

Date OCT 7 2019
Registrar
Greffier REATRIZ WINTER
REGISTRY OFFICER:
AGENT DU GREFFE

FEDERAL COURT

PROPOSED CLASS PROCEEDING

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

Plaintiffs

- 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., BARCLAYS CAPITAL CANADA INC., BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS EXECUTION SERVICES LIMITED and BARCLAYS CAPITAL SECURITIES LIMITED

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

December 5, 2017
Amended October 7, 2019

Issued by: CHERLIN MCCOLMAN

Address of local office: 180 Queen Street West
Suite 200
Toronto, ON M5V 3L6

- TO** **Bank of America Corporation**
100 North Tryon Street
Charlotte, North Carolina 28255
United States
- AND TO** **Bank of America, N.A.**
101 South Tryon Street
Charlotte, North Carolina 28255
United States
- AND TO** **Bank of America Canada**
400-181 Bay Street
Toronto, ON M5J 2V8
Canada
- AND TO** **Bank of America, National Association**
400 - 181 BAY ST
Toronto, ON M5J 2V8
Canada
- AND TO** **Bank of America Merrill Lynch International Limited**
2 King Edward Street
London, EC1A 1HQ
United Kingdom
- AND TO** **Merrill Lynch International**
2 King Edward Street
London, EC1A 1HQ
United Kingdom
- AND TO** **Merrill Lynch, Pierce, Fenner & Smith Inc.**
One Bryant Park
New York, NY 10036
United States
- AND TO** **Merrill Lynch Canada Inc.**
181 Bay Street
Suite 400
Toronto, ON M5J 2V8
Canada
- AND TO** **Merrill Lynch International Services Limited**
129 Water Street Box 38
Charlottetown PE C1A 1A8
Canada

AND TO Merrill Lynch Financial Assets Inc.
181 Bay Street
Suite 400
Toronto, ON M5J 2V8
Canada

AND TO Merrill Lynch Benefits Ltd.
181 Bay Street
Suite 400
Toronto, ON M5J 2V8
Canada

AND TO BNP Paribas S.A.
16 boulevard des Italiens
Paris, 75009
France

AND TO BNP Paribas Group
16 Boulevard des Italiens
Paris, France 75009

AND TO BNP Paribas (Canada)
1981 McGill College Avenue
Montreal, QC H3A 2W8
Canada

AND TO BNP Paribas North America Inc.
787 7th Avenue
New York, New York 10019
United States

AND TO BNP Paribas
1981 McGill College Avenue
Montreal, QC H3A 2W8
Canada

AND TO Citigroup Inc.
399 Park Avenue
New York, New York 10022
United States

AND TO Citibank N.A.
399 Park Avenue
New York, New York 10022
United States

- AND TO Citigroup Global Markets Inc.**
390-388 Greenwich Street
New York, NY 10013-2396
United States
- AND TO Citigroup Global Markets Limited**
Citygroup Centre
Canada Square
Canary Wharf
London, E14 5LB
United Kingdom
- AND TO Citibank Canada**
123 Front Street West, 19th Floor
Toronto, ON M5J 2M3
- AND TO Citigroup Global Markets Canada Inc.**
123 Front Street West, 19th Floor
Toronto, ON M5J 2M3
- AND TO Crédit Agricole S.A.**
12, place des Etats-Unis
Cedex
Montrouge, 92127
France
- AND TO Crédit Agricole Corporate and Investment Bank**
9 quai du Président Paul Doumer
92920 Paris La Défense Cedex
France
- AND TO Crédit Agricole Corporate and Investment Bank (Canada Branch)**
2000, av. McGill College
Bureau 1900
Montréal, Quebec, H3A 3H3
Canada
- AND TO Credit Suisse Group AG**
Paradeplatz 8
Zurich, 8070
Switzerland

- AND TO Credit Suisse AG**
Paradeplatz 8
Zurich, 8001
Switzerland
- AND TO Credit Suisse Securities (Europe) Ltd.**
One Cabot Square
London, E14 4QJ
United Kingdom
- AND TO Credit Suisse International**
One Cabot Square
London, E14 4QJ
United Kingdom
- AND TO Credit Suisse Securities (Canada), Inc.**
2900-1 First Canadian Place
100 King Street West
PO Box 301
Toronto, ON M5X 1C9
- AND TO Credit Suisse AG**
2900-1 First Canadian Place
100 King Street West
PO Box 301
Toronto, ON M5X 1C9
- AND TO Credit Suisse Securities (USA) LLC**
11 Madison Avenue
New York, New York 10010
United States
- AND TO Deutsche Bank AG**
Taunusanlage 12
60325 Frankfurt AM Main
Germany
- AND TO Deutsche Bank Securities Inc.**
60 Wall Street
4th Floor
New York, NY 10005
United States

- AND TO Deutsche Bank Securities Limited**
199 Bay Street
Suite 4700
Commerce Court West
Toronto, ON M5L 1E9
Canada
- AND TO HSBC Holdings plc**
8 Canada Square
London, E14 511Q
United Kingdom
- AND TO HSBC Bank USA, N.A.**
50-1800 Tysons Boulevard
Virginia, United States 22102
United States
- AND TO HSBC Securities (USA) Inc.**
HSBC Tower
452 Fifth Avenue
New York, NY 10018
United States
- AND TO HSBC Bank plc**
8 Canada Square
London, E14 5HQ
United Kingdom
- AND TO HSBC North America Holdings Inc.**
HSBC Tower
452 5th Avenue
New York, New York 10018
United States
- AND TO HSBC Bank Canada**
300-885 West Georgia Street
Vancouver, BC V6C 3E9
Canada
- AND TO HSBC USA, Inc.**
452 Fifth Avenue
New York, New York, 10018
United States

- AND TO** **Nomura Holdings, Inc.**
1-9-1 Nihonbashi
Chuo-ku
Tokyo, 103-8645
Japan
- AND TO** **Nomura Securities International, Inc.**
309 West 49th Street
Worldwide Plaza
New York, NY 10019-7316
United States
- AND TO** **Nomura International plc**
1 Angel Lane
London, EC4R 3AB
United Kingdom
- AND TO** **Royal Bank of Canada**
Corporate Secretary's Department
1 Place Ville Marie
Montréal, Québec
H3C 3A9
Canada
- AND TO** **RBC Europe Limited**
Riverbank House
2 Swan Lane
London, EC4R 3BF
United Kingdom
- AND TO** **RBC Capital Markets LLC**
Three World Financial Centre
200 Vesey Street, 5th Floor
New York, New York 10281
- AND TO** **Toronto-Dominion Bank Group**
P.O. Box 1
Toronto-Dominion Centre
Toronto, ON M5K 1A2
- AND TO** **TD Bank, N.A.**
1701 Route 70 East
Suite 200
Cherry Hill, NJ 08034

