

**CIBC CLASS ACTION SETTLEMENT AGREEMENT
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MEMORANDUM OF AGREEMENT OF SETTLEMENT AND TRANSACTION ENTERED INTO AT MONTREAL, QUEBEC, THIS 10th DAY OF DECEMBER, 2007, BY AND BETWEEN MARK RABINOVITCH, ON HIS OWN BEHALF AND IN HIS QUALITY AS PLAINTIFF AND CLASS DESIGNATED REPRESENTATIVE FOR THE CLASS ACTION AUTHORIZED IN SUPERIOR COURT, DISTRICT OF MONTREAL, RECORD NUMBER 500-06-000215-034 (HEREIN REFERRED TO AS "PLAINTIFF"), AND CIBC ASSET MANAGEMENT INC. (HEREIN REFERRED TO AS "DEFENDANT").

WHEREAS:

- A. By judgment dated February 23rd, 2004, as rectified by judgment dated March 11th, 2004 in record number 500-06-000215-034 of the Superior Court, District of Montreal, (herein referred to as the "Court"), Plaintiff was authorized to institute a class action against Defendant, and Plaintiff was ascribed the status of representative of the members of the class therein described.
- B. By Motion Introductive of Class Action dated May 6th, 2004 as amended and re-amended thereafter, Plaintiff instituted a class action against Defendant in the above mentioned court record claiming collective damages against Defendant as a result of Defendant exposing the fund formerly known as the Atlas American RSP Index Fund and the Merrill Lynch U.S. RSP Index Fund, then known as the Renaissance U.S. RSP Index Fund and thereafter known as the Renaissance U.S. Index Fund (herein referred to as the "Fund") to the risk of exchange rate fluctuations in respect of the US/Canadian dollar from April 4, 2002 to the earlier of the date when Class Members sold their units in the Fund and November 21st, 2003 (the "Class Period") (the said proceedings being herein referred to as the "Class Action" and the claims made or which could have been made therein in respect of the facts alleged in the Class Action being herein referred to as the "Settled Claims").
- C. The Class Action was instituted on behalf of all persons who purchased, or were holders of units in the Fund prior to April 4th, 2002 and who remained unit holders of the Fund for any period of time after April 4th, 2002 (herein referred to as the "Class" or "Class Members").
- D. Based on an analysis of the facts and the law and taking into account the burden and expenses of litigation, as well as the fair, cost effective, and assured method of resolving the Settled Claims, the Plaintiff and counsel for the Plaintiff and the Class (herein referred to as "Class Counsel") have concluded that this Settlement and Transaction Agreement provides substantial benefits to the Class Members and is fair, reasonable, adequate and in the best interest of the Class Members.
- E. Defendant and Counsel for the Defendant have as well determined that this Settlement and Transaction Agreement is desirable to resolve finally and completely the pending and potential claims in respect of the Class Action.

- F. Plaintiff on his own behalf and in his capacity of designated representative on behalf of the Class has, subject to the approval of the Court, agreed to accept in full and final payment of the Settled Claims and all costs, fees and disbursements due to Class Counsel, the sum of Twenty Million Dollars (\$20,000,000) CDN (herein referred to as the "Settlement Proceeds"), the whole subject to the terms, conditions and method of distribution of the Settlement Proceeds herein provided (herein referred to as the "Settlement Conditions"), which Defendant agrees to pay and abide by as herein provided (the Settlement Proceeds and Settlement Conditions are herein collectively referred to as the "Settlement").
- G. Subject to the payment of the Settlement Proceeds as herein provided and in compliance with the Settlement Conditions, the Plaintiff on his own behalf and in his quality as designated representative of the Class Members who have not opted out of the Class Action in accordance with article 1007 of the *Code of Civil Procedure of (Quebec)* (herein referred to as the "CCP"), desires to grant to the Defendant on its own behalf and in its quality as Trustee and Administrator of the Fund a complete, full and final release and discharge in regard to any and all claims, actions, demands, costs, expenses and fees of whatsoever nature or source, that each individually or collectively may have or pretend to have against the other in respect of the Class Action and Settled Claims, the whole in accordance with the terms hereto.
- H. Plaintiff and Defendant have agreed that the Settlement Proceeds less the fees owing to Class Counsel (herein referred to as the "Net Settlement Proceeds") will be distributed in accordance with the terms of the present Settlement and Transaction Agreement to all Class Members who have not opted out of the Class Action wherever located in Canada and who will have produced a Proof of Claim in accordance with the terms described herein
- I. Subject to the approval of the Court, the Parties agree that the Class Action and the Settled Claims shall be transacted as set forth in this Settlement and Transaction Agreement.
- J. This Settlement and Transaction Agreement is made and given on behalf of the Parties without admission of liability, and solely for purposes of purchasing peace and avoiding the expenses and risks of litigation.

