Court File No. 05-CL-5965

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE SECURITIES ACT
R.S.O 1990, c.s.5, AS AMENDED

BETWEEN

ONTARIO SECURITIES COMMISSION

Applicant

- and –

GESTION DE PLACEMENTS NORSHIELD (CANADA) LTÉE / NORSHIELD ASSET MANAGEMENT (CANADA) LTD.,

GESTION DES PARTENAIRES D'INVESTISSEMENT NORSHIELD LTEE / NORSHIELD INVESTMENT PARTNERS HOLDINGS LTD.,

OLYMPUS UNITED FUNDS HOLDINGS CORPORATION,

CORPORATION DE FONDS UNIS OLYMPUS / OLYMPUS UNITED FUNDS CORPORATION,

OLYMPUS UNITED BANK AND TRUST SCC,

GROUPE OLYMPUS UNITED INC. / OLYMPUS UNITED GROUP INC.,

TECHNOLOGIES DE LOGICIELS HONEYBEE INC. / HONEYBEE SOFTWARE TECHNOLOGIES INC. (FORMERLY CORPORATION D'INVESTISSEMENT NORSHIELD / NORSHIELD INVESTMENT CORPORATION), AND

CORPORATION GESTION DE L'ACTIF NORSHIELD / NORSHIELD CAPITAL MANAGEMENT CORPORATION

Respondents

MOTION RECORD
(Returnable on February 20, 2020)

January 21, 2020

Sylvestre Painchaud et associés

Sylvestre Painchaud et associés
740, Atwater
Montreal (Québec) H4C 2G9
Lawyers for the Class Representative

TO: **THIS HONOURABLE COURT**

AND TO: **THE ATTACHED SERVICE LIST**

SERVICE LIST

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TAB 1

Court File No. 05-CL-5965

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE SECURITIES ACT
R.S.O 1990, c.s.5, AS AMENDED

BETWEEN

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\- and –

GESTION DE PLACEMENTS NORSHIELD (CANADA) LTÉE / NORSHIELD ASSET MANAGEMENT (CANADA) LTD.,

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OLYMPUS UNITED BANK AND TRUST SCC,

GROUPE OLYMPUS UNITED INC. / OLYMPUS UNITED GROUP INC.,

TECHNOLOGIES DE LOGICIELS HONEYBEE INC. / HONEYBEE SOFTWARE TECHNOLOGIES INC. (FORMERLY CORPORATION D'INVESTISSEMENT NORSHIELD / NORSHIELD INVESTMENT CORPORATION), AND

CORPORATION GESTION DE L'ACTIF NORSHIELD / NORSHIELD CAPITAL MANAGEMENT CORPORATION

Respondents

NOTICE OF MOTION

Sheila Calder, in her capacity as class representative (the "**Class Representative**") for the former investors in Olympus United Funds Corporation and related entities (the "**Companies**"), will make a motion before the Court on February 20, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, in the City of Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, if necessary, abridging the time for service of this Notice of Motion and dispensing with further service thereof.

2. An Order approving the terms of the Memorandum of Agreement (the "**Agreement**") entered into on October 8, 2019 by Richter (as defined below), the JOLs (as defined below) and Sylvestre Painchaud (as defined below).

3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

BACKGROUND:

1. By Order of this Honourable Court (the "**Court**") dated June 29, 2005 and by subsequent orders of the Court, Richter Advisory Group Inc. (formerly RSM Richter Inc.) ("**Richter**") was appointed as the receiver ("**Receiver**") of Olympus United Funds Corporation as well as Gestion de Placements Norshield (Canada) Ltée/Norshield Asset Management (Canada) Ltd., Gestion des Partenaires d'Investissement Norshield Ltée/Norshield Investment Partners Holdings Ltd., Olympus United Funds Holdings Corporation, Olympus United Bank and Trust SCC, Groupe Olympus United Inc./Olympus United Group Inc., Norshield Capital Management Corporation/Corporation Gestion de l'Actif Norshield, Honeybee Software Technologies Inc./Technogolies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation d'Investissement Norshield and related entities (collectively, the "**Norshield Companies**").

2. Richter, through one of its partners (now retired), Raymond Massi, is also acting in the capacity as one of the joint official liquidators of Olympus Univest Limited and Mosaic Composite Limited, now Mosaic Composite Limited (US), Inc., both in the Commonwealth of The Bahamas. Raymond

Massi and Clifford Culmer, a partner at BDO Mann Judd, are the Joint Official Liquidators of these entities (the "**JOLs**").

3. Sylvestre Painchaud & Associés, s.e.n.c.r.l. ("**Sylvestre Painchaud**"), is class counsel in the class action instituted by the Class Representative before the Superior Court of Quebec in Court File No: 500-06-000435-087 (the "**Class Action Proceedings**"), wherein the members of the class (the "**Class Members**") are virtually all of the creditors in the present file.

4. The proofs of claim filed by the Class Members represent almost 100% of the claims that have been admitted by the Receiver.

5. The class action alleges, *inter alia*, that Class Members were defrauded by the Companies, that RBC and RBC Capital Markets Corporation ("**RBC**") provided a financial product that was essential to the fraud, and that RBC facilitated the dispersion of assets that could have benefited Class Members.

THE GROUNDS FOR THE MOTION ARE AS FOLLOWS:

6. At the present time, the Class Action Proceedings are the principal potential source of significant recoveries for the class members.

7. Sylvestre Painchaud, Richter and the JOLs entered into an Agreement which, provided approval of this Court and the Supreme Court of the Commonwealth of The Bahamas and any other relevant authorities is obtained, will set the framework by which Richter and the JOLs are to provide documents and information which will assist Sylvestre Painchaud, on behalf of the class members, in making proof relevant to the Class Action Proceedings, including, *inter alia*, proof of the Norshield fraud.

8. The Agreement requires that this Court, and the Supreme Court of the Commonwealth of The Bahamas and any other relevant authorities, approve the terms of said Agreement, including that the funds of the Receivership of the Norshield Companies, up to an amount of $75,000 plus taxes, may be used to pay certain specified costs and fees.

9. It is in the interests of justice that this Court approve the terms of the Agreement in order to assist the Class Representative and her counsel as well as the other Class Members in the Class Action Proceedings by way of the hereby sought Order.

10. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The affidavit of Normand Painchaud sworn on January 21, 2020 filed as part of the Applicant's Motion Record dated January 21, 2020 and the exhibits thereto; and

2. Such further and other material as counsel may advise and this Honourable Court permit.

January 21, 2020

SYLVESTRE PAINCHAUD & ASSOCIÉS
Sylvestre Painchaud et associés
740, Atwater
Montreal (Québec) H4C 2G9
Lawyers for the Class Representative

TAB 2

Court File No. 05-CL-5965

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE SECURITIES ACT
R.S.O 1990, c.s.5, AS AMENDED

ONTARIO SECURITIES COMMISSION

Applicant

AFFIDAVIT OF NORMAND PAINCHAUD
(sworn January 21, 2020)

I, **NORMAND PAINCHAUD**, of the City of Montreal, in the Province of Québec, MAKE OATH AND SAY:

1. I am a member in good standing of the Barreau du Québec since 1996 and a partner in the law firm Sylvestre Painchaud & Associés (**"Sylvestre Painchaud"**) s.e.n.c.r.l. based in Montreal.

2. A significant part of my practice relates to class actions and, most particularly, I am counsel for the class representative, Sheila Calder (the "**Class Representative**"), in class action proceedings (the "**Class Action Proceedings**") instituted in the Superior Court of Quebec in Court File No: 500-06-000435-087.

3. As counsel for the Class Representative, I have knowledge of the matters to which I herein depose, except where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

INTRODUCTION

4. This affidavit is sworn in support of a motion for an Order by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") approving an agreement, as

defined and described more fully below, that will assist the Class Representative and her counsel in making proof relevant to the Class Action Proceedings.

5. By Order of this Court (the "**Court**") dated June 29, 2005 and by subsequent orders of the Court, Richter Advisory Group Inc. (formerly RSM Richter Inc.) (**"Richter"**) was appointed as the receiver ("**Receiver**") of Olympus United Funds Corporation as well as Gestion de Placements Norshield (Canada) Ltée/Norshield Asset Management (Canada) Ltd., Gestion des Partenaires d'Investissement Norshield Ltée/Norshield Investment Partners Holdings Ltd., Olympus United Funds Holdings Corporation, Olympus United Bank and Trust SCC, Groupe Olympus United Inc./Olympus United Group Inc., Norshield Capital Management Corporation/Corporation Gestion de l'Actif Norshield, Honeybee Software Technologies Inc./Technogolies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation d'Investissement Norshield and related entities (collectively, the "**Norshield Companies**").

6. Richter, through one of its partners (now retired), Raymond Massi, is also acting in the capacity as one of the joint official liquidators of Olympus Univest Limited and Mosaic Composite Limited, now Mosaic Composite Limited (US), Inc., both in the Commonwealth of The Bahamas. Raymond Massi and Clifford Culmer, a partner at BDO Mann Judd, are the Joint Official Liquidators of these entities (the "**JOLs**").

THE CLASS ACTION AND THE CLASS MEMBERS

7. On November 1, 2013, the Class Representative was successful in having a class action authorized (certified) against the Royal Bank of Canada and RBC Capital Markets Corporation (collectively, "**RBC**"), as appears from a copy of the judgment of the Honourable Marc de Wever, J.S.C. attached herewith as Exhibit "**A**".

8. The alleged fraudulent scheme involved investments by the Class Representative as well as other investors in Olympus United Funds Corporation and related companies (the "**Companies**").

9. The Class Action Proceedings allege, *inter alia*, that:

    a. Norshield Entities (as defined in the Class Action Proceedings) were used to defraud the Retail Investors (the "**Norshield Fraud**");

    b. a financial product was provided by RBC to Norshield prior to the occurrence of the Norshield Fraud;

    c. the RBC financial product was an essential element of the Norshield Fraud;

    d. RBC facilitated or did not adequately prevent some of the defrauders' assets to be permanently lost to the members of the class.