- AND TO** **TD Securities Limited**
60 Threadneedle Street
London, EC2R 8AP
United Kingdom
- AND TO** **TD Group Holdings, LLC**
466 Lexington Avenue
New York, NY 10017
United States
- AND TO** **TD Bank USA, N.A.**
2035 Limestone Road
Wilmington DE 19808
United States
- AND TO** **Barclays Capital Canada Inc.**
333 Bay Street, Suite 4910
Toronto, ON M5H 2R2
- AND TO** **Barclays Bank plc**
1 Churchill Place
London, England E14 5H
- AND TO** **Barclays Capital Inc.**
745 7th Avenue
New York, New York 10019
- AND TO** **Barclays Execution Services Limited**
5 North Colonnade
London, E14 4BB
United Kingdom
- AND TO** **Barclays Capital Securities Limited**
1 Churchill Place
London, E14 5HP
United Kingdom

CLAIM

1. The plaintiffs claim:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;
 - (b) a declaration that the defendants conspired, agreed, or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the price of SSA bonds during the Class Period (as defined in paragraph 12 below);
 - (c) a declaration that some or all of the defendants conspired, agreed or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the quoted bid-ask spreads used by participants in the SSA bond market during the Class Period;
 - (d) damages or compensation in an amount not exceeding \$1,000,000,000 for:
 - (i) loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*");
 - (ii) civil conspiracy;
 - (iii) unjust enrichment;
 - (iv) waiver of tort; and
 - (v) breach of contract;
 - (e) punitive damages in the amount of \$250,000,000;
 - (f) an equitable rate of interest on all sums found due and owing to the plaintiffs and other class members or, in the alternative, prejudgment

and postjudgment interest pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

- (g) investigative costs pursuant to section 36 of the *Competition Act* and costs of this proceeding on a full indemnity basis pursuant to section 36 of the *Competition Act*;
- (h) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Court Rules*, SOR/98-106; and
- (i) such further and other relief as this Honourable Court deems just.

NATURE OF THE ACTION

2. This action arises from a conspiracy among the defendants to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably the price of supranational, sovereign, sub-sovereign, and agency bonds (“SSA bonds”) and to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably supra-competitive bid-ask spreads used by market participants in the SSA Bond market.

3. Rather than competing with each other, the defendants worked as a single team. Each defendant openly shared with each other their own bank’s competitively sensitive pricing information, their customers’ trading histories and requests for quotes, their positions and trading strategies, and inside information about the pricing and demand for new issues of SSA bonds. This had the effect of the defendants secretly functioning as a single trading desk that enabled them to exert influence over the SSA bond market that would be impossible if they had been acting independently. By undermining competition across the SSA bond market through this illegal scheme, the defendants profited at the expense of plaintiffs and other investors.

4. The defendants are some of the world’s largest banks that worked as dealers, or “market makers,” in the market for SSA bonds. Investors wanting to purchase or sell SSA bonds have no choice but to do so through a dealer such as the defendants. There

is no exchange where investors can view the latest prices of SSA bonds and trade directly with other investors. Rather, investors must contact a dealer or a range of dealers, ask for price quotes, and select the best price they can find.

5. In a properly functioning market, the defendants would compete for this business. This competition would naturally lower investors' costs to buy or sell SSA bonds. Competition among dealers motivates them to buy bonds from customers for more than other dealers are willing to pay, and to sell them to customers for less than other dealers are willing to accept.

6. But the defendants only pretended to be competing. In addition to directly coordinating with each other, the defendants also used a group of interdealer brokers to facilitate and conceal their conspiracy. Interdealer brokers ran trading platforms on which dealers traded SSA bonds with other dealers in order to manage risk. These trading platforms were supposed to be anonymous.

7. The defendants also directed the interdealer brokers to manipulate the prices of the trades they posted on the electronic screens watched by every dealer in the SSA bond market. This again undermined competition and impacted pricing while it perversely made the defendants' anticompetitive prices seem legitimate.

8. The defendants used the interdealer brokers to conceal the defendants' direct trades with each other, by having the interdealer brokers book those trades through their platforms, even though the trades had been pre-negotiated outside of the platform. This enabled the cartel to move SSA bond inventory undetected between the defendants.

9. The United States Department of Justice, the United Kingdom Financial Conduct Authority and the European Competition Commissioner have active and ongoing investigations into the defendants' conduct. As a result of these global investigations, the defendants have terminated and suspended numerous personnel with responsibility over their SSA bond operations.

10. The defendants' longstanding conspiracy reflected a culture of increasing profits at the expense of the Class and the very integrity of the SSA bond market. The defendants' conspiracy to fix prices in the SSA bond market resulted in loss and damage for the Class.

THE PLAINTIFFS AND THE CLASS

11. The plaintiffs, Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos, and Jack Oliveira (the "**Labourers Trustees**") in their capacity as The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, are the trustees of a multi-employer pension plan providing benefits for employees working in the construction industry. The fund is a union-negotiated, collectively-bargained defined benefit pension plan established on February 23, 1972 which currently has approximately \$5 billion in assets, over 100,000 members and over 19,000 pensioners and beneficiaries. A board of trustees representing members of the plan governs the fund. The plan is registered under the *Pension Benefits Act*, R.S.O. 1990, c P.8 and the *Income Tax Act*, R.S.C. 1985, 5th Supp, c, 1. In their capacity as trustees for the pension fund, the Labourers Trustees entered into numerous SSA Bond transactions during the relevant time period.

12. The plaintiffs seeks to represent the following proposed class (the "**Class**" or the "**Class members**"):

*All persons in Canada who, between January 1, 2005 and December 31, 2015 (the "**Class Period**"), entered either directly or indirectly through an intermediary, and/or purchased or otherwise ~~participates~~ 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.*

THE DEFENDANTS

13. The defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including unnamed co-conspirators.

14. Where a particular entity within a corporate family of the defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into an agreement on behalf of, and reported these meetings and discussions to, their respective corporate families.

15. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this action, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged herein, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anti-competitive conduct.

16. The terms “defendant” or “defendants” as used herein includes, in addition to those named specifically below, all of the named defendants’ predecessors, including those merged with or acquired by the named defendants and each named defendant’s wholly owned or controlled subsidiaries or affiliates that played a material role in the unlawful acts alleged herein.

Bank of America

17. The defendant **Bank of America Corporation** is a Delaware corporation headquartered in Charlotte, North Carolina. Bank of America Corporation is a multinational banking and financial services corporation with its investment banking division located in New York, New York.

18. The defendant **Bank of America, N.A.** is a United States federally-chartered national banking association headquartered in Charlotte, North Carolina, and is an indirect, wholly owned subsidiary of Bank of America Corporation.

19. The defendant **Bank of America Canada** is regulated under the *Bank Act*, S.C. 1991, c. 46 (the “*Bank Act*”) as a Schedule II bank and has its head office in Toronto, Ontario.

20. The defendant **Bank of America, National Association** is regulated under the *Bank Act* as a Schedule III bank.

21. The defendant **Bank of America Merrill Lynch International Limited** is a company organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom and is an indirect subsidiary of Bank of America Corporation.

22. The defendant **Merrill Lynch International** is a company organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom and is an indirect subsidiary of Bank of America Corporation.

23. The defendant **Merrill Lynch, Pierce, Fenner & Smith Inc.** is a corporation organized under the laws of Delaware with its principal place of business in New York, New York and is a wholly owned subsidiary of Bank of America Corporation.

24. The defendant **Merrill Lynch Canada Inc.** is a corporation organized under the laws of Canada with its principal place of business in Toronto, Ontario and is subsidiary of Bank of America Corporation.

25. The defendant **Merrill Lynch International Services Limited** is a corporation organized under the laws of Canada with its principal place of business in Charlottetown, Prince Edward Island and is subsidiary of Bank of America Corporation.

26. The defendant **Merrill Lynch Financial Assets Inc.** is a corporation organized under the laws of Canada with its principal place of business in Toronto, Ontario and is subsidiary of Bank of America Corporation.

27. The defendant **Merrill Lynch Benefits Ltd.** is a corporation organized under the laws of Canada with its principal place of business in Toronto, Ontario and is subsidiary of Bank of America Corporation.

28. The defendants 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., and Merrill Lynch Benefits Ltd. are collectively referred to as “Bank of America.”

BNP

29. The defendant **BNP Paribas S.A.** is a French bank and financial services company with its principal place of business in Paris, France.

30. The defendant **BNP Paribas Group** is a French bank and financial services company headquartered in Paris, France.

31. The defendant **BNP Paribas (Canada)** is regulated under the *Bank Act* as a Schedule II bank and has its head office in Montreal, Quebec.

32. The defendant **BNP Paribas North America Inc.** is a Delaware corporation headquartered in New York, New York. BNP Paribas North America Inc. provides corporate, investment banking, and securities brokerage activities and is an affiliate of BNP Paribas.

33. The defendant **BNP Paribas** is regulated under the *Bank Act* as a Schedule III bank.

34. The defendants BNP Paribas S.A., BNP Paribas Group, BNP Paribas (Canada), BNP Paribas North America Inc., and BNP Paribas are collectively referred to as “BNP.”

Citigroup

35. The defendant **Citigroup, Inc.** is a Delaware corporation headquartered in New York, New York.

36. The defendant **Citibank, N.A.** is a United States federally-chartered national banking association headquartered in New York, New York and is a wholly owned

subsidiary of defendant Citigroup, Inc. Citibank, N.A. is regulated in Canada under the *Bank Act* as a Schedule III bank.

37. The defendant **Citigroup Global Markets Inc.** is a New York corporation with its principal place of business in New York, New York and is an indirect, wholly owned subsidiary of Citigroup.

38. The defendant **Citigroup Global Markets Limited** is a U.K. registered private limited company with its principal place of business in London, United Kingdom and is an indirect, wholly owned subsidiary of Citigroup.

39. The defendant **Citibank Canada** is regulated under the Bank Act as a Schedule II bank and has its head office in Toronto, Ontario.

40. The defendant **Citigroup Global Markets Canada Inc.** is a wholly owned subsidiary of Citigroup, Inc. headquartered in Toronto, Ontario and incorporated under the laws of the Province of Ontario.

41. The defendants Citigroup Inc., Citibank N.A., Citigroup Global Markets Inc., Citigroup Global Markets Limited, Citibank Canada, and Citigroup Global Markets Canada Inc. are collectively referred to as "Citigroup."

Crédit Agricole

42. The defendant **Crédit Agricole S.A.** is a corporation organized and existing under the laws of France with its principal place of business in Montrouge, France.

43. The defendant **Crédit Agricole Corporate and Investment Bank** is a wholly owned subsidiary of Crédit Agricole S.A. and is a bank organized and existing under the laws of France with its principal place of business in Paris, France.

44. The defendant **Crédit Agricole Corporate and Investment Bank (Canada Branch)** is regulated under the Bank Act as a Schedule III bank and has its head office in Montréal, Quebec.

45. The defendants *Crédit Agricole S.A.*, *Crédit Agricole Corporate and Investment Bank*, and *Crédit Agricole Corporate and Investment Bank (Canada Branch)* are collectively referred to as “*Crédit Agricole.*”

Credit Suisse

46. The defendant **Credit Suisse Group AG** is a Swiss company headquartered in Zurich, Switzerland.

47. The defendant **Credit Suisse AG** is regulated in Canada under the *Bank Act* as a Schedule III bank.

48. The defendant **Credit Suisse Securities (Europe) Ltd.** is a company organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom and is a subsidiary of Credit Suisse Group AG.

49. The defendant **Credit Suisse International** is a company organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom and is a subsidiary of Credit Suisse Group AG.

50. The defendant **Credit Suisse Securities (Canada), Inc.** is a wholly owned subsidiary of Credit Suisse Group AG headquartered in Toronto, Ontario and incorporated under the laws of the Province of Ontario.

51. The defendant **Credit Suisse AG** is regulated in Canada under the *Bank Act* as a Schedule III bank.

52. The defendant **Credit Suisse Securities (USA) LLC** is a Delaware limited liability company headquartered in New York, New York, and is a wholly owned subsidiary of Credit Suisse Group AG.

