

## PLAN OF ALLOCATION

### THE DEFINED TERMS

- f The definitions set out in the settlement agreement reached between the Plaintiffs and Settling Defendants (“**Agreement**”), except as modified or defined herein, apply to and are incorporated into this Plan of Allocation:
- (a) **Approval Order** means the Order of Justice Glustein approving the Agreement;
  - (b) **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;
  - (c) **Class Proceedings Fund Levy** means the levy payable to the Class Proceedings Fund, which provided funding and an indemnity to the Plaintiffs;
  - (d) **Compensation Fund** means the Settlement Amount less Class Counsel Fees, Administration Expenses and Honoraria;
  - (e) **CRA** means the Canada Revenue Agency;
  - (f) **Database** means the web-based database in which the Administrator stores information provided by the Foundation and received from the Claimants and/or acquired through the claims process;
  - (g) **Distribution** means the payment(s) to an Eligible Claimant in accordance with this Plan of Allocation, the Agreement and any order of the Court;
  - (h) **Distribution List** means a list containing the name and address of each Eligible Claimant, the calculation of his/her/its Notional Damages and the calculation of the Eligible Claimant’s *pro rata* share of the Compensation Fund;
  - (i) **Donation(s)** means the leveraged donation made by the Class Member to the Program.
  - (j) **Donation Date** means the date on which the Claimant’s Donation was deemed to be made pursuant to the Foundation Records.
  - (k) **Eligible Claimant** means a Claimant that the Administrator determines is eligible to participate in the Distribution of the Compensation Fund;

- (l) ***Escrow Account*** means the trust account holding the Compensation Fund and used by the Administrator to make the Distribution in accordance with this Plan of Allocation;
- (m) ***First Notice of Reassessment*** means the first Notice of Reassessment received by a Class Member, or in the case of a resident of Québec the first Notice of Reassessment received from each of the CRA and Revenue Québec as a result of the Class Member's participation in the Program;
- (n) ***Foundation Records*** means the records maintained and produced by the Foundation in the Action;
- (o) ***Honoraria*** means a one-time payment of \$50,000 from the Compensation Fund to each of the representative plaintiffs (Marc Charette and Andrew Cumming), subject to the approval of the Court;
- (p) ***Notional Damages*** means the Class Member's cash portion of their Donation(s) that was not recognized by the CRA as a valid donation, plus arrears interest as particularized in the First Notice of Reassessment for each Donation, less any arrears interest allowed pursuant to the Subsequent Notice of Reassessment(s), if any;
- (q) ***Reference*** means the procedure by which a Claimant who disagrees with the Administrator's decision relating to his/her/its eligibility and/or Notional Damages or the amount of that person's Distribution may appeal the Administrator's decision and have it reviewed by the Referee;
- (r) ***Settlement Amount*** means \$37,000,000, inclusive of the Administration Expenses, Class Counsel Fees, Class Proceedings Fund Levy, the return of funds advanced by the Class Proceedings Fund, interest, taxes and any other costs or expenses related to the Action or the Settlement;
- (s) ***Subsequent Notice of Reassessments*** means the notice of reassessment(s) received by a Class Member after the First Notice of Reassessment as a result of the Class Member's participation in the Program; and

- (t) **Website** means the website at [www.trinityclassaction.com](http://www.trinityclassaction.com).

#### **THE OVERVIEW**

2. This Plan of Allocation contemplates a determination of eligibility and a Distribution to each Eligible Claimant of a *pro rata* share of the Compensation Fund.
3. The Administrator will calculate the Notional Damages for each contribution to the Program.
4. All costs incurred by a Class Member in complying with any procedure contemplated by this Plan of Allocation, including any legal and accounting costs, shall be borne entirely by the Class Member.