The whole as appears from a copy of the Motion to Institute Proceedings (Class Action) dated March 18, 2014, attached herewith as Exhibit "**B**".

10. Through information provided by the Receiver, I understand and do believe to be true that nearly 100% of the proofs of claim filed with the Receiver were filed by members of the Class Action Proceedings.

11. Through information provided by the Receiver, I understand and do believe to be true that, at the present time, the Class Action Proceedings are the principal source of significant recoveries for the creditors.

THE AGREEMENT AND REQUESTED ORDER BY THIS COURT

12. As counsel for the Class Representative in the Class Action Proceedings, Sylvestre Painchaud requires certain information and documents from the Receiver and the JOLs for the purpose of prosecuting the Class Action Proceedings.

13. Richter and the JOLs are prepared to provide such information and documentation on the terms and conditions which are set out in the Memorandum of Agreement (the **"Agreement"**) entered into by Richter, the JOLs and Sylvestre Painchaud on October 8, 2019, a copy of which is attached herewith as Exhibit "**C**".

14. The Agreement requires that this Court, and the Supreme Court of the Commonwealth of The Bahamas and any other relevant authorities, approve the terms of said Agreement, including that the funds of the Receivership of the Norshield Companies, up to an amount of $75,000 plus taxes, may be used to pay certain specified costs and fees.

15. The requested information and documents is necessary to assist Sylvestre Painchaud in proving the allegations set out in the Class Action Proceedings on behalf of the Class Representative and for the benefit of all class members and hence the creditors.

SWORN BEFORE ME, at the
City of Montreal on January 21, 2020

Commissioner for Taking Oaths

Élodie Jossé
212010
COMMISSAIRE À L'ASSERMENTATION
Pour le Québec
Québec

NORMAND PAINCHAUD

Exhibit A

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000435-087

DATE: November 1st, 2013

IN THE PRESENCE OF : THE HONOURABLE MARC DE WEVER, J.S.C.

SHEILA CALDER
Petitioner
v.
BANQUE ROYALE DU CANADA
and
RBC DOMINION SECURITIES LIMITED
and
RBC DOMINION SECURITIES INC.
and
RBC CAPITAL MARKETS CORPORATION
Respondents

RSM RICHTER INC.
and
RAYMOND MASSI, C.A. CIRP
Mis-en-cause

CORRECTED JUDGMENT ON MOTION FOR AUTHORIZATION TO INSTITUTE CLASS ACTION PROCEEDINGS

JD 2232

[1] The petitioner, Sheila Calder (hereafter Calder), seeks authorization to institute class action proceedings on behalf of the following group of persons, of which she is also a member:

> « All Canadian retail investors who purchased one of the Olympus United Funds Corporation shares (formerly First Horizon Holdings Ltd.) from June 27, 1999 to June 29, 2005 and who had outstanding shares in said corporations as of June 29, 2005. »

THE CONTEXT

[2] The context of these proceedings is well described in petitioner's motion :

> **« The Norshield / Olympus Scheme**
>
> 5. Between June 1999 and June 2005, John Xanthoudakis (Xanthoudakis), through the *Norshield Financial Group* developed, marketed and operated the *Norshield investment structure*;
>
> 6. *Norshield Financial Group* was not an incorporated entity, but rather a brand name to which Xanthoudakis, managed to give a strong aura of performance and credibility in the years preceding its complete financial collapse;
>
> 7. The *Norshield investment structure* allowed the *Norshield Financial Group* to raise Canadian retail investors money, which flowed through the following entities:
>
> **Olympus United Funds Corporation (Canada)**
>
> **(formally(sic) First Horizon Group)**
>
> ↓
>
> **Olympus United Bank and Trust SCC (Barbades)**
>
> **(formally(sic) First Horizon Bank)**
>
> ↓
>
> **Olympus Univest Ltd (Bahamas)**
>
> **(formally(sic) Univest)**
>
> ↓
>
> **Mosaic Composite Ltd. (Bahamas)**
>
> **(formally(sic) Norshield Composite Ltd)**
>
> 8. In May 2005, the *Norshield investment structure* failed to meet redemption requests;

9. From that incapacity to meet redemptions, the *Norshield Financial Group* collapsed, as appears from the following paragraphs;

The collapse of the *Norshield Financial Group*

10. The first *Norshield Financial Group* entity to be placed into insolvency proceedings was **Olympus Univest Ltd** (**Univest**) which, on May 19, 2005, decided on its voluntary liquidation, the whole as appears from paragraph 1.1 of Exhibit R-21;

11. Univest's voluntary liquidation was followed, on June 29, 2005, by the following entities to be placed into receivership, the whole as appears from paragraphs 1 and 2 of Exhibit R-12B:

Norshield Asset Management Ltd (NAM)

Norshield Investment Partners Holdings Ltd

Olympus United Funds Holdings Corporation

Olympus United Funds Corporations (Olympus Funds)

Olympus United Bank and Trust SCC (Olympus Bank)

Olympus United Group Inc.

12. On September 9, 2005 and October 14, 2005, the two following entities were also placed into receivership, as appears from paragraph 3 of Exhibit R-12B:

Norshield Capital Management Corporation

Honeybee Software Technologies Inc.

(formerly Norshield Investment Corporation)

13. Finally, on January 20, 2006, **Mosaic Composite Ltd (formally(sic) Norshield Composite Ltd)** was placed in receivership as appears from paragraph 8 of Exhibit R-49A;

14. All of the companies describes above are part of the *Norshield Financial Group;*

15. The Mis-en-cause, Massi and RSM Richter (Richter), are involved in each of these insolvency processes, either as Receivers, Joint Custodians or Joint Liquidators;

The Olympus scheme

16. Between June 1999 to June 2005, the *Norshield investment structure* allowed *Norshield Financial Group* to raise tens of millions of dollars of Canadian retail investors money;

17. The flow of funds within the *Norshield investment structure* was described by Richter in November 2005, by the chart which Plaintiff files in support of the present motion as Exhibit R-50;

18. When the *Norshield investment structure* collapsed, some 1 900 Canadian retail investors (the Class) were left with $159 million of unredeemable shares of Olympus United Funds Corporation, the whole as appears from the Mis-en-cause's *Thirteeth Report of Receivers* filed as Exhibit R-51, at paragraph 16;

19. The *Norshield investment structure's* foundation was a basket of hedge funds created in the Bahamas in June 1999, by *Norshield Financial Group* and RBC. »

FACTS ALLEGED

[3] The petitioner maintains that Banque Royale du Canada and RBC Capital Markets Corporation[1] (hereafter collectively RBC) knowingly or blindfully took part in the setting up of a fraudulent scheme or structure by the *Norshield Financial Group*, the whole with a view to making a profit, when they knew or should have known that their business partner was defrauding third parties, that is the Canadian retail investors.

[4] To demonstrate the existence of the fraudulent scheme, the petitioner relies on the following «Decisions or Reports» :

- June 2, 2005 decision of the Autorités des Marchés Financiers (exhibit R-15);
- June 21, 2005 preliminary report of Richter (exhibit R-12A);
- Affidavit of Richard Radu, Ontario Securities Commission Investigator (exhibit R-25);
- Initial order of the Ontario Superior Court of June 29, 2005 (exhibit I-1);
- First report of May 26, 2006 of the Joint liquidator (exhibit R-12C);
- First Mosaic Joint liquidators' report of February 13th, 2008 (exhibit R-49A).

[5] On the basis of these « Decisions or Reports », the petitioner, in her motion, invokes the following facts:

[1] Although petitioner also includes as respondents RBC Dominion Securities Limited and RBC Dominion Securities Inc., it appears, on the basis of the proceedings, exhibits and discoveries that these two entities were not involved in the fraudulent scheme described by petitioner or in the actual process by her of purchasing Olympus United Funds Corporation shares. The motion should therefore be dismissed as against these two entities.

« 20. On June 8th, 1999, *Norshield Financial Group* signed with RBC Dominion Securities (acting for Royal Bank of Canada) a *Letter Agreement with respect to a structured call option transaction*, (Exhibit R-29);

...

22. By way of the R-29 transaction, RBC was in fact extending a USD $100 million margin loan to *Norshield Financial Group*;

23. This margin loan was granted with the specific goal of creating a basket of offshore hedge funds;

...

25. In order to gain access to the $100 million margin loan, *Norshield Financial Group* paid a premium of USD $15 million in cash (or 15% of the margin loan);

...

27. On June 29, 1999, an RBC Dominion Securities *Confidential client questionnaire* (R-31) was signed by which Norshield Composite Ltd. (later Mosaic Composite Ltd) was identified as the *Norshield Financial Group* entity to be RBC's counterparty;

28. The R-29 transaction was finalized on July 30, 1999 between RBC and Norshield Composite Ltd., as appears from the R-33 Norshield Composite board of directors resolution, the R-34 ISDA Master Agreement and the R-35 Confirmation of agreement;

29. The R-35 Confirmation of agreement provided that RBC had authority over:

- the modification of the index of the basket of hedge funds (par.9);
- the calculation of the value of the index (par. 13(2));
- any assignment of the option (par. 13(4));

...

31 Notably, R-29 provided that RBC itself would negotiate and sign the Investment Advisory Agreements with each of the managers of each of the new hedge funds (par. 3);

32. On August 7, 1999, RBC signed with one of those hedge funds managers an *Investment Management Agreement*, said agreement being filed as Exhibit R-52;

33. Another concrete example of RBC's power over the basket of hedge funds is an August 29, 2000 letter from RBC informing *Norshield Asset Management* of a change in composition of the Index, said letter being filed as Exhibit R-53;

...

36. On June 27th 1999, Canadian retail investors were offered the *Horizon Group of Investment Funds* (later the *Olympus United Funds*), the whole as appears from Exhibits R-9A to R-9G;

37. The R-9 Offering Memorandums indicated that the retail investor's monies would be managed by *Olympus United Bank* SCC (Olympus Bank), a wholly owned Barbados subsidiary;

38. (...) Most of *Olympus Bank's* equity was in turn invested in *Olympus Univest Limited* (Olympus Univest), as appears from the R-56A to R-56D Olympus Bank's financial statements;

...