53. The defendants *Credit Suisse Group AG*, *Credit Suisse AG*, *Credit Suisse Securities (Europe) Ltd.*, *Credit Suisse International*, *Credit Suisse Securities (Canada), Inc.*, *Credit Suisse AG*, and *Credit Suisse Securities (USA) LLC* are collectively referred to as “*Credit Suisse.*”

Deutsche Bank

54. The defendant **Deutsche Bank AG** is a German financial services company headquartered in Frankfurt, Germany. Deutsche Bank is regulated in Canada under the *Bank Act* as a Schedule III bank.

55. The defendant, **Deutsche Bank Securities Inc.**, is a wholly owned subsidiary of Deutsche Bank AG with its principal place of business in New York, New York.

56. The defendant, **Deutsche Bank Securities Limited**, is a wholly owned subsidiary of Deutsche Bank AG with its principal place of business in Toronto, Ontario.

57. The defendants Deutsche Bank AG, Deutsche Bank Securities Inc., and Deutsche Bank Securities Limited are collectively referred to as “Deutsche Bank.”

HSBC

58. The defendant **HSBC Holdings plc** is a United Kingdom public limited company headquartered in London, England.

59. The defendant **HSBC Bank USA, N.A.** is a national banking association with its principal place of business in New York, New York, and is an indirect wholly owned subsidiary of HSBC North America Holdings Inc.

60. The defendant, **HSBC Securities (USA) Inc.**, is a wholly owned subsidiary of HSBC Bank plc with its principal place of business in New York, New York.

61. The defendant **HSBC Bank plc** is a United Kingdom public limited company headquartered in London, England and is a wholly owned subsidiary of HSBC Holdings plc.

62. The defendant **HSBC North America Holdings Inc.** is a Delaware corporation headquartered in New York, and is a wholly owned subsidiary of HSBC

Holdings plc. HSBC North America Holdings Inc. is the holding company for HSBC Holding plc's operations in the United States.

63. The defendant **HSBC Bank Canada** is regulated in Canada under the *Bank Act* as a Schedule II bank and has its head office in Vancouver, British Columbia.

64. The defendant, **HSBC USA Inc.**, is a wholly owned subsidiary of HSBC Bank plc with its principal place of business in New York, New York.

65. The defendants 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. are collectively referred to as "HSBC."

Nomura

~~66. The defendant **Nomura Holdings, Inc.** is a corporation organized and existing under the laws of Japan with its principal place of business in Tokyo, Japan.~~

67. The defendant **Nomura Securities International, Inc.** is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York and is a subsidiary of Nomura Holdings, Inc.

68. The defendant **Nomura International plc** is a company organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom and is an indirect subsidiary of Nomura Holdings, Inc.

69. The defendants ~~Nomura Holdings, Inc.~~, Nomura Securities International, Inc., and Nomura International plc are collectively referred to as "Nomura."

RBC

70. The defendant **Royal Bank of Canada** is regulated in Canada under the *Bank Act* as a Schedule I bank and has its head office in Toronto, Ontario.

71. The defendant **RBC Europe Limited** is a company organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom and is a subsidiary of Royal Bank of Canada.

72. The defendant **RBC Capital Markets LLC** is a Minnesota limited liability company with its principal place of business and headquarters in New York, New York and is also a wholly-owned subsidiary of the Royal Bank of Canada.

73. The defendants Royal Bank of Canada, RBC Europe Limited, and RBC Capital Markets LLC are collectively referred to as "RBC."

TD

74. The defendant **Toronto-Dominion Bank Group** is regulated in Canada under the *Bank Act* as a Schedule I bank and has its head office in Toronto, Ontario.

75. The defendant **TD Bank, N.A.** is a Delaware corporation headquartered in Cherry Hill, New Jersey and is a wholly owned subsidiary of Toronto Dominion Bank.

76. The defendant **TD Securities Limited** is a multinational banking and financial services corporation with operations in London, England.

77. The defendant **TD Group Holdings, LLC** is a Delaware corporation headquartered in New York, New York and is a wholly owned subsidiary of Toronto Dominion Bank.

78. The defendant **TD Bank USA, N.A.** is a Delaware corporation headquartered in Wilmington, Delaware and is a wholly owned subsidiary of Toronto Dominion Bank.

79. The defendants Toronto-Dominion Bank Group, TD Bank, N.A., TD Securities Limited, TD Group Holdings, LLC, and TD Bank USA, N.A. are collectively referred to as "TD."

Barclays

80. The defendant **Barclays Capital Canada Inc.** is a wholly owned subsidiary of Barclays Bank plc headquartered in Toronto, Ontario and incorporated under the laws of Canada.

81. The defendant **Barclays Bank plc** is a British public limited company headquartered in London, England. In Canada, Barclays Bank plc is regulated under the Bank Act as a Schedule III bank.

82. The defendant **Barclays Capital Inc.** is a wholly owned subsidiary of Barclays Bank PLC headquartered in New York, New York and engages in investment banking, wealth management and investment management services.

83. The defendant **Barclays Execution Services Limited**, formerly known as **Barclays Capital Services Limited**, is a corporation organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom.

84. The defendant **Barclays Capital Securities Limited** is a corporation organized under the laws of the United Kingdom with its principal place of business in London, United Kingdom.

85. The defendants **Barclays Capital Canada Inc.**, **Barclays Bank plc**, **Barclays Capital Inc.**, **Barclays Execution Services Limited**, and **Barclays Capital Securities Limited** are collectively referred to as "**Barclays**".

FACTUAL BACKGROUND

SSA Bond Issuers

86. Supranational bond issuers are large, multilateral institutions with shareholders from several countries and global economic mandates. Examples include the International Bank for Reconstruction and Development ("IBRD") and the International Finance Corporation ("IFC") of the World Bank Group; the European

Investment Bank (“EIB”); and the African and Asian Development Banks (“AfDB” and “ADB,” respectively).

87. Sovereign bond issuers are sovereign governments, such as the Government of Canada, the Federal Republic of Germany, and the Kingdom of Spain, which issue debt in currencies other than their local currency. The category of “sovereign” issuers also includes sub-sovereign bond issuers, which are state-level entities sitting at least one level below a sovereign government. Examples of sub-sovereign issuers include Canadian provinces.