NOW THEREFORE IT IS AGREED:

1. Preamble
 - 1.1 The Preamble is true and correct and shall form an integral part hereof.
2. The Settlement

2.1 Subject to the approval of the Settlement and the present Settlement and Transaction Agreement by the Court pursuant to article 1025 of the CCP (herein referred to as the "Final Judgment"), Defendant will forthwith after the Final Judgment acquires the status of *res judicata* pay the Settlement Proceeds as hereinafter provided.

2.1.1 The Net Settlement Proceeds shall be deposited by the Defendant with the Claims Administrator hereinafter defined (herein referred to as the "Claims Administrator") In Trust, who shall invest same in a distinct interest bearing trust term deposit with the Canadian Imperial Bank of Commerce (the "Trust Funds") to be dealt with and distributed to the Class Members who have not opted out of the Class Action pursuant to article 1007 CCP and who have filed valid proofs of claim as hereinafter provided (herein referred to as the "Net Settlement Proceeds").

2.1.2 The Defendant shall pay the fees that Plaintiff agrees are owing to Class Counsel from the Settlement Proceeds.

3. Court Approval Hearing

3.1 Promptly after execution of this Settlement and Transaction Agreement, the Parties shall jointly advise the Court of same and Plaintiff shall after publication of required legal notices by Defendant pursuant to article 1025 of the CCP initiate a motion pursuant to article 1025 of the CCP for orders that:

3.1.1 Approve this Settlement and Transaction Agreement;

3.1.2 Declare that the Settlement provided for herein is fair and reasonable and in the best interests of the Class Members;

3.1.3 Approve the notice to the Class to be published after the Final Judgment, copy of which is annexed hereto as Schedule 1 (herein referred to as the "Judgment Notice");

3.1.4 Provide a claims bar date after which no Class Member shall be entitled to file a proof of claim in respect of the Settlement Proceeds (herein referred to as the "Claims Bar Date");

3.1.5 Authorize Plaintiff in his designated capacity on behalf of Class Members who have not opted out of the Class Action in accordance with article 1007 CCP, to enter into and grant the release referred to in section Eight (8) hereof.

3.1.6 Declare that the Defendant is released in accordance with the terms of Section Eight (8) hereof;

- 3.1.7 Approve the content and form of the Proof of Claim, a copy of which is annexed as Schedule 2 hereto (herein referred to as a "Proof(s) of Claim");
- 3.1.8 Approve the content and form of the letter to Class Members advising of the Final Judgment, a copy of which is attached hereto as Schedule 3.
- 3.1.9 Approve the payment of fees to Class Counsel in accordance with the agreement entered into by Plaintiff and Class Counsel, a copy of which is annexed hereto as Schedule 4.
- 3.1.10 Approve and declare such other matters as counsel to the Parties may reasonably request to the extent not inconsistent with the terms of the present Settlement and Transaction Agreement.