40. *Olympus Univest* then invested most of its equity in *Mosaic Composite Limited* (*Mosaic*), the "owner" of the basket of hedge funds created with the R-35 margin loan;

41. *Mosaic's* basket of hedge funds was the main asset on which was calculated the value of the *Olympus United Funds* shares;

42. But the underlying debt attached to that basket of hedge funds was not taken into account in calculating the *Olympus United Funds* shares value;

43. Founding *Olympus United Funds* shares value on a heavily leveraged asset, without taking this asset's underlying debt into account, had the effect of grossly inflating the value at which Class members bought their shares of *Olympus United Funds*;

...

45. During 2003 and 2004 an exceptionally high proportion of redemptions of *Olympus United Funds* shares occurred;

46. During those two years, whereas Canadian retail investors injected $105 million to buy new shares at grossly inflated values, $90 million went out to pay redemptions;

...

49. For one, the R-35 $100 million margin loan was followed, on June 28, 2002, by a second agreement which extended an extra $33,33 million loan from RBC to Mosaic as appears from the R-39A Letter Agreement;

50. Then, during the thirteen months between September 2002 and October 2003, the R-39A margin loan was amended and augmented eight times by RBC to end up totalling $245,33 million;

51. On or before March 4, 2004, the R-35 and R-39A margin loans were merged, and on March 4, 2004, the merged loan was one more time augmented by RBC to end up totalling $353,1 million;

52. During that relatively short period, in consideration for those margin loan augmentations, RBC pocketed cash premiums of over $38 million;

53. Those $38 million added to the $15 million premium already pocketed by RBC from the original R-35 margin loan;

54. Thus, the total premiums generated by RBC from its lending activity to *Norshield Financial Group* amounted to $53 million USD;

55. These margin loan augmentations had the effect of augmenting the assets under management in the underlying basket of hedge funds, which in turn artificially inflated the value of the *Olympus United Funds* shares;

56. During that period, most of *Olympus United Funds* share subscriptions were used to pay redemptions (ponzi scheme) and to make some $217 million in unexplained payments to *Norshield Financial Group* related entities;

57. In the OSC decision concerning Xanthoudakis et al., filed as Exhibit R-54, the Ontario securities commission (OSC) found that :

(...)

292. "The fact remains that because of the dissipation of investor funds at various points throughout the Norshield Investment Structure, only a small portion of investor funds made their way to the hedge fund managers. Massi testified that "[in] later years, most of the money never went down to the bank. It stayed at the fund level" (Hearing Transcript, November 4, 2008, p. 144). Consequently, the use of leverage was required in order to provide the hedge fund managers with sufficient funds and to ensure that a diverse set of assets could be achieved".

...

60. On January 19th 2004, RBC presented to the Canadian public and investment professionals the *RBC Olympus United Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1*, as appears from RBC/*Norshield Financial Group* Press release, said press release being already filed as Exhibit R-41;

61. In the R-41 press release, RBC and *Norshield Financial Group* mention that they :

"are proud to bring you the : *Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1*"

...

64. The *RBC Olympus United Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1* was offered through an *Information Statement* filed as Exhibit R-55;

...

67. Pages iv to x of R-55 identify Norshield Asset Management (NAM) as "basket manager", said basket being a basket of hedge funds;

68. NAM was *a Norshield Financial Group* entity implicated at every level of the *Norshield investment structure*, as indicated by the Mis-en-causes in the R-50 chart;

69. Other concrete examples of NAM's implication in the *Norshield investment structure* are :

    a) NAM was RBC's Advisor to the *Mosaic* basket of hedge funds (R-29 Letter Agreement);

    b) NAM was Portfolio Manager of the *Olympus United Funds* from at least 2002 (R-9D Offering memorandums and R-10 Portfolio Management Agreement);

...

71. What's more, at that time, not only did RBC had *Know your clients obligations*, but they also had anti-laundering and anti-terrorist monitoring obligations.

72. During the years preceding the R-55 PPN:

    - *Olympus United Funds* investor's money was not making its way down the *Olympus investment structure* but was being diverted by the hundreds of millions to *Norshield Financial Group* related entities;

    - *Olympus United Funds* share redemptions became as high as subscriptions;

    - *Norshield Financial Group's* indebtedness in the R-35/R-39A margin loan had grown exponentially;

    - *Norshield Financial Group* was over-evaluating *Olympus United Funds* and *Univest* shares by as much as the amount due to RBC;

...

74. On November 10th 2004, Mosaic assigned it's benefit in the SOHO Option to MS-II as appears from the R-43A Assignment Agreement (the assignment was to be retroactive to October 29th 2004). At the time of the assignment, Mosaic's interest in the SOHO Option was it's main asset (R-49 at para.66); as of October 29th, 2004, the SOHO Option was then valued at USD $52 493 000 (R-37 Valuation Report);

75. MS-II was a Cayman Island corporation whose representative was Terri Engelman-Rhodes, who was also one of the Norshield Composite's representative for the first SOHO Option agreement in 1999 (R-29, R-32); Xanthoudakis was also the signee of future dealings between RBC and MS-II (R-39A, at page 58 and following);

76. The assignment transaction was made in consideration for Class A and B shares of MS-II being emitted to Mosaic (R-49A, para 68); the assignment transaction was made in a manner that Mosaic could maintain an economical interest in the SOHO Option basket of hedge funds, in order to continue to base the *Norshield investment structure's* value on the said basket of hedge funds (R-49A, para.67);

77. As per the SOHO Option agreements, RBC had to consent to the R-43A assignment, which it did as appears from the document;

78. Then, on November 19th 2004, MS-II and RBC agreed to a partial termination of the SOHO Option, by which 272 of the then 1 000 options were "cash settled" for an amount of USD $15 million (R-39B, at page 55 of 68); as appears from page 2 of the Partial Termination agreement, at the request of MS-II, the proceeds were to be wired to the JP Morgan Chase New York bank account of a European financial institution : Daiwa Securities Trust & Banking (Europe), London; »

[6] Petitioner's attorneys also quote some specific sections from the «Decisions or Reports» that pinpoint important facts.

[7] From the liquidators' first report :

« 22. Investments in Olympus United Funds Corporation flowed into its wholly-owned subsidiary, Olympus United Bank and Trust SCC in Barbados, wherein the said, investments were purportedly segregated into different "cells" (as constituted according to Barbados banking laws) which, more or less, matched the investment strategies of each class of shares of Olympus United Funds Corporation.

23. Olympus United Bank and Trust SCC then invested its funds into Olympus Univest in the Bahamas. Olympus United Bank and Trust SCC's investments were co-mingled in Olympus Univest with investments received from pension funds and financial institutions, mostly from Canada, as well as other persons whose investments were made either in cash or by way of "in kind" contributions. At the time of Culmer's

appointment as Voluntary Liquidator of Olympus Univest, on May 19, 2005, its equity amounted to approximately $483 millions.

24. Olympus Univest then invested, either directly or through other funds, in Mosaic. Mosaic, in turn, held investments in both hedged and non-hedged assets.

25. Mosaic's hedged assets consisted predominantly of two cash settled equity barrier call options with the Royal Bank of Canada which were consolidated into a single option on March 31, 2004 (the "RBC SOHO Option"). The RBC SOHO Option permitted Mosaic to invest in a basket of hedge funds managed by various fund managers. Furthermore, the RBC SOHO Option was highly leveraged such that the basket of hedge funds had a gross value of approximately six times the value of Mosaic's actual investment.

26. As at September 30, 2003, the date of the last audited financial statements of Mosaic, the RBC SOHO Option had a gross value of approximately $300 million while Mosaic's actual investment therein (equity) was approximately $50 million. » (exhibit R-49A)

[8] At paragraph 27, the liquidators add :

« 27. In addition to its significant value, the RBC SOHO Option was important to the Norshield Investment Structure because the gross value of the basket of hedge funds was the basis upon which the net asset value of the shares of Mosaic, Olympus Univest and Olympus United Funds Corporation, as reported to their investors, was substantially calculated. » (exhibit R-49A)

[9] From the Sixth report of the receiver :

« 150. Both John Xanthoudakis and Dale Smith stated during their examinations by the Receiver that the NAVs which were provided on a weekly basis by Mosaic for presentation to the preference shareholders of Olympus Univest and indirectly to the Retail Investors (flowing up from Olympus Univest, through Olympus Bank and then Olympus Funds) were calculated almost entirely on the value of the hedged assets of Mosaic.

...

153. In order for this method of calculating the NAVs of the entities within the Norshield investment structure to be supported, Mosaic's non-hedged assets would have to have had, at a minimum, a realizable value equal to or greater than the outstanding amount of the margin loans which were secured by Mosaic's hedged assets. As stated above, Mosaic's non-hedged assets consisted principally of its investments in the Channel Entities.

...

155. The Receiver has concluded that the asset values carried on the audited financial statements of the Channel Entities were overstated by at least US $200 million for fiscal 2002, increasing to at least US $300 million for fiscal 2003. As a result, the value of the Channel Entities' assets was overstated by approximately 88% on their fiscal 2003 financial statements.

...

170. The Receiver has identified numerous significant payments from 2002 to 2004 made by Mosaic to entities and/or funds which appear to have or have had i) close connections to John Xanthoudakis and/or to Norshield entities, and/or ii) connections to entities over which John Xanthoudakis had influence with respect to investment decisions. The Receiver has not identified evidence that any of these third party payments have benefited either John Xanthoudakis or Dale Smith personally.