88. Agency bond issuers include subdivisions of a sovereign state or other institutions that perform tasks on behalf of a governing sovereign, such as Germany’s Kreditanstalt für Wiederaufbau (“KfW”), France’s Caisse d’Amortissement de la Dette Sociale (“CADES”), and Spain’s Instituto de Crédito Oficial (“ICO”).

89. These and other SSA institutions issue debt on a regular basis to raise capital needed to fund global, continental, and regional projects and development programs.

Issuance of SSA Bonds

90. Issuers determine the currency in which an SSA bond issue will be denominated. SSA bonds are generally regarded as secure investments because they often enjoy special legal status, and their credit-worthiness is often pegged to sovereign, regional, or international entities. SSA bonds are perceived as high-quality assets of similar safety as government debt, but with higher yields even in a low interest rate environment.

91. The size of the SSA bond market is substantial, with global SSA bond issuance volume hitting USD \$843.35 billion in 2016. According to Bloomberg, depending on the securities included, the size of the SSA bond market can range from USD\$9 trillion to USD\$15 trillion.

92. Unlike Government of Canada or U.S. Treasury bonds, which are often issued through auctions, SSA bonds are typically issued through syndication. In a

syndication, an SSA institution seeking to issue bonds will retain a bank or group of banks to underwrite its bond issue and then sell those bonds to investors. The syndicate banks serve as the lead managers on the deal, and are responsible for finding investors to purchase the bonds at the time of issuance and also for pricing the bonds. These banks “sound the market” to gauge investor interest, build the order book (*i.e.*, collect orders from investors) for the bonds, and determine the final size of the issue and how many bonds to allocate to each investor.

Trading of SSA Bonds

93. After being issued, SSA bonds can be re-sold and traded by dealers and investors, including by sovereign wealth funds, central banks, pension funds, mutual funds and hedge funds. However, unlike with major exchanges such as the Toronto Stock Exchange and the New York Stock Exchange, there was no open, anonymous exchange that matched all SSA bond buyers and sellers at the best available price. Rather, investors traded SSA bonds “over-the-counter,” meaning that investors seeking to trade SSA bonds had no choice but to deal with dealers such as the defendants, who provided liquidity by being willing to continuously buy and sell SSA bonds.

94. Most investor trading of SSA bonds during the Class Period occurred in a so-called “voice” environment, meaning that transactions were executed over the telephone or via electronic chat messaging. In a typical voice trade, an investor contacted one or more dealers’ sales desks to request a quote. The sales desk communicated the request to the dealer’s trading desk, which returned a quote that the sales desk relayed back to the investor. The process typically took several minutes, and the time gap between quote requests and order executions provided defendants with the lead-time they needed to collude.

95. To a lesser degree, investors also used electronic trading platforms to execute orders with dealers during the Class Period. Electronic trading platforms include single-dealer systems as well as multi-dealer platforms. Multi-dealer platforms

enabled investors to request quotes from multiple dealers simultaneously, using a request for quote (“RFQ”) protocol.

96. Whether investors transacted by voice or through electronic trading platforms, the essential features of the protocol were the same. Investors did not have access to real-time market data to validate whether dealers’ quotes were competitive. Rather, investors were forced to rely exclusively on dealers such as defendants for pricing information on SSA bonds. To find out the price of an SSA bond, investors had to contact a dealer and request a quote. In the process, the investor would reveal their identity, the specific instrument and volume they sought to trade, and often the trade’s direction.

97. This activity generated a steady flow of market information, including a wealth of investor-specific information, such as which bonds an investor held and in what quantity, whether it was an ongoing buyer or seller of certain bonds, and the price levels at which it had traded. The market information dealers collected through the customer inquiry process was a critical component in dealers’ analysis of the market. The information was proprietary, confidential, and extremely valuable. In a properly functioning market, where dealers competed against each other, no dealer would forfeit its competitive advantage by disclosing such sensitive information to another dealer.

98. Apart from their activity as market makers, dealers also traded SSA bonds with other dealers. Unlike in the dealer-to-client segment, where dealers knew the identity of their investor counterparties from the initial requests for quotes, trading was anonymous in the interdealer segment. When trading with other dealers, dealers’ identities were concealed from one another, even after trade execution.

99. Interdealer trades were matched by third parties known as interdealer brokers (“IDBs”). Dealers submitted bid and offer prices to IDBs, which then published those quotes on their various trading platforms, which traders could view from their desks on screens provided by each IDB, or in an aggregated feed on their own in-house screens. The screens showed live, executable prices, allowing a dealer to immediately

enter into a trade at the quoted price without negotiation. When a bond traded at a specific price, the price would flash on the screen. Dealers watched these screens closely, and they treated the prices on IDB screens as a guide for where to set bond prices in response to investor inquiries. During the Class Period, the dominant IDBs in the SSA bond market included BGC Partners, GFI Group, ICAP, and Tullet Prebon.

Quoting of SSA Bond Prices

100. Dealers typically quoted SSA bonds in basis points as a spread above the yield of Government of Canada bonds with a similar maturity, with one basis point equal to 1/100th of a percentage point. Dealers provided both “bid” and “offer” quotes. The “bid” was the spread above the Government of Canada bonds at which a dealer was willing to buy an SSA bond. The “offer” was the spread above the Government of Canada bonds at which a dealer was willing to sell an SSA bond. A dealer “got hit” when an investor accepted a dealer’s bid, and “got lifted” when an investor accepted a dealer’s offer.

101. Investors could request either a one-way quote or a two-way quote from dealers. A one-way quote was either a bid or an offer, depending on the direction of the trade the investor sought to make. The difference or margin between the bid and offer was the “bid-offer spread.” A two-way quote consisted of both the bid and offer for a given bond. A two-way quote was known as the “market” on a bond. The fair, competitive market on a bond was referred to by dealers as the “real” or “inside” market.

102. SSA bond yields are inversely related to bond prices: the higher the spread over the Government of Canada bonds, the lower the price of an SSA bond, and vice versa. Investors sought to purchase SSA bonds at the highest available ask (i.e., the highest available yield, and thus the lowest price) and to sell them at the lowest available bid (i.e., the lowest available yield, and thus the highest price). As a consequence, bids were higher than asks for SSA bonds, unlike with other instruments, for which bids and asks are quoted as dollar prices, rather than yield spreads.