4. Allocation of Class Members' Pro Rata Share of Net Settlement Proceeds

- 4.1 Upon the Final Judgment acquiring the authority of *res judicata*, the allocation of each Class Member's pro rata share of the Net Settlement Proceeds shall be determined and calculated as follows:
 - 4.1.1 Each Class Member shall be allocated his/her pro rata share of the Net Settlement Proceeds based upon his/her individual damages as extrapolated and as calculated and determined by Raymond Chabot Grant Thornton (the "RCGT") from their report dated October 13th, 2006, based on their total calculation of total damages to the Class of approximately \$22,300,000 (herein referred to as the "RCGT Individual Damages Calculation") (Annexed hereto as Schedule 5 is the method of calculation to be used by RCGT to arrive at the RCGT Individual Damages Calculation) . This RCGT Individual Damage Calculation shall be performed as expeditiously as possible after the Court Approval Hearing and shall be provided to the Class Members' damage quantum expert LBC International Investigative Accounting Inc. (herein referred to as "LBC") and the Claims Administrator forthwith after finalization.
 - 4.1.2 LBC shall within a delay of two weeks following receipt of the RCGT Individual Damage Calculation verify the accuracy of same, by spot checking the RCGT Individual Damages Determination of 100 individual Class Members, and shall thereupon issue its verification report to RCGT in respect thereof (the "LBC Individual Damage Verification Report"). Defendant agrees and undertakes to provide or cause to be provided to LBC full access to all data, and information relied upon by Defendant and RCGT to arrive at the RCGT Individual Damage Determination. LBC shall keep all such data, software and information confidential at all times. In the event that Defendant should so require

LBC undertakes to execute and deliver to Defendant a confidentiality and non disclosure agreement in respect of all such confidential information.

- 4.1.3 In the event that the LBC Individual Damage Verification Report differs in a total dollar amount in excess of 10% on a collective basis from the RCGT Individual Damage Calculation in respect of the said 100 Class Members, RCGT and LBC shall immediately attempt to reconcile the differences and agree upon same. Failing agreement and or consent of Defendant to use the calculation used by LBC to arrive at the LBC Individual Damage Verification Report within a delay of Seven (7) days of receipt of the LBC Individual Damage Verification Report, the issues which cannot be reconciled (herein referred to as the "Non-Reconciled Issues") shall be submitted to Pascale Gaudreault C.A. of RSM Richter Inc. (herein referred to as the "Arbitrator") who shall act as sole and final arbitrator for purposes of arbitrating the Non Reconciled Issues in order to determine the correct pro rata share of the Net Settlement Proceeds due the Class Members (herein referred to as the "Arbitration"). In no event shall the Arbitration award result in an increase in the amount of the total Net Settlement Proceeds payable to all Class Members. The Arbitrator shall set such rules or conditions as may be necessary to secure the speedy and inexpensive resolution of the Non-Reconciled Issues in writing, in person or in such manner as the Arbitrator determines to be appropriate. The hearing in respect of the Arbitration shall not exceed one day. The parties to the Arbitration shall be RCGT and LBC. The Arbitrator shall render her decision in writing within Seven (7) days of receiving all information she requires and her decision shall be final and binding upon all parties. The Arbitrator shall send and distribute copy of her decision to the parties to the Arbitration and to the Claims Administrator. The reasonable fees and disbursements of RCGT, LBC, the Arbitrator and all costs of hearing or other processes associated with the Arbitration shall be paid by Defendant. In the event that the LBC Individual Damage Verification Report does not differ in a collective dollar amount of ten percent (10%) or more from the RCGT Individual Damage Calculation in respect of the said 100 Class Members, the RCGT Individual Damage Calculation shall be used to calculate the Class Members' pro rata share of the Net Settlement Proceeds and RCGT shall submit same forthwith thereafter to the Claims Administrator. (the amount finally agreed or determined as each Class Member's pro rata share of the Net Settlement Proceeds is referred to as the "Class Member's Determined Damages").

5. Administration of the Settlement

- 5.1 Subject to Court approval the Parties agree that Crawford Class Action Services (herein referred to as the "Claims Administrator") shall be appointed the Claims

Administrator and shall in so doing act as an officer of the Court and without limitation shall:

- 5.1.1 If requested by Class Member supply a copy of the Proof of Claim form via mail, telecopy or e-mail.
 - 5.1.2 Consider and determine the admissibility of the Proofs of Claim submitted and, if deemed necessary consult the Defendant and or RCGT to make the determination in accordance with the terms of the present Settlement and Transaction Agreement.
 - 5.1.3 Ensure that payments are made to Class Members within the delays foreseen herein.
 - 5.1.4 If requested assist the Class Members in the preparation of their Proofs of Claim in order that they shall not be required to seek unwarranted professional services.
 - 5.1.5 Provide a methodology to register Proofs of Claim and if required to communicate with all Class Members in the most cost effective and efficient manner possible.
 - 5.1.6 Invest the Trust Proceeds and provide an accounting of the disbursement of same.
- 5.2 The costs of administration of the Settlement will be paid for by the Defendant (herein referred to as the "Settlement Administration Expenses"). Without limitation same shall include the costs and expenses of the Claims Administrator to administer the Settlement, the costs of dedicated toll free telephone access to the Claims Administrator, and the costs of a dedicated web site established by the Claims Administrator providing details of the Settlement, the claims procedure, PDF downloading of the Final Judgment, the Settlement and Transaction Agreement, Final Judgment Notice, Proof of Claim forms, on line registration of Proofs of Claim, and any other matters or things deemed necessary or desirable by the Parties and or the Claims Administrator acting reasonably.
- 5.3 To participate in the Net Settlement Proceeds, a Class Member or a person who has received units of the Fund from a Class Member (herein referred to as a "Transferee") must remit to the Claims Administrator a signed Proof of Claim in the form approved by the Court together with the other genuine and sufficient documentation specified in the Proof of Claim form on or before the expiry of the Claims Bar Date(a person who has submitted a Proof of Claim being herein referred to as a "Claimant").

- 5.4 Within thirty (30) days of the latter of (a) receipt of a Proof of Claim, or (b) the date of establishment of the Class Member's Determined Damages, the Claims Administrator shall send written notification to the Claimant by mail or other reputable means that: (herein referred to as the "Claims Administrator Decision")
- 5.4.1 The Proof of Claim has been accepted, and in such event payment of the Class Member's Determined Damages will be included with the notification, payment to be made from the Trust Funds, or
- 5.4.2 The Proof of Claim has been rejected and the reason for rejection and the right to the dispute resolution mechanism for the purpose of appealing the rejection decision, or
- 5.4.3 Additional information or documentation is required to support the Proof of Claim. Details of the information or documentation required will be included with the notification. The Claimant will have Thirty (30) days from the date of notification to provide the additional information or documentation failing which the Proof of Claim shall be considered rejected for all legal purposes and the Claimant shall have no further rights to payment of the Class Member's Determined Damages, unless permission of the Court is obtained prior to the expiry of the Claims Bar Date. Upon receipt of the additional information or documentation the Claims Administrator shall advise the Claimant if the Proof of Claim is (1) accepted, in which case payment of the Class Member's Determined Damages shall be included with the notification, same to be paid from the Trust Funds, or (2) is rejected and shall notify the Claimant in writing by registered mail within Ten (10) days of receipt of the additional information or documentation of its reasons for rejection and its right to the dispute resolution mechanism for the purpose of appealing the rejection decision.
6. Dispute Resolution Mechanism for Claims Administrator Decision
- 6.1 Within Fourteen (14) days of being advised by the Claims Administrator of the Claims Administrator Decision, but not thereafter, the Claimant may by registered mail or electronically in a manner established by the Claims Administrator, elect adjudication of the Claims Administrator Decision by Pascale Gaudreault C.A. of RSM Richter Inc. (herein referred to as the "Referee") who shall act as sole and final arbitrator in respect of the determination as to the validity and/or value of the Claimant's Proof of Claim (herein referred to as the "Adjudication Process"). The Claims Administrator shall forthwith upon receipt of an election to adjudicate a rejected Proof of Claim send notice thereof to the Defendant, who reserves the right to accept the Proof of Claim notwithstanding its rejection by the Claims Administrator.

- 6.2 The Adjudication Process shall proceed by the Claims Administrator advising the Referee of the Claims Administrator Decision, and the Claimant advising the Referee of the basis for his/her disagreeing with the Claims Administrator's Decision.
- 6.3 The Referee shall set any other rules or conditions as may be necessary to secure the speedy and inexpensive resolution of dispute(s) in writing, in person, or in such manner as the Referee determines to be appropriate. In the event of a hearing in person same shall not exceed one day. The Parties to the Adjudication Process will be the Claimant and the Claims Administrator.
- 6.4 The Referee shall render her decision in writing within Seven (7) days of receiving all the information she requires and her decision shall be final and binding upon the Parties and the Claimant and without right of appeal or judicial review. The Referee shall send and distribute copy of her decision to the Claims Administrator and the Parties to the Adjudication Process.
- 6.5 In the event that the Referee accepts the Claimant's position, the Claims Administrator shall forthwith after receipt of the decision pay the Claimant his/her Class Member's Determined Damages from the Trust Funds.
- 6.6 The Defendant agrees that the reasonable fees and disbursements of the Referee and all costs of hearings or other processes associated with the Adjudication Process shall be paid by the Defendant.
7. Distribution of the Balance of Trust Funds
- 7.1 Within thirty (30) days following the latter of the Claims Bar Date and the last decision of the Referee in respect of the Proof of Claim(s) submitted to the Adjudication Process, the Claims Administrator shall send a written report to Class Counsel and Defendant's counsel advising of (1) the amount of Net Settlement Proceeds that have been paid, and (2) if any, the balance of Trust Funds that remain (herein referred to as the "Balance of Trust Funds").
- 7.2 The Balance of Trust Funds if any and all interest earned thereon shall thereafter be dealt with as follows:
- 7.2.1 The Claims Administrator shall reimburse the Defendant the costs and expenses it has paid (1) RCGT for the RCGT Individual Damage Calculation and all associated fees, including fees involved in liaising with LBC and the Claims Administrator, and if applicable for its participation in the Arbitration, (2) LBC for the LBC Individual Damage Verification Report, and if applicable for its participation in the Arbitration, (3) the Arbitrator and expenses

in the case of Arbitration, (4) the Referee and expenses in the case of a Referee Adjudication(s), (5) the Claims Administrator for the Settlement Administration Expenses, (6) the costs of translation of this Agreement and its schedules and (7) the costs of publication and delivery of the notices referred to in Section 10 and 11 hereof.

7.2.2 After reimbursing the amounts set forth in Section 7.2.1 hereof, the remaining Balance of Trust Funds, if any, shall be divided as follows: (1) ten percent (10%), up to a maximum amount of one hundred thousand dollars (\$100,000), shall be paid to the Fonds d'aide aux recours collectifs; (2) fifteen percent (15%) shall be paid to one or more registered charities of the Defendant's choice; and, thereafter, (3) the remainder shall be returned to Defendant, the whole subject to a Motion which the Defendant shall serve and present in accordance with the terms of article 1036 CCP.

8. Release

8.1 After the Final Judgment acquires the status of *res judicata*, and upon the Effective Date hereinafter defined, and subject to the authorization of the Court herein provided:

8.1.1 The Plaintiff on his own behalf and in his quality as Class designated representative on behalf of the Class Members who have not opted out of the Class Action pursuant to article 1007 CCP does grant unto the Defendant, in its personal capacity as well as in its capacity as Trustee and administrator of the Fund, the Fund and their parent(s), affiliated and related persons, companies, partnerships, trusts, officers, directors, shareholders, partners, employees, representatives, attorneys, agents, consultants and advisors (all such persons being hereinafter collectively referred to as the "Defendant Released Parties"), for themselves and their predecessors, successors and assigns, full and final and complete release and discharge of and from any and all claims, actions, suits, demands, causes of action, costs and expenses which they ever had, may have had, now have or that their respective predecessors, successors and assigns can have or may have had individually or collectively or otherwise, against any of the Defendant Released Parties for or by reason of, or in relation to (a) any fact, matter or transaction referred to in the Class Action and the Settled Claims, (b) all amounts claimed in the Class Action or which could have been claimed in respect of the allegations made therein and (c) any conduct of Defendant and of the Defendant Released Parties in respect of the matters that were asserted in the Defense to the Class Action.

8.2 Upon the Effective Date the release and discharge granted herein on behalf of the Plaintiff on his own behalf and in his quality as Class designated representative on behalf of the Class Members will permanently bar the Plaintiff and the Class Members who have not opted out of the Class Action pursuant to article 1007