171. These payments totalling $156.6 million ...

172. The Receiver has not found a satisfactory explanation for these payments.

173. The Receiver also identified significant payments made by Olympus Bank from January 2001 to June 2005 ...

174. These payments by Olympus Bank totalled $60.7 million ...

175 The Receiver has not found a satisfactory explanation for these payments. » (Exhibit R-12D)

[10] In summary, these «Decisions or Reports» present the following chronology :

- June 8, 1999, signing of the letter of agreement with respect to structure the call option transaction (the SOHO Option) (exhibit R-29) between RBC and an entity of Norshield Financial Group;
- June 27, 1999, First Horizon / Olympus United Funds shares offered to the Canadian retail investors (exhibit R-9A);
- June 29, 1999, Mosaic (formally Norshield Composite Ltd) designated as RBC's counter party to the SOHO Option (exhibit R-32);
- July 30, 1999, signing of the master Agreement between RBC and Mosaic (exhibit R-34);

- Numerous extensions of the SOHO Option between September 2002 and March 2004 for a total of $353 million (exhibits R-35, R-39A and R-39B);

- January 19, 2004, deployment of the RBC Olympus United Univest Principal Protected Hedge Funds Linked Deposit Notes (exhibit R-55);

- November 10th, 2004 assignment by Mosaic of its benefit in the SOHO Option to MS-II, a Cayman Island Corporation, with RBC's consent (exhibit R-43A);

- November 19th, 2004, partial termination of the SOHO Option by mutual agreement between MS-II and RBC (exhibit R-39B).

[11] Petitioner therefore maintains that these specific events involving RBC factually demonstrate that RBC was the nemesis of the *Norshield Investment Structure* fraud, helped the fraudulent structure to evolve and gain credibility, permitted the diversion of money out of the structure and thus caused damages equivalent to the value of the unredeemable shares of Olympus United Funds held by the petitioner and other class members as of July 2005.

THE LAW

[12] Articles 1002 and following *C.c.P.* detail the conditions that must be met in order to obtain an authorization to institute a class action.

[13] Article 1003 *C.c.P.* states:

> « **1003.** The court authorizes the bringing of the class action and ascribes the status of representative to the member it designates if of opinion that:
>
> *(a)* the recourses of the members raise identical, similar or related questions of law or fact;
>
> *(b)* the facts alleged seem to justify the conclusions sought;
>
> *(c)* the composition of the group makes the application of article 59 or 67 difficult or impracticable; and
>
> *(d)* the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately. »

[14] In *Dow Corning*, our colleague, Mr Justice Denis, describes how the Court must approach these conditions:

« a) Généralité

« Avant d'aborder ces conditions, il n'est pas inutile de rappeler que le recours collectif a une portée sociale et vise à fournir l'accès à la justice à des citoyens qui ont des problèmes communs dont la valeur pécuniaire peut souvent être d'une modicité relative et qui n'oseraient ou ne pourraient pas de façon appropriée mettre en marche le processus judiciaire. »

« Reprenant l'enseignement de la Cour suprême dans Comité régional des usagers de transports en commun de Québec c. C.T.C.U.Q., [1981] 1 R.C.S., 424, la jurisprudence a généralement établi que les conditions de l'article 1003 doivent être interprétées de façon non restrictive et qu'elles laissent peu de discrétion au Tribunal lorsqu'elles sont remplies sans pour autant que le Tribunal ait à se prononcer sur le bien-fondé en droit des conclusions en regard des faits allégués. »

« Le premier juge a qualifié le recours collectif de «recours exceptionnel». Avec égards, je ne partage pas ce point de vue. Le recours collectif est un véhicule procédural comme il y en a plusieurs autres dans le Code et il est disponible lorsque les conditions d'exercice se rencontrent. »

« Disons tout d'abord qu'un courant jurisprudentiel semble maintenant s'établir à l'effet que, en cas de doute, le doute doit jouer en faveur du mérite de la requête en autorisation. En d'autres mots, les dispositions de l'article 1003 du Code de procédure civile n'ont pas à être interprétées de façon restrictive, mais de façon libérale. »

a) L'article 1003 a) C.p.C.

« L'article 1003a) exige que le recours de l'ensemble des membres présente des caractéristiques suffisamment communes pour que l'essentiel du litige puisse être tranché par un seul jugement. Ainsi dans Nagar c. Ville de Montréal, [1991] R.D.Q. 604 (C.A.), notre Cour a reconnu qu'une requête pour exercer un recours collectif n'était pas recevable lorsque les questions sont très diversifiées, notamment quant aux dommages subis, aux régimes concernés, à la réglementation applicable et au partage de responsabilité éventuel. La seule diversité des réclamations individuelles ou encore la variété des circonstances n'est toutefois pas un obstacle insurmontable à l'exercice de ce recours (Comité d'environnement de la Baie Inc. c. Société d'électrolyse et de chimie Alcan, déjà cité; Tremaine c. C.C.H. Robins Canada Inc., déjà cité). Il suffit qu'il existe un certain nombre de questions de droit ou de fait suffisamment semblables ou connexes pour justifier le recours (Guilbert c. Vacances sans frontières Ltée. [1991] R.D.J. 513 (C.A.); Association coopérative d'économie familiale (Acef) du Nord de Montréal c. Ste-Marie, déjà cité ».

« Avec égards pour l'opinion contraire, l'essentiel du débat, c'est la conception même du stérilet Dalkon Shield. S'il s'avère que cette conception n'était pas

erronée et que son utilisation ne pouvait causer de problèmes, c'en sera fait du recours en dommages-intérêts.

Si, par contre, les réclamantes franchissent collectivement cette étape de façon victorieuse, le reste – outre la question de prescription – constituera des modalités propres à chaque membre du groupe.

Certes, à partir de ce moment, la preuve variera d'une personne à l'autre mais le législateur de 1978 n'a pas voulu limiter le recours collectif à des cas stéréotypés. »

b) L'article 1003 b) C.p.C.

« Les mots «paraissent justifier» et «justifient» ne peuvent avoir la même portée à moins que dans la première expression l'on ne tienne pas compte de la présence du verbe paraître. Et c'est ici que le renvoi au passage cité de l'opinion du juge Brossard dans l'arrêt St-Léonard, précité, est utile sur le sens à donner au verbe paraître qui sied à mon avis tout aussi bien dans le contexte de l'art. 1003. Le législateur a voulu que le tribunal écarte d'emblée tout recours frivole ou manifestement mal fondé et n'autorise que ceux où les faits allégués dévoilent une apparence sérieuse de droit.

Je conclus donc que l'expression «paraissent justifier» signifie qu'il doit y avoir aux yeux du juge une apparence sérieuse de droit pour qu'il autorise le recours, sans pour autant qu'il ait à se prononcer sur le bien-fondé en droit des conclusions en regard des faits allégués[2]. »

[15] The Court agrees with this approach described by Mr Justice Denis.

THE PRESENT MOTION

A. Article 1003(a) *C.c.P.*

[16] As regards identical, similar or related questions of law or fact, petitioner puts forward in her motion the following questions :

« 94 a) Did RBC participate in the creation of a financial product that was used to defraud the class members?

b) Did RBC allow this fraudulent structure to evolve, strive, and survive until $159 million were lost by Class members?

c) Did RBC know or ought to have known that the class members were being defrauded or at serious risk of losing their investments within that structure?

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2 *Manon Doyer* c. *Dow Corning Corporation et al.*, 500-06-000013-934, pages 6 to 8 of 20.

d) Did RBC voluntarily blind itself because of the financial benefits it derived from the fraudulent structure?

e) Did RBC omit to refrain from continuing its collaboration with *Norshield Financial Group*?

f) Did RBC omit to inform authorities of obvious risks and irregularities they knew or should have known about within *Norshield Financial Group* and the *Olympus investment structure*?

g) Did RBC lend their credibility to *Norshield Financial Group* and the *Olympus investment structure*, first by providing hundreds of millions of dollars in financing, and then by offering a principal protected financial product to the Canadian public which was directly based on the fraudulent structure?

g.1) Did RBC authorize transfers of funds and/or assets from the *Norshield Financial structure* that caused such assets to be diverted from assets that would have benefited the Group?

h) Does a positive answer to one or more of the questions above equate to an extra-contractual fault on the part of RBC?

i) If so, did RBC's fault(s) cause the losses incurred by Class members? »

[17] Petitioner asserts that all these questions are common to the group and only the amount of losses will vary from one member to the other.

[18] In support of this submission, petitioner refers the Court to several decisions[3] and also the following comment by Mr Justice Fournier of the Appeal Court in *Brown* v. *B2B Trust* :

> « 59. Une question est commune aux membres du groupe lorsqu'il est nécessaire d'y répondre pour résoudre la demande de chaque membre, que sa détermination a un effet significatif sur le sort des réclamations de chacun d'eux...
>
> 60. Bref, dans la mesure où se pose une question commune aux membres du groupe, question qui est par ailleurs significative, le critère est satisfait. »[4]

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[3] Comité d'environnement de La Baie Inc. c. Société d'électrolyse et de chimie Alcan Ltée, 1990 QCCA 3338, Nadon c. Anjou (Ville), 1994 QCCA 5900, Sigouin c. Merck & Co. inc., 2006 QCCS 5325, Collectif de défense des droits de la Montérégie (CDDM) c. Centre hospitalier régional du Suroît du Centre de santé et de services sociaux du Suroît, 2011 QCCA 826, Option consommateurs c. Infineon, 2011 QCCA 2116, Dell'Anielo c. Vivendi Canada Inc., 2012 QCCA 384.

[4] 2012 QCCA 900, p. 15 of 17.

[19] For its part, respondents refer, amongst others, to the case of *Harmegnies* v. *Toyota Canada Inc.*:

> « 54. Il est, en effet, essentiel de démontrer le caractère collectif du dommage subi et le recours collectif n'est pas approprié lorsqu'il donnerait naissance, lors de l'audition au fond, à une multitude de petits procès et qu'un aspect important de la contestation engagé ne se prête pas à une détermination collective en raison d'une multiplication de facteurs subjectifs[5]... »

[20] Respondents pretend that, in effect, causation (article 1457 QCC) will be a fundamental question at issue and consequently this will give rise to a multitude of trials.