103. For example, if 30-year Government of Canada bonds had a yield of 3.00%, and an SSA bond with a similar maturity (for instance, 25 years) last traded at a yield of 3.35%, then the SSA bond was last traded at a spread of 35 basis points above the Government of Canada bonds. Asked to provide a one-way quote for such an SSA bond, a dealer may provide an investor with a bid of 36 or “+36,” or an ask of 34 or “+34.” Asked to provide a two-way quote, the dealer would provide a “market” of “36/34.”

THE CONSPIRACY

Defendants Conspired to Control and Fix Prices and Supply in the SSA Bond Market

104. The acts alleged in the following paragraphs are collectively referred to as the “Conspiratorial Acts.”

105. Beginning at least as early as 2005, traders employed by the defendants agreed to work not as competitors but as one team, pooling their information and resources to affect prices in SSA bond trades for the benefit of the group.

106. Each defendant openly shared with each other their own bank’s competitively sensitive pricing information, their customers’ trading histories and requests for quotes, their positions and trading strategies, and inside information about the pricing and demand for new issues of SSA bonds. No competitor operating independently would share such commercially sensitive information with its competitors absent collusion.

107. In a properly functioning market, the defendants would compete for this business. This competition would naturally lower investors’ costs to buy or sell SSA bonds. However, there was no competition. Instead, the defendants remained in communication with each other via telephone calls, in-person meetings, and electronic messaging and chat rooms. One method of communication was the Instant Bloomberg, an instant messaging system available on terminals that Bloomberg LP leased to

financial firms. These chat rooms were a convenient way for the defendants to exchange information.

108. The defendants' tactics can be grouped into the following categories. First, the defendants conspired to fix the prices they quoted to investors. When a trader for one of the defendants would receive a request for a quote, he or she would immediately share the information with the other defendants, thereby subverting competition and maximizing the terms on which they would win the business. When multiple cartel members had received the same inquiry, for example, the group would typically decide which trader would take the lead on the trade and how the other traders could provide cover and support. The cartel members often agreed to match each other's quotes so it would appear to investors that the quotes were representative of a market consensus. Other times, certain cartel members would agree to present inflated, non-competitive quotes to investors so it would appear to the investor that the quote provided by the cartel member who had been pre-determined to win the business was a bargain by comparison.

109. Second, to ensure that a certain cartel member would win a trade, other cartel members would often step back from the market by declining to provide quotes, or revising existing quotes to make them less appealing to investors, or even withdrawing quotes they had previously provided.

110. Third, the traders at the defendants blatantly shared confidential and competitively sensitive information whenever it could help them extract supra-competitive profits from their customers. This included information about client's requests for quotes, as well as clients' bond purchases and sales, identities, trading habits, trade flow, and order sizes. Cartel members routinely updated the group on their own positions and strategies, so each cartel member knew the others' long and short positions, whether currently buyers or sellers of particular bonds, and the price and volumes they were quoting for those bonds.

111. Fourth, the defendants exchanged inside information regarding new SSA bond issues that had yet to be announced or were in the midst of the book-building process

with the syndicate desks. This inside information included pricing information or information about market demand for the new bond issue. The defendants would use this inside information by “front-running,” *i.e.*, trading specific secondary bonds linked to the new issue. In addition, the inside, non-public, knowledge of the strength of the new deal, relative to expectations, allowed the defendants to adjust their overall positioning in the broader market. Armed with proprietary inside information, the defendants also engaged in manipulating the pricing of customer “switch” transactions (where customers would look to sell some of their existing bond holdings in order to buy the new issue).

112. Fifth, the defendants pooled their inventory so that an investor inquiry to one defendant could be filled by any defendant. Behind the scenes, colluding traders routinely filled customer orders on behalf of other cartel members, using the other cartel members’ inventory. Colluding traders also would divide trades among different defendants, so multiple cartel members could get a piece of a (non-competitive) trade with an investor, who had no reason to suspect the trade was anything but a competitive, bilateral transaction.

Use of Interdealer Brokers to Facilitate the Conspiracy and Mask Collusive Trades

113. When SSA bond dealers would trade with one another, they did so using trading platforms that were run by interdealer brokers such as BGC Partners, GFI Group, ICAP, and Tullet Prebon. Dealers submitted quotes to the interdealer brokers, which then streamed those quotes live to screens at the traders’ desks. The interdealer brokers matched trades anonymously, so that no dealer knew who was on the other side of any trade. The brokers earn a commission through these services.

114. The defendants used the interdealer brokers to conceal their conspiracy and to enable them to function as a single trading desk. First, the defendants used the interdealer brokers to help “launder” the defendants’ direct trades with each other, allowing the defendants to move inventory around the super-desk undetected. A defendant that traded its co-conspirator’s inventory could not execute that trade unless that inventory was transferred to it. Operating as a single desk required the defendants

to trade directly with each other in massive volumes. The interdealer brokers laundered the defendants' direct trades by booking them through their own platforms, in exchange for fees. Such trades were recorded as interdealer trades through IDBs, rather than direct inter-bank trades that might set off red flags.

115. Second, the defendants used the interdealer brokers to help police the conspiracy by keeping each defendant apprised of the others' activity. By monitoring and broadcasting the group's activity, the interdealer brokers ensured that the defendants stayed out of each other's way and the conspiracy ran smoothly. When a colluding trader inadvertently submitted a quote that competed with another colluding trader's quote, a broker would remove it, sometimes even on their own initiative without instruction from the trader who had submitted the competing quote.

116. Third, the defendants used the interdealer brokers to access confidential information and manipulate the price information that was broadcast to the SSA bond market. Despite the fact that interdealer trading was supposed to be anonymous, the interdealer brokers regularly disclosed names of trading counterparties to the defendants. The defendants also instructed the interdealer brokers not to post trades to the brokers' screens when the defendants did not want to publicize the trades. The interdealer brokers also agreed to post *inaccurate* prices at the defendants' direction. Thus, the defendants used the interdealer brokers to disseminate false market information to every desk in the interdealer segment and cause price distortions throughout the market, given that the prices on IDB screens serve as a reference for dealers when they set the prices they quote to investors.

The Defendants' Conspiracy Resulted in Artificial Prices for SSA Bonds .

117. The defendants' conspiracy had the effect of removing an enormous amount of competition from the market for SSA bonds. As a direct result of the defendants' agreement not to compete, investors unwittingly transacted at prices worse than one would expect in a normally operating, competitive market. Shopping around for better pricing was a pointless because the quotes received from one defendant would be at best identical to those offered by the other defendants, and at worst, set at manipulated

levels. From the customer's perspective, the matching quotes suggested that the prices offered by any one defendant was a competitive market price or even a bargain. Unbeknownst to the customer, however, these prices were actually the product of back-channel collusion.

118. By undermining competition across the SSA bond market through this illegal scheme, the defendants harmed not only investors who paid too much and received too little in SSA bond trades with the defendants, but the entire market for SSA bonds. The effect of reducing some of the world's largest banks into a single desk, reduced competition market-wide. Because the defendants deprived investors of more competitors operating in a competitive market, investors across the market paid more and received less in trades for SSA bonds.

Concealment of the Conspiracy

119. During the Class Period, the defendants and/or their employees and agents, took active steps to, and did, conceal the unlawful conspiracy from Class Members.

120. The unlawful activity alleged herein was concealed by the defendants. The defendants conspired to fix, maintain, increase, decrease, control, and unreasonably enhance the prices of SSA bonds to the benefit of the defendants and to the detriment of the Class, and they conspired to keep their collusive conduct secret. As a result, the plaintiffs could not, and did not, discover that they suffered loss or damage.

121. The defendants fraudulently concealed their anticompetitive activities by, among other things, engaging in secret communications in furtherance of their conspiracy, agreement or arrangement. These communications occurred within non-public chat rooms, instant messages, "snapchat" (a mobile-phone application that sends messages that automatically disappear) and through email, none of which was reasonably available to the plaintiffs or other Class Members. The defendants did not communicate by telephone in order to avoid detection.

122. The chat rooms in question were operated by the highest-ranking traders within the defendants' operations. The defendants strictly limited access to the chat rooms.

The substance of the conversations occurring within these chat rooms was unknown to the plaintiffs and other Class Members.

123. The defendants actively and jointly concealed their collusive conduct. The defendants agreed among themselves not to publicly discuss or otherwise reveal the nature and substance of the acts and communications in furtherance of the agreements alleged herein. The defendants also used code words and deliberately misspelled words to evade detection.

124. SSA bond trades occur primarily in the private, over-the-counter market, and the defendants' trades and trading strategies are not public information. The defendants do not publish information concerning particular trading entities, including trading between dealer entities. The defendants, acting as executing dealers, also discouraged brokers from revealing or otherwise identifying them as counterparties on the brokers' customers' transactions, in order to conceal the counterparties on those transactions.

GOVERNMENT INVESTIGATIONS AND EMPLOYEE SANCTIONS

125. Law enforcement and regulatory authorities in the United States, the United Kingdom and the European Union are actively investigating the defendants' conduct in the SSA bond market.

126. These law enforcement and regulatory authorities include:

- (a) United States: the Department of Justice;
- (b) United Kingdom: U.K. Financial Conduct Authority; and,
- (c) European Union: European Commission – Competition Commissioner.

127. The law enforcement and regulatory investigations are ongoing.

Termination, Suspension and Departures of Employees

128. The defendants have terminated, suspended or put on leave employees with responsibility for their SSA bond operations, including:

- (a) **Bank of America:** Hiren Gudka worked at Bank of America from at least December 2001 to May 2009, and at Deutsche Bank from July 2009 to April 2014. In July 2014, Gudka returned to Bank of America, where he remained until approximately November 2015. In late 2015, Bank of America suspended or terminated Gudka.
- (b) **Credit Suisse:** Shailen Pau worked at RBC from at least December 2001 until May 2009. In July 2009, Pau moved to Cr dit Agricole, which he left in March 2010. In approximately June 2010, Pau joined Credit Suisse, where he remained until February 2016. In late 2015 or early 2016, Credit Suisse suspended or terminated Pau.
- (c) **Cr dit Agricole:** Amandeep Singh Manku worked at HSBC from January 2002 to December 2009, when he left for Bank of America. Manku worked at Bank of America from January 2010 to October 2012. In January 2013, Manku joined Cr dit Agricole, where he worked until December 2015. In late 2015 or early 2016, Cr dit Agricole suspended or terminated Manku.
- (d) **Nomura:** Bhardeep Singh Heer worked at Nomura from January 2005 to March 2016. In late 2015 or early 2016, Nomura suspended Heer, who was removed from Nomura's trading desk and moved to a back-office role indefinitely.

CAUSES OF ACTION

Breach of the Competition Act

129. The Conspiratorial Acts constitute offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) and 47(1) of the *Competition Act*. The plaintiffs

claim on behalf of themselves and other Class Members loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

Breach of Foreign Law

130. The defendants and their unnamed co-conspirators' conduct took place in, among other places, the United States, the United Kingdom, various countries in Asia and various countries in Europe where it was illegal and contrary to the competition laws of those jurisdictions.

Civil Conspiracy

131. The defendants and their co-conspirators engaged in civil conspiracy: both an unlawful means conspiracy and a predominant purpose conspiracy.

132. The defendants and their co-conspirators voluntarily, wrongfully, and unlawfully entered into agreements with each other.

133. The defendants and their co-conspirators were motivated to conspire. Their predominant purpose and concern was to harm the Class.

134. The defendants' conduct, and the conduct of their co-conspirators particularized herein, consisted of prohibited, unlawful, and illegal acts, which included the following:

- (a) entering into the Conspiratorial Acts in contravention of section 45(1) of the *Competition Act*;
- (b) the Canadian-based defendants giving effect to a foreign directive in contravention of section 46(1) of the *Competition Act*; and
- (c) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

135. In furtherance of the conspiracy, the defendants, their employees, agents and co-conspirators carried out the Conspiratorial Acts described above.

136. The defendants and their co-conspirators intended to cause economic loss to the Class. In the alternative, the defendants and their co-conspirators knew in the circumstances that their prohibited, unlawful, and illegal acts would likely cause injury to the Class.

137. The defendants' and their co-conspirators' prohibited, unlawful, and illegal acts did cause injury to the Class.

138. The defendants' conduct in combination with others constitutes a tortious conspiracy to injure the Class and renders the defendants liable to pay the resulting damages.

Unjust Enrichment

139. The defendants have been unjustly enriched as a result of the conduct alleged above. The Class Members have suffered a corresponding deprivation in the amount of the difference between the prices actually paid by or on behalf of the Class Members for SSA bonds and the prices which would have been paid in the absence of the Conspiratorial Acts.

140. Since the difference in price received by the defendants from the Class Members resulted from the defendants' wrongful and unlawful acts, there is and can be no juridical reason justifying the defendants retaining any part of it.

141. The Class is entitled to restitution of the benefit received by the defendants from the Class.

Waiver of Tort

142. In the alternative to damages, the plaintiffs plead an entitlement to waive the tort claims and claim an accounting, or other such restitutionary remedy for disgorgement of the revenues generated by the defendants' illegal, wrongful and anti-competitive conduct.

143. The Class's entitlement is appropriate for, among other things, the following reasons:

- (a) the defendants cannot in good conscience retain the unlawful overcharge acquired via the acts described herein;
- (b) it would be unconscionable for the defendants to retain the unlawful overcharge acquired via the acts described herein;
- (c) the integrity of the marketplace would be undermined if an accounting was not required; and
- (d) absent the tortious, illegal, and criminal conduct described herein, the defendants would have received less revenue than they otherwise would have.

Breach of Contract

144. When certain of the defendants acted as market makers throughout the trading day, certain Class Members contracted with them directly when entering into contracts for the purchase or sale of SSA bonds.

145. It was the reasonable expectation of the Class Members and an implied term of their contracts with the defendants that when the defendants were acting as market makers, they would not manipulate the bid-ask spreads of SSA bonds or other aspects of the SSA bond market for their own benefit and at the Class Members' expense. To the extent that they manipulated the bid-ask spreads when acting as market makers and

other aspects of the SSA bond market, the defendants breached their contracts with the Class Members and the Class Members have suffered damages as a result.

146. Furthermore, the defendants were dishonest in relation to their performance of their contractual obligations by engaging in the Conspiratorial Acts, and were therefore in breach of their duties of good faith. The Class Members have suffered damages as a result.

Discovery of Losses

147. The plaintiffs did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the claims which are the basis of this action until recently.

148. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the Class Members. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

149. The defendants' and their co-conspirators' anti-competitive conspiracy was self-concealing. The defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

150. Because the defendants' agreements, understandings and conspiracies were kept secret, the Class Members were unaware of the defendants' unlawful conduct during the Class Period, and did not know that the SSA bond prices they were paying (or were being paid on their behalf) had been unlawfully fixed, maintained, increased, decreased, controlled, and unreasonably enhanced.

REMEDIES

Damages

151. The defendants are competitors in the SSA bond market, competing for customers by supplying rate quotations. The relationship between the defendants and their customers is the same as the relationship between any merchant selling goods or services to consumers in a marketplace. In SSA bond trading, the “goods” are the SSA bonds. When a defendant’s customer accepts a quote, the defendant sells SSA bonds from its own inventory or seeks an off-setting order at the bargained-for price. Pricing of SSA bonds, like goods, is based on fundamental market forces of supply and demand.

152. The defendants’ conspiracy limits competition between dealers in the SSA bond market. Where customers would, absent the defendants’ collusion, have received competitive quotes and reaped the benefits of competition, here, the defendants have repeatedly agreed in chat rooms to conform quoted customer spreads to each other’s market views, with the intent of controlling or manipulating the market. These actions, individually and collectively, have the effect of imposing overcharges on SSA Bond customers by artificially increasing the cost of buying SSA bonds and artificially decreasing the price received from selling SSA bonds. These actions deprive customers of a competitive marketplace and expose them to artificial volatility.

153. Absent collusion, the defendants, who are competitors in the SSA bond market, would have possessed independent incentives to quote tighter spreads to customers to win more business in the SSA bond market. Every purchase of a SSA bond represents demand relative to supply – forces that would, in a market free of collusion, determine the price. Through collusion, the Class Members were deprived of this active price competition.

154. Absent collusion, the defendants would have had incentives to avoid abusive trading practices, like front-running, that could cause customers to receive better

execution and trade pricing from other SSA bond dealers. Through collusion, SSA bond customers were deprived of this competitive marketplace.

155. The collusion necessarily injures participants in the SSA bond market. All market participants transacting in the SSA bond market would be receiving artificially low prices for their bond sales and paying artificially high prices as a result of the defendants' collusion with respect to bid/ask spreads. This would only be compounded through the defendants' use of tactics like "front-running" to cause further injury through manipulation.

156. The Class suffered loss and damage as a result of the defendants' conduct. Where the Class Member purchased an SSA bond, the Class Member was injured as a result of paying artificially enhanced prices (or where the Class Member was selling SSA bonds, receiving artificially deflated prices). Where the Class Member purchased or otherwise ~~participates~~ participated in an investment or mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an SSA bond transaction, at least part of the damages were passed through to such Class Members as a result of the depressed value of the investment vehicle. Specifically, as a result of the defendants' conduct, the investment vehicle bore inflated SSA bond prices and/or received deflated SSA bond prices, resulting in a loss in value of the funds. This loss was passed on, in whole or in part, to holders of the investment vehicle through the deflated value of the investment vehicle and/or higher management fees. The defendants knew or ought to have known that such pass-through would occur.

157. No one defendant could accomplish systematic and continuing control or manipulation of the SSA bond market without coordinating with its rivals. Absent the defendants' knowledge of one another's confidential customer information, the conduct alleged herein would be a risky strategy. The defendants benefited from coordinating their market activities.

158. As a direct, foreseeable and proximate result of the defendants' conduct alleged above, the plaintiffs and the Class have suffered damages.

159. The damage is capable of being quantified on an aggregate basis as the difference between the prices actually paid by (or on behalf of) Class Members for SSA bonds and the prices which would have been paid in the absence of the unlawful conspiracy.

160. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant.

161. In addition, the defendants are jointly and severally liable to pay costs of investigation and prosecution of this action pursuant to section 36 of the *Competition Act*.

Punitive Damages

162. The defendants used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from SSA bond transactions. They were, at all times, aware that their actions would have a significant adverse impact on Class Members. The conduct of the defendants and their co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the Class members' rights.

163. Accordingly, the plaintiffs requests substantial punitive, exemplary and aggravated damages.

164. The plaintiffs plead and rely on the:

- (a) *Federal Courts Rules*, SOR/98-106, as amended;
- (b) *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended;
- (c) *Bank Act*, S.C. 1991, c. 46, as amended;
- (d) *Competition Act*, R.S.C. 1985, c.34, as amended;
- (e) *Criminal Code*, R.S.C. 1985, c C-46; and
- (f) common law.

The plaintiff proposes that this action be tried at Toronto, Ontario.

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