#### **CLAIM FORM AND DOCUMENTS**

5. In order to participate in the Settlement, a Class Member must provide to the Administrator the following documents, on or before the Claims Bar Deadline:
  - (a) a copy of government issued photo identification;
  - (b) a completed Claim Form;
  - (c) the First Notice of Reassessment;
  - (d) any Subsequent Notices of Reassessment, if applicable;
  - (e) the Confirmation Notice from CRA, if applicable; and
  - (f) documents to establish that the Class Member participated in the Program and was reassessed by CRA, including the tax receipt issued by the Foundation, or the reporting letter issued by the Foundation, or a copy of a cheque that accompanied the completed pledge form, or a letter from CRA describing the particulars of the Donation, sufficient for the Administrator to determine:

- i. the value of the Donation;
- ii. the value of the Class Member's cash contribution to the Donation; and
- iii. the Class Member's actual payment of the cash contribution.

**PRESUMED ADJUSTMENTS TO THE CALCULATION OF NOTIONAL DAMAGES**

6. In calculating the Notional Damages of each Eligible Claimant this Plan of Allocation takes into account the June 26, 2013 amendments to the *Income Tax Act*, specifically the new ss. 248(30) and (31), which apply with retroactive effect after December 20, 2002.

*Donation dates on or before December 20, 2002*

7. For the calculation of an Eligible Claimant's Notional Damages where the Donation Date is on or before December 20, 2002, it will be presumed that:
  - (a) the entire cash portion of the Claimant's Donation was not recognized by the CRA and, where applicable, Revenue Québec; and
  - (b) the amount of arrears interest from the First Notice of Reassessment will not be reduced.

*Donation dates after December 20, 2002*

8. For the calculation of an Eligible Claimant's Notional Damages where the Donation Date is after December 20, 2002, it will be presumed that:
  - (a) the entire cash portion of the Claimant's Donation was recognized by the CRA and, where applicable, Revenue Québec; and
  - (b) the amount of arrears interest from the First Notice of Reassessment will be reduced by 32%.

9. An Eligible Claimant whose Donation Date is after December 20, 2002 may rebut the presumed adjustment in paragraph 8 by providing documentation adequate for the Administrator to determine the actual percentage of the Donation that was allowed by the CRA, and where applicable, Revenue Québec. Such documentation includes, at a minimum:
- (c) a Subsequent Notice of Reassessment;
  - (d) a Notice of Confirmation from the CRA; and
  - (e) a statement of account for the relevant tax year from the CRA dated on or after June 26, 2013.

#### **CALCULATION OF THE DISTRIBUTION**

10. The Administrator will divide the Compensation Fund by the sum of the Notional Damages of all Claimants to arrive at a *pro rata* ratio defined herein as the “*Pro Rata Ratio*”.
11. The Administrator will then multiply the *Pro Rata Ratio* by the Eligible Claimant’s Notional Damages to determine the Distribution to be paid to each Eligible Claimant.
12. The Distribution to be paid to each Eligible Claimant will be subject to a ten (10) percent deduction for the Class Proceedings Fund Levy.

#### **GENERAL PRINCIPLES OF THE ADMINISTRATION OF THE SETTLEMENT**

13. The administration process shall:
- (a) implement and conform to the Plan of Allocation;
  - (b) employ secure, paperless, web-based systems with electronic registration and record keeping, wherever practical; and
  - (c) be bilingual (English, French) in all respects and include a bilingual website and a bilingual toll-free telephone helpline.

#### **THE ADMINISTRATOR**

14. The Administrator shall have such powers and rights reasonably necessary to discharge its duties and obligations to implement and administer the Escrow Account and the Plan of Allocation in accordance with the Agreement and the Approval Order, subject to the direction of the Court.