[21] This argument is based on the premise that petitioner as well as other members of the group did rely on RBC's involvement before deciding to invest in Olympus.

[22] Petitioner replies that reliance is not at the core of this recourse.

[23] The Court agrees that, in her motion, petitioner doesn't invoke reliance on any « faits et gestes » of respondents before deciding to invest in Olympus.

[24] The crux of petitioner's argument is that respondents decided to partake in the fraudulent scheme or structure with a view to making a profit while knowing or presumed to have known that their co-contracting partner was defrauding third parties.

[25] Furthermore, in the more recent ruling of *CDDM*[6] cited by petitioner, the Appeal Court ruled that the possibility of mini trials should not be considered as an obstacle to a class action:

> «[23] Il est fort possible que la détermination des questions communes ne constitue pas une résolution complète du litige, mais qu'elle donne plutôt lieu à des petits procès à l'étape du règlement individuel des réclamations. Cela ne fait pas obstacle à un recours collectif... »[7]

[26] The Court concludes that the questions of fact and law enumerated by petitioner in her motion[8] do raise common questions of law or fact and that, therefore, the criterion of article 1003 a) *C.c.P.* is met.

B. <u>Article 1003(b) *C.c.P.*</u>

[27] Do the facts alleged by petitioner and previously summarized seem to justify the conclusions sought?

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5 2008 QCCA 380, p. 10 of 11.
6 2011 QCCA 826.
7 Id., p. 4 of 8.
8 Paragraph 94 of the motion.

[28] Let us recall that this criterion deals with the issue of whether or not petitioner's motion shows a « good colour of right » or not. At this stage, the Court doesn't rule on the merits of the case.

[29] With regards to this criterion, petitioner cites the decision of *Menard* v. *Matteo et al* where Mr Justice Buffoni writes:

> « [42] Le syllogisme du recours envisagé ici se présente sommairement comme suit:
>
> 42.1 Selon l'article 1457 du *Code civil du Québec* (CCQ), toute personne a le devoir de respecter les règles de conduite qui s'imposent à elle de manière à ne pas causer de préjudice à autrui. Lorsqu'elle manque à ce devoir, elle est responsable du préjudice qu'elle cause par cette faute à autrui et tenue de réparer ce préjudice.
>
> 42.2 Or, allègue la requérante, chacun des intimés a manqué à une ou plusieurs règles de conduite qui s'imposaient à lui et a, en ce faisant, participé d'une façon ou d'une autre ou favorisé d'une façon ou d'une autre la perpétration collective de la fraude, cause directe des pertes financières subies par les membres du Groupe.
>
> 42.3 Donc, conclut-elle, chacun des intimés est tenu solidairement de réparer le préjudice causé par sa faute aux membres du Groupe.
>
> [43] En tenant pour avérées les allégations de la requête amendée, l'on doit se demander si le recours envisagé satisfait à la condition de l'apparence sérieuse de droit, tant à l'égard de chacun des intimés qu'à l'égard de chacun des trois éléments requis: faute, préjudice, lien de causalité[9]. »

[30] In *Brown* v. *B2B Trust*[10] previously cited, the Court of Appeal states:

> « [40] Au stade de l'autorisation, le fardeau de l'appelant n'en est pas un de preuve prépondérante. Il lui suffit de faire la démonstration d'un syllogisme juridique qui mènera, si prouvé, à une condamnation et le juge saisi de la requête ne peut considérer les moyens de défense qui pourraient être soulevés.
>
> ...
>
> [43] Comme je le mentionnais plus haut, le fardeau de l'appelant en est un de démonstration et c'est en tenant compte de ce fardeau que le juge exerce sa discrétion de l'examen des quatre critères. Le paragraphe b) de l'article précise bien que les faits allégués <u>paraissent justifier</u> les conclusions recherchées. Un peu comme en matière d'injonction interlocutoire, à ce stade précoce de la

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9 2011 QCCS 4287, at p. 7-8 of 20.

10 2012 QCCA 900, Page of ...

procédure, le fardeau du demandeur se limite à établir une apparence de droit et non à convaincre à la suite d'un débat contradictoire[11] »

[31] To the same effect are the comments of our colleague, Mr Justice Mongeon, in the matter of *Jean-François Paris*:

> « 49. Dès qu'il constate une allégation qui, si elle est prouvée à l'audition au fond, peut permettre à un tribunal de conclure à une faute génératrice d'un dommage et que cette situation suggère qu'une(sic) ou plusieurs questions communes à des membres d'un groupe, le tribunal d'instance se doit de s'abstenir de rejeter le recours au stade de l'autorisation et de permettre que le débat soit tranché après audition complète de toute la preuve. Le processus de filtration des recours collectifs au moyen de la requête en autorisation n'est ni le moment ni le forum approprié pour fermer la porte à l'exercice d'un recours judiciaire sauf lorsqu'il est évident que le recours n'a aucune chance de réussite comme recours collectif.
>
> ...
>
> 60. Les défendeurs administrateurs et dirigeants plaident essentiellement que les faits allégués par le demandeur doivent être remis en perspective, certains parce qu'ils sont eux-mêmes faux et inexacts, d'autres parce qu'ils sont contredits par la preuve documentaire produite par le demandeur lui-même. Bref, s'il fallait retenir leur thèse, cela équivaudrait à décider de l'issue de cette cause sur la seule foi des mémoires, sans entendre la preuve, sans voir les témoins et sans apprécier leur crédibilité. Cela ne veut pas dire que le demandeur a raison ou qu'il a tort. Cela ne veut pas dire que le demandeur a raison ou qu'il a tort. Cela veut dire que malgré l'intérêt des questions et des arguments de part et d'autre, le Tribunal se doit d'entendre un recours collectif à moins que la lecture des allégations ne fasse ni bon sens ni logique, somme toute, que ces allégations soient à ce point frivoles et manifestement mal fondées, que la poursuite du débat judiciaire ne résulte qu'en un abus du système et ne débouche que sur un constat prévu d'avance[12]. »

[32] Respondents maintain that petitioner has failed in her burden to demonstrate a good color of right for three reasons:

- no allegation of concrete facts that could qualify as a fault on the part of respondents;
- no allegation of reliance on respondents' contribution to the alleged fraud;
- no standing to sue for the loss of value of petitioner's or other members' investments in Olympus.

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[11] 2008 QCCA 380, p. 10 of 11.

[12] Jean-François Paris c. Renaud Lafrance et al., 500-06-000440-087, September 1, 2011.

[33] Because of the principle that the facts alleged by petitioner must be taken for granted, the Court is of the opinion that the facts alleged by petitioner in the motion or referenced in the exhibits do show a good color of right in favour of petitioner.

[34] More specifically, if those facts are taken for granted, they support the submission that respondents committed a fault in the course of their business operations, said fault causing the damages claimed by petitioner.

[35] Of course, at trial, the Court will rule on the basis of the proof presented by both parties and will then decide whether or not respondents, in the present instance, had an obligation to review and investigate the financial structure of Norshield and/or Mosaic the whole in the context of determining if they committed or not a fault.

[36] Coming back to the three arguments raised by respondents to argue that the alleged facts do not seem to justify the conclusions sought, the Court will underline the following points.

[37] The first argument is to the effect that petitioner makes no allegation of concrete facts that could qualify as a fault on the part of respondents.

[38] More specifically, respondents maintain that the SOHO Option is not a margin loan as pleaded by petitioner but rather an investment vehicle.

[39] Much of respondents' contestation is directed at convincing the Court of this distinction.

[40] Repeating again that, at the stage of the authorization, the facts alleged must be taken for granted, the Court cannot entertain this first argument by respondents.

[41] Only the proof at trial will permit to determine if respondents knew or should have known that they were voluntarily participating in a fraudulent scheme.

[42] The Court also notes that in the receiver's Sixth report, he refers to a « margin loan » not an « investment vehicle »:

> « 153. In order for this method of calculating the NAVs of the entities within the Norshield investment structure to be supported, Mosaic's non-hedged assets would have to have had, at a minimum, a realizable value equal to or greater than the outstanding amount of the <u>margin loans</u> which were secured by Mosaic's hedged assets. As stated above, Mosaic's non-hedged assets consisted principally of its investments in the Channel Entities[13]. »

(Our underlining)

[13] Exhibit R-12D.

[43] As a second argument, respondents maintain that petitioner makes no allegation of reliance on respondents' contribution to the fraudulent scheme.

[44] We have already seen that, in effect, petitioner does not invoke the argument of reliance and, therefore, the Court believes that this argument is mute.

[45] Respondents point out that the Memorandum (exhibits R-9 and R-9-F) doesn't refer to them and provides « risk tolerance warnings » for potential investors as well as many « Beware » in exhibit R-55.

[46] Again, the Court considers that these may be valid arguments but only to be raised at the hearing on the merits not at the stage of the authorization.

[47] Thirdly, respondents maintain that petitioner as well as other members of the group have no standing to sue for the loss of value of their investments in Olympus.

[48] In support of this argument, respondents refer the Court to cases involving claims by shareholders or to the fact that only the receiver is entitled to initiate proceedings against the respondents, a decision the receiver has not taken.

[49] The Court does not endorse this argument because, in the present instance, petitioner and other class members are basing their right to sue on the premise that they were fraudulently lured into investing in Olympus. They do not invoke the contracts, per se, between respondents and *Mosaic* or any other extra-contractual links between respondents and other entities involved in the fraudulent structure.

[50] The Court concludes that if petitioner is successful in her claim against respondents and obtains damages, this should not constitute a preferential treatment.

