SMITH INC., MERRILL LYNCH CANADA INC., MERRILL LYNCH INTERNATIONAL SERVICES LIMITED, MERRILL LYNCH FINANCIAL ASSETS INC., MERRILL LYNCH BENEFITS LTD., BNP PARIBAS S.A., BNP PARIBAS GROUP, BNP PARIBAS (CANADA), BNP PARIBAS NORTH AMERICA INC., BNP PARIBAS, CITIGROUP INC., CITIBANK N.A., CITIGROUP GLOBAL MARKETS INC., CITIGROUP GLOBAL MARKETS LIMITED, CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC., CRÉDIT AGRICOLE S.A., CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK (CANADA BRANCH), CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (EUROPE) LTD., CREDIT SUISSE INTERNATIONAL, CREDIT SUISSE SECURITIES (CANADA), INC., CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC., DEUTSCHE BANK SECURITIES LIMITED, HSBC HOLDINGS PLC, HSBC BANK USA, N.A., HSBC SECURITIES (USA) INC., HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK CANADA, HSBC USA, INC., NOMURA HOLDINGS, INC., NOMURA SECURITIES INTERNATIONAL, INC., NOMURA INTERNATIONAL PLC, ROYAL BANK OF CANADA, RBC EUROPE LIMITED, RBC CAPITAL MARKETS LLC, TORONTO-DOMINION BANK GROUP, TD BANK, N.A., TD SECURITIES LIMITED, TD GROUP US HOLDINGS, LLC, and TD BANK USA, N.A.	<p>All persons in Canada who, between January 1, 2005 and December 31, 2015, entered either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA Bond Transaction. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.</p> <p>“SSA Bond” means any and all supranational, sovereign, sub-sovereign, governmental, quasi-governmental, and agency bonds or debt instruments regardless of the structure, currency, or credit quality.</p> <p>“SSA Bond Transaction” means any purchase, sale, trade, assignment, novation, unwind, termination, or other exercise of rights or options with respect to any SSA Bond.</p>

**SCHEDULE "B"**

**Date:**

**Docket: T-1871-17**

**Ottawa, Ontario, \_\_\_\_\_, 2019**

**PROPOSED CLASS ACTION**

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

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

**Plaintiff**

**- and -**

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

**Defendants**

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving the short-form and long-form notices of settlement approval hearing, the method of dissemination of said notices, and

certifying this proceeding as a class proceeding for settlement purposes as against HSBC Holdings PLC, HSBC Bank USA, N.A., HSBC Securities (USA) Inc., HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank Canada, and HSBC USA, Inc. (the “**Settling Defendants**”) was heard.

**ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of September [X], 2019 attached to this Order as Schedule “A” (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiffs, counsel for the Settling Defendants, and counsel for the Non-Settling Defendants;

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

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

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

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

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

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

6. **THIS COURT ORDERS** that Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos, and Jack Oliveira in their capacity as The Trustees of the Labourers’ Pension Fund of Central and Eastern Canada as the representative plaintiffs for the Settlement Class.
7. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

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

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The Honourable Justice Barnes



**SCHEDULE "C"**

**Date:**

**Docket: T-1871-17**

**Ottawa, Ontario, \_\_\_\_\_, 2019**

**CLASS ACTION**

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

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

**Plaintiff**

**- and -**

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

**Defendants**

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving the settlement agreement entered into with HSBC Holdings PLC, HSBC Bank USA, N.A., HSBC Securities (USA) Inc.,

HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank Canada, and HSBC USA, Inc. (the “**Settling Defendants**”) and dismissing this action as against the Settling Defendants, was heard this day at \_\_\_.

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

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

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

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

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the following definitions apply:
  - (a) *Effective Date* means the date when the Final Orders have been received approving the Settlement Agreement and dismissing the Proceedings against the Settling Defendants.
  - (b) *Released Claims* means any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute,

regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, counsel fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, choate or inchoate, which the Releasing Parties ever had, now have, or hereafter can, shall or may have, representatively, derivatively, or in any other capacity, against the Released Parties arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action or the Ontario Action or any amended pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to: (i) communications related to SSA Bonds, the trading of SSA Bonds between a Released Party and any other broker, dealer or trader in SSA Bonds or any participant in the conspiracy alleged in the Proceedings, (ii) agreements, arrangements, or understandings related to SSSA Bonds, SSA Bond Trading or prices or rates associated with SSA Bonds between released Party and any other broker, dealer or trader in SSA Bonds or any participant in the conspiracy alleged in the Proceedings, (iii) the sharing or exchange of customer or other confidential information between a Released Party and any other broker, dealer or trader in SSA Bonds or any other participant in the conspiracy alleged in the Proceedings, (iv) the establishment, calculation, communication, control, manipulation, quotation or use of the price, spread, yield or rate of any SSA Bond in connection with the conspiracy alleged in the Proceedings, or (v) acts to conceal the conspiracy alleged in the Proceedings.

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

and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators purchasers, predecessors, successors, insurers, spouses, family law claimants, creditors, and assigns of each of the foregoing (whether or not they object to the settlement set forth in this Settlement Agreement), and whether or not they make a claim for payment from the Settlement Fund, excluding always the Non-Settling Defendants.

- (d) *SSA Bond* means any and all supranational, sovereign, sub-sovereign, governmental, quasi-governmental, and agency bonds or debt instruments regardless of the structure, currency, or credit quality.
  - (e) *SSA Bond Transaction* means any purchase, sale, trade, assignment, novation, unwind, termination, or other exercise of rights or options with respect to any SSA Bond.
  - (f) *Settlement Class* means all persons in Canada who, between January 1, 2005 and December 31, 2015, entered either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA Bond Transaction. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable.
  5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
  6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 334.29 of the *Federal Courts Rules* and shall be implemented and enforced in accordance with its terms.

7. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
9. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 11, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N1 or other legislation or at common law or equity, in respect of any Released Claim except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.
11. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
12. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor

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

13. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
14. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
  - (a) the Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - (b) the Plaintiffs and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-

conspirators and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees remain in the Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action against whom claims for contribution and indemnity or other claims over were made on a timely basis, and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Action and shall not be binding on the Releasees in any other proceeding.

- 15. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of Settlement Class Members in the Action or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
- 16. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Action, and on at least thirty (30) days' notice to counsel for the Settling Defendants, and not to be brought unless and until the Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
  - (a) documentary discovery and an affidavit of documents from the Settling Defendant(s) in accordance with the *Federal Courts Rules*;
  - (b) oral discovery of a representative of the Settling Defendant(s), the transcript of which may be read in at trial;

- (c) leave to serve a request to admit on the Settling Defendant(s) in respect of factual matters; and
  - (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
17. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 16. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 16. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 16, the Court may make such orders as to costs and other terms as it considers appropriate.
18. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 16 above on the Settling Defendants by service on counsel for the Settling Defendant.
19. **THIS COURT ORDERS** that the approval of the Settlement Agreement and this Order, and any reasons given by the Court in connection with the approval of the Settlement Agreement or this Order (except any reasons given in connection with paragraphs 13 – 18 of this Order), are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Action and, without restricting the generality of the foregoing, may not be relied upon by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.
20. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order and for no other purpose.



21. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have in the Action against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
22. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.
23. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Class Counsel for the benefit of the Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Proceedings against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
25. **THIS COURT ORDERS** that the Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.

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The Honourable Justice Barnes