

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

HOWARD GREEN and ANNE BELL

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF VINCENT GENOVA
(SETTLEMENT APPROVAL)
(SWORN DECEMBER 31, 2021)**

I, VINCENT GENOVA, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am partner at Rochon Genova LLP (“**Rochon Genova**”) which is counsel for the Plaintiffs in the above-captioned proceeding (the “**Action**”). Along with Joel Rochon, I founded Rochon Genova in 1999.
2. While I am not formally part of the counsel team on this Action on a daily basis, given its size and scope and the firm’s substantial financial and resource commitment to its prosecution, I have been kept closely apprised of developments in the Action since it was commenced in July 2008, and I have specific knowledge of the matters to which I hereinafter depose. Where that

knowledge is based on information and belief, I have indicated the source of that information, and believe it to be true.

3. Attached as **Exhibit “A”** is a copy of the executed Settlement Agreement dated December 2, 2021 (the “**Settlement Agreement**”). Where I use capitalized terms not separately defined in the body of this affidavit, those terms have the meanings ascribed to them in the Settlement Agreement.

4. I am swearing this affidavit in support of a motion brought for an Order:

(a) approving the Settlement Agreement pursuant to section 29 of the *Class Proceedings Act, 1992* (the “*CPA*”) and the settlement of this Action pursuant to section 138.10 of the Ontario *Securities Act* (the “*OSA*”); and

(b) approving the Distribution Protocol which is Schedule “D” to the Settlement Agreement.

5. I have sworn a separate affidavit in support of the motion for approval of Class Counsel Fees requested by Class Counsel to be paid in accordance with the retainer agreements entered into by the Representative Plaintiffs pursuant to section 32 of the *CPA*.

OVERVIEW

6. This was an extraordinary and seminal securities misrepresentation class Action that has been vigorously litigated for over 13 years through many important challenges including a highly complex merits-based motion for leave to proceed under Part XXIII.1 of the *OSA* and certification under the *CPA* which, like every stage of this litigation, was aggressively contested by the defendants. The record on the leave motion included 22 expert and bank affidavits, 27 days of cross examination and over 1,500 documents. It was argued in two phases before Strathy J. who reviewed in detail the evidentiary record and considered the merits of the action. He would have

granted leave but for the release, during the leave hearing, of the Court of Appeal decision in *Timminco* which he was bound to apply in determining that the otherwise meritorious action was statute barred. The Plaintiffs successfully appealed this ruling to the Court of Appeal which granted leave and certified the *Securities Act* and common law claims. This decision was appealed by the defendants to the Supreme Court of Canada who dismissed the appeal in its decision in December 2015. There were also many other contested interlocutory motions, many lengthy case conferences and trial management conferences. After the SCC decision, the Defendants produced more than 1.5 million pages of documentary productions and there were additional weeks of oral examinations. In total, there were over 47 days of cross-examinations on affidavits and examinations for discovery. In addition, the Defendants served over 100 pages of detailed written interrogatories which required several hundred pages of response. This discovery process involved a very substantial review of the documentary and oral evidence from 2016 through 2018.

7. In preparation for trial, the parties served and filed 22 expert reports and reply reports of more than 4,000 pages in length¹ in the fields of the subprime collateralized securities and derivative products at issue in the litigation (including precise analysis of the relevant risk sensitivity of the mezzanine Collateralized Debt Obligations (“CDOs”) and the subprime securities and derivatives referenced Credit Default Swaps at issue), securities market economics, corporate finance, corporate governance, credit risk management accounting and the relevant econometric analysis underlying the damage claims. The Plaintiffs’ experts included witnesses from New York, Chicago, Rochester NY, and Toronto. Many days were spent working with these experts to

¹ Excluding exhibits, the expert reports were almost 1450 pages in length

prepare the very detailed initial reports and the detailed reply reports responding to the defendants' expert reports.

8. In addition, the Plaintiffs spent many days preparing the trial by approaching numerous fact witnesses to testify at the trial. These witnesses who lived in Ontario were under summons to appear at trial. In addition, letters of request had been issued by the Court to compel the attendance of witnesses in the United States and England, and the process was underway with US counsel to summon witnesses for trial.

9. The trial of this action was scheduled to commence on Monday, October 4, 2021 for 9 weeks before the Honourable Sean Dunphy of the Ontario Superior Court of Justice.

10. In an effort to settle the claims without a trial, the parties engaged in very intensive, arm's length negotiations, including:

- (a) a two day mediation before the Honourable George Adams, Q.C. (in October, 2012, after the decision of Justice Strathy denying leave and certification but before the Plaintiffs' appeal to the Ontario Court of Appeal);
- (b) a two day mediation before retired Associate Chief Justice of the Ontario Superior Court of Justice, the Honourable Dennis O'Connor Q.C. (in early June 2021); and
- (c) an extensive Pre-Trial process before the Honourable Frederick Myers (which proceeded for two days in late June 2021, was adjourned and proceeded again in September, 2021).

11. In preparation for these settlement negotiations, the parties exchanged lengthy detailed mediation/pre-trial memoranda which set out the basis for the Plaintiffs' liability claim and damages claim, and the elements of the defendants' defences to both liability and damages. The

parties finally achieved a settlement in principle to resolve the Action for \$125 million on September 22, 2021, with the assistance of Mr. Justice Myers in his capacity as Pre-Trial Judge.

12. In preparation for the mediation sessions before Mr. O'Connor and later the formal Pre-Trial with Justice Myers, Class Counsel had lengthy internal discussions during which we considered the risks and obstacles the Action faced in proceeding through a trial of the common issues and how those risks would impact on the potential recovery for the Class.

13. As noted, the case was extraordinarily complex, vigorously defended by capable and well-resourced counsel teams at Torys LLP and Goodmans LLP, and the outcome was at all times uncertain.

14. No case has proceeded to trial under Part XXIII.1, although defendants have been successful on leave and summary judgment motions. There are a number of aspects of this unique civil liability regime that have not been the subject of judicial guidance. That uncertainty further heightened the risk in this case.

15. In addition to the general risks that are inherent in all major litigation, the critical risks that the counsel team identified as specific to this litigation were as follows:

- (i) the risk that the Court would find that there had been no misrepresentation made by the Defendants, at all during the Class Period from May 31, 2007 through to December 2007, or only later in the Class Period, either because it found that the alleged misstatements were not untrue throughout that period, or because they were not sufficiently material prior to December 2007 to require disclosure;
- (ii) the risk that if the trial judge determined that the undisclosed facts about the Bank's subprime exposure only became "material" and thus required disclosure much later in the Class Period would substantially reduce the number of Class members

entitled to damages and would severely reduce the damages claim for those class members;

- (iii) the risk that the Court would find that no public corrections of the alleged misrepresentations had occurred as alleged by the Plaintiffs in 6 separate “partial corrective disclosures” between mid November 2007 and December 6, 2007, or alternatively only on December 6, 2007, which would either eliminate or substantially reduce the damages claim (the jurisprudence on “partial corrective disclosures” is still in development in the absence of any trial decisions under Part XXIII.1);
- (iv) the risk that the Defendants would establish a “reasonable investigation”, or due diligence, defence pursuant to section 138.4(6) and (7) of the *OSA*, based on the substantial evidence filed by the defendants about how they had followed their corporate governance practises throughout the Class Period in considering the necessary disclosures, and had consulted with, and followed the advice of, their external auditors about how to value their subprime securities in 2007;
- (v) the risk that the Defendants’ theory of damages, which assessed damages at only 5% of the Plaintiffs’ assessment, would be accepted by the court over the Plaintiffs’ theory of damages which would dramatically reduce the recovery;
- (vi) the risk that, even if the Plaintiffs succeeded in establishing liability and achieving an award of damages, that the defendants would appeal to the Court of Appeal and the Supreme Court of Canada which could delay recovery for another three years at least; and

- (vii) the risk that, even if successful on liability, the Court would not award aggregate damages pursuant to section 24 of the *CPA*, and instead refer the determination of damages to a lengthy individualized claim assessment process which itself might take years after liability was determined and appeals exhausted.

16. In advance of and during the various mediations and ultimately the Pre-Trial, Class Counsel carefully analyzed each of these risks and how they impacted the prospects of recovery and collection of damages for the Class Members. We weighed each of these risks in concluding that the proposed settlement is fair, reasonable and in the best interests of the Class Members.

17. After being briefed on the settlement by Joel Rochon, the Representative Plaintiffs agreed with our assessment and our recommendation to settle on the terms proposed.

18. In this affidavit, on behalf of the Plaintiffs' counsel team, I describe the following:

- (i) the background facts from which the Action arose;
- (ii) the procedural history of the Action;
- (iii) the negotiation of the Settlement;
- (iv) the factors supporting the fairness and reasonableness of the Settlement, including the evidence and information available to us when the Settlement Agreement was reached, and the key issues and risks to advancing the Action to trial;
- (v) Notice issues; and
- (vi) the rationale for the proposed Distribution Protocol.

FACTUAL BACKGROUND OF THE ACTION

19. The following description of the factual background to this Action is based on my direct knowledge of the record of this case as well as the knowledge of the Rochon Genova counsel team

having principal carriage of this matter. The Defendants take issue with many of the Plaintiffs' positions, and I describe their principal defenses later in this affidavit.

20. The Class brings this action for damages arising out of CIBC's alleged misrepresentations to the market about the nature and extent of its USD\$11.5 billion exposure to subprime U.S. residential mortgage-backed securities ("US RMBS") from May 31, 2007 through February 2008.

21. It is the Plaintiffs' position that CIBC not only failed to disclose material facts about the extent of its subprime US RMBS exposure, but it also denied that it had any "major risk" to such exposure on May 31, 2007 when specifically asked by financial analysts during its Q2/2007² earnings conference call.

22. By the Spring of 2007, the subprime US RMBS market had collapsed, trading had "frozen" and index prices indicated the potential for substantial losses. Market analysts were increasingly concerned about the Bank's potential exposure to this collapsing sub-prime RMBS market, which exposure the CIBC denied.

23. The Bank failed to disclose the nature and extent of its sub-prime US RMBS exposure until it was far too late; and Class Members purchased their CIBC shares at prices which were artificially inflated because the market was told by CIBC that it had no material risk exposure to sub-prime US RMBS.

24. When the facts about the nature and extent of CIBC's subprime US RMBS exposure were leaked into the market in a series of disclosures from mid November to December 6, 2007, CIBC's share price lost almost 20% of its value causing damage to the Class Members.

² CIBC's fiscal year end is October 31. Therefore, its Q1 ends on January 31, its Q2 ends on April 30, its Q3 ends on July 31 and its Q4/FY ends on October 31. Throughout this document there will be reference to Q2/2007, Q3/2007 and Q4/2007 which refer to CIBC's 2007 quarterly interim reporting periods.

25. It is the Plaintiffs' position that the Class Members – CIBC's own shareholders – were entitled to full, true and plain disclosure about the business and affairs of CIBC during the Class Period. As a result of not receiving appropriate disclosure, the Plaintiffs allege that Class Members purchased shares at artificially inflated prices and suffered substantial damages as a result. The Defendants have denied this.

26. The Plaintiffs received two reports from economist Frank Torchio of Forensic Economics Inc. in Rochester New York, wherein total aggregate damages were estimated to be between \$715.8 million and \$728.0 million, exclusive of pre-judgment interest. These reports were served on the Defendants in anticipation of trial.

27. The market capitalization of CIBC prior to the start of the Class Period was approximately CA\$35 billion.

28. At the material time, CIBC World Markets ("World Markets") was the wholesale and corporate banking arm of CIBC providing, among other things, a range of integrated credit and capital markets products and investment banking services to clients in key financial markets, including in the U.S. and the U.K. The Bank's involvement in structured finance transactions was carried out largely through the World Markets division and the World Markets' offices in London and New York. The assets at issue this Action – Collateralized Debt Obligations ("CDOs"), and in particular US RMBS – were structured, underwritten, traded and held as investments within the World Markets division.

29. As discussed below, through a number of undisclosed transactions, CIBC amassed an exposure of approximately \$11.5 billion to the U.S. subprime (and nonprime) residential mortgages market. The Bank's expert in this case broke down the notional value of this US subprime RMBS exposure as at the end of Q2/2007 (April 30, 2007) as \$1.732 billion of unhedged

exposure, and \$9.957 billion of “hedged” exposure. It is the Plaintiffs’ position that the amount and nature of this approximately \$11.7 billion exposure to US sub-prime RMBS were material facts that were not disclosed to the market. Further this disclosure should have taken place no later than May 31, 2007, with the release of CIBC’s Q2/2007 interim financial report and accompanying MD&A.

30. It is the Plaintiffs’ position that these statements and similar statements in the Bank’s Class Period public disclosure which denied or minimized the Bank’s exposure to subprime US RMBS were actionable misrepresentations pursuant to *OSA* section 138.3.

31. The Bank and the other Defendants took the position that given the known market conditions throughout the Class Period, its risk exposure to subprime US RMBS was not material, and when such exposure became material, it made public disclosure in compliance with its legal obligations under the *OSA* and otherwise.

PROCEDURAL HISTORY OF THE LITIGATION

Commencement of this Action

32. This Action was commenced in the name of Howard Green by the issuance of a Statement of Claim on July 22, 2008. There were several substantial amendments to the Statement of Claim, the most recent being on June 8, 2016. Anne Bell was added as a Representative Plaintiff on January 11, 2010.

Certification of the Actions and the Granting of Leave to Proceed

33. The Plaintiffs’ motion for certification under the *CPA* and leave to proceed under the Part XXIII.1 of the *OSA* were heard over 8 days before Mr. Justice Strathy, as he then was, on February 9, 10, 13, 14, 15, 16, 17 and April 5, 2012.

34. On the leave and certification motion, there were 13 expert reports filed and cross examinations of both fact and expert witnesses over 27 days in 2011.

35. On February 16, 2012, the penultimate day of the original hearing of the leave and certification motion, the Ontario Court of Appeal released its decision in *Sharma v. Timminco Ltd.*, 2012 ONCA 107, which ruled, for the first time, that section 28 of the *CPA* did not suspend the limitation period in section 138.14 of the *OSA*. The implication of this was that the Part XXIII.1 leave motion had to be finally determined (not just commenced) prior to the *OSA* 3-year limitation period. As the pleaded misrepresentations in this Action were made in 2007, by the time the leave motion was before Justice Strathy in 2012, the *Timminco* decision would mean that this case would be time barred.

36. On July 3, 2012 Justice Strathy ruled that he would have certified this case but for the just released *Timminco* decision. Following that Court of Appeal authority, leave and certification were denied.

37. We appealed Justice Strathy's decision to a panel of 5 Judges before the Ontario Court of Appeal, because we were asking the Court to overrule its 2012 *Timminco* decision and allow this case to proceed. This appeal was brought along with appeals of two other leave and certification decisions (*Silver v. Imax*, and *Millwright Regional Counsel of Ontario Pension Trust Fund (Trustee of) v. Celestica*) which met a similar fate because of the *Timminco* decision.

38. After a 4-day hearing in May of 2013, the Ontario Court of Appeal overturned the decision of Justice Strathy and certified this case under the *CPA* and granted the Plaintiffs leave to proceed pursuant to Part XXIII.1 of the *OSA*.

39. The Defendants applied for and were granted leave to appeal to the Supreme Court of Canada on August 7, 2014. The appeal was heard on February 9, 2015.

40. On December 4, 2015, a narrowly divided Supreme Court of Canada dismissed the appeal, as it applied to this case, and the Plaintiffs were allowed to proceed pursuant to the earlier decision of the Ontario Court of Appeal.

41. The issue of costs of the 2012 leave and certification motion was referred back to Mr. Justice Strathy, sitting *ex officio*, who awarded the Plaintiffs their costs in the amount of \$2,679,277.82. This amount was comprised of \$1,505,418.72 in fees, on a partial indemnity basis, disbursements, which consisted mostly of expert fees, in the amount of \$932,123.14, and HST on both amounts. This award reimbursed only a portion, but not all of, the actual disbursement expenses (largely expert witness fees) that had been incurred by the Plaintiffs on the leave motion.

Certification Opt-Out Process

42. By way of court approved notice dated October 5, 2016, Class Members were given an opportunity to opt-out of this certified class action. The deadline to opt-out passed on January 3, 2017. Attached as **Exhibit “B”** is a copy of the October 5, 2016 Notice published in the *Globe and Mail* announcing the Certification of this Action and advising Class Members of opt-out rights.

43. We were advised by Crawford Class Action Services (“Crawford”), who administered the notice and opt-out program following the certification of this Action, that there were 74 individuals who opted out of the Action. Rochon Genova received a direct request to opt-out from an additional individual who was not on the list of opt-outs provided by Crawford.

44. Therefore, there are 75 individuals who opted out of this Action who have no right to make a claim for compensation from the Settlement Amount.

The Amount and Nature of Discovery, Evidence or Investigation

45. Following the decision of the Supreme Court of Canada, the Action was allowed to proceed, and the process of production and discovery was commenced.

46. The Defendants produced 150,000 documents amounting to approximately 1.5 million pages of productions. This documentary record was reviewed by a team of lawyers, students and clerks for many months in preparation for examinations for discovery which took place over 20 days in 2017 and 2018.

47. By order of Mr. Justice Belobaba dated June 14, 2017, the transcripts of the cross examinations of CIBC's fact witnesses on the leave and certification motion formed part of the discovery record.

48. In addition to oral examinations for discovery, there were approximately 450 pages of written interrogatories which also formed part of the discovery record. It took many weeks for Plaintiffs' counsel to respond to these very detailed requests for not only facts but also the detailed theory of the Plaintiffs' case.

49. There were also various motions brought in respect of production and discovery issues before the record for trial was set.

Preparation for Trial

50. The Plaintiffs spent over one year working with expert witnesses who prepared very detailed initial and reply reports dealing with the complex issues in this case. In preparation for trial, the parties served and filed 22 expert reports and reply reports of more than 4,000 pages in length (1437 pages excluding exhibits) in the fields of the relevant subprime securities and related derivatives (subprime RMBS, subprime CDOs, synthetic CDO², and subprime derivative referenced CDS, securities market economics, corporate finance, corporate governance, credit risk management, securities valuation and related accounting issues, as well as the econometric analysis that formed the bases for the respective damages claims. . A brief summary of these expert reports follows:

- (a) The expert trial reports of the Plaintiffs:
- (i) Professor Gregg Jarrell the past Chief Economist at the SEC and Professor of Economics at the University of Rochester prepared an assessment of the materiality of the alleged misrepresentations, as well as the question of whether the alleged public corrections were corrective of the alleged misrepresentations and constituted new information provided to the market;
 - (ii) Professor Gordon Richardson, the KPMG Accounting Scholar at the University of Toronto, prepared an accounting report addressing whether CIBC's financial reporting complied with relevant accounting standards during the Class Period, and in particular whether CIBC's financial reporting adequately reported its concentration of credit risk to shareholders;
 - (iii) Professor Bernard Black, the Nicholas D. Chabraja Professor at Northwestern University, with positions in the Pritzker School of Law, the Kellogg School of Management, Department of Finance, and the Institute for Policy Research. Professor Black's research areas include, among others, empirical methods for causal inference, law and finance, and international corporate governance. He had earlier provided expert testimony in the *Enron* litigation. Professor Black prepared extensive reports (168 and 158 pages in length, respectively) dealing with CIBC's exposure to Subprime US RMBS and CIBC's public reporting of same throughout the Class Period;

- (iv) H. Garfield Emerson, Q.C., the past chair of Rogers Communications, CEO of Rothchild's Bank and acknowledged leading expert in the area of corporate governance prepared an expert report (304 pages in length) and reply report (114 pages in length) filed for trial on issues of corporate governance and whether CIBC was duly diligent in assessing the materiality of information about its business and affairs for the purposes of fulfilling CIBC's disclosure obligations;
- (v) Dr. Sanjay Sharma, the Founder and Chairman of GreenPoint Global – a risk advisory, education, and technology services firm headquartered in New York, prepared an expert report and reply report of investment banking industry risk management practices and CIBC's risk management practices during the Class Period. From 2007 to 2016, Dr. Sharma was the Chief Risk Officer of Global Arbitrage and Trading Group and Managing Director in Fixed Income and Currencies Risk Management at RBC Capital Markets in New York. His career in the financial services industry spans over two decades during which he has held investment banking and risk management positions at Goldman Sachs, Merrill Lynch, Citigroup, Moody's and Natixis. Dr. Sharma is the author of "Risk Transparency" (Risk Books, 2013), Data Privacy and GDPR Handbook (Wiley, 2019) and co-author of "The Fundamental Review of Trading Book (or FRTB) – Impact and Implementation" (RiskBooks, 2018).
- (vi) The reply expert report of Mr. Larry Bates filed for trial regarding investment banking industry practice during the Class Period, including the role and significance of credit rating agencies. Mr. Bates enjoyed a thirty-

five year banking career with several major financial institutions in both Canada and the U.K., including most recently as Global Head of Debt Capital Markets for the Royal Bank of Canada; and

- (vii) The expert report and reply expert report of economist Frank Torchio on the issue of aggregate and per share damages suffered by Class Members, which reports were served but not filed in advance of trial. Mr. Torchio is a leading expert in damages determination, particularly in securities class actions and he has provided expert reports, affidavits, depositions and testified in numerous securities class actions in Canada, the U.K., the United States, and Australia;
- (b) The responding expert trial reports of the Defendants:
 - (i) Dr. Daniel Thornton's report addressed accounting standards and CIBC's compliance with relevant accounting standards (responding to the report of Professor Richardson);
 - (ii) David A. Brown Q.C.'s report regarding corporate governance issues and whether CIBC was duly diligent in its assessment and reporting of material facts about its business and affairs during the Class Period (responding to the Report of Mr. Emerson);
 - (iii) Professor Glenn Hubbard of Columbia University prepared a report regarding corporate finance and economic issues (responding to the reports of Professor Black and Dr. Sharma);
 - (iv) Professor John J. McConnell of Perdue University prepared a report regarding corporate finance and economic issues and CIBC's assessment of

its exposure to Subprime US RMBS (responding to the reports of Professor Black, Dr. Sharma, and Professor Richardson);

- (v) Paul Noring, CPA, prepared a report regarding accounting standards and CIBC's compliance with relevant accounting standards (responding to the report of Professor Richardson);
- (vi) Dr. Lesley Daniels Webster's report regarding finance and economic issues (responding to the reports of Professor Black and Dr. Sharma);
- (vii) Dr. Mukesh Bajaj's report regarding finance, economic and damages issues (responding to the reports of Professor Jarrell, Mr. Torchio, Professor Black and Professor Richardson); and
- (viii) Mr. James K. Finkel's report regarding investment banking industry practice during the Class Period on the issues of credit risk evaluation and the reliance of credit rating agencies (responding to the report of Mr. Larry Bates).

51. In addition, numerous domestic witnesses were under summons to appear at trial, and letters of request had been issued by the Court, and the process was underway with US counsel to obtain the trial evidence of foreign witnesses.

52. An *Evidence Act* notice was served by the Plaintiffs on September 10, 2021, and a two volume Trial Record was served by the Plaintiffs on or about September 22, 2021.

53. The trial of this action was scheduled to commence on Monday October 4, 2021 for 10 weeks before the Honourable Sean Dunphy of the Ontario Superior Court of Justice.

THE SETTLEMENT

The Negotiation Process: The Presence of Arm's-Length Bargaining and the Absence of Collusion

54. All of the negotiations leading to the Settlement Agreement were conducted on an adversarial, arms-length basis.

55. In 2014, after leave to proceed with the claim had been denied by Justice Strathy on limitation grounds, and with an appeal pending to the Ontario Court of Appeal, a mediation was scheduled with the Honourable George Adams who is highly regarded as one of the most experienced mediators of complex commercial disputes in Canada. The mediation proceeded over two days, with a full canvassing of the many complex issues in this case.

56. After the Court of Appeal allowed the appeal on limitation issues and granted leave to proceed with the statutory claims, and certified both the statutory and common law claims, the defendants obtained leave to appeal to the Supreme Court of Canada. That appeal was ultimately dismissed and the case proceeded through both documentary production and oral discovery.

57. After a trial date was finally set for the fall of 2021, a further mediation was scheduled to proceed with the Honourable Dennis O'Connor, the highly respected former Associate Chief Justice of Ontario. That mediation proceeded over two days in early June 2021. In preparation for the mediation, Mr O'Connor received detailed mediation memoranda from all parties, and briefs of many of the key documents relied on. He also held separate preparation sessions with counsel for each of the parties to review and discuss, in advance of the mediation, the key issues in dispute relating to both liability and damages.

58. Over the subsequent two-day mediation, there were very intense negotiations and a very detailed review with Mr O'Connor of both the strengths and weaknesses of the Plaintiffs' case as

well as the case of the Defendants. After two days of intense negotiation, it was apparent that there was no possibility of agreeing on settlement.

Further Negotiation and the Recommendation of Neutral Parties

59. Later, towards the end of June 2021, a Pre-Trial Conference took place with the case management judge, Justice Fred Myers, who is a highly experienced commercial judge. The Pre-Trial addressed settlement issues and Justice Myers, like Mr O'Connor, was provided with detailed mediation memoranda and briefs of many of the key documents to review in advance of the Pre-Trial. After two days of reviewing the issues with the parties, Justice Myers concluded that a settlement was not possible at that time based on the significant differences in the parties' perceptions of the strength of the Plaintiffs' case both on liability and damages. The Pre-Trial was adjourned on the basis that there might be further negotiation between the parties directly or through Justice Myers. Trial preparation continued throughout the summer of 2021, and the trial date was briefly pushed back to commence on October 4, 2021 before Mr. Justice Dunphy.

60. In September 2021, the Plaintiffs contacted Justice Myers and asked him to assist the parties by communicating a further settlement offer to the Defendants. After he discussed the offer with defence counsel, he communicated a responding offer from the Defendants. The final offer of \$125 million to be paid by the Bank in full settlement of all claims, and without an admission of liability, was accepted by Class Counsel on the instructions of the Representative Plaintiffs. This was considered to be a reasonable compromise given the broad range of issues discussed over this very prolonged negotiation process through three rounds of mediation with extremely experienced mediators and a highly experienced commercial judge.

The Proposed Settlement Terms and Conditions

61. The key terms of the Settlement Agreement are as follows:

- (a) the Settlement is conditional on the approval of the Court;
- (b) the Settlement does not constitute an admission of liability by the Defendants who, in fact, deny the allegations against them;
- (c) CIBC will pay \$125 million (“**Settlement Amount**”) for the benefit of the Class Members in full and final settlement of this Action;
- (d) the Settlement Amount shall be paid, within thirty (30) days of execution of the Settlement Agreement, to Rochon Genova, in trust, to be deposited into an interest-bearing escrow account at a Canadian Schedule 1 bank (the “**Escrow Account**”), from which funds shall be paid toward Administration Expenses incurred prior to the issuance of the Approved Settlement Order;
- (e) upon the issuance of the Approved Settlement Order, Rochon Genova shall transfer control of the Escrow Account to the Administrator, in trust, for the benefit of the Class Members, to be disbursed in accordance with the Settlement Agreement and the Approved Settlement Order;
- (f) when the Approved Settlement Order becomes a Final Order (the “**Effective Date**”), all Defendants will receive a full and final release from all Class Members of all claims made against them in the Action;
- (g) there is no provision for any reversion of the Settlement Amount to the Defendants unless the Settlement is not approved and does not, therefore, become effective;

- (h) the Net Settlement Amount will be distributed to Class Members who file claims in accordance with the Distribution Protocol; and
- (i) the approval of the Distribution Protocol and the request for Class Counsel Fees are not conditions of the approval of the Settlement itself.

NOTICE OF SETTLEMENT APPROVAL HEARING

62. On December 6, 2021, this Honourable Court issued an order (“**Notice of Settlement Approval Hearing Order**”):

- (a) setting the date for the Settlement and Fee Approval Hearing for January 12, 2022;
- (b) approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing in accordance with the Plan of Notice which is Schedule H to the Settlement Agreement (the “**Plan of Notice**”); and
- (c) appointing Epiq Class Action Services Canada Inc. (“**Epiq**”) as the administrator of this Settlement (the “**Administrator**”).

Attached as **Exhibit “C”** is a copy of the Notice of Settlement Approval Hearing Order.

63. Pursuant to the Settlement Approval Hearing Order, and the Plan of Notice, the following steps have been taken to provide notice of the January 12, 2022 Settlement Approval Hearing:

- (a) The Notice of Settlement Approval Hearing (Short Form):
 - (i) Was published in the English language national editions of the of *The Globe and Mail* and the *Gazette* on December 10, and 11, 2021;
 - (ii) Was published in the French language in *La Presse* on December 10 and 11, 2021;

- (iii) Was published on December 6, 2021 in the English and French languages across North America via *CNW/Cision Newswire*, a major business newswire in Canada and *Institutional Shareholder Services Inc. (ISS)*, an institutional investor data and information dissemination organization which has international reach; and
 - (iv) Was posted on the dedicated website www.cibcsecuritiessettlement.ca which is administered by Epiq, on December 6, 2021; and
- (b) The Notice of Settlement Approval Hearing (Long Form):
- (i) Was published in English and French on the dedicated website www.cibcsecuritiessettlement.ca which is administered by Epiq, on December 6, 2021;
 - (ii) Was mailed by Epiq, electronically or physically to those persons or entities who had previously contacted Class Counsel for the purposes of receiving notice of developments in this Action. We are advised by Epiq, and I verily believe that this direct notice was mailed to 96 individuals and e-mailed to 107 individuals on December 6, 2021;
- (c) In addition, the Notice of Settlement Approval Hearing (Long form) provides a toll-free number and email address that enable Class Members to contact Class Counsel in order that they may, among other things, obtain more information about the Settlement or how to object to it, and/or request that a copy of the Settlement Agreement be electronically or physically mailed to them;

- (d) Class Counsel posted to their website <https://www.rochongenova.com/current-class-action-cases/cibc/> the following documents on the dates indicated:
- (i) the Settlement Agreement (posted on December 6, 2021);
 - (ii) the Notice of Settlement Approval Hearing (Long Form) (posted on December 6, 2021);
 - (iii) a short summary of the rationale for the Settlement (posted on December 8, 2021);
 - (iv) a sample calculation of notional entitlement pursuant to the Distribution Protocol with an explanation (posted on December 21, 2021).

64. In addition, the evidence and written submissions in support of the motion for approval of the Settlement and requested Counsel Fees will be posted on the Class Counsel Website shortly after I swear this affidavit and the motion materials are served on the Defendants.

65. The Notice of Settlement Approval Hearing, both long form and short form, advised Class Members of their right to object to the Settlement as well as to the request to be made by Class Counsel for the payment of Class Counsel Fees. As of the swearing of this affidavit, I am not aware of any objections having been received; however, I am advised that in response to the published notices, Rochon Genova and Epiq have been contacted by a number of individuals seeking information about the claims process. Any timely objections received after the date of this affidavit and before the Settlement Approval Hearing will be provided to the Court.

FACTORS SUPPORTING THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

Recommendations and Experience of Class Counsel

66. In assessing the reasonableness of the Settlement, we had access to and considered the following sources of information:

- (a) all of CIBC's relevant disclosure documents and other publicly available information concerning the Defendants;
- (b) a database of more than 150,000 documents constituting in excess of 1.5 million pages produced by the Defendants;
- (c) additional documents arising from the *OSA* leave and *CPA* certification process;
- (d) evidence and information generated by our own investigation into the matters underlying the Action;
- (e) trading data for the shares of CIBC during the material period of time;
- (f) published financial analyst reports regarding CIBC during the material period of time;
- (g) the Plaintiffs' trial expert reports as described above were authored by some of the world's leading experts in their respective fields;
- (h) the discovery evidence which, by Order of Mr. Justice Belobaba, included cross-examinations on the leave and certification motions which, taken together amounted to approximately 47 days of examinations;
- (i) the input of Mr. O'Connor in his capacity as mediator and Mr. Justice Myers, in his capacity as Pre-Trial Judge;

- (j) the views and observations of the Courts expressed in the various preliminary decisions rendered and during the various case conferences and trial management conferences in this case; and
- (k) information regarding positions taken by the Defendants during the course of the mediation sessions.

67. In our opinion, we possessed more than adequate information from which to make an informed recommendation concerning resolution of the Action as against the Defendants on the basis upon which it was resolved.

68. It is also the opinion of the entire Class Counsel team, which has combined many decades of experience in litigating secondary markets securities claims, that the terms of the Settlement Agreement are fair, reasonable and in the best interests of the Class. The Settlement Agreement delivers a substantial, immediate benefit to Class Members in exchange for the release of their claims which, while we believed them to be meritorious, faced significant challenges.

The Future Expense and Likely Duration of Litigation

69. If the Settlement were not to be approved, the future expense and duration of litigation would be very substantial.

70. As stated earlier, in preparation for trial, the parties served and filed 22 expert reports and reply reports of more than 4,000 pages in length in the fields of market economics, finance, corporate governance, credit risk management accounting and damages.

71. In addition, numerous fact witnesses were under summons to appear at trial, and letters of request had been issued by this Honourable Court to compel the attendance of witnesses from the United States and England, and the process was underway with US counsel to summons witnesses.

72. The trial of this action was scheduled for 9 weeks. Appeals will inevitably follow, adding further expense and delay before the claims of class members would be finally determined.

73. Furthermore, and as described elsewhere, if the Trial Judge did not make an aggregate damages award pursuant to section 24 of the *CPA*, then there would be a further very lengthy individualized claims process which would likely take many years after the final determination of liability following appeals.

The Degree and Nature of Communications by Counsel and the Representative Plaintiffs with Class Members during the Litigation

74. During the course of this litigation, Class Counsel communicated with Class Members through court-approved notices, answering their inquiries by email and telephone and periodic website updates.

75. I am advised by Joel Rochon, and I believe that he explained the terms of the settlement to the Representative Plaintiffs, and his rationale for recommending acceptance of the proposed Settlement; and that they both agreed with his advice and instructed him to enter the Settlement Agreement on their behalf, which he did.

76. I explain below our rationale for recommending the Settlement to the Plaintiffs, the Class and to the Court.

The Likelihood of Recovery or Likelihood of Success: Litigation Risks

77. In discussing litigation risks, we refer to both the various generic risks inherent in all litigation that influence the range of outcomes, as well, of course, as the risks specific to this particular case.

78. In speaking of the generic risks inherent in litigation, we are referring to the risks arising from the passage of time, and the procedural risks that are inherent in litigation of this complexity,

such as the risk that witnesses will not appear or will not give the evidence expected of them, and the risk of adverse procedural or evidentiary determinations by the Court.

79. With the passage of time, documentary evidence may no longer be available, and witnesses may die or their memories of the material events may fade, all of which would impact the Plaintiffs' ability to prove their case.

80. That also applies to the Class Members. By the time the trial process, including appeals from the trial judgment, would have concluded, more than 14 years would have passed from the Class Period when the Class Members' purchase transactions took place. It was inevitable that a claims process that occurred years after the Class Period would not have 100% participation from Class Members. That would impact the amount ultimately recovered.

81. In this case, the evidence is voluminous, the facts complex, and the law uncertain. The uncertainty and unpredictability arising from that legal novelty certainly enhanced the risk for the Plaintiffs.

82. The more specific risks are those relating to the issues arising in this case. The significant risks we identified are explained in greater detail below.

(a) **The risk that the Court would find that there was no actionable misrepresentation**

83. To succeed at trial, the Plaintiffs would have to prove that CIBC failed to disclose to shareholders material information it was required to disclose about any material risk of loss it faced as a result of its exposure to subprime US RMBS throughout the Class Period, beginning on May 31, 2007. While the claim alleges that CIBC made misrepresentations by failing to disclose the full extent of its subprime exposure and risks from May 31, 2007 through February 2008, the Bank argued that its disclosures relating to its US subprime securities were accurate, reflected facts that were known at the time, and complied with all applicable securities laws. The Bank also argued

that the period of 2007 was tumultuous for all financial institutions as it was the period when the global credit crisis affected the entire financial sector. In short, there was a risk that a Court could conclude that CIBC made no material misrepresentations that caused harm to shareholders. I elaborate on this risk below.

84. In order to establish liability against the Defendants in this case pursuant to Part XXIII.1 of the *OSA*, it was necessary to establish that there was a misrepresentation in CIBC's public disclosure about its business and affairs during the Class Period.

85. A statutory misrepresentation under the Part XXIII.1 regime is an untrue statement of material fact or a failure to state a material fact that is required to be stated or that is necessary to make a statement not misleading, in light of the circumstances it was made.

86. A material fact is a fact that would reasonably be expected to have a significant effect on the market price or value of the securities in question, which in this case, were CIBC's common shares.

87. The core of the misrepresentation claims asserted by the Plaintiffs on behalf of the Class relate to CIBC's public disclosure (or lack of disclosure) regarding the nature and extent of its US\$11.5 billion exposure to subprime US RMBS throughout the Class Period.

88. In order to determine what CIBC was and was not required to disclose in respect of its \$11.5 billion exposure to subprime US RMBS, it was necessary to deconstruct how and when that risk existed, and when losses crystallized within the context of what was known or should have been known by the Defendants. This was an exercise of some complexity which gave rise to various points of controversy among experts. How that controversy would be resolved at trial represented, in some instances, the difference between establishing liability and not.

89. To understand these critical points of controversy, it is necessary to explain CIBC's exposure to subprime US RMBS as reflected by the record of this case.

90. It is the Plaintiffs' position that CIBC's \$11.5 billion exposure to the subprime US RMBS market consisted of a number of securitized structures including:

- (a) subprime mortgage collateralized bonds (generally, "RMBS");
- (b) high-risk "mezzanine" Collateralized Debt Obligations ("CDOs") which were collateralized by the lower, riskier generally BBB/BBB- tranches of subprime RMBS;
- (c) CDOs collateralized by the lower, riskier mezzanine tranches of "mezzanine" CDOs known as CDO squared ("CDO²"); and
- (d) its intermediation business, simultaneously taking a long and short position on subprime assets; usually achieved using Credit Default Swaps ("CDS") written on subprime reference assets comprised largely of subprime mezzanine RMBS, CDOs and CDO².

91. As explained by Plaintiffs' expert Professor Black, each RMBS, CDO and CDO² consisted of layers, or "tranches", all receiving cash flow from the underlying pools of subprime or nonprime mortgages, RMBS, CDOs and/or CDO²s. The tranches would usually be rated by an external credit rating agency. The most senior tranches would generally receive a AAA rating and would typically be sold to investors. Within the AAA category, some tranches were more senior, and were called "super-senior AAA" or simply "super-senior." The remaining lower layers would then be subdivided into various lower tranches with ratings ranging from AA to C.

92. Each RMBS, CDO and CDO² offering included a detailed cash flow "waterfall" specifying how loan and coupon payments would be allocated among the tranches. The waterfall

typically provided that losses would be applied first to the lowest tranches. If lower tranches were wiped out, losses would be applied progressively to higher tranches.

93. It is relevant that all of the Bank's CDOs and CDO²s were "mezzanine" securities collateralized by mostly the lower, typically, BBB/BBB- tranches of RMBS (that could not be sold to investors). According to the Plaintiffs' experts, this meant that if losses in the subprime mortgage pools reached relatively low levels, the entire CDO or CDO² would be "wiped out" including the Super Senior AAA CDO and CDO² tranches held by the Bank.

94. RMBS and CDO tranches have "attachment" and "detachment" points. The "attachment point" of a particular tranche (e.g., BBB) signifies the level of the percentage of losses in the underlying mortgage pools which will restrict cash flow and begin to cause losses to that tranche. The "detachment point" signifies the percentage of such losses in the mortgage pools which will cause a complete wipeout of that tranche, and subsequently a complete loss for further securities collateralized by that tranche. According to the Plaintiffs' expert Professor Black, BBB- rated nonprime securities typically attached when losses in the underlying collateral reached 10% and detached at 11% losses.

95. According to Professor Black, if the attachment point and detachment point for a particular underlying BBB- RMBS tranche, which collateralizes a mezzanine CDO, are 10 to 11%, and if the mortgage losses in the underlying subprime collateral pools exceed 11%, the entire CDO structure including the Super Senior AAA tranche will suffer a complete loss of 100% of the "notional value."

96. The implication of this finding by Professor Black, is that CIBC's subprime securities, even though they may have been rated AAA, were only collateralized by thin layers of BBB or BBB- mezzanine tranches of subprime RMBS. The term "mezzanine" reflected the non-

investment grade quality of the BBB/BBB- RMBS tranches that supported the securities. According to Professor Black, even though the senior tranches of the mezzanine CDO might have received a rating of AAA, these securities were highly vulnerable to loss if the subprime mortgage pool losses reached a level of only 10 to 15%.

97. A key area of disagreement among the experts was the attachment and detachment points of the various tranches of the RMBS within the CDO structure.

98. The lower the detachment point, the more likely it was for there to be a failure of the particular CDO structure; exposing CIBC to loss on the full notional value of its particular CDO investment.

99. The Plaintiffs' experts (in particular, Professor Black and Dr. Sharma) opined that, based on what they determined to be appropriate attachment and detachment points for each of the securities and the prevailing conditions in the US residential real estate market, the entire CDO portfolio was at significant risk of being wiped out, exposing CIBC to losses of the full notional value of \$11.5 billion through most, if not all of the Class Period.

100. The Defendants' experts held contrary opinions of the relevant attachment and detachment points and the prevailing state of the US residential real estate market throughout the Class Period. Based on their analyses, CIBC's experts opined that CIBC's risk of loss was not nearly so dire as that opined by Professor Black and Dr. Sharma.

101. Another issue where there was considerable disagreement among the experts was the strength or value of CIBC's hedges against loss.

102. It was the Plaintiffs' position that a substantial element of CIBC's subprime risk exposure arose through its approximately \$9.8 billion "hedged" (intermediated) positions. CIBC had written CDS protection on mezzanine subprime reference assets to large institutions such as Goldman

Sachs; essentially insuring Goldman against any losses on these reference assets. This was exposure to risk of loss on mezzanine subprime securities.

103. CIBC entered offsetting CDS trades by purchasing CDS protection on the same reference assets from less credit worthy insurers. It was the Plaintiffs' position that approximately \$7.8 billion of this protection was written with financially weak monoline insurers. These intermediation trades were referred to as "negative basis trades" because CIBC could charge more when selling its CDS to a counterparty like Goldman than it had to pay its less creditworthy monoline insurer. These contracts with monoline insurers, including ACA Financial Guaranty Corporation ("ACA") were described by Plaintiffs' industry expert Dr. Sharma as "illogical" because the creditworthiness and ratings of the hedge counterparties (like ACA) were worse than the underlying "insured" securities. ACA was a single "A" rated entity, and it insured CIBC's risk on was purportedly a "AAA" portfolio. Stated more simply, insurance against risk of loss on the "AAA" portfolio was placed with monoline insurers which had a much higher risk of loss.

104. In addition, the Plaintiffs' experts (in particular, Professor Black and Dr. Sharma) pointed to the fact that these monoline insurers had also written many billions of dollars of insurance to not only CIBC but to other financial institutions also seeking CDS insurance protection on the US subprime mortgage market. Therefore, these experts opined, ACA and the other monoline insurers lacked the capital to pay on claims if called upon by CIBC. The Plaintiffs' position was that ACA never had the claims paying ability at any time during the Class Period and was therefore never an effective hedge.

105. The Defendants and their experts pointed to the fact that ACA was rated investment grade by Standard & Poor's, and that the rating agency was in the best position to assess ACA's creditworthiness. Furthermore, they point out that when S&P downgraded ACA in December

2007 because of ACA's bankruptcy, CIBC promptly disclosed this and its implications to the regulators and the market as they were required to do by relevant securities laws.

106. The Plaintiffs' experts (in particular, Professor Black, Dr. Sharma and Mr. Bates) opined that the rating agencies' assessment of ACA was unreliable and known to be so by market participants at the material time. The Defendants' experts took a contrary view, opining that the rating agencies were the best source of information regarding the creditworthiness of ACA and the other monoline insurers.

107. While there were many points of disagreement between the Plaintiffs' and the Defendants' experts, I mention these two (i.e., the appropriate attachment and detachment points of the various CDO positions held by CIBC; and the creditworthiness of the monoline insurers providing CIBC with hedges against risk of loss) as illustrative of how the Court had a basis for deciding the key liability issue of material non-disclosure in favour of or against the Plaintiffs. If the latter, the case would be lost, and the Class would receive nothing.

108. It is noteworthy that a proposed securities class action very similar to this one was brought by leading US securities class actions firms on behalf of US resident CIBC shareholders before the US Federal Court in the Southern District of New York. That case alleged substantially the same misrepresentations regarding CIBC's exposure to US subprime RMBS in 2007. On March 19, 2010, U.S. District Judge William H. Pauley III (SDNY) dismissed that case on a motion for summary judgement. In his reasons for decision, Judge Pauley ruled that many major financial institutions failed to anticipate a meltdown in the mortgage market during the period in 2007 covered by the Class Period, and that the US plaintiffs failed to demonstrate that CIBC had information in its possession that was contrary to CIBC's public statements about its subprime risk

exposure. Attached as **Exhibit “D”** is a copy of the March 19, 2010 decision of District Judge Pauley in *Plumbers & Steamfitters Local 773 Pension Fund v. CIBC et al.*, 08 Civ. 8143.

109. Even though the parallel US case failed in 2010, we had faith in our investigation and our ability to prove our case against CIBC. Accordingly, we carried on, in spite of the failure of the parallel US case in the SDNY.

- (b) **The risk that the Court would find that there was no public correction of the pleaded misrepresentations (i.e., that the misrepresentation did not give rise to damages)**

110. A key theory of the Plaintiffs’ damages analysis is that the undisclosed facts about the Bank’s subprime exposure was “publicly corrected through six “partial corrective disclosures” between mid November and December 6, 2007. The alleged damages per share are calculated, according to the Plaintiffs’ damages experts, based on the share price declines after each of these six disclosures. The Defendants have challenged this theory on several bases. First, they argue that the concept of a “partial corrective disclosure” has not been recognized in Canadian securities jurisprudence. Second, they argue that none of the price declines on those dates related to issues relating to the Bank’s subprime exposure. Third, they argue that five of the six alleged “public corrections” were not communications from the Bank, and none of the disclosures were “corrective” of any of the alleged misrepresentations.

111. The Defendants also argued that the economic analysis of its experts established that there were no damages suffered by shareholders as a result of any alleged failure to disclose the Bank’s subprime risk exposure prior to Q3/2007 and Q4/2007. According to the Defendants’ experts, fluctuations in CIBC’s share price were attributable to the evolution of the financial crisis through 2007 and not because of the Bank’s failure to make appropriate and timely disclosure of material facts about its subprime risk exposure. There was therefore a risk that a Court could accept

the Defendants' expert evidence that there was no public correction of the pleaded misrepresentations. I elaborate on this risk, below.

112. Assuming that a misrepresentation was established, on a balance of probabilities, another element of Part XXIII.1 liability is the requirement that the Plaintiffs establish that the pleaded misrepresentation were publicly corrected – that is there was some public disclosure which informed the market of that previous disclosures by the Defendants, were in fact material misstatements.

113. In general, a public correction which corrects materially positive information about the issuer, will cause the price of the issuer's securities to decline. That is, artificial inflation in the share price before the correction, leaves the share price once the market is aware of the material misstatement which caused the inflation.

114. In order to prove a public correction, what is generally needed is an observed statistically significant share price movement caused by the new, correct information, and a proven correlation between that share price movement and the previously misrepresented material information. This is established through the expertise of a financial economist using both statistical analysis and event study methodology.

115. Proof of a public correction is relevant to both issues of liability and damages. Where there is a statistically significant observed share price movement which is caused by a correction of the pleaded misrepresentation, this supports the conclusion that the misstatements were material – that is, the misstatement was reasonably expected to significantly affect the market price or value of the securities. The amount of the statistically significant share price movement which is attributable to the correction is a measure of per share damages, at least for those shares purchased immediately prior to the correction.

116. As I have mentioned, the Plaintiffs' expert, Professor Gregg Jarrell, found 6 statistically significant share price movements in November and December 2007, which he opined were public corrections of the pleaded misrepresentations regarding CIBC's failure to disclose its exposure to subprime US RMBS.

117. Further, Professor Jarrell opined that the cumulative artificial inflation imparted into CIBC's share price was \$16.89 per share immediately before the first public correction which occurred on November 12, 2007. This represents a measure of per-share damages for those Class Members who acquired their shares immediately prior to the first public correction.

118. The Defendants' expert, Dr. Mukesh Bajaj, using different parameters, opined in his 218-page report that, among other things, of the 6 corrective events identified by Professor Jarrell, only two (on December 6 and 7) were statistically significant, and only \$0.90 of the observed excess share price movement on these dates could be attributed to the pleaded misrepresentations. This meant that, according to Dr. Bajaj, that there were virtually no damages to Class Members attributable to the pleaded misrepresentations.

119. In his Reply Expert Report, Professor Jarrell was highly critical of Dr. Bajaj's methodology as being results driven and contrary to accepted economic analytical techniques.

120. While we were confident that Professor Jarrell's reports were stronger than the report of Dr. Bajaj, nevertheless, the fact that there was such diametrically opposite expert opinion on the foundational issue of whether there was a public correction of the pleaded misrepresentations, represented considerable litigation risk in this case.

(c) **The risk that the Defendants would establish a “reasonable investigation” or due diligence defence pursuant to section 138.4(6) and (7) of the OSA**

121. The Defendants advanced defenses that they exercised proper judgment in evaluating the value and risk associated with CIBC’s CDO portfolio which was exposed to subprime US RMBS and that they relied appropriately on their internal disclosure and risk measurement systems, and external accounting advisers who agreed with the Bank’s disclosure of risks and valuations of its subprime assets. The Defendants also maintained that it was only in late 2007 that the severity of the subprime crisis required detailed disclosure, which it made in its Q4/2007 report in December 2007. A strong argument that they relied on was that no other Bank or financial institution made disaggregated disclosure of its subprime assets prior to December 2007 and that CIBC took the lead in this regard.

122. The Bank also argued that the Bank’s Board and management committees were constantly analyzing the risk inherent in its subprime portfolio and made the necessary disclosure as required by law. There was substantial evidence of detailed consideration by the full Board, its committees and management committees of the subprime risk, and the Bank relied on the fact that it followed its corporate governance structure fully in its consideration of its subprime exposures and its disclosure obligations under Canadian securities law. There was therefore a risk that the Court could find that the Defendants were duly diligent and therefore not liable pursuant to *OSA* sections 138.4(6) and (7). I elaborate on this risk, below.

123. All of the Defendants relied on the “reasonable investigation” defence under sections 138.4(6) and (7) of the *OSA* that they had been duly diligent even if the misrepresentations were made (which they denied).

124. The Plaintiffs relied on the expert opinions of Mr. Gar Emerson, Q.C., one of Canada's leading experts on corporate governance and securities law; while the Defendants relied on the expert opinions of Mr. David Brown, Q.C. Mr. Emerson and Mr. Brown are both very highly regarded and in fact were, at one point, law partners practicing securities law in the mergers and acquisition practice at the firm that was then known as Davies, Ward & Beck.

125. In short, two leading experts came to opposite conclusions regarding this critical issue of whether the Defendants had been duly diligent in assessing and publicly reporting on CIBC's exposure to subprime US RMBS during the Class Period.

126. Needless to say, we were confident that Mr. Emerson's opinion was superior and should be accepted and the Defendants' "reasonable investigation" defense would be rejected by the Court; however there was litigation risk that in the circumstances of this case, the Court would find that the Defendants did all that they reasonably could have done to assess the Bank's exposure to subprime US RMBS at a time of great market volatility in the immediate lead up to the financial crisis of late 2007 and 2008.

(d) **Would aggregate damages be awarded?**

127. The Plaintiffs' position was that that this was an appropriate case for aggregate damages to be assessed at trial after the conclusion of the liability phase pursuant to section 24 of the *CPA*. In this regard, the Plaintiffs served the aggregate damages report and reply report of economist Frank Torchio.

128. The Defendants brought a pre-trial motion to strike the reports of Mr. Torchio on the basis that, in their view, aggregate damages are not permitted by Part XXIII.1 of the *OSA*.

129. On June 3, 2021, Mr. Justice Dunphy ruled that the motion to strike the reports of Mr. Torchio was premature, and the appropriate time to deal with whether aggregate damages should

be awarded pursuant to section 24 of the *CPA* is at the conclusion of the liability phase of trial.

Mr. Justice Dunphy held:

The most efficient way of proceeding – and the one I am directing – is to reserve the aggregate damages issue to be considered if necessary after a decision on liability is rendered. There is no need for evidence relating to an eventual application under s. 24 of the *CPA* to be called before any decision on liability is given. If (i) a finding of liability is made; and (ii) an application is made in consequence of such decision under s. 24 of the *CPA*, then and only then a hearing may be held to consider that issue and to hear additional evidence, including *viva voce* evidence, relating to that narrow issue. If there are further expert reports to be exchanged on this subject, I invite the parties to do so now and to continue to comply with all directions of the case management or pre-trial judge in that regard.

Attached as **Exhibit “E”** is a copy of the Endorsement of Mr. Justice Dunphy dated June 3, 2021.

130. While Justice Dunphy did not strike the reports of Mr. Torchio, Justice Dunphy also ruled that they could not be tendered into evidence until the issue of aggregate damages was considered and determined after the liability phase of trial.

131. Whether or not aggregate damages can be awarded in a securities class action brought pursuant to Part XXIII.1 of the *OSA* has not, to our knowledge, been the subject of determination at trial.

132. While we were confident that the Court had a basis to award aggregate damages in this case, the fact that there has not been a trial determination of this issue represents litigation risk. If aggregate damages were not awarded in this case, and instead a lengthy process of individualized claims determination was undertaken post-trial and any appeals of the trial decision on liability, then, in our judgment the amount of participation in the claims process would be further diminished, particularly among Class Members who are retail investors.

133. The certainty of settlement and the claims process contemplated by the Notice Program and the Distribution Protocol will, in our judgment, improve the class member take-up rate and recovery of some of their losses.

Immediate Benefit

134. The Settlement eliminates these identified risks to recovery and instead provides an immediate and substantial benefit to Class Members in exchange for the release of their claims.

135. I note that at \$125 million, this Settlement is among the largest settlements of a Canadian secondary market securities class action to date. While each case is different, there can be no doubt that this is a substantial result for the Class after years of very difficult and hard-fought litigation.

DISSEMINATION OF APPROVED SETTLEMENT NOTICE

136. The Settlement Agreement requires that the distribution of the Approved Settlement Notice (both short form and long form notices) be conducted in accordance with the Plan of Notice which is Schedule “H” to the Settlement Agreement.

137. For ease of reference, attached as **Exhibits “F”** and **“G”** are respectively, the Approved Settlement Notice (Long Form) and Approved Settlement Notice (Short Form). These forms of notice are respectively Schedules “A” and “B” to the Settlement Agreement.

138. Part two of the Plan of Notice provides for indirect notice through:

- (a) The publication of the Approved Settlement Notice (Short Form) in the English language national editions of *The Globe and Mail*, the *Montreal Gazette*, and in the French language of *La Presse* on two occasions;
- (b) The publication of the English and French language versions of the Approved Settlement Notice (Short Form), with necessary formatting modifications, across North America wide *CNW/Cision*, a major business newswire in Canada and sent to Institutional Shareholder Services Inc. (ISS);
- (c) The posting of the Approved Settlement Notice (Long Form) in both the English and French languages on the dedicated CIBC class action website www.cibcsecuritiessettlement.ca which is administered by Epiq;
- (d) Class Counsel posting to its website dedicated to the action the short form and long form Approved Settlement Notice;
- (e) Epiq setting up a toll-free number and email address available to the public that will enable Class Members to obtain more information about the settlement, the

claims process, and to request that a copy of the Settlement Agreement, Approved Settlement Notice (Long Form) and the Claim Form be sent electronically or physically to them directly.

139. The Plan of Notice also provides for direct notice through:

- (a) Epiq mailing the Approved Settlement Notice (Long Form) and the Claim Form to individuals and entities identified as a result of CIBC's counsel delivering to the Epiq an electronic list in the possession of CIBC's transfer agent containing the names and addresses of persons that obtained CIBC common shares immediately prior to the six corrective events identified by Professor Jarrell in his expert reports; and
- (b) Epiq mailing the Approved Settlement Notice (Long Form) and the Claim Form to the brokerage firms in Epiq's proprietary databases requesting that the brokerage firms either send a copy of the Approved Settlement Notice and the Claim Form to all individuals and entities identified by the brokerage firms as being Class Members, or to send the names and addresses of all known Class Members to Epiq who shall mail the Approved Settlement Notice and the Claim Form to the individuals and entities so identified.

140. In our experience, providing notice directly to Class Members and indirectly through publication in the manner described above will cause it to come to the attention of a substantial portion of the Class.

141. The content and manner of dissemination of the Notice of Approved Settlement (both short form and long form) are consistent with the programs approved and implemented in a number of other similar cases in which our firm has acted as class counsel.

142. I have read the affidavit of Laura Jane Bruneau, Senior Vice-President of Epiq Class Action Servicers Canada Inc., sworn December 3, 2021, in which she states her opinion on the efficacy of the Plan of Notice. Ms. Bruneau testified:

25. I believe this approach is reasonable, including from a cost-benefit perspective.

26. Having supervised the implementation of numerous notice programs and claims administrations for securities matters, it is my opinion that the combination of the direct notice and indirect notice proposed in the Plan of Notice is consistent with plans of notice from similar securities matters that we executed. In my opinion, the Plan of Notice has been reasonably designed to reach the greatest practicable number of potential class members.

27. The proposed Plan of Notice schedule will afford enough time to provide full and proper notice to Class Members before the objection deadline. Overall, it is my opinion that the proposed Plan of Notice is reasonable and adequate and satisfies the requirements of the Ontario *Class Proceedings Act, 1992*, is the best notice practicable under the circumstances and conforms to Canadian principles of nature justice, namely achieving adequate notice.

143. Epiq estimated the total cost of administering the Plan of Notice and the Settlement to be between \$466,557 and \$670,189, exclusive of any applicable taxes, depending on the number of claims submitted in response to the Notice Plan. I believe that the estimated cost is proportionate to the size of the settlement and consistent with the cost of notice and settlement administration in other securities class action settlements of similar size or complexity.

PROPOSED DISTRIBUTION PROTOCOL

144. The proposed Distribution Protocol for distributing the Net Settlement Amount is attached as Schedule “D” to the Settlement Agreement, which I have attached as **Exhibit “H”** hereto, for ease of reference. Attached as **Exhibit “I”** is a sample calculation with an explanation.

145. Both the Distribution Protocol and the Sample Calculation have been posted to the Class Counsel website in accordance with the Plan of Notice.

146. The Distribution Protocol was prepared with the assistance of Mr. Frank Torchio, the Plaintiffs’ damages expert. I have read Mr. Torchio’s affidavit sworn on December 28, 2021, wherein he explains the Distribution Protocol and the rationale behind it. I agree with Mr. Torchio’s evidence in this regard.

147. The objective of the Distribution Protocol was three-fold:

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

148. For the reasons stated in Mr. Torchio’s affidavit on this motion, we believe that the Distribution Protocol achieves these objectives.

149. I note that the Distribution Protocol does not provide for any damages to attach to Class Members’ shares purchased after December 7, 2007, even though the Class Period runs to February 28, 2008. The reason for this is based on the evidence of the Plaintiffs’ expert Professor Jarrell who opined that by December 7, 2007, after the six identified corrective disclosures, there

was no longer any artificial inflation still present in the CIBC share price which could be attributed to the pleaded misrepresentations. In other words, the Class Period as certified was too long, and includes Class Members who did not suffer any damages tied to the misrepresentations pleaded against CIBC.

150. If this matter were to proceed to trial, based on the expert evidence filed in this case, damages could not be proven for shares acquired after December 7, 2007, therefore the Distribution Protocol assigns such shares a Notional Entitlement of “zero”.

151. Apart from the calculation of the Notional Entitlement which is explained in the affidavit of Mr. Torchio, the key elements of the Distribution Protocol are as follows (definitions in the Distribution Protocol are applied here):

- (a) the Administrator (*i.e.*, Epiq) will administer all claims pursuant to the terms of the Distribution Protocol;
- (b) the Administrator, in the absence of reasonable grounds to the contrary, will assume Claimants to be acting honestly and in good faith;
- (c) Claimants will have 180 days from the date of the publication of notice of approval of the Settlement within which to submit a claim to the Administrator;
- (d) the Administrator will have discretion to correct minor omissions or errors in a Claim Form;
- (e) in the event of a denial of a claim by the Administrator, there is a process whereby a Claimant can request that there be a reconsideration of the claim. Any decision

of the Administrator after a reconsideration of the claim is final and binding and not subject to further review or appeal;

- (f) this is a non-reversionary settlement and, as such, the Net Settlement Amount will be distributed to Authorized Claimants on a *pro rata* basis pursuant to the terms of the Distribution Protocol;
- (g) under no circumstances will an Eligible Claimant receive more than his or her Notional Entitlement, as that amount represents the maximum amount of provable damages for such Eligible Claimants;
- (h) to the extent that funds remain in the Escrow Account after distribution pursuant to the Distribution Protocol, then those funds will be distributed *cy-près* to a recipient as directed by the Court.

152. Based on our knowledge of the facts of this case and our experience in other securities class action settlements, I believe that the Distribution Protocol will achieve its stated objective of equitably distributing the Net Settlement Amount among Eligible Claimants.

SWORN OR AFFIRMED before me)
at the City of Toronto, in the Province)
of Ontario, this 31st day of December,)
2021)

R Podolny

A Commissioner, etc.)



Vincent Genova

HOWARD GREEN AND ANNE BELL
Plaintiffs

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

Court File No. CV-08-359335

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act*,
1992

AFFIDAVIT OF VINCENT GENOVA

(Settlement Approval)

(SWORN DECEMBER 31, 2021)

ROCHON GENOVA LLP

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SCHEDULE "A" TO THE ORDER

Exhibit "A"

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

Made as of December 2, 2021

BETWEEN

HOWARD GREEN and ANNE BELL

("Plaintiffs")

– and –

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

("Defendants")

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SETTLEMENT AGREEMENT

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

SECTION 1- RECITALS

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

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

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

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

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

SECTION 2 - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

SECTION 3 –APPROVAL AND NOTICE PROCESS

3.1 Best Efforts

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

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

3.2 Notice of Settlement Approval Hearing

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

3.3 Approval Motion and Notice

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

SECTION 4 - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

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

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

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

4.2 Settlement Amount to be Held in Trust

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

4.3 Taxes on Interest

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

SECTION 5 - NO REVERSION

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

SECTION 6 - DISTRIBUTION OF THE SETTLEMENT AMOUNT

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

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

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

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

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

7.2 Agreement Not Evidence

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

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

7.3 Restrictions on Further Litigation

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

SECTION 8- TERMINATION OF THE AGREEMENT

8.1 General

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

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

8.2 Allocation of Monies in the Escrow Account Following Termination

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

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

8.3 Disputes Relating to Termination

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

8.4 No Right to Terminate

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

SECTION 9- DETERMINATION THAT THE SETTLEMENT IS FINAL

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

SECTION 10 - RELEASES AND JURISDICTION OF THE COURT

10.1 Release of Releasees

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

10.2 No Further Claims

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

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

10.3 Dismissal of the Actions

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

SECTION 11- ADMINISTRATION

11.1 Appointment of the Administrator

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

11.2 Information and Assistance from the Defendants

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

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

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

11.3 Claims Process

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

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

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

11.4 Disputes Concerning the Decisions of the Administrator

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

11.5 Conclusion of the Administration

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

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

SECTION 12 – THE FEE AGREEMENT AND CLASS COUNSEL FEES

12.1 Motion for Approval of Class Counsel Fees

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

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

12.2 Payment of Class Counsel Fees

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

SECTION 13 - MISCELLANEOUS

13.1 Motions for Directions

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

13.2 Defendants Have No Responsibility or Liability for Administration

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

13.3 Publicity

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

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

13.4 Governing Law

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

13.5 Entire Agreement

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

subject matter of this Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court.

13.5 Binding Effect

- (1) If the Settlement is approved by the Court and becomes final as contemplated in Section 9(1), this Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendants, Class Counsel, the Releasees and the Releasers, the insurers, or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

13.6 Survival

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

13.7 Negotiated Agreement

- (1) This Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that

would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement shall have no bearing upon the proper interpretation of this Agreement.

13.8 Schedules

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

13.9 Acknowledgements

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

13.10 Counterparts

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

13.11 Notice

- (1) Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally or by e-mail during normal business hours as follows

Notice to the Plaintiffs:

Joel P. Rochon
Rochon Genova LLP

Telephone:

(416) 367-1867

E-Mail:

jrochon@rochongenova.com

Notice to CIBC:

Sheila Block
Torys LLP

Telephone:

(416) 865-7319

E-Mail:

sblock@torys.com

Notice to Individual Defendants:

David Conklin
Goodmans LLP

Telephone:

416-597-5164

E-Mail:

dconklin@goodmans.ca

13.12 Date of Execution

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



Witness
Per: Danielle Sousa



Witness
Per: Gillian Dingle



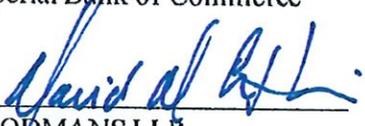
Witness
Per: Sanya Kambally



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



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



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

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

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

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

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

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

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

Important Deadline:

Claims Bar Deadline

(to file a claim for compensation):

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

Purpose of this Notice

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

Court Approval of the Settlement

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

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

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

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

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

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

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

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

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

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

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

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

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

Class Members’ Entitlement to Compensation

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

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

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

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

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

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

Administraton

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

Telephone:
Mailing Address:
Website:

Filing a Claim

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

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

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

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

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

Copies of the Settlement Documents

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

Class Counsel

Rochon Genova LLP is Class Counsel.

Inquiries may be directed to:

Rochon Genova LLP
121 Richmond Street, West

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

Attention: Jon Sloan – e-mail: jsloan@rochongenova.com

Interpretation

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

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

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

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

SCHEDULE B : Approved Settlement Notice (Short Form)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claims or any matter related thereto.

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

The Honourable Justice Frederick Myers

HOWARD GREEN et al
Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE et al
Defendants

Court File No: CV-08-359335

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER
(Approved Settlement Order)

ROCHON GENOVA LLP

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

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

Tel: 416.363-1867

Lawyers for the Plaintiffs

SCHEDULE D: DISTRIBUTION PROTOCOL

DISTRIBUTION PROTOCOL

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

DEFINED TERMS

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

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

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

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

OBJECTIVE

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

PROCESSING CLAIM FORMS

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

CALCULATION OF NOTIONAL ENTITLEMENT

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

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

13. The applicable Share Inflation amounts are as follows:

TABLE A

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

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

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

COMPLETION OF CLAIM FORM

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

IRREGULAR CLAIMS

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

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

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

ADDITIONAL RULES

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

FINAL DISTRIBUTION

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

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

-END-

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

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

Read this notice carefully as it may affect your legal rights

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

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

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

Purpose of this Notice

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

The Action

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

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

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

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

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

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

Settlement Approval Hearing:

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

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

Release of Claims and Effect on Other Proceedings

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

Distribution Protocol

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

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

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

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

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

Approval of Class Counsel Fees and Expenses:

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

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

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

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

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

Class Members’ Right to Participate in the Motions for Approval

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

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

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

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

Class Counsel

For further information please visit www.●.com or contact Class Counsel at:

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

Attention: Joel P. Rochon

Tel: 1-866-881-2292

Email: •

Interpretation

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

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

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

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

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

Settlement Approval Hearing.

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

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

December **, 2021

The Honourable Frederick Myers

HOWARD GREEN et al
Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE et al
Defendants

Court File No: CV-08-359335

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

Notice of Settlement Approval Hearing Order

ROCHON GENOVA LLP

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

Joel P. Rochon (LSUC#: 28222Q)

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Ronald Podolny (LSO#: 56908C)

Golnaz Nayerahmadi (LSO #: 68204C)

Tel: 416.363-1867

Lawyers for the Plaintiffs

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

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

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

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

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

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

SCHEDULE "H": Plan of Notice

PLAN OF NOTICE

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

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

PART 1 - NOTICE OF SETTLEMENT APPROVAL HEARING

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

Newspaper Publication

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

Newswire Publication

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

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

Internet Publication

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

Class Counsel

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

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

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

Class Counsel will also post on its website:

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

PART 2 - NOTICE OF SETTLEMENT

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

Newspaper Publication

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

Newswire Publication

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

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

Individual Notice

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

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

Internet Publication

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

Class Counsel

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

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

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

MISSING AND MURDERED Parliament Hill rally

Exhibit "B"



Canadian Prime Minister Justin Trudeau, centre, listens to Sytukie Joamie, left, speak about his cousin, the late Inuit artist Annie Pootoogook, during a rally for missing and murdered indigenous women and girls on Parliament Hill in Ottawa on Tuesday.
ADRIAN WYLD/THE CANADIAN PRESS

HUMANITIES

Canadian philosopher named winner of first Berggruen Prize

JUSTIN GIOVANNETTI

Canadian philosopher Charles Taylor, who has spent decades tackling humanity's moral, political and cultural dilemmas, on Tuesday was named the winner of the first Berggruen Prize.

The \$1-million award, sponsored by the Los Angeles-based Berggruen Institute, is awarded annually to a thinker whose ideas have helped shape "human self-understanding and the advancement of humanity."

Mr. Taylor, a professor emeritus at McGill University, is considered one of the world's most

prominent philosophers and has had a significant impact on the humanities and social sciences. His work has provided a basis for respecting cultural diversity, according to the institute.

The award will be added to a crowded mantel.

The 84-year-old Mr. Taylor has already won most of the leading awards for philosophers who have had global ramifications, including Japan's Kyoto Prize, the Templeton Prize and the John W. Kluge Prize.

"Charles Taylor's work links ethics, political philosophy, and philosophical anthropology to

address central questions of public and private life," wrote Kwame Anthony Appiah, a New York University professor, in a statement.

Mr. Appiah chaired the nine-member jury that chose Mr. Taylor for the inaugural award. The Berggruen Prize honours a thinker with profound thoughts who has had a practical impact on the world, according to the award's backer.

In 1964, Mr. Taylor published *The Explanation of Behaviour*, which criticized the leading view of behaviour at the time.

A Secular Age, released in 2007,

looks at religion and the Western world's turn away from faith. His latest book, *The Language Animal*, was published in March and looks at language as a tool that helps create meaning.

"Charles Taylor is a brilliantly appropriate recipient, because he has changed the way people all over the world think about some of the most basic questions in human life," wrote Nicolas Berggruen, chairman of the Berggruen Institute.

Mr. Taylor has had a significant role within Canada as well. The Montrealer is seen as a

stout defender of national unity who has critiqued some of Quebec's cultural laws while defending the province's unique identity.

In 2007, he formed Quebec's commission on reasonable accommodation with historian Gérard Bouchard. The commission travelled the province and reported that accommodations be made for religious symbols in schools while public workers should refrain from overtly religious displays.

One of Canada's leading awards for literary non-fiction is also named after Mr. Taylor.

To All Persons and Entities who Purchased CIBC Common Shares between May 31, 2007 and February 28, 2008

Canadian Imperial Bank of Commerce ("CIBC") Securities Class Action Notice of Certification and the Granting of Leave to Proceed with Statutory Secondary Market Misrepresentation Claims

Please read this notice carefully as it may affect your legal rights

The Certification Order

You could be affected by a class action for damages arising from representations made in connection with CIBC's exposure to the U.S. subprime mortgage market through collateralized debt obligations ("CDOs") and credit default swaps ("CDS"), which resulted in CIBC eventually taking gross write-downs on those positions totalling \$9.3 billion.

On February 3, 2014, the Court of Appeal for Ontario (the "Court") certified the action *Howard Green et al. v. Canadian Imperial Bank of Commerce et al.* Court File No. CV-08-00359335-0000 (the "Action") as a class proceeding against CIBC and appointed Howard Green and Anne Bell as representative plaintiffs.

The Leave Order

On February 3, 2014, the Court also granted leave (permission to proceed) to the plaintiffs to commence an action under the secondary market liability provisions of the Ontario *Securities Act*. The *Securities Act* provisions permit a person who acquires a company's security after a misrepresentation has been made in a company's public disclosure to recover damages without proof of reliance on the misrepresentation, subject to certain defences which may be asserted in this case.

In December 2015, the Supreme Court of Canada upheld the Court's certification and leave orders. The defendants deny that the claims in the Action have merit.

This notice describes the case and explains your rights and options. If you are part of the Class described below, you have to decide whether to stay in the class and be bound by the results of the case, or opt out, and get nothing from a settlement if reached, but keep your right to pursue your own lawsuit.

Who is a Class Member?

The Action has been certified on behalf of the following class: All persons or entities, excluding U.S. residents, who purchased CIBC common shares between May 31, 2007 and February 28, 2008 on the TSX. If you are an eligible class member and the Action is successful or if a settlement is reached, you may be entitled to share in the amount of any award.

What is this About?

The certification order means that the Action may proceed to trial as a class action on behalf of a "Class," or group of people and entities, that could include you.

Certification is a procedural step that defines the form of the litigation, allowing it to be pursued on behalf of the Class. The substance and accuracy of the claims have not yet been determined by the Court.

What are My Rights?

You do not need to do anything if you want to participate in the Action. Class Members who want to participate in the Action are automatically included and do not need to do anything at this time. As a Class Member, you will not be required to pay any costs in the event that the Action is unsuccessful. If the class is successful and a settlement is reached, a settlement notice will be provided to the class which will provide complete details concerning the terms of the settlement.

Class Members who DO NOT want to participate in the Action must opt out. A Class Member who opts out **will not** be entitled to participate in the Action and will not be entitled to share in the amount of any award, if the Action is successful, or any settlement achieved.

If you want to opt out of the Action, you must send a signed letter stating that you choose to opt out of the Class in the CIBC class action and provide the additional information described below.

In order for an opt out request to be valid, it must include ALL of the following information: (i) the date(s) on which you purchased CIBC securities; (ii) the number of securities purchased; (iii) the price at which you purchased CIBC securities; and (iv) your name, address, telephone number and signature. If you are submitting an opt out request on behalf of a corporation or other entity, you must state your position and provide your authority to bind the corporation or entity.

The postmarked or fax deadline to opt out is January 3, 2017. Your opt out request must contain all the requested information, and may be sent by fax or email to:

Attention: CIBC Securities Class Action
c/o Crawford Class Action Services
Suite 3-505, 133 Weber St N
Waterloo, ON N2J 3G9
Fax: 1-888-842-1332

Email: CIBCSecuritiesClassAction@crawco.ca

Each Class Member who does not opt out of the Action will be bound by the terms of any judgment or settlement, whether favourable or not, and will not be allowed to prosecute an independent action against the defendant for any of the factual matters raised in the Action. If the Action is successful, you may be entitled to share in the amount of any award or settlement recovered. In order to determine if you are entitled to share in the award or settlement and the amount, if any, of your share, it may be necessary to conduct an individual determination. There may be costs payable by you if you submit a claim and it is determined that you are not entitled to share in the award or settlement. You will have the opportunity to decide in advance if you wish to proceed with your individual entitlement determination.

No person may opt out a minor or a mentally incapable member of the Class without permission of the courts after providing notice to The Children's Lawyer and/or the Public Guardian and Trustee, as appropriate.

Class Counsel and Legal Fees

The plaintiffs and the Class in the Action are represented by Rochon Genova LLP, who is acting on a contingency basis, such that legal fees, disbursements and applicable taxes will be payable only in the event of success in the Action. Rochon Genova LLP is also paying all disbursements incurred in the Action. In the event of success in the Action, Class Counsel will make a motion to the Court to have their fees and disbursements approved. As a Class Member, you will not be required to pay any costs in the event that the Action is unsuccessful.

How Do I Get More Information?

This notice was approved by the Ontario Superior Court of Justice. The claims, orders of the courts and other information are available on Class Counsel's website at www.rochongenova.com. This notice is only a Summary. If you have questions, please email or write to Class Counsel:

Joel P. Rochon – Rochon Genova LLP
121 Richmond Street West, Suite 900
Toronto, ON M5H 2K1
Tel: 416-363-9893

Email: contact@rochongenova.com

The publication of this notice was authorized by the Ontario Superior Court of Justice. Please Do Not Contact the Court.

416-363-9893

www.rochongenova.com

ON READING the materials filed, including the Settlement Agreement, dated December 2, 2021, attached hereto as **Schedule “A”** (the “Settlement Agreement”); and

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

1. **THIS COURT ORDERS** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.
2. **THIS COURT ORDERS** that the hearing of the Plaintiffs’ motion to approve the Settlement and Class Counsel Fees shall take place on January 12, 2022.
3. **THIS COURT ORDERS** that the form and content of the Notice of Settlement Approval Hearing (Short Form), substantially in the form attached hereto as **Schedule “B”**, is hereby approved.
4. **THIS COURT ORDERS** that the form and content of the Notice of Settlement Approval Hearing (Long Form), substantially in the form attached hereto as **Schedule “C”**, is hereby approved.
5. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (Short Form) and the Notice of Settlement Approval Hearing (Long Form) shall be published and disseminated in accordance with the Plan of Notice attached hereto as **Schedule “D”**.
6. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection or comment on the Settlement, Plan of Allocation or the request for approval of Class Counsel Fees and expenses shall deliver a written statement to Class Counsel no later than 5 days prior to the Settlement Approval Hearing.

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

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

December 6, 2021


JUSTICE F.L. MYERS

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HOWARD GREEN et al
Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE et al
Defendants

Court File No: CV-08-359335

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

Notice of Settlement Approval Hearing Order

ROCHON GENOVA LLP

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

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

Tel: 416.363-1867

Lawyers for the Plaintiffs

SCHEDULE "A" TO THE ORDER

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

Made as of December 2, 2021

BETWEEN

HOWARD GREEN and ANNE BELL

("Plaintiffs")

– and –

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

("Defendants")

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SETTLEMENT AGREEMENT

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

SECTION 1- RECITALS

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

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

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

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

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

SECTION 2 - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

SECTION 3 –APPROVAL AND NOTICE PROCESS

3.1 Best Efforts

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

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

3.2 Notice of Settlement Approval Hearing

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

3.3 Approval Motion and Notice

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

SECTION 4 - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

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

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

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

4.2 Settlement Amount to be Held in Trust

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

4.3 Taxes on Interest

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

SECTION 5 - NO REVERSION

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

SECTION 6 - DISTRIBUTION OF THE SETTLEMENT AMOUNT

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

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

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

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

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

7.2 Agreement Not Evidence

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

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

7.3 Restrictions on Further Litigation

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

SECTION 8- TERMINATION OF THE AGREEMENT

8.1 General

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

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

8.2 Allocation of Monies in the Escrow Account Following Termination

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

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

8.3 Disputes Relating to Termination

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

8.4 No Right to Terminate

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

SECTION 9- DETERMINATION THAT THE SETTLEMENT IS FINAL

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

SECTION 10 - RELEASES AND JURISDICTION OF THE COURT

10.1 Release of Releasees

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

10.2 No Further Claims

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

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

10.3 Dismissal of the Actions

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

SECTION 11- ADMINISTRATION

11.1 Appointment of the Administrator

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

11.2 Information and Assistance from the Defendants

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

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

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

11.3 Claims Process

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

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

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

11.4 Disputes Concerning the Decisions of the Administrator

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

11.5 Conclusion of the Administration

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

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

SECTION 12 – THE FEE AGREEMENT AND CLASS COUNSEL FEES

12.1 Motion for Approval of Class Counsel Fees

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

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

12.2 Payment of Class Counsel Fees

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

SECTION 13 - MISCELLANEOUS

13.1 Motions for Directions

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

13.2 Defendants Have No Responsibility or Liability for Administration

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

13.3 Publicity

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

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

13.4 Governing Law

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

13.5 Entire Agreement

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

subject matter of this Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court.

13.5 Binding Effect

- (1) If the Settlement is approved by the Court and becomes final as contemplated in Section 9(1), this Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendants, Class Counsel, the Releasees and the Releasers, the insurers, or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

13.6 Survival

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

13.7 Negotiated Agreement

- (1) This Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that

would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement shall have no bearing upon the proper interpretation of this Agreement.

13.8 Schedules

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

13.9 Acknowledgements

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

13.10 Counterparts

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

13.11 Notice

- (1) Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally or by e-mail during normal business hours as follows

Notice to the Plaintiffs:

Joel P. Rochon
Rochon Genova LLP

Telephone:

(416) 367-1867

E-Mail:

jrochon@rochongenova.com

Notice to CIBC:

Sheila Block
Torys LLP

Telephone:

(416) 865-7319

E-Mail:

sblock@torys.com

Notice to Individual Defendants:

David Conklin
Goodmans LLP

Telephone:

416-597-5164

E-Mail:

dconklin@goodmans.ca

13.12 Date of Execution

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



Witness
Per: Danielle Sousa



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



Witness
Per: Gillian Dingle



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



Witness
Per: Sanya Kambally



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

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

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

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

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

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

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

Important Deadline:

Claims Bar Deadline

(to file a claim for compensation):

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

Purpose of this Notice

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

Court Approval of the Settlement

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

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

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

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

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

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

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

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

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

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

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

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

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

Class Members’ Entitlement to Compensation

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

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

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

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

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

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

Administraton

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

Telephone:
Mailing Address:
Website:

Filing a Claim

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

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

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

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

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

Copies of the Settlement Documents

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

Class Counsel

Rochon Genova LLP is Class Counsel.

Inquiries may be directed to:

Rochon Genova LLP
121 Richmond Street, West

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

Attention: Jon Sloan – e-mail: jsloan@rochongenova.com

Interpretation

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

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

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

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

SCHEDULE B : Approved Settlement Notice (Short Form)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claims or any matter related thereto.

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

The Honourable Justice Frederick Myers

HOWARD GREEN et al
Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE et al
Defendants

Court File No: CV-08-359335

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER
(Approved Settlement Order)

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

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

Tel: 416.363-1867

Lawyers for the Plaintiffs

SCHEDULE D: DISTRIBUTION PROTOCOL

DISTRIBUTION PROTOCOL

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

DEFINED TERMS

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

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

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

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

OBJECTIVE

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

PROCESSING CLAIM FORMS

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

CALCULATION OF NOTIONAL ENTITLEMENT

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

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

13. The applicable Share Inflation amounts are as follows:

TABLE A

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

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

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

COMPLETION OF CLAIM FORM

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

IRREGULAR CLAIMS

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

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

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

ADDITIONAL RULES

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

FINAL DISTRIBUTION

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

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

-END-

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

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

Read this notice carefully as it may affect your legal rights

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

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

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

Purpose of this Notice

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

The Action

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

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

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

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

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

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

Settlement Approval Hearing:

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

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

Release of Claims and Effect on Other Proceedings

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

Distribution Protocol

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

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

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

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

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

Approval of Class Counsel Fees and Expenses:

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

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

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

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

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

Class Members’ Right to Participate in the Motions for Approval

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

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

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

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

Class Counsel

For further information please visit www.rg.com or contact Class Counsel at:

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

Attention: Joel P. Rochon

Tel: 1-866-881-2292

Email: •

Interpretation

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

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

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

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

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

Settlement Approval Hearing.

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

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

December **, 2021

The Honourable Frederick Myers

HOWARD GREEN et al
Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE et al
Defendants

Court File No: CV-08-359335

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

Notice of Settlement Approval Hearing Order

ROCHON GENOVA LLP

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

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

Tel: 416.363-1867

Lawyers for the Plaintiffs

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

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

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

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

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

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

SCHEDULE "H": Plan of Notice

PLAN OF NOTICE

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

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

PART 1 - NOTICE OF SETTLEMENT APPROVAL HEARING

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

Newspaper Publication

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

Newswire Publication

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

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

Internet Publication

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

Class Counsel

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

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

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

Class Counsel will also post on its website:

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

PART 2 - NOTICE OF SETTLEMENT

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

Newspaper Publication

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

Newswire Publication

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

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

Individual Notice

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

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

Internet Publication

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

Class Counsel

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

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

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

SCHEDULE “B” TO THE ORDER

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

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

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

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

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

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

SCHEDULE “C” TO THE ORDER

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

CANADIAN IMPERIAL BANK OF COMMERCE (“CIBC”)

SECURITIES CLASS ACTION

NOTICE OF SETTLEMENT APPROVAL HEARING

Read this notice carefully as it may affect your legal rights

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

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

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

Purpose of this Notice

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

The Action

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

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

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

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

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

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

Settlement Approval Hearing:

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

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

Release of Claims and Effect on Other Proceedings

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

Distribution Protocol

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

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

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

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

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

Approval of Class Counsel Fees and Expenses:

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

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

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

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

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

Class Members’ Right to Participate in the Motions for Approval

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

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

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

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

Class Counsel

For further information please visit www.rockon.com or contact Class Counsel at:

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

Attention: Joel P. Rochon

Tel: 1-866-881-2292

Email: •

Interpretation

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

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

SCHEDULE "D" TO THE ORDER

SCHEDULE "H": Plan of Notice

PLAN OF NOTICE

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

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

PART 1 - NOTICE OF SETTLEMENT APPROVAL HEARING

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

Newspaper Publication

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

Newswire Publication

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

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

Internet Publication

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

Class Counsel

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

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

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

Class Counsel will also post on its website:

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

PART 2 - NOTICE OF SETTLEMENT

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

Newspaper Publication

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

Newswire Publication

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

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

Individual Notice

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

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

Internet Publication

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

Class Counsel

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

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

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

Exhibit "D"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PLUMBERS & STEAMFITTERS LOCAL 773 :
PENSION FUND, *Individually and on Behalf of* :
All Others Similarly Situated, :

Plaintiff, :

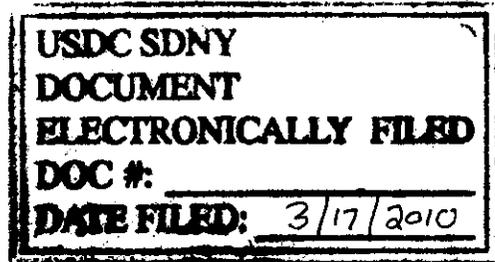
-against- :

CANADIAN IMPERIAL BANK OF :
COMMERCE, GERALD McCaughey, :
THOMAS D. WOODS, BRIAN G. SHAW, and :
KEN KILGOUR, :

Defendants. :
-----X

08 Civ. 8143 (WHP)

MEMORANDUM & ORDER



WILLIAM H. PAULEY III, District Judge:

Lead Plaintiff Plumbers & Steamfitters Local 773 Pension Fund (the "Pension Fund" or "Plaintiff") brings this putative securities class action lawsuit against Defendant Canadian Imperial Bank of Commerce ("CIBC") and four of its officers, Gerald McCaughey ("McCaughey"), Thomas D. Woods ("Woods"), Brian G. Shaw ("Shaw"), and Ken Kilgour ("Kilgour" and collectively the "Individual Defendants"), alleging that the Defendants misled investors about CIBC's exposure to fixed-income securities backed by subprime residential mortgages. The Pension Fund asserts that Defendants' false statements and omissions caused injury in violation of Sections 10(b), 15 U.S.C. § 78j(b), and 20(a), 15 U.S.C. § 78t(a), of the Securities Exchange Act of 1934 (the "Exchange Act"). Defendants move to dismiss the Consolidated Class Action Complaint (the "Complaint") pursuant to Fed. R. Civ. P. 12(b)(6). For the following reasons, Defendants' motion is granted.

BACKGROUND

I. The Parties

The Pension Fund seeks to represent a class of all purchasers of CIBC securities on the New York Stock Exchange (the “NYSE”) as well as U.S. persons who otherwise acquired a CIBC security between May 31, 2007 and May 29, 2008 (the “Class Period”) and were damaged thereby. (Consolidated Class Action Complaint dated Feb. 20, 2009 (“Compl.”) ¶¶ 1, 32.) Plaintiff purchased CIBC common stock during the Class Period. (Compl. ¶ 19.)

CIBC is a chartered Canadian bank whose securities are traded under the symbol “CM” on the NYSE and the Toronto Stock Exchange. (Compl. ¶ 20.) From August 2005 until the present, Defendant McCaughey has served as President and Chief Executive Officer (“CEO”) of CIBC. (Compl. ¶ 21.) Defendant Woods was Senior Executive Vice-President and Chief Financial Officer (“CFO”) during the Class Period before being reassigned in January 2008 to Chief Risk Officer. (Compl. ¶¶ 22, 208.) Defendant Shaw was Senior Executive Vice President and Chairman and CEO of CIBC World Markets, the company’s investment banking arm. (Compl. ¶¶ 23, 72.) Defendant Kilgour was Senior Executive Vice-President and Chief Risk Officer. (Compl. ¶ 24.) Since the Class Period, CIBC has terminated Kilgour and Shaw. (Compl. ¶¶ 23-24.)

By virtue of their senior positions within the company, all of the Individual Defendants had access to the confidential and sensitive business information of CIBC. (Compl. ¶ 26.) Moreover, Plaintiff alleges that each of the Individual Defendants participated in and exercised some control over the drafting, preparation, and approval of various public,

shareholder, and investment reports and had access to undisclosed adverse information harmful to CIBC. (Compl. ¶¶ 28-31.)

II. Mortgage-Backed Securities

Plaintiff alleges that Defendants “immersed” CIBC in the U.S. mortgage-backed securities market and then misled CIBC investors about the company’s holdings as the value of those assets plummeted. (Compl. ¶ 38.) In the late 1990s, mortgage interest rates in the United States declined, leading to increased demand for homes and a corresponding run-up in home prices. (Compl. ¶ 41.) Aggressive and “oftentimes predatory” lenders extended credit to so-called “sub-prime” borrowers—i.e., persons with a high debt-to-income ratio. (Compl. ¶¶ 41, 44.)

By 2005, the increase in housing prices began to abate as interest rates increased. (Compl. ¶ 42.) To sustain a high volume of new mortgages, lenders offered “adjustable rate” plans to borrowers. (Compl. ¶ 42.) Lenders also extended “no income/no asset verification” loans for which borrowers were not required to substantiate their creditworthiness. (Compl. ¶ 45.) Such loans were classified as “non-prime” or “Alt-A” mortgages. (Compl. ¶ 45.)

These individual home loans were sold by the banks issuing them to third parties who then securitized the assets. (Compl. ¶ 40.) Mortgage securitization is the pooling of thousands of loans to form the collateral for so-called residential mortgage-backed securities (“RMBS”). (Compl. ¶ 46.) RMBSs are issued as bonds in tranches ranging from “High Grade” (AAA- and AA-rated bonds) to “Mezzanine” (BBB- to B-rated bonds) to unrated. (Compl. ¶¶ 47-48.) When income is generated from the underlying home loans, it is paid over to the

tranches according to bond seniority (High Grade being first). (Compl. ¶¶ 47-48.) If borrowers default on home loans and the amount of income generated by the pool of loans decreases, the lowest-rated tranches are the first not to receive payments. (Compl. ¶ 48.)

RMBSs can themselves be pooled for inclusion in a category of securitization known as a collateralized debt obligation (“CDO”). (Compl. ¶ 52.) CDOs are issued and rated in a manner similar to RMBSs, that is, by the priority of payments from the underlying collateral. (Compl. ¶ 52.) To protect, or “hedge,” against default of an RMBS or CDO, the holder may purchase insurance known as a credit-default swap (“CDS”), through which the holder pays a counterparty to assume the risk of default. (Compl. ¶ 63.)

III. CIBC’s Mortgage-Backed Securities

In 2005, two years before the Class Period began, the first signs of a deteriorating U.S. housing market emerged—American home values declined, interest rates rose, and the mortgage default rate increased. (Compl. ¶¶ 85-86, 100.) As defaults rose, the revenue streams feeding RMBSs and, in turn, CDOs dried up. (Compl. ¶¶ 87, 99.) Plaintiff alleges that the impairment in the value of mortgage-backed securities was widely known because the decline was tracked by the ABX Index, an exchange for these securities, and was reported in the press. (Compl. ¶¶ 89, 98-99, 103-112.) By April 2007, press reports indicated that some of the \$450 billion in subprime mortgage debt sold in 2006 had lost 37 percent of its value. (Compl. ¶ 111.)

By the beginning of the Class Period, CIBC had accumulated \$11.5 billion in assets collateralized by subprime mortgage loans. (Compl. ¶¶ 73, 115.) Of that total, \$9.8

billion was hedged. (Compl. ¶ 74.) CIBC hedged \$3.5 billion through one counterparty known as ACA Financial Guaranty Corporation (“ACA Financial”). (Compl. ¶¶ 10, 74.)

The gravamen of this litigation is that CIBC, as owner of these securities in the midst of a U.S. mortgage crisis, misled investors about the firm’s mortgage-backed holdings and its relationship with ACA Financial. (Compl. ¶¶ 113, 116.)

IV. The Alleged False Statements and Omissions

a. May 2007 Release and Conference Call

On May 31, 2007—the start of the Class Period—CIBC issued a press release, incorporated into a Form 6-K filed with the SEC, regarding its second quarter 2007 financial results (the “Second Quarter 2007 Release”). (Compl. ¶ 128.) The Second Quarter 2007 Release did not specifically address the U.S. mortgage crisis but referred to pages 67 through 69 of the 2006 Annual Accountability Report (the “2006 Accountability Report”) for off-balance sheet arrangements, which included the company’s CDO exposure. (Compl. ¶ 131.) In the 2006 Accountability Report, CIBC stated, “Although actual losses are not expected to be material, as of October 31, 2006, our maximum exposure to loss as a result of involvement with the CDOs was approximately \$729 million.” (Compl. ¶ 132.) Plaintiff alleges that this reference and the statement that “there were no other significant changes to off-balance sheet arrangements for the three and six months ended April 30, 2007” constituted “blatantly false and misleading” representations because CIBC’s actual exposure to the U.S. real estate market was almost \$12 billion. (Compl. ¶ 133.) Moreover, Plaintiff alleges that CIBC should have written down \$2.15 billion of its mortgage-backed portfolio as of its Second Quarter 2007 Release. (Compl. ¶ 134.)

During a conference call on May 31, 2007 (the “May 31 Conference Call”), analysts pressed McCaughey and Shaw on CIBC’s purchase of a \$330 million mezzanine CDO known as Tricadia, which was a particularly poorly-performing subprime asset. (Compl. ¶ 137.) One analyst inquired whether CIBC had “other exposures” like Tricadia. (Compl. ¶ 137.) Shaw responded about the “total exposure” faced by CIBC as follows:

I guess I would probably say to the extent we have exposure in this space it tends to be more synthetic than direct CDO exposure. We don’t see this as a major revenue contributor currently to CIBC . . . I guess I would just conclude by saying in summary our risks in this space is [sic] not at all major.

(Compl. ¶ 137.) Neither McCaughey nor Shaw stated CIBC’s total RMBS or CDO exposure during the May 31 Conference Call. (Compl. ¶¶ 138-140.)

b. July 2007 Press Release

On June 15, 2007, Grant’s Interest Rate Observer published an article about subprime mortgages which questioned CIBC’s total exposure to such assets and speculated that it might be \$2.6 billion. (Compl. ¶ 145.) The article also wondered whether CIBC had additional Tricadia-like holdings and questioned the accuracy of Shaw’s statement in the May 31 Conference Call that CIBC faced low risks with its mezzanine CDOs. (Compl. ¶ 145.) On July 10, 2007, CIBC responded to the speculation in the press by stating that “CIBC does not disclose individual securities positions but confirms its previous statement to the media that its unhedged exposure to this sector is well below U.S. \$2.6 billion” (the “July 10 Press Release”). (Compl. ¶ 146.) Plaintiff alleges the July 10 Press Release was materially false and misleading for failing to disclose CIBC’s true exposure of almost \$12 billion and that its hedges on such exposure were guaranteed by financially unstable counterparties. (Compl. ¶ 147.)

c. August 2007 Pre-Release, Release, and Conference Call

On August 13, 2007, CIBC pre-announced its third quarter 2007 financial results (the “Third Quarter 2007 Pre-Release”). (Compl. ¶ 157.) CIBC stated it expected to report “good revenue, expense and loan performance in most business groups, as well as higher than normal gains on securities and credit derivative hedges” in its third quarter 2007 financial results at the month’s end. (Compl. ¶ 157.) The Third Quarter 2007 Pre-Release further detailed that CIBC expected mark-to-market write-downs on approximately \$290 million of its structured credit business related to CDO and RMBS losses in the U.S. mortgage market. (Compl. ¶ 157.) The release also quoted McCaughey as asserting, “We had positive financial results in many areas which more than offset the Structured Credit write-downs.” (Compl. ¶ 157.) CIBC further revealed its unhedged position in securities tied to U.S. mortgages:

CIBC’s exposure to [the U.S. residential mortgage market] before write downs is approximately US \$1.7 billion (excluding exposure directly hedged with other counterparties). . . . CIBC estimates that less than 60% of this exposure relates to underlying subprime mortgages, while the remainder is midprime and higher grade assets. The majority of the US \$1.7 billion exposure continues to be AAA-rated, the highest rating category.

(Compl. ¶¶ 158-59.)

However, from June to August 2007, shares of ACA Financial, CIBC’s hedge for \$3.5 billion in securities, fell from \$15.00 to \$5.17 per share. (Compl. ¶ 148.) On August 4, 2007, one industry publication forecasted the financial demise of ACA Financial as well as “devastating” financial consequences for companies and banks guaranteeing securities through that firm. (Compl. ¶ 149.) Plaintiff alleges the Third Quarter 2007 Pre-Release was false and misleading for not disclosing the additional \$9.8 billion in hedged exposure as well as

information regarding ACA Financial's decline. Further, Plaintiff asserts "CIBC should have recorded a cumulative write-down of \$5.65 billion . . . instead of the \$290 million write-down reported." (Compl. ¶¶ 160-61.)

On August 30, 2007, CIBC announced its third quarter 2007 financial results, which were later incorporated into the company's Form 6-K (the "Third Quarter 2007 Release"). (Compl. ¶ 165.) The Third Quarter 2007 Release contained the same information as the pre-release regarding CIBC's exposure to the U.S. real estate market. (Compl. ¶¶ 166-67.) However, it also referenced off-balance sheet arrangements described in the 2006 Accountability Report. (Compl. ¶ 168.) During an earnings conference call that day (the "August 30 Conference Call"), Kilgour, Woods, and Shaw all made reference to the Third Quarter 2007 Release, and Woods represented that the firm was undertaking a "rigorous" review of the firm's mortgage-backed portfolio. (Compl. ¶ 173.) Later that day, Woods appeared on the Business News Network and characterized CIBC's portfolio as follows: "When the residential real estate market in the U.S. started to decline in June—July, we upped our efforts at looking at all of the CDO books. We have very low exposure right now." (Compl. ¶ 175.)

d. November 2007 Conference Call and Press Release

In a November 5, 2007 earnings conference call (the "November 5 Conference Call"), CFO Woods responded to an analyst's question about the quality of its RMBS and CDO hedges as follows: "We have provided a fair bit of detail on the unhedged positions, the hedges we have good counterparties [sic], and we are not going to go any further than that." (Compl. ¶ 180.) In autumn 2007, stories about the deteriorating financial condition of ACA Financial began to appear in the press. (Compl. ¶ 178.) At least one reporter predicted that ACA Financial

would file for bankruptcy. (Compl. ¶ 178.) Plaintiff alleges that Woods' representation regarding "good counterparties" was materially misleading in light of CIBC's extensive exposure to ACA Financial. (Compl. ¶ 181.)

Four days later, CIBC issued a press release announcing that it expected an additional write-down of \$463 million for the fourth quarter relating to exposure in the U.S. real estate market (the "November 9 Release"). (Compl. ¶ 182.) Plaintiff alleges this release was false and misleading because it understated the true impairment of the company's mortgage-backed portfolio. (Compl. ¶ 183.)

e. December 2007 Release

On December 6, 2007, CIBC announced its fourth quarter results and revealed its hedged exposure to the U.S. housing market (the "Fourth Quarter 2007 Pre-Release"). (Compl. ¶ 184.) The Fourth Quarter 2007 Pre-Release stated:

In addition, we have exposures to the U.S. subprime residential mortgage market through derivative contracts which are hedged with investment-grade counterparties. As of October 31, 2007, the notional amount of these hedged contracts was \$9.3 billion and the related on-balance sheet fair value was \$4.0 billion."

(Compl. ¶ 184.) In an analyst conference call (the "December 6 Conference Call"), McCaughey disclosed that 35 percent of the hedged exposure was with an "A-rated financial guarantor that has recently been placed on credit watch." (Compl. ¶ 187.) CIBC did not reveal that the guarantor was ACA Financial. (Compl. ¶ 188.) Analysts responded that the quality of the hedges on the debt was "much weaker than . . . anticipated." (Compl. ¶ 192.) CIBC shares fell 8.4 percent over the next two trading days. (Compl. ¶ 193.)

f. ACA Financial's Bankruptcy and CIBC's Write-Downs

On December 13, 2007, the NYSE announced that it would suspend trading of ACA Financial common stock before the market opened on December 18, 2007. (Compl. ¶ 198.) Because the market was freighted with speculation that ACA Financial was the unnamed insurer, Plaintiff alleges the NYSE announcement caused CIBC's shares to fall another 3.9 percent on December 14. (Compl. ¶¶ 198-99.) On December 17, an analyst downgraded CIBC from "stable" to "negative," precipitating a further 2.5 percent drop in share price. (Compl. ¶¶ 200-01.) On December 19, ACA Financial announced it was bankrupt. (Compl. ¶ 202.) That day, CIBC disclosed that ACA Financial was the unnamed hedge counterparty for \$3.5 billion of its U.S. subprime real estate exposure and stated its belief that "there is a reasonably high probability that [CIBC] will incur a large charge in its financial results for the First Quarter ending January 31, 2008" (the "December 19 Release"). (Compl. ¶ 204.) CIBC's shares fell 2.5 percent following the December 19 Release. (Compl. ¶ 207.)

From January 2008 through the end of the Class Period on May 29, 2008, CIBC announced three separate write-downs related to the U.S. subprime mortgage market. (Compl. ¶¶ 210-226.) First, on January 14, 2008, the company issued a release detailing its write-down of \$462 million of its unhedged mortgage-backed portfolio as well as a "fair value adjustment" of \$2 billion to its hedged portfolio (the "January 14 Release"). (Compl. ¶ 210.) The January 14 Release further stated that "no additional material fair value adjustments are currently contemplated." (Compl. ¶ 211.) Plaintiff alleges the January 14 Release continued to mislead investors by "materially understat[ing] the impairment of CIBC's structured securities portfolio." (Compl. ¶ 212.) On February 28, 2008, CIBC announced its first quarter 2008 financial results,

describing write-downs totaling \$3.379 billion attributable to its subprime mortgage investments (the “First Quarter 2008 Release”). (Compl. ¶¶ 216-17, 220.) On May 29, 2008, the last day of the Class Period, CIBC reported its second quarter 2008 financial results and disclosed an additional \$2.48 billion write-down (the “Second Quarter 2008 Release”). (Compl. ¶ 225.) CIBC shares closed at \$70.20, an approximate 20 percent decline from the start of the Class Period. (Compl. ¶¶ 214, 225-26.)

g. Value at Risk Misrepresentation

Plaintiff also alleges that CIBC misrepresented its measurement and management of risk using a key metric known as the “Value-at-Risk” (“VaR”) indicator.¹ (Compl. ¶¶ 117-19.) The Complaint contrasts the “miniscule size” of CIBC’s VaR metric with figures from other financial institutions having significant RMBS exposure. Plaintiff alleges this disparity indicates CIBC’s intent to mislead investors. (Compl. ¶ 121.) For example, CIBC’s mortgage-backed portfolio was one-third as large as those of comparable financial institutions. Therefore, Plaintiff alleges, its VaR should have approximated one-third of other banks’ VaRs. (Compl. ¶ 121.) Instead, CIBC’s VaR figures were between 1/50 and 1/100 the magnitude of other firms. (Compl. ¶ 121.) The alleged misrepresentation occurred, in part, because CIBC based its VaR projections on overly optimistic bond default rates leading CIBC to understate its risk. (Compl. ¶ 122.)

¹ “Value at risk” describes a general class of probabilistic models that measure the risk of loss in market risk sensitive instruments. These models measure the potential loss that could occur in normal markets, over a defined period, within a certain confidence level. VaR can measure the uncorrelated risks of single transactions or the correlated risks of several different exposures in a portfolio. See U.S. Sec. & Exchange Comm’n, “Market Risk Disclosure FAQ,” <http://www.sec.gov/divisions/corpfin/guidance/derivfaq.htm> (last visited Mar. 16, 2010).

h. Defendants' Alleged State of Mind

Plaintiff premises its allegations on Defendants' knowledge or reckless disregard of internal CIBC documents and records controverting their public statements. (Compl. ¶ 227.) Further, Plaintiff alleges that Shaw, as head of CIBC World Markets, knew or should have known that CIBC's statements were false because "[s]ecurities and other instruments tied to subprime were core products, and a large revenue generators [sic], for CIBC World Markets." (Compl. ¶¶ 228-29.) According to Canadian newspaper reports, "from no later than mid-June 2007, McCaughey became an expert on the subject of CIBC's activities related to structured finance instruments and CIBC's exposure to the subprime market," and thus knew or should have known of the deteriorating market situation. (Compl. ¶ 230.) Plaintiff also alleges that Defendants' discussion of CIBC's subprime exposure, risk levels, and counterparty protection during the Class Period suggests they knew or should have known the company's statements on those topics were false and misleading. (Compl. ¶ 231.) Plaintiff maintains the Statements of Financial Accounting Standards ("SFAS") Nos. 94 and 115 and Generally Accepted Accounting Principles (the "GAAP") required CIBC to write-down the value of the mortgage-backed securities earlier than it did. (Compl. ¶¶ 127, 233.)

DISCUSSION

I. Legal Standard

In reviewing a motion to dismiss, this Court accepts all material facts alleged in the complaint as true and construes all reasonable inferences in the plaintiff's favor. ECA Local 134 IBEW Joint Pension Trust Fund of Chicago v. JP Morgan Chase Co., 553 F.3d 187, 196 (2d Cir. 2009); Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital, Inc., 531 F.3d 190, 194 (2d Cir. 2008). Nonetheless, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citation omitted). To survive a motion to dismiss, the Court must find that the claim is more than mere suspicion, but rather rests on "factual allegations sufficient to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). "Determining whether a complaint states a plausible claim for relief will . . . be a context specific task that requires the reviewing court to draw on its judicial experience and common sense." South Cherry St. LLC v. Hennessee Group LLC, 573 F.3d 98, 110 (2d Cir. 2009) (quoting Iqbal, 129 S. Ct. at 1953) (internal quotations omitted). In assessing whether the standard is met, a court may consider "any written instrument attached to the complaint, statements or documents incorporated into the complaint by reference, legally required public disclosure documents filed with the SEC, and documents possessed by or known to the plaintiff

and upon which it relied in bringing the suit.” ATSI Commc’ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007) (citation omitted); see also Allen v. WestPoint-Pepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991).²

II. Section 10(b) and Rule 10b-5 Claim

To state a claim for misrepresentation under Section 10(b) and Rule 10b-5, a plaintiff must allege that each defendant “(1) made misstatements or omissions of material fact, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) upon which the plaintiff relied, and (5) that the plaintiff’s reliance was the proximate cause of its injury.” ATSI Commc’ns, 493 F.3d at 105 (citing Lentell v. Merrill Lynch & Co., 396 F.3d 161, 172 (2d Cir. 2005)); see also Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 318, 321 (2007). A securities fraud complaint must further comply with the heightened pleading standard of Fed. R. Civ. P. 9(b), which requires that “the circumstances constituting fraud . . . shall be stated with particularity.” See Novak v. Kasaks, 216 F.3d 300, 306 (2d Cir. 2000). Thus, “[a] plaintiff

² Plaintiff moves to strike twenty-one exhibits, internet sources, and news articles referenced in Defendants’ motion to dismiss which were not referenced in the Complaint. On a motion to dismiss, a court is generally confined to considering the complaint, documents incorporated in the complaint, and matters of which the court may take judicial notice. See Roth v. Jennings, 489 F.3d 499, 509 (2d Cir. 2007). The Court has reviewed the Defendants’ supplemental documents and declines to consider them except to the limited extent that they inform the competing inference analysis required by Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 323-24 (2007) (“The strength of an inference cannot be decided in a vacuum. . . . To determine whether the plaintiff has alleged facts that give rise to the requisite ‘strong inference’ of scienter, a court must consider plausible nonculpable explanations for the defendant’s conduct.”); see also In re Merrill Lynch & Co. Research Reports Sec. Litig., 289 F. Supp. 2d 416, 421 n.6 (S.D.N.Y. 2003) (Pollack, J.) (“The Court may take judicial notice of the existence of the internet bubble and its subsequent crash.” (citations omitted)).

cannot base securities fraud claims on speculation and conclusory allegations.” Kalnit v. Eicher, 264 F.3d 131, 142 (2d Cir. 2001).

A well-pled scienter allegation “state[s] with particularity facts giving rise to a strong inference” that the defendants had “a mental state embracing [the] intent to deceive, manipulate, or defraud.” Tellabs, 551 U.S. at 319 (quoting Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976)); see also South Cherry, 573 F.3d at 108 (adopting the Court’s language in Tellabs); Teamsters, 531 F.3d at 194. In addition, “the scienter element can be satisfied by a strong showing of reckless disregard for the truth.” South Cherry, 573 F.3d at 109 (citations omitted). A reckless disregard for the truth means “conscious recklessness—i.e., a state of mind approximating actual intent, and not merely a heightened form of negligence.” South Cherry, 573 F.3d at 109 (citing Novak, 216 F.3d at 312) (emphasis in original). Like any allegation of recklessness in tort, the plaintiff need only identify conduct that is “highly unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.” South Cherry, 573 F.3d at 109 (citing In re Carter-Wallace, Inc. Sec. Litig., 220 F.3d 36, 39 (2d Cir. 2000)) (quotation marks omitted).

There are four kinds of deceitful behavior that, if well-pled, support a “strong inference” of scienter: where the defendants: (1) benefited in a concrete and personal way from the purported fraud; (2) engaged in deliberately illegal behavior; (3) knew facts or had access to information suggesting that their public statements were not accurate; or (4) failed to check information they had a duty to monitor. See Novak, 216 F.3d at 311. However, “it is not sufficient to allege goals that are ‘possessed by virtually all corporate insiders,’ such as the desire

to maintain a high credit rating for the corporation or otherwise sustain the appearance of corporate profitability or the success of an investment, or the desire to maintain a high stock price in order to increase executive compensation.” South Cherry, 573 F.3d at 109 (citing Novak, 216 F.3d at 308); see also San Leandro Emergency Med. Group Profit Sharing Plan v. Phillip Morris Cos., 75 F.3d 801, 814 (2d Cir. 1996) (“if scienter could be pleaded on that basis alone, virtually every company . . . that experiences a downturn in stock price could be forced to defend securities fraud actions”). Likewise, even an “egregious failure to gather information will not establish . . . liability as long as the defendants did not deliberately shut their eyes to the facts.” Hart v. Internet Wire, Inc., 145 F. Supp. 2d 360, 368-69 (S.D.N.Y. 2001) (Pollack, J.) (internal quotation marks and citations omitted).

Moreover, the determination of an inference of scienter must not be conducted “in a vacuum.” Tellabs, 551 U.S. at 324. A court “must consider plausible nonculpable explanations for the defendant’s conduct.” Tellabs, 551 U.S. at 324; ATSI Comm’cns, 493 F.3d at 99. In comparing competing explanations two adversaries offer for an event, the “complaint will survive . . . only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged.” Tellabs, 551 U.S. at 324 (distinguishing the balancing of inferences in a securities fraud claim with a motion for summary judgment under Rule 56) (emphasis added); South Cherry, 573 F.3d at 111 (applying the “competing inference” principles); Teamsters Local 445, 531 F.3d at 194; ATSI Comm’cns, 493 F.3d at 99.

a. Defendants' Public Statements

The Complaint makes specific allegations of misrepresentation with respect to at least fourteen statements or press releases made by Defendants during the class period: (1) the Second Quarter 2007 Release, (2) the May 31 Conference Call, (3) the July 10 Release, (4) the Third Quarter 2007 Pre-Release, (5) the Third Quarter 2007 Release, (6) the August 30 Conference Call, (7) the Business News Network Statements, (8) the November 5 Conference Call, (9) the November 9 Release, (10) the Fourth Quarter 2007 Pre-Release, (11) the December 6 Conference Call, (12) the January 14 Release, (13) the First Quarter 2008 Release, and (14) the Second Quarter 2008 Release. Plaintiff also alleges misrepresentation in the VaR measurement over the entirety of the Class Period.

Reviewing the entirety of the Complaint, there is no allegation that any Defendant benefited in “a concrete and personal” way from the purported fraud. See Novak, 216 F.3d at 311. Rather, the Complaint incorporates news releases which show that CIBC purchased approximately \$300 million of its own stock during the Class Period. Moreover, three of the four Individual Defendants also increased their holdings of CIBC stock during the Class Period. See In re Bristol-Myers Squibb Sec. Litig., 312 F. Supp. 2d 549, 561 (S.D.N.Y. 2004) (defendants’ increase in company holdings during class period was “wholly inconsistent with fraudulent intent”). Indeed, the Defendants did not sell their stock just prior to a price drop—a fact suggesting the absence of any nefarious motives. See In re Oxford Health Plans Inc. Sec. Litig., 187 F.R.D. 133, 139 (S.D.N.Y. 1999) (“Trades made a short time before a negative public announcement are suspiciously timed.”); see also Acito v. IMCERA Group, Inc., 47 F.3d 47, 53-54 (2d Cir. 1995). It is nonsensical to impute dishonest motives to the Individual Defendants

when each of them suffered significant losses in their stock holdings and executive compensation. See Kalnit, 264 F.3d at 140-41. Because Plaintiff has not alleged that the Defendants had any “motive and opportunity to commit fraud,” Shields v. Citytrust Bancorp, Inc., 25 F.3d 1124, 1128 (2d Cir. 1994), and the Complaint makes no allegations of deliberately illegal behavior by the Defendants, this Court turns to the third and fourth Novak categories regarding recklessness.

An inference of scienter may arise where the defendants “knew facts or had access to information suggesting that their public statements were not accurate . . . or . . . failed to check information they had a duty to monitor.” Novak, 216 F.3d at 311. To make this showing, a complaint “must specifically identify the reports or statements” that are contradictory to the statements made. Novak, 216 F.3d at 309 (citing San Leandro, 75 F.3d at 812 (finding an unsupported allegation about the existence of a contrary sales report “insufficient to survive a motion to dismiss”)) (emphasis added); see also Teamsters Local 445, 531 F.3d at 196 (requiring a “high degree” of specificity).

Notably, the Complaint makes no reference to internal CIBC documents or confidential sources discrediting Defendants’ assertions that they were only adapting to a “rapidly changing economic landscape” during a “once-in-a-century credit tsunami.” Further, this Court notes that this action is not the first dispute to arise from the subprime mortgage crisis. See In re 2007 Novastar Fin. Inc., Sec. Litig., 579 F.3d 878 (8th Cir. 2009); Kuriakose v. Fed. Home Loan Mortgage Co., --- F. Supp. 2d ----, 2009 WL 4609591 (S.D.N.Y. Dec. 7, 2009) (alleged misrepresentation to investors about the soundness of the company’s mortgage portfolio during subprime mortgage crisis); Landmen Partners Inc. v. Blackstone Group, L.P., 659 F.

Supp. 2d 532 (S.D.N.Y. 2009) (failure to disclose adverse information about significant exposure to subprime mortgage market). Plaintiffs should, but do not, provide specific instances in which Defendants received information that was contrary to their public declarations. See In re Oxford Health Plans, 187 F.R.D. at 139 (finding (1) a verbal report from one defendant to another, (2) evidence of an emergency meeting to address the problem, (3) a report from an outside vendor regarding the problem, and (4) access to reports that the company's internal controls and accounting were not followed as factual grounds on which defendants' scienter could be inferred).

Plaintiff alleges perfunctorily that Defendants received information contradicting their public statements because they held management roles and monitored CIBC financial reports. However, that "broad reference to raw data" is not sufficient. See Steinberg v. Ericsson LM Telephone Co., No. 07 Civ. 9615 (RPP), 2008 WL 5170640, at *13-14 (S.D.N.Y. Dec. 10, 2008) ("[T]he Complaint identifies none of this adverse information other than stating, generically, that it was contained in various 'internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof, and via reports' and 'internal non-public reports' provided to Defendants."). Plaintiff has not "specifically identified any reports or statements" or any dates or time frame in which Defendants were put on notice of contradictory information. Teamsters Local 445, 531 F.3d at 196 (citation omitted); In re PXRE Group Ltd. Sec. Litig., 600 F. Supp. 2d 510, 539 (S.D.N.Y. 2009). Likewise, Plaintiff's contention that Shaw, as Chairman and CEO of CIBC World Markets, received contradictory information because he "was ultimately in charge of all CIBC's activities related to subprime exposure" is too general an

allegation from which to conclude Shaw had actionable data alerting him to the falsity of his statements. Courts in this Circuit have long held that accusations founded on nothing more than a defendant's corporate position are entitled to no weight. See In re Sotheby's Holdings, Inc., No. 00 Civ. 1041 (DLC), 2000 WL 1234601, at *7 (S.D.N.Y. Aug. 31, 2000) ("It is well established that boilerplate allegations that defendants knew or should have known of fraudulent conduct based solely on their board membership or executive positions are insufficient to plead scienter." (citations omitted)).

Even assuming these events put Defendants on notice of the subprime credit crisis as early as May 2007, knowledge of a general economic trend does not equate to harboring a mental state to deceive, manipulate, or defraud. See In re PXRE Group, 600 F. Supp. 2d at 540 ("it does not follow that the resultant generalized awareness of . . . 'concerns' made it reckless for the Individual Defendants to rely on the prepared loss estimate reports").

Despite opportunistic rummaging through press releases and internal company documents, Plaintiff buttresses its allegation only with citations to newspaper and magazine articles and the website The Motley Fool, <http://www.fool.com>. Although a plaintiff may use such sources in pleadings, "the news articles cited still must indicate particularized facts about a defendant's conduct in order to support [the] claims." Miller v. Lazard, Ltd., 473 F. Supp. 2d 571, 586 (S.D.N.Y. 2004). With just one exception, the media reports on which Plaintiff relies provide only generalized forecasting and speculation about a looming subprime crisis.

The June 15, 2007 Grant's Interest Rate Observer article stands alone in reporting particularized facts about the Tricadia investment and CIBC's exposure to mezzanine CDOs. Yet CIBC responded to that article in its July 10 Release, stating that its unhedged investments

were less than the reported \$2.6 billion. Moreover, the Complaint acknowledges that CIBC's actual unhedged exposure was only \$1.7 billion. See Compl. ¶ 115. Thus, Plaintiff offers no specific facts on which to infer an intent to deceive through the July 10 Release. Nor does Plaintiff identify any obligation requiring Defendants to make a complete disclosure of all CIBC's mortgage-backed holdings.

More broadly, Defendants were not obligated to respond to every potentially disparaging news story or to rebut the musings of the financial press. See In re Omnicom Group, Inc. Sec. Litig., --- F.3d ----, 2010 WL 774311, at *11 (2d Cir. Mar. 9, 2010) ("Firms are not required by the securities laws to speculate about distant, ambiguous, and perhaps idiosyncratic reactions by the press or even by directors."); Hershfang v. Citicorp., 767 F. Supp. 1251, 1259 (S.D.N.Y. 1991) ("Plaintiffs have stitched together a patchwork of newspaper clippings and proclaimed the result a tale of securities fraud. . . . Read as a whole, the complaint creates the strong impression that when [the defendant] announced a cut in dividends, plaintiff's counsel simply stepped to the nearest computer console, conducted a global Nexis search, [and] pressed the 'Print' button."). The securities laws do not require—and good business practice does not suggest—that financial institutions respond to every warble of the 24-hour news cycle.

Plaintiff also seeks to engraft a conscious intent to mislead onto the erroneous quantitative prediction—the VaR. That effort is unavailing. Even assuming the VaR metric was neither forward-looking nor accompanied by appropriate cautionary language, Plaintiff cannot show the VaR calculations were both objectively and subjectively false. See In re Salomon Smith Analyst Level 3 Litig., 373 F. Supp. 2d 248, 251 (S.D.N.Y. 2005) ("The Court rejects plaintiffs' characterization of valuation models as 'fact' rather than 'opinion.'"). Adopting

Plaintiff's calculus, CIBC's VaR metric was objectively inaccurate, but Plaintiffs do not allege that Defendants knew of the error and used it to mislead others. One cannot reasonably conclude that, because the VaR calculations were mistaken, Defendants had the subjective intent to defraud.

Under the Tellabs "comparative" inquiry, the inference Plaintiff asks this Court to draw from CIBC's statements must be considered against "cogent" and "compelling" alternative explanations for a deficiency. See 551 U.S. at 323-24. The Complaint describes an unprecedented paralysis of the credit market and a global recession. Major financial institutions like Bear Stearns, Merrill Lynch, and Lehman Brothers imploded as a consequence of the financial dislocation. Looking back, a full turn of the wheel would have been appropriate. That CIBC chose an incremental measured response, while erroneous in hindsight, is as plausible an explanation for the losses as an inference of fraud. See In re PXRE Group, 600 F. Supp. 2d at 546. CIBC, like so many other institutions, could not have been expected to anticipate the crisis with the accuracy Plaintiff enjoys in hindsight—"[t]aking the time necessary to get things right is both proper and lawful." Higginbotham v. Baxter Int'l, Inc., 495 F.3d 753, 761 (7th Cir. 2007) ("Managers cannot tell lies but are entitled to investigate for a reasonable time, until they have a full story to reveal."); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1430-31 (3d Cir. 1997) (Alito, J.).

b. Write-Downs on CIBC's Mortgage-Backed Holdings

Plaintiff also alleges that Defendants intentionally or recklessly failed to take timely write-downs on CIBC's mortgage-backed securities. The Complaint asserts that CIBC should have recorded much larger write-downs earlier than it did. Because the securities laws do

not allow fraud by hindsight claims, after-the-fact “allegations that statements in one report should have been made in earlier reports do not make out a claim of securities fraud.” Acito, 47 F.3d at 53; Denny v. Barber, 576 F.2d 465, 470 (2d Cir. 1978). “If all that is involved is a dispute about the timing of the writeoff . . . we do not have fraud; we may not even have negligence.” DiLeo v. Ernst & Young, 901 F.2d 624, 627 (7th Cir. 1990). Rather, the inquiry remains framed by the recklessness standard—that is, whether the failure to take a write-down amounted to “highly unreasonable [conduct] which represents an extreme departure from the standards of ordinary care.” South Cherry, 573 F.3d at 109 (citing In re Carter-Wallace, Inc. Sec. Litig., 220 F.3d 36, 39 (2d Cir. 2000)) (quotation marks omitted); see also Kriendler v. Chem. Waste Mgmt., Inc., 877 F. Supp. 1140, 1153 (N.D. Ill. 1995) (“[T]he standard is whether the need to write-down . . . was ‘so apparent’ to [the defendant] before the announcement, that a failure to take an earlier write-down amounts to fraud.” (quotation marks omitted)).

As with Defendants’ alleged misstatements, the Complaint is bereft of factual allegations from which a reader could infer Defendants intentionally or recklessly failed to take write-downs on U.S. mortgage-backed securities. Because the “size of an alleged fraud alone does not create an inference of scienter,” Plaintiff’s repeated allegation concerning the magnitude of the write-downs is insufficient to plead scienter. In re PXRE Group, 600 F. Supp. 2d at 545 (quoting In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 21488087, at *7 (S.D.N.Y. June 25, 2003)).

Additionally, CIBC’s conduct during the Class Period was not consistent with fraud. See, e.g., Rothman v. Gregor, 220 F.3d 81, 92 (2d Cir. 2000) (where company “suddenly realized” need to take write-downs after becoming source of public scrutiny). Indeed, CIBC

adopted an incremental strategy by taking six write-downs during the Class Period, including pre-announced write-downs expected in two quarterly releases—a fact that contradicts an inference of scienter. See Rombach v. Chang, 355 F.3d 164, 176-77 (2d Cir. 2004) (“Further, the allegation that defendants behaved recklessly is weakened by their disclosure of certain financial problems prior to the deadline to file its financial statements.”); In re Nokia Corp. Sec. Litig., No. 96 Civ. 4752 (DC), 1998 WL 150963, at *13 (S.D.N.Y. Apr. 1, 1998) (“If anything, the fact that [the defendant] voluntarily chose to issue a press release earlier than its standard year-end reporting in February undercuts the allegation that defendants were acting recklessly.”). If CIBC had a greater obligation to be forthcoming, such a duty is not apparent from the Complaint. See Kalnit, 264 F.3d at 143-44 (requiring facts to be pled in complaint “indicating a clear duty to disclose”). Moreover, Plaintiff has not provided the statements of any corporate insider or confidential informant to buttress its allegations on the fraudulent timing of write-downs. See S.E.C. v. McNulty, 137 F.3d 732, 741 (2d Cir. 1998) (a finding of “reckless disregard for the truth is well supported by . . . [Defendant’s own affidavit] . . . that he included false statements in S.E.C. filings”); In re NovaGold Res., Inc. Sec. Litig., 629 F. Supp. 2d 272, 298-300 (S.D.N.Y. 2009) (crediting testimony of confidential informants without requiring specificity as to which documents demonstrated the falsity of defendant’s statements).

Finally, Plaintiff’s argument that Defendants failed to adhere to two provisions of the GAAP does not advance its allegations. Generally, vague claims of GAAP violations are insufficient to support an inference of “intent to defraud.” See Stevelman v. Alias Research, Inc., 174 F.3d 79, 84 (2d Cir. 1999) (citing Chill v. Gen. Elec. Co., 101 F.3d 263, 270 (2d Cir. 1996)). Because the “GAAP is not [a] lucid or encyclopedic set of pre-existing rules . . . [and is]

[f]ar from a single-source accounting rulebook,” reasonable disagreements and deference to business judgment is permissible. Shalala v. Guernsey Mem’l Hosp., 514 U.S. 87, 101 (1995). Given the flexibility in interpreting GAAP and financial reporting requirements, deference is afforded executives absent “evidence of ‘corresponding fraudulent intent.’” Novak, 216 F.3d at 309 (citing Chill, 101 F.3d at 270); see also ECA Local 134, 553 F.3d at 200 (“Allegations of GAAP violations or accounting irregularities, standing alone, are insufficient to state a securities fraud claim.”) (internal quotation marks omitted); In re Bristol-Myers, 312 F.Supp.2d at 565.

Such deference is warranted here. The allegations regarding CIBC’s write-downs amount to fundamental disagreements with Defendants’ business judgments in a tumultuous economic downturn—claims that are not actionable under Section 10(b) and Rule 10b-5. See Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479 (1977); DiLeo, 901 F.2d at 627 (“Securities laws do not guarantee sound business practices and do not protect investors against reverses.”).

c. The ACA Financial Disclosure

Plaintiff’s remaining substantive allegations concern Defendants’ disclosure (or non-disclosure) that ACA Financial hedged a substantial portion of CIBC’s mortgage-backed portfolio. In view of the plunge in ACA Financial’s stock price over the summer of 2007, Plaintiff alleges that CIBC should have disclosed that its hedge was a “single A” rated financial guarantor beginning with the July 10 Release.

The allegations regarding ACA Financial are particularly tenuous because they rest on the notion that Defendants failed to disclose internal financial information of a company other than CIBC. See Defer LP v. Raymond James Financial, Inc., 654 F. Supp. 2d 204, 218-19 (S.D.N.Y. 2009) (declining, for purposes of imputing scienter, to aggregate the knowledge of

two separate corporate entities on the basis that they share the same parent). Yet, there is no allegation in the Complaint that Defendants knew of, had access to, or could collect information that ACA Financial was on the verge of bankruptcy. “Even an egregious failure to gather information will not establish 10b-5 liability so long as the defendants did not deliberately shut their eyes to the facts.” In re Bayou Hedge Fund Litig., 534 F. Supp. 2d 405, 415 (S.D.N.Y. 2007) (citation omitted), aff’d sub nom. South Cherry, 573 F.3d at 98.

In the three months prior to ACA Financial’s bankruptcy, Defendants’ only representation even tangentially related to ACA Financial was a statement by McCaughey on the November 5 Conference Call that “the hedges we have [are] good counterparties.” This Court declines to extrapolate a year-long fraudulent scheme from this isolated and imprecise remark on a conference call, especially in light of CIBC’s subsequent disclosures regarding ACA Financial. See Goplen v. 51job, Inc., 453 F. Supp. 2d 759, 773 (S.D.N.Y. 2006) (noting scienter inference is “most compelling for problems of the ‘type and magnitude [that] likely develop over time, and do not become apparent to management all at once.’” (quoting In re Grand Casinos, Inc. Sec. Litig., 988 F.Supp. 1273, 1283 (D. Minn. 1997))).

Accordingly, Plaintiffs have failed to plead scienter and Defendants’ motion to dismiss the § 10(b) and Rule 10b-5 claims is granted.

III. Section 20(a) Claim

To allege a prima facie case of liability under § 20(a), a plaintiff must first plead a primary violation by a control person. In re PXRE Group, 600 F. Supp. 2d at 548 (citing Boguslavsky v. Kaplan, 159 F.3d 715, 720 (2d Cir. 1998)). Because this Court has determined

that no primary violation occurred under Section 10(b) and Rule 10b-5, Defendants' motion to dismiss the § 20(a) claim is granted.

IV. Leave to Amend

In the final footnote of Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, Plaintiff requests leave to amend its Consolidated Class Action Complaint if it is deficient in any respect. Under Fed. R. Civ. P. 15(a), a "court should freely give leave when justice so requires." "However, in determining whether leave to amend should be granted, the district court has discretion to consider, inter alia, the apparent 'futility of amendment.'" Grace v. Rosenstock, 228 F.3d 40, 53 (2d Cir. 2000) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). Plaintiff has already been given one opportunity to submit a Consolidated Class Action Complaint detailing its allegations of fraud against CIBC. Any request for leave to file an amended consolidated class action complaint should conform to this Court's Individual Practices.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is granted and the Consolidated Class Action Complaint is dismissed in its entirety. The Clerk of Court is directed to terminate all motions pending and mark this case as closed.

Dated: March 17, 2010
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

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Lawrence Jay Zweifach, Esq.
Gibson, Dunn & Crutcher, LLP
200 Park Avenue
New York, NY 10166
Counsel for Individual Defendants

Exhibit "E"

COURT FILE NO.: 08-CV-359335CP

DATE: 20210603

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: HOWARD GREEN and ANNE BELL, Plaintiffs

AND:

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

Proceedings under the *Class Proceedings Act, 1992*

BEFORE: S.F. Dunphy J.

COUNSEL: *Joel P. Rochon, Peter Jervis, Ron Podolny, Douglas Worndl and Golnaz Nayerahmadi*, for the Plaintiffs

Andrew Gray, Sheila Block, Gillian Dingle and Hannah Allen, for CIBC

David Conklin and Dan Block, for the individual defendants

HEARD at Toronto: May 27, 2021

REASONS FOR DECISION

[1] The defendant Canadian Imperial Bank of Commerce brought two motions before me as trial judge in this matter seeking (i) to strike out the expert report(s) of Mr. Frank C. Torchio delivered by the plaintiffs during trial preparation; (ii) to strike out a "Misrepresentations Schedule" submitted by the plaintiffs in the course of responding to written interrogatories.

[2] After the conclusion of the hearing of this matter, I concluded that it was not appropriate at this time to make any order in respect of the second motion but indicated that I would take the first of the two motions under reserve. After further reflection, I have concluded that this is not the time to rule on the first motion either, but I shall provide some directions regarding that motion as it impacts trial preparation.

[3] These two motions arise in the context of a class action proceeding scheduled to be tried before me in September. The claim in question is pursuant to Part XXIII.1 of the *Securities Act*, R.S.O. 1990, c. S.5 and alleges that CIBC made certain secondary market misrepresentations in relation to its exposure to the sub-prime mortgage marketplace in

the May-December 2007 time frame. In addition to the asserted statutory cause of action, the claim also includes a common law misrepresentation claim.

[4] The statement of claim was issued on July 22, 2008. Certification proceedings under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 followed. The certification motion was heard by Strathy J. (as he then was) over five days between February 9 and April 5, 2012. By that time, the statement of claim had been amended such that the claim before Strathy J. was the “Second Fresh as Amended Statement of Claim” dated January 11, 2010.

[5] After an in-depth hearing before Strathy J. and a subsequent appeal to the Court of Appeal that was decided on February 3, 2014, the Court of Appeal upheld the certification of the claim and the common issues made by Strathy J. with some minor revisions not material to these motions.

[6] The defendants conducted their examination for discovery of the representative plaintiffs by way of written interrogatories. Among the questions asked in those interrogatories was a request for particulars of each of the allegations of misrepresentation found in the Second Fresh as Amended Statement of Claim.

[7] The plaintiffs complied with those requests and produced a document containing a detailed “Misrepresentation Schedule”. The defendant bank takes issue with the Misrepresentation Schedule – or more accurately with parts of it – and brought the second of the two motions referenced above under Rule 25.11 or Rule 21.01(1) of the *Rules of Civil Procedure* to strike out the offending portions of the Misrepresentation Schedule or seeking a ruling that claims in respect of those portions of the schedule may not be pursued at trial.

[8] I shall expand briefly upon the reasons given orally at the hearing for deferring a decision on this issue until the trial. In short, I found it both unnecessary and premature to issue a detailed ruling at this time.

[9] It is unnecessary in that both parties agree that this claim will be bound at trial by the pleadings as they stand. There is no motion pending to amend the claim nor do the plaintiffs evince any intention to bring one. The plaintiffs agree that they are not permitted to pursue the listed claims of misrepresentation merely by reason of having listed them as part of its response to discovery questions. The plaintiffs are not seeking to amend the claim by stealth through the responses to discovery questions. If any issue is found to lie outside the bounds of the pleading and the certified common issues, then out of bounds it lies.

[10] It is premature because the determination of whether the particulars of the misrepresentations provided in the Misrepresentation Schedule fall within the pleaded claim or the certified issues cannot be decided in the abstract. Evidence may be relevant to more than one issue.

[11] A practical approach to this problem is the one that commends itself to me. By way of example, it is clear that the trial will hear a great deal of evidence regarding a particular analyst call. Whether this or that sentence uttered during the call can be characterized as a stand-alone material misrepresentation or whether it might instead be but one instance which, when combined with others, adds up to a material misrepresentation is something that it would be impossible for me to determine in advance with any degree of confidence. The issues are those that are pleaded. How the evidence that is led is applied to those issues will depend on the evidence as it comes in.

[12] The parties know the evidence and the issues. As and when the evidence strays from the four corners of relevance into other areas, our normal trial procedure provides a remedy: a timely objection. There can be no doubt that the claim the defendants must respond to will be determined in the light of the *actual* claim pleaded and considered, to the extent necessary, in the light of the list of issues for which certification was granted.

[13] The issues with respect to the challenged items in the Misrepresentation Schedule have been raised and quite thoroughly briefed. Should they become relevant with respect to any particular aspect of evidence being challenged, I will know where to find the motion materials and both sides will be able to tailor their arguments to the actual evidence as it comes in then rather than to surmises today as to what that evidence might look like.

[14] I turn now to the first motion on which I reserved my decision. That motion challenges the admissibility of certain plaintiff expert reports by Mr. Torchio going to the issue of aggregate damages.

[15] Once again, I find that a pragmatic view of the question strongly suggests that further consideration of that issue be deferred until a point where it may actually be relevant.

[16] The narrow argument raised by the bank may be summarized as follows: s. 24 of the *CPA* authorizes the court in some circumstances to make an award of aggregate damages. Section 138.5(1) of the *Securities Act*, on the other hand, provides that damages “shall” be assessed in a particular fashion.

[17] The bank’s position is that the mandatory provision for damages calculations contained in a specialized statute such as the *Securities Act* precludes the application of general damages provision contained in a broad, umbrella statute such as the *CPA*. Rather than have the parties distracted by producing expert reports into an issue that cannot be relevant, the bank suggests that it would be more efficient to decide that issue now.

[18] The plaintiff’s position unsurprisingly is to the opposite effect. They say that I cannot fully grasp the means by which harmony might potentially be found to exist between the two statutes in the abstract. Better to decide such things when they require decision rather than when they don’t.

[19] My decision incorporates aspects of both positions.

[20] The bank's objections about trial efficiency can be addressed in other ways but I concur with the plaintiffs that this is not the right time to try to grapple with the aggregate damages issue and the conflict/interplay between s. 24 of the *CPA* and s. 138.5(1) of the *Securities Act*.

[21] Mr. Torchio's report has already been replied to by the bank and indeed that reply has generated further reply from Mr. Torchio. I don't know how many rounds the parties intend to go in exchanging dueling expert reports but I do know that less and less work is required for each successive round. I conclude that the experts' work on this issue at least is either done or all but done. There are few savings in efficiency to be had by excluding in advance the admissibility of a report that is already done.

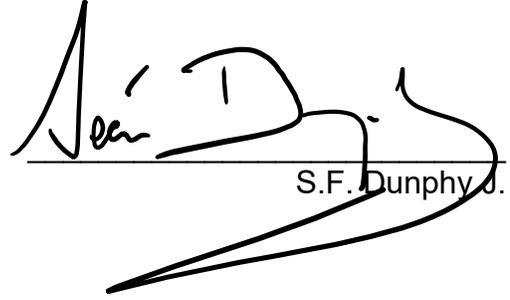
[22] I do, however, see merit to the bank's argument that there is no reason to distract the trial with hearing such speculative and potentially irrelevant evidence. I have reviewed Mr. Torchio's report and it appears that the only issue it addresses is that of s. 24 of the *CPA*.

[23] The most efficient way of proceeding – and the one I am directing – is to reserve the aggregate damages issue to be considered if necessary *after* a decision on liability is rendered. There is no need for evidence relating to an eventual application under s. 24 of the *CPA* to be called before any decision on liability is given. If (i) a finding of liability is made; and (ii) an application is made in consequence of such decision under s. 24 of the *CPA*, then and only then a hearing may be held to consider that issue and to hear additional evidence, including *viva voce* evidence, relating to that narrow issue. If there are further expert reports to be exchanged on this subject, I invite the parties to do so now and to continue to comply with all directions of the case management or pre-trial judge in that regard.

[24] If there is another issue that Mr. Torchio's evidence relates to – and I do not mean the question of "total" impact on CIBC shares as stated in Common Issue 11 – the parties may address me on that point. However, I do not expect to find him on the list of *trial* witnesses otherwise. I do not make the same direction in relation to the defendants' expert only because I have not reviewed that/those report(s). However, evidence of such expert relating to s. 24 of the *CPA* or common issue 11 should similarly not be led.

[25] The foregoing is intended to foreclose evidence of the "impact on CIBC's share prices on a *total* ... basis" being used as a basis to bring in s. 24 *CPA* evidence. The reports that have been prepared to determine the estimated per share damages are – of course – not affected. The total impact calculation contemplated by Common Issue 11 refers to the total impact on *all* CIBC shares and not merely that subset of all shares possessed by class members at some point in time. It is the process of carving "total damages" to the CIBC shares down to "total damages to the CIBC shares held by class members" that I am directing not be gone into prior to a decision on liability. That latter exercise is of no conceivable relevance prior to a s. 24 *CPA* application.

[26] As I have effectively deferred ruling on the merits of either of the two motions at this time, I shall decline to make any order as to costs. Costs of these motions may be addressed after the trial if necessary.



S.F. Dunphy J.

Date: June 3, 2021

Exhibit "F"

SCHEDULE "A": Approved Settlement Notice (Long Form)

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

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

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

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

Important Deadline:

Claims Bar Deadline

(to file a claim for compensation):

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

Purpose of this Notice

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

Court Approval of the Settlement

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

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

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

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

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

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

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

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

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

Funding of major expenses (such as expert fees but not Class Counsel Fees) and any adverse costs awards was provided by the Class Proceedings Fund of the Law Foundation of Ontario. Pursuant to section 10 of Ontario Regulation 771/92 of the *Law Society Act*, the Class Proceedings Fund is entitled to payment of a levy from the Settlement Amount which is equal to the sum of the financial support that it provided throughout the Class Action and 10% of the Settlement Amount (less Class Counsel Fees, Settlement Administration Expenses and the amount returned to the Class Proceedings Fund for its ongoing adverse costs and disbursement funding). The Class Proceedings Fund levy is expected to be approximately \$●, and will be deducted from the Settlement Amount before there is a distribution to Class Members. It is not possible to definitively state what the Class Proceedings Fund Levy will be at this time because the final amount is dependent on variables not known at this time.

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

Class Members’ Entitlement to Compensation

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

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

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

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

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

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

Administration

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

Telephone:
Mailing Address:
Website:

Filing a Claim

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

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

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

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

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

Copies of the Settlement Documents

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

Class Counsel

Rochon Genova LLP is Class Counsel.

Inquiries may be directed to:

Rochon Genova LLP
121 Richmond Street, West
Suite #900
Toronto, ON M5H 2K1
Tel: 1-866-881-2292
Fax: 416-363-0263

Attention: Jon Sloan – e-mail: jsloan@rochongenova.com

Interpretation

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

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

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

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

Exhibit "G"

SCHEDULE B: Approved Settlement Notice (Short Form)

Did you purchase shares of Canadian Imperial Bank of Commerce ("CIBC") from May 31, 2007 to and including and February 28, 2008?

A settlement has been reached in the class action against CIBC and certain of its former officers alleging misrepresentations made in certain of CIBC's public disclosures released between May 31, 2007 and February 28, 2008.

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

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

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

Exhibit "H"

SCHEDULE D: DISTRIBUTION PROTOCOL

DISTRIBUTION PROTOCOL

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

DEFINED TERMS

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

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

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

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

OBJECTIVE

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

PROCESSING CLAIM FORMS

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

CALCULATION OF NOTIONAL ENTITLEMENT

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

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

13. The applicable Share Inflation amounts are as follows:

TABLE A

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

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

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

COMPLETION OF CLAIM FORM

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

IRREGULAR CLAIMS

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

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

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

ADDITIONAL RULES

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

FINAL DISTRIBUTION

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

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

-END-

Exhibit "I"

CIBC Securities Settlement

SAMPLE CALCULATION

Example:

Assumptions:

- the sum of all Claimants' Notional Entitlements are \$200,000,000. This represents the total notional value of approved claims received by the administrator.
- the Net Settlement Amount available for distribution is \$80,000,000. This represents the amount available for distribution to class members after deducting applicable fees from the Settlement Fund.

Hypothetical Trading and Holdings:

- 5,000 shares held at the opening of trading on the TSX on May 31, 2007;
- 2,500 shares sold on the TSX on September 21, 2007 at a price per share of \$97.48;
- 2,500 shares bought on the TSX on December 03, 2007 at a price per share of \$88.00;
- 3,000 shares sold on the TSX on February 08, 2008 at a price per share of \$67.03;

Application of the Distribution Protocol:

- 5,000 shares held at the opening of trading on the TSX on May 31, 2007:

Shares such as these, held on May 31, 2007 would have been purchased prior to the beginning of the class period and would not have been damaged by the misrepresentations.

It is important to know the number of shares held at the beginning of the class period in order to apply a First In First Out (FIFO) methodology to determine the allocation of purchases and sales during the class period. Thinking of the shares as inventory, the first shares you purchased will be the first shares sold.

- 2,500 shares sold on the TSX on September 21, 2007:

Prior to this sale, the Class Member held 5,000 shares that were acquired before the class period and none from purchases during the class period. After this sale, the Class Member holds 2,500 shares remaining from the shares held before the class period.

- 2,500 shares bought on the TSX on December 03, 2007:

After this purchase, the Class Member holds 2,500 shares that were acquired during the class period, which are eligible shares. The Class Member also holds 2,500 shares purchased prior to the class period, for total of 5,000 shares held.

- 3,000 shares sold on the TSX on February 08, 2008:

After this sale, the Class Member holds zero (0) shares remaining from the shares held prior to the class period. The Class Member also holds 2,000 shares purchased during the class period, for total of 2,000 shares held.

Applying FIFO, shares sold first come out of the inventory of shares held prior to the class period, this results first in the sale of 2,500 shares that were held at the beginning of the class period. The remaining 500 shares from this transaction come out of the next inventory of shares purchased, the December 03, 2007 transaction. Because these shares were purchased during the class period and held through at least one correction, these 500 shares are eligible shares. In this example, the remaining 2,000 shares are still held at the time the claim is submitted and are also eligible shares.

Damage per Share Formulae:

For 500 shares bought on the TSX on December 03, 2007 and sold on the TSX on February 08, 2008, paragraph 12(d) of the distribution protocol will apply. The Notional Entitlement for these shares will be the least of:

- the purchase price minus the sale price, or \$88.00 minus \$67.03, or \$20.97 per share.
- the purchase price minus the 10- Day VWAP of \$75.53, or \$88.00 minus \$75.53, or \$12.47 per share
- the artificial inflation per share on the date of purchase/acquisition, as stated in Table A, or \$7.51 per share

For 2,000 shares bought on the TSX on December 03, 2007 and still held as at the date a claim is submitted, paragraph 12(e) of the distribution protocol will apply. The Notional Entitlement for these shares will be the least of:

- the purchase price minus the 10- Day VWAP of \$75.53, or \$88.00 minus \$75.53, or \$12.47 per share
- the artificial inflation per share on the date of purchase/acquisition, as stated in Table A, or \$7.51 per share

The Claimant's Notional Entitlement is equal to the sum of the number of shares damaged multiplied by the notional entitlement attributed to those shares, as determined above:

$$\text{Notional Entitlement} = (500 \text{ Shares} \times \$7.51) + (2,000 \text{ Shares} \times \$7.51)$$

$$\text{Notional Entitlement} = \$18,775.00$$

The Claimant's Notional Entitlement pro rata share of the sum of notional entitlements of all claims is calculated as follows:

$$\text{Pro Rata Percentage} = \frac{\text{Claimant's Notional Entitlement}}{\text{Sum of Notional Entitlements of All Claims}}$$

$$\text{Pro Rata Percentage} = \frac{\$18,775.00}{\$200,000,000}$$

$$\text{Pro Rata Percentage} = 0.009388\%$$

The Claimant's pro rata entitlement will be the Pro Rata Percentage of the Net Settlement Amount:

$$\text{Claimant's Pro Rata entitlement} = \text{Pro Rata Percentage} \times \text{Net Settlement Amount}$$

$$\text{Claimant's Pro Rata entitlement} = 0.009388\% \times \$80,000,000$$

$$\text{Claimant's Pro Rata entitlement} = \$7,510.00$$

In the example the Claimant's actual compensation is \$7,510.