C. Article 1003(c) *C.c.P*.

[51] Our Appeal Court[14] recently cited the Supreme Court decision in *Western Canadian Shopping Centre* which discusses the question of the composition of the group:

> « 38 Bien qu'il existe des différences entre les critères, il se dégage quatre conditions nécessaires au recours collectif. Premièrement, le groupe doit pouvoir être clairement défini. La définition du groupe est essentielle parce qu'elle précise qui a droit aux avis, qui a droit à la réparation (si une réparation est accordée), et qui est lié par le jugement. Il est donc primordial que le groupe puisse être clairement défini au début du litige. La définition devrait énoncer des critères objectifs permettant d'identifier les membres du groupe. Les critères devraient avoir un rapport rationnel avec les revendications communes à tous les membres du groupe mais ne devraient pas dépendre de l'issue du litige. Il n'est pas nécessaire que tous les membres du groupe soient nommés ou connus. Il

[14] CDDM v. CSSS du Suroît et al., 2011 QCCA 826 (CanLII), p. 9 of 14.

est toutefois nécessaire que l'appartenance d'une personne au groupe puisse être déterminée sur des critères explicites et objectifs : voir Branch, *op. cit.*, par. 4.190-4.207; Friedenthal, Kane et Miller, *Civil Procedure* (2e éd. 1993), p. 726-727; *Bywater c. Toronto Transit Commission* (1998), 27 C.P.C. (4th) 172 (C. Ont. (Div. gén.)), par. 10-11. »

[52] In view of these comments, the respondents do not seriously contest the premise that the composition of the group proposed by petitioner makes the application of articles 59 or 67 *C.c.P.* difficult or impracticable.

D. Article 1003(d) *C.c.P.*

[53] Respondents maintain that petitioner is not in a position to represent the group adequately because she does not have an interest to sue.

[54] This argument has already been set aside[15].

[55] They also claim that petitioner would know very little about the pertinent facts so that other members of the proposed class would not accept to be represented by her.

[56] The Court is of the opinion that, on the contrary, petitioner has shown that she has a good understanding of the facts relevant to this motion.

[57] The Court underlines all the various steps taken by petitioner over the past few years to bring forward this claim, despite numerous set backs and difficulties, as illustrated in the various proceedings before the Court as well as her capabilities to submit to discoveries and provide answers to pertinent questions.

[58] The Court concludes that petitioner is in a position to represent the group adequately.

[59] Still on the question of the group's composition, the Court agrees with petitioner's submission that the class definition should be national in scope.

[60] Respondents do not appear to contest such a national scope.

[61] Furthermore, it should be noted that there is a real and substantial connection with the jurisdiction of this Court (article 3148 *C.c.Q.*) since the alleged fraud was perpetrated in Montreal where *Norshield Financial Group* was founded and RBC as well as the mis-en-cause Richter and Massi have either a head office or a domicile.

[62] Lastly, respondents are right to argue that the definition of the proposed class must exclude any person who is or was in any way related to John Xanthoudakis or any other former director, administrator, representative or employee of the *Norshield Financial Group*.

---

[15] See paragraphs 44 to 47.

FOR THESE REASONS, THE COURT :

[63] **GRANTS** the present motion against Banque Royale du Canada and RBC Capital Markets Corporation;

[64] AUTHORISES the exercise of the following class action: An action in damages for extra-contractual liability;

[65] **GRANTS** petitioner the status of representative member in order to institute class action proceedings on behalf of those persons belonging to the following class:

> « All Canadian retail investors who purchased one of the Olympus United Funds Corporation shares (formally First Horizon Holdings Ltd.) from June 27, 1999 to June 29, 2005, and who had outstanding shares in said corporations as of June 29, 2005, but to the exclusion of any person who is or was in any way related to John Xanthoudakis or any other former director, administrator, representative or employee of the *Norshield Financial Group*. »

[66] **IDENTIFIES** as follows the principal questions of fact and law to be dealt with on a collective basis:

a) Did RBC participate in the creation of a financial product that was used to defraud the class members?

b) Did RBC allow this fraudulent structure to evolve, strive, and survive until $159 million were lost by Class members?

c) Did RBC know or ought to have known that the class members were being defrauded or at serious risk of losing their investments within that structure?

d) Did RBC voluntarily blind itself because of the financial benefits it derived from the fraudulent structure?

e) Did RBC omit to refrain from continuing its collaboration with *Norshield Financial Group*?

f) Did RBC omit to inform authorities of obvious risks and irregularities they knew or should have known about within *Norshield Financial Group* and the *Olympus investment structure*?

g) Did RBC lend their credibility to *Norshield Financial Group* and the *Olympus investment structure*, first by providing hundreds of millions of dollars in financing, and then by offering a principal protected financial product to the Canadian public which was directly based on the fraudulent structure?

g.1) Did RBC authorize transfers of funds and/or assets from the *Norshield Financial* structure that caused such assets to be diverted from assets that would have benefited the Group?

h) Does a positive answer to one or more of the questions above equate to an extra-contractual fault on the part of RBC?

i) If so, did RBC's fault(s) cause the losses incurred by Class members?

[67] **IDENTIFIES** as follows the class action conclusions sought:

> **GRANT** the present class action;
>
> **CONDEMN** respondents to pay to the Class members the balance in Canadian dollars attributed to their unredeemed shares of *Olympus United Funds Corporation* or its predecessor First Horizon Holdings Ltd, as of June 29, 2005, less any amount received by class members pursuant to the judgment rendered by this Court on July 26th 2012, in court file 500-06-000434-080, and subject to the judgment of July 26th 2012 in the present instance, plus legal interest and the special indemnity provided by Article 1619 of the *Civil Code of Quebec* calculated from the first date of the service of the proceedings;
>
> **ORDER** the collective recovery of the damages;
>
> **CONDEMN** respondents to costs including experts' fees;

[68] **DECLARES** that all members of the class shall be bound by the judgment to intervene with respect to the class action proceedings except where they have opted to be excluded as provided by law;

[69] **ORDERS** that every member shall benefit from a period of ninety (90) days from the judgment to intervene in order to exercise any statutory right to be excluded from the class;

[70] **ORDERS** the mis-en-cause to provide the petitioner with a complete list of the known identifies and coordinates of Class members;

[71] **ORDERS** the publication of a notice to the members in accordance with a national diffusion plan to be ordered by this Court;

[72] **ORDERS** that the said notice to members be published within a period of thirty (30) days from the judgment to intervene on the present motion;

[73] **THE WHOLE** with costs;

[74] **DISMISSES** the motion against RBC Dominion Securities Limited and RBC Dominion Securities Inc.;

[75] **WITHOUT COSTS** as regards RBC Dominion Securities Limited and RBC Dominion Securities Inc.

Marc de Wever jcs

MARC DE WEVER, J.S.C.

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Dates of hearing : April 10th and 11th, 2013.

Exhibit B

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO : 500-06-000435-087

SUPERIOR COURT
CLASS ACTION

SHEILA CALDER

Plaintiff

-c-

ROYAL BANK OF CANADA

-and-

RBC CAPITAL MARKETS CORPORATION

Defendant

MOTION TO INSTITUTE PROCEEDINGS
(CLASS ACTION)
(Sections 1011 ss. C.c.p)

TO THE HONOURABLE MARC DE WEVER, J.C.S., PLAINTIFF SHEILA CALDER RESPECTFULLY SUBMITS THE FOLLOWING:

Plaintiff and Class description

1. By judgment of this Court dated November 1, 2013 Plaintiff Sheila Calder was authorized to institute the present class action proceeding against Royal Bank of Canada and RBC Capital Markets Corporation, for the benefit of the following persons:

   "All Canadian retail investors who purchased one of the Olympus United Funds Corporation shares (formally First Horizon Holdings Ltd.) from June 27, 1999 to June 29, 2005 (the Class period), and who had outstanding shares in said corporations as of June 29, 2005, but to the exclusion of any person who is or was in any way related to John Xanthoudakis or any other former director, administrator, representative or employee of the Norshield Financial Group." (Hereinafter, the Class members);

2. The conclusions sought in the present class action are:

CONDEMN Royal Bank of Canada and RBC Capital Markets to pay Class members the balance in Canadian dollars attributed to their unredeemed shares of Olympus United Funds Corporation or its predecessor First Horizon Holdings Ltd. as of June 29, 2005, less any amount received by class members pursuant to the judgment rendered by this Court on July 26th 2012, in court file 500-06-000434-080[1], and subject to the judgment of July 26th 2012 in the present instance[2], plus legal interest and the special indemnity provided by Article 1619 of the Civil Code of Quebec calculated from the first date of the service of the proceedings in this file;

ORDER the collective recovery of the recovered damages;

CONDEMN Respondents to pay costs, including experts' fees.

3. The Royal Bank of Canada is a Canadian chartered Bank that has its domicile in Montreal;

4. RBC Capital Markets (RBCCM) is a trade mark brand name of Royal Bank of Canada (Royal Bank) and is its corporate and investment banking business platform; RBCCM specializes in options, hedge fund and other structured financial products; together, Royal Bank and RBCCM will be referred to as RBC in the present Motion;

5. The Norshield Financial Group (NFG) was the brand name of a Montreal based financial organization comprising a number of entities in Canada, the Caribbean Islands and the United States; during the Class period, NFG posed as a Canadian leading, established and successful hedge fund and "fund of hedge funds" managers;

6. In the present Motion, Plaintiff Sheila Calder will refer the Court to, among her 54 exhibits, a series of eight Reports that were prepared by various Monitors, Recevers and Liquidators between 2004 to 2009, and presented to different tribunals in relation to the winding down of various entities related to NFG, namely:

- **Exhibit P-01** - Globe-X Management and Globe-X Canadiana

[1] A judgement of this Court which definitely settled a class action against KPMG, by which a majority of class members received a proportion of the approved net settlement amount.
[2] A judgement of this Court which provides that Mrs. Calder and the Class members cannot claim from RBC any portion of losses or damages caused by or attributable to KPMG, if applicable.