#### **THE ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

15. The Administrator shall administer the Plan of Allocation under the oversight and direction of the Court and act as trustee in respect of the monies held within the Escrow Account upon receipt from Strosberg Sasso Sutts LLP.
16. The Administrator shall, wherever practical, develop, implement and operate an administration system utilizing web-based technology and other electronic systems for the following:
  - (a) Class notification, as required;
  - (b) claim filing and document collection;
  - (c) claim evaluation, analysis, and Reference procedures;
  - (d) calculation of Distributions;
  - (e) cy près award distribution, if any, and reporting thereon;
  - (f) Administration Expense payments; and
  - (g) cash management, audit control and reporting thereon.
17. The Administrator's duties and responsibilities shall include the following:
  - (a) receiving the monies in the Escrow Account from Strosberg Sasso Sutts LLP and investing them in trust in accordance with the Agreement;
  - (b) preparing any protocols required for submission to and approval of the Court;

- (c) providing the hardware, software solutions and other resources necessary for an electronic web-based bilingual claims processing centre to function in a commercially-reasonable manner;
- (d) providing, training and instructing personnel in such reasonable numbers as are required for the performance of its duties in the most expedient, commercially reasonable manner;
- (e) developing, implementing and operating electronic web-based systems and procedures for receiving, processing, evaluating and decision-making respecting the claims of Class Members, including making all necessary inquiries to determine the validity of such claims;
- (f) if practicable, providing any Class Member whose Claim Form is not properly completed or does not include some of the required supporting documentation, an opportunity to remedy the deficiency as stipulated in the Agreement;
- (g) making timely assessments of eligibility for compensation and providing prompt notice thereof;
- (h) paying all taxes accruing on the interest earned in the Escrow Account and adding that interest (net of taxes) to the Compensation Fund;
- (i) making Distributions from the Compensation Fund in a timely fashion;
- (j) dedicating sufficient personnel to communicate with a Class Member in English or French as the Class Member elects;
- (k) using its best efforts to ensure that its personnel provide timely, helpful and supportive assistance to Class Members in completing the claims application process and in responding to inquiries respecting claims;
- (l) providing the Referee with access to all necessary documents in a timely manner;
- (m) distributing and reporting on any cy près awards;
- (n) making payments of Administration Expenses;
- (o) maintaining a Database with all information necessary to permit the Court to evaluate the progress of the administration, as may, from time to time, be required;
- (p) reporting to the Court respecting claims received and administered, and Administration Expenses;
- (q) preparing such financial statements, reports and records as directed by the Court; and

- (r) the requirement for the Administrator to withhold and pay the 10% levy on both the distribution to Eligible Claimants and the cy prè award if any.
18. As required, the Administrator shall pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form, including the notice expenses reasonably and actually incurred by the Administrator in connection with the provision of notice of this Settlement to Class Members (provided, however, that the Administrator shall not pay in excess of CAD\$20,000.00 in the aggregate).
  19. To facilitate the Administrator providing notice to the Class Members, FMC shall provide Class Counsel with a summary of the most recent contact information in its possession for each Class Member forthwith after the issuance of the Approval Order.
  20. The Administrator shall cause the information in the Database to be secured and accessible from the Website to an individual with a user identification name and password.
  21. Information in the Database concerning a claim shall be accessible to the Class Member electronically. Each Class Member shall use a unique personal user identification name and personal password that will permit the Class Member to access only his/her/its own information in the Database.
  22. Once a Claim Form and required supporting documentation is received by the Administrator, the Administrator shall:
    - (a) determine the Eligible Claimant's Notional Distribution;
    - (b) calculate the *Pro Rata* Ratio; and
    - (c) calculate the Distribution for each Eligible Claimant.



23. Once the Administrator determines the Eligible Claimant's Notional Distribution and his/her/its Distribution from the Compensation Fund, the Administrator shall advise the Eligible Claimant of the Administrator's decision by posting it on his/her/its online claim file.
24. The Administrator may deal with Class Members in a manner that is not through an electronic medium, as and when it determines that such a step is feasible and/or necessary. However, in all cases the information acquired concerning Class Members shall be entered into the Database.
25. A decision of the Administrator in respect of a claim and any Class Member's entitlement to participate in or receive a share of the Distribution, subject to the Class Member's right to elect to refer the decision to the Referee for review, will be final and binding upon the Class Member and the Administrator.

#### **THE REFEREE**

26. The Referee shall have such powers and rights as are reasonably necessary to discharge his or her duties and obligations.
27. The Referee shall establish and employ a summary procedure to review any disputes arising from a decision of the Administrator, and may enter into such mediation and arbitration proceedings as the Referee may deem necessary.
28. All decisions of the Referee shall be in writing and shall be final and conclusive and there shall be no appeal therefrom whatsoever.

#### **THE PROCEDURE FOR REFERENCE**

29. If a Class Member disagrees with the Administrator's decision relating to his/her status as a Claimant or the amount of his/her Notional Damages or individual Distribution, a Class Member may elect a Reference by the Referee by delivering a written election for review to the Administrator within fifteen (15) days of receipt of the Administrator's decision.
30. The election for a Reference must set out the basis for the disagreement with the Administrator's decision and attach all documents relevant to the review which have not previously been delivered to the Administrator.
31. Upon receipt of an election for a Reference, the Administrator shall provide the Referee with online access to a copy of:
  - (a) the election for a Reference and accompanying documents;
  - (b) the Administrator's decision on status as a Claimant, its calculation of the Claimant's Notional Damages and its calculation of the Claimant's individual Distribution, as applicable; and
  - (c) the Claim Form and supporting documents.
32. The Referee will carry out the Reference in writing and shall deliver a written decision to the Class Member and the Administrator within five (5) business days of receiving access to all documents referred to in paragraph 31.

#### **ADMINISTRATION EXPENSES**

33. The Administrator shall pay the fees, disbursements, taxes, levies, and other costs of:
  - (a) the Administrator;
  - (b) the Referee; and
  - (c) such other persons at the direction of the Court

out of the Settlement Amount in accordance with the provisions of the Agreement, the Approval Order and any other orders of the Court.

34. The costs of giving the notices required pursuant to the Approval Order and the Plan of Allocation are not to be paid by the Administrator from its fee.

#### **DISTRIBUTION TO CLAIMANTS**

35. As soon as practicable after the completion of the claims submission and reference process, the Administrator will bring a motion to the Court for authorization to make Distributions from the Compensation Fund. In support of this motion, the Administrator will file the Distribution List with the Court in a manner that protects the privacy of persons on the Distribution List.
36. No Distribution shall be made by the Administrator until authorized by the Court.
37. The Administrator may make interim Distributions if authorized by the Court.
38. Each Eligible Claimant whose name appears on the Distribution List shall comply with any condition precedent to Distribution that the Court may impose.
39. The Administrator shall make Distributions from the Compensation Fund forthwith after receipt of authorization from the Court to make Distributions to the Eligible Claimants whose names are on the Distribution List.
40. If the Escrow Account is in a positive balance (whether by reason of tax refunds, uncashed cheques or otherwise) in an amount greater than or equal to \$25,000 after one hundred eighty (180) days from the date of the most recent Distribution of the Compensation Fund to the Eligible Claimants, the Administrator shall allocate such balance among Claimants whose names are on the Distribution List in an equitable fashion. The Administrator may wait until a Canada Revenue Agency T-5 tax slip for

investment income is issued by the Schedule One bank in respect of the Escrow Account before making this second distribution. If there is a balance in the Escrow Account in an amount less than \$25,000 after one hundred eighty (180) days from the date of the most recent Distribution of the Compensation Fund to the Claimants, the remaining funds shall be paid *cy près* to the Law Foundation of Ontario's Access to Justice Fund, subject to approval by the Court, after the payment of the ten percent (10%) levy to the Class Proceedings Fund.

**RESTRICTION ON CLAIMS**

41. Any Class Member who does not submit a Claim Form and required supporting documentation with the Administrator on or before the Claims Bar Deadline, will not be permitted to participate in the Distribution without permission of the Court. The Administrator will not accept or process any Claim Form received after the Claims Bar Deadline unless directed to do so by the Court.

**NO ASSIGNMENT**

42. No amount payable under this Plan of Allocation may be assigned without the written consent of the Administrator.

**ADMINISTRATOR'S FINAL REPORT TO THE COURT**

43. Upon the conclusion of the administration, or at such other time as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed by Distribution or otherwise, and may obtain an order from the Court discharging it as Administrator.