(Globe-X) Joint Liquidator's First Report (July 2004);

- **Exhibit P-02** - Globe-X Joint Liquidator's Second Report (April 2005);
- **Exhibit P-03** - Norshield Asset Management (NAM) Monitor's Preliminary Report (June 2005);
- **Exhibit P-04** - Olympus Univest Ltd. (Univest) Single Liquidator's First Report (July 2005);
- **Exhibit P-05** - NFG Receiver's Second Report (November 2005);
- **Exhibit P-06** - NFG Receiver's Sixth Report (March 2007);
- **Exhibit P-07** - Mosaic Composite Ltd. (Mosaic) Joint Liquidators' First Report (February 2008); and
- **Exhibit P-08** - NFG Receiver's Thirteenth Report (December 2009)

* * *

7. In June 1999, Royal Bank, through its agent RBC Dominion Securities, engaged in certain financial business with NFG (namely the RBC SOHO Option) which provided NFG access to up to $ USD 350 million of highly leveraged assets, from the beginning to the end of the Class period;

8. In the same month of June of 1999, NFG created the Olympus Investment Structure (OIS)[3];

9. The OIS's financial foundation was the leveraged assets acquired by way of the RBC SOHO Option (a basket of hedge funds);

10. The OIS and NFG collapsed in June 2005, which revealed that tens of millions of dollars of Class members' money had vanished;

11. This Class action seeks to establish that:

    a) NFG, through the OIS, defrauded Sheila Calder and Class members of the value of their unredeemable shares of Olympus United Funds Corporation as of June 29th 2005;

[3] The IOS is described in paragraphs 22 ss. of this Motion.

b) RBC participated in the creation of the fraudulent OIS and was essential to the ongoing perpetration of the fraud;

c) RBC facilitated the diversion of assets that would have otherwise benefitted to the Class members;

d) By its actions and inactions, RBC failed in its duty to abide by rules of conduct which lied upon it, so as not to cause injury to others, and is hence jointly responsible with the defrauders for the losses caused by the fraud;

12. Mrs. Calder hence asks this Court to resolve the following issues in dispute:

a) Did RBC participate in the creation of a financial product that was used to defraud the Class members?

b) Did RBC allow this fraudulent structure to evolve, strive, and survive until $159 million were lost by Class members?

c) Did RBC know or ought to have known that the Class members were being defrauded or at serious risk of losing their investments within that structure?

d) Did RBC voluntarily blind itself because of the financial benefits it derived from the fraudulent structure?

e) Did RBC omit to refrain from continuing its collaboration with NFG?

f) Did RBC omit to inform authorities of obvious risks and irregularities they knew or should have known about within NFG and the OIS?

g) Did RBC lend their credibility to NFG and the OIS, first by providing hundreds of millions of dollars in financing, and then by offering a principal protected financial product to the Canadian public which was directly based on the fraudulent structure?

h) Did RBC authorize transfers of funds and/or assets from the Norshield investment structure that caused such assets to be

diverted from assets that would have benefited the Class members?

i) Does a positive answer to one or more of the questions above equate to an extra-contractual fault on the part of RBC?

j) If so, did RBC's fault(s) cause the losses incurred by Class members?

The Norshield/Olympus Fraud

13. Between June 1999 and June 2005, NFG developed, marketed and operated the OIS [4], at the top of which was Olympus United Funds Corporation (Olympus United Funds);

14. In May 2005, the OIS failed to meet redemption requests;

15. From that incapacity to meet redemptions, the whole structure, along with what was left of NFG, quickly collapsed;

16. The first OIS/NFG entity to be placed into insolvency proceedings was Olympus Univest Ltd. (Univest) which, on May 19, 2005, was placed in voluntary liquidation, the whole as appears from the P-04 Univest Single Liquidator's First Report;

17. Univest's voluntary liquidation was followed, from June 29, 2005 to October 14, 2005, by the following entities to be placed into receivership, the whole as appears from paragraphs 1 to 3 of the P-05 NFG Receiver's Second Report[5]:

Norshield Asset Management Ltd.
Norshield Investment Partners Holdings Ltd.
Olympus United Funds Holdings Corporation
Olympus United Funds Corporation
Olympus United Bank and Trust SCC
Olympus United Group Inc.
Norshield Capital Management Corporation
Honeybee Software Technologies Inc.

18. Finally, on January 20, 2006, Mosaic Composite Ltd. (Mosaic) was placed

[4] In their different reports, NFG's Receiver and Liquidators also refer to the Olympus investment structure as the Norshield investment structure or NIS.
[5] See also: Exhibit P-03 NAM Monitor's Preliminary Report, **Exhibit P-09** AMF Restriction and Monitoring Order and **Exhibit P-10** OSC investigator Radu's Affidavit.

into receivership as appears from the P-07 Mosaic Joint Liquidators' First Report[6];

19. The Richter firm (Receiver Richter) and its partner Raymond Massi were involved in each of these insolvency processes, either as Monitor, Receiver, Custodians or Liquidators;

20. Although the entities listed in the above paragraphs 16 to 18 do not represent the totality of the NFG, they represented most of what NFG entities were left at the time;

21. The NFG entities described in paragraphs 16 to 18 were all related to the OIS;

22. The OIS was composed of the four following levels, as appears form the **Exhibit P-11** Chart drafted by Receiver Richter in November 2005:

Olympus United Funds Corporation

Olympus United Bank and Trust SCC

Olympus Univest Ltd.

Mosaic Composite Ltd.

23. In its December 2009 **Exhibit P-08** Thirteenth Report, NFG Receiver Richter described the relation from one entity to the other within the OIS, which can be summarized as follows:

- Investments in Olympus United Funds collected from the Canadian Retail Investors flowed into Olympus United Bank and Trust SCC (Olympus Bank);

[6] At paragraph 8.

- Olympus Bank invested its funds into Univest;

- Univest then invested the monies received from Olympus Bank[7] in Mosaic;

- Mosaic's assets were divided into two main assets: hedged and non-hedged assets;

- Mosaic's hedged assets consisted of a basket of hedge funds acquired through the RBC SOHO Option;

- Mosaic's non-hedged assets consisted of the Channel entities;

24. The interrelation between those four OIS levels appear from the available Financial Statements of Olympus United Funds communicated as **Exhibits P-11 to P-15**, those of Olympus Bank as **Exhibits P-16 to P-19**, those of Univest as **Exhibits P-20 to P-22**, and those of Mosaic as **Exhibit P-23**;

25. In their February 2008 P-07 First Report, Mosaic's Joint Liquidators stated:

> « 27. In addition to its significant value, the RBC SOHO Option was important to the Norshield Investment Structure because the gross value of the basket of hedge funds was the basis upon which the net asset value of the shares of Mosaic, Olympus Univest and Olympus United Funds Corporation, as reported to their investors, was substantially calculated. »

26. The direct relation between the Mosaic basket of hedge funds' gross value and Olympus United Funds shares' value was confirmed by Xanthoudakis and Smith in a memo prepared for Univest's Single Liquidator in June 2005[8]:

> "Under its agreement with MCL [Mosaic], OUL's [Univest's] exposure to these hedge funds through 17 outside managers and two proprietary-managers was tracked on a daily basis by Norshield Staff, and the NAV [Net Asset Value] was calculated based on the returns of these exposures, net of manager fees, and then the OUL fees and admin costs were applied at the OUL level, to produce weekly NAV estimates that were the source of the NAV calculations at the Olympus United Funds Corporation level each week."

27. Xanthoudakis and Smith testified to the same effect to NFG's Receiver as

---

[7] Along with monies received from other direct investors (see P-11 Chart, over the Univest level).
[8] P-04 at para. 5.6 and page 62 (exhibit 8 of P-04).

appears from the March 2007 P-06 NFG's Receiver's Sixth Report:

> "150. Both John Xanthoudakis and Dale Smith stated during their examinations by the Receiver that the NAVs which were provided on a weekly basis by Mosaic for presentation to the preference shareholders of Olympus Univest and indirectly to the Retail Investors (flowing up from Olympus Univest, through Olympus Bank and then Olympus Funds) were calculated almost entirely on the value of the hedged assets of Mosaic."

28. Hence, at all levels of the OIS, Norshield Staff was founding OIS' net worth on assets it didn't fully own[9];

29. NFG justified this fiction by pretending that Mosaic's non-hedged assets compensated for the liability owed to RBC in the basket of hedge funds;

30. Receiver Richter rightly explained in the P-06 Report:

> "153. In order for this method of calculating the NAVs of the entities within the Norshield investment structure to be supported, Mosaic's non-hedged assets would have to have had, at a minimum, a realizable value equal to or greater than the outstanding amount of the margin loans [10] which were secured by Mosaic's hedged assets. As stated above, Mosaic's non-hedged assets consisted principally of its investments in the Channel Entities."

31. That essential condition was found to be non-existent:

> "155. The Receiver has concluded that the asset values carried on the audited financial statements of the Channel Entities were overstated by at least US$200 million for fiscal 2002, increasing to at least US$300 million for fiscal 2003. As a result, the value of the Channel Entities' assets was overstated by approximately 88% on their fiscal 2003 financial statements."

32. Those overstatement corresponded essentially, year for year, to the amount owed by Mosaic to RBC as per the RBC SOHO Option;

33. Thus, the value reported to Class members for their shares of Olympus United Funds' was founded on false representations, on no value; those shares, contrary to what the account statements had said, had no value;

[9] OIS's net equity in Mosaic's basket of hedge funds was approximately 15% of its gross value.
[10] Receiver Richter referred to the RBC SOHO option financing as a margin loan; OIS management referred to it as a bank loan (P-23, note 8).

34. Between 2001 and 2005, $ CDN 264,7 million were invested by Canadian Retail Investors in the OIS through the Olympus United Funds door, while $ CDN 132,2 million were redeemed[11];

35. In June of 2005, the outstanding shares of Class members in Olympus United Funds had no more value;

Where the Class members' money went

36. Receiver Richter's P-06 Report provided the following answer at page 44:

> 170. The Receiver has identified numerous significant payments from 2002 to 2004 made by Mosaic to entities and/or funds which appear to have or have had i) close connections to John Xanthoudakis and/or to Norshield entities, and/or ii) connections to entities over which John Xanthoudakis had influence with respect to investment decisions. The Receiver has not identified evidence that any of these third party payments have benefited either John Xanthoudakis or Dale Smith personally.
>
> 171. These payments totalling $156.6 million consisted of:

Globe-X Management Ltd, Globe-X Canadiana Ltd, Globe-X Enhanced Yield Fund, Globe-X International, Globe-X Assets International	$ 57.6 million
Comprehensive Investors Services Ltd.	$ 38.4 million
C-MAX Advantage Fund Ltd.	$ 14.0 million
Comax Management	$ 18.3 million
Univest Fixed Return for Emerald Key Management	$ 4.2 million
Bice International inc.	$ 3.2 million
Real Vest Investement Ltd.	$ 1.6 million
Silicon Isle Ltd.	$ 3.7 million
Olympus Bank (for Liberty Trust)	$ 15.6 million
Total	**$ 157 million**

> 172. The Receiver has not found a satisfactory explanation for these payments.
>
> 173. The Receiver also identified significant payments made by

[11] P-06, Exhibit 4 (last page)

Olympus Bank from January 2001 to June 2005 to entities that i) were related to or had close connections to John Xanthoudakis and/or to Norshield entities, and/or ii) connections to entities over which John Xanthoudakis had influence with respect to investment decisions. The Receiver has not identified evidence that any of these third party payments have benefited either John Xanthoudakis or Dale Smith personally.

174. These payments by Olympus Bank totalled $60.7 million and included:

Comprehensive Investors Services Ltd.	$ 40.9 million
Cardinal International Corp. Limited	$ 9.6 million
Bice International inc.	$ 5.1 million
Norshield Investment Partners inc.	$ 2.0 million
Univest Global Funds Ltd.	$ 1.4 million
Balance Return Fund Limited	$ 1.0 million
Sterling Leaf Income Trust	$ 0.7 million
Total	**$ 61 million**

175. The Receiver has not found a satisfactory explanation for these payments."

37. The total unexplained payment was $ USD 217.3 million;

38. Hence, while the Class members shares in Olympus United Funds was based on assets that were borrowed, the real money invested by Class members got diverted by the hundreds of millions to entities to directly or indirectly connected to John Xanthoudakis;

39. In a March 2010 **Exhibit P-24** OSC decision concerning Xanthoudakis et al., the Ontario securities commission wrote:

> "235. We note that the Respondents were generally unable to account for investors' funds. We heard evidence that the Receiver put forth considerable efforts to trace the movement of investor funds through the Norshield Investment Structure, but was not able to determine exactly where the funds went. (...)"

40. The dire truth was, by being shown investment values that were based on air, Class members were lured by NFG to invest and leave their money in the OIS, all the while their money was quietly spirited away;

41. That money vacuum was created in the Bahamas in 1999;

The Bahamas, 1999

42. On June 8th, 1999, NFG signed with RBC Dominion Securities[12] (acting for Royal Bank of Canada) the **Exhibit P-25** Letter Agreement with respect to a structured cash-settled call option transaction[13]; said Letter Agreement contained the following passages:

> "This letter confirms our understanding that an entity of Norshield Financial Group (to be determined) ("Norshield") has agreed with us, as agent for Royal Bank of Canada ("RBC") to execute a structured cash-settled call option, the value of which will be based upon an index comprised of third party asset managers (the "Transaction"). (...) We mutually agree that final determination of the initial portfolio is subject to change and is contingent upon due diligence reviews by both firms.
>
> (...)
>
> Norshield agrees: (...) (ii) to pay the US$ 15,000,000 Premium of the Transaction in USD cash after completion of such negotiations and prior to the Trade Date.
>
> (...)
>
> We will be forwarding shortly to you draft versions of the: (...) (iv) Investment Advisory Agreements between each hedge fund manager and RBC. (...) the following outstanding issues require resolution : (i) form of premium payment by Norshield; (ii) whether the interest rate is fixed or floating; and (iii) the Norshield entity that will be the option counterparty. In addition, following both of our due diligence reviews, we will finalize the portfolio composition and establish the necessary prime brokerage accounts as well as advisory agreements between each manager and RBC. We will keep you appraised of our discussions with the managers and negotiations of the advisory agreements.
>
> (...)

[12] RBC Dominion Securities (RBC-DS) is a wholly owned sudsidiary of RBC.
[13] The first RBC SOHO Option, also called NY-1874 or NOR1.

Index:	USD 100mm of RBC assets invested with various money managers (each a "Hedge Fund") as advised by Norshield Asset Management, Ltd. ("NAM") in accordance with an investment Advisory Agreement between NAM and RBC. Indicative initial portfolio is as follows: (...)
(...)	
Investment Adviser ("NAM")	Norshield Asset Managenaent, Ltd
Assets :	USD 100mm deposited in various accounts with third party broker-dealers (each a "Prime Broker") or investment vehilces (each, an "Account") as recommended by Investment Adviser."

43. The RBC SOHO Option product is a powerful financial vehicle; $ USD 100 million is not a small sum to raise; such a sum creates a critical mass of assets;

44. The RBC SOHO Option financing created the Mosaic basket of hedge funds[14];

45. In order to gain access to the $ USD 100 million financing, NFG had to pay a initial premium of $ USD 15 million;

46. That $ USD 15 million initial came from another NFG related group of entities: Globe-X Management and Globe-X Canadiana[15];

47. That fact was known to RBC, as is explained in the July 2004 P-01 Globe-X Joint Liquidators' First Report, at paragraph 6.17:

> "6.17 (...) On 28 July 1999, GXC [Globe-X Canadiana] instructed Royal Bank of Canada, Bahamas to debit its US$ account and transfer US$15 million to Royal Bank of Scotland (Nassau) Limited for the account of Norshield Mosaic

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[14] P-25, p.3, under the title"Index".

[15] Globe-X entities' monthly statements of accounts were issued by Norshield International (P-01, para. 8.4); International Asset Management Limited (IAM) was issued 60% of Globe-X Management shares; Lino Matteo and John Xanthoudakis were respectively President/Secretary and Vice-president/Treasurer of IAM (P-01, paras. 3.4 et 3.7). Matteo was also, in July 2004, President and CEO of Honeybee Software Technologies (P-01 para 11.5.2).

Fund Limited ("Norshield Mosaic")[16]. It is our understanding, based on a memo dated 22 July 1999 from Steve Davis of Cardinal International to Robert Daviault of Norshield International and copied to Terri Engelman-Rhoads of Norshield Asset Management International Ltd. Chicago, and Stephen Hancock of Cardinal International, that Norshield Mosaic made an internal transfer to make the funds available to Norshield Composite."

48. This fact that the Globe-X transfer was used to pay the initial $ USD 15 million premium is correlated by the **Exhibit P-26** February 26th 2001 letter from Norshield Composite, irrevocably instructing RBC to forward all cash proceeds from re-leveraging of the RBC SOHO Option to Globe-X Management;

49. The context of this $ USD 15 million transfer request is explained in detail in the P-01 Report;

50. Between November 1998 and June 1999, Globe-X Canadiana and Globe-X Management opened 11 accounts with RBC Dominion Securities Bahamas, the whole as appears from paragraphs 6.6 to 6.10, and 7.6 to 7.29 of said P-01 Report; some of those accounts were anonymous RBC numbered accounts (see paragraphs 6.6 and 7.6);

51. During that 7 months period, those Globe-X accounts at RBC-DS were used to purchase, on margin, fixed income securities that yielded less than the interests paid for the margins (see paragraph 7.8);

52. RBC, as banker for both parties had a unique perspective on the $ USD 15 million transfer; but by being a direct financial beneficiary of these activities, RBC had a conflicting interest in raising questions;

* * *

53. The day after the $ USD 15 million transfer, on June 29, 1999, the **Exhibit P-27** RBC Dominion Securities Confidential client questionnaire was signed by which Norshield Composite Ltd. (later Mosaic Composite Ltd) was identified as the NFG entity to be RBC's counterparty to the SOHO Option financing;

54. The RBC SOHO Option transaction was finalized on July 30, 1999 between RBC and Norshield Composite Ltd., as appears from the **Exhibit P-28** Norshield Composite board of directors resolution, the **Exhibit P-29** ISDA

[16] Norshield Composite became Mosaic Composite in May 2001 (P-07, paras. 6 and 7)

Master Agreement and the **Exhibit P-30** Confirmation Letter Agreement[17];

55. The P-30 Confirmation Letter Agreement provided that RBC kept authority over:

    - the modification of the index of the basket of hedge funds (par. 9);
    - the calculation of the value of the index (par. 13 (2));
    - any assignment of the option (par. 13 (4));

56. Althought Norshield Asset Management was the Investment Advisor to the hedge funds, the transaction provided that RBC would negotiate and sign Investment Advisory Agreements with each of the managers of each of the hedge funds[18];

57. Examples of RBC's ongoing prerogatives are the **Exhibit P-31** August 7, 1999 Investment Management Agreement concluded by RBC with one of the hedge funds managers, and the **Exhibit P-32** August 29, 2000 RBC to Norshield Asset Management letter informing NAM of a change in composition of the Index;

* * *

58. On June 27th 1999, in the midst of the conclusion of the first RBC SOHO Option and the creation of the Mosaic basket of hedge fund, the Canadian retail investors were offered for the first time the Horizon Group of Investment Funds (later the Olympus United Funds), as appears from the **Exhibits P-33 to P-38** First Horizon/Olympus United Funds Offering Memorandums;

59. The concomitance of the conclusion of the first RBC SOHO Option, the acquisition by Mosaic of a $ USD 100 million basket of hedge funds and the first P-33 Offering Memorandum is not a coincidence; those events were the foundation of a financial structure designed by NFG to lure Canadian retail investors to entrust the OIS with hundreds of millions of real dollars;

60. First Horizon/Olympus United Funds could not have been the effective spearhead of that scheme without the illusion of value given by the Mosaic basket of hedge funds;

61. Without the meeting of NFG and RBC minds in the first part of 1999, and

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[17] This first RBC SOHO Option agreement was eventually followed by a second in June 2002. This first RBC SOHO Option is also reffered to by RBC as NY-1874 or NOR1;
[18] P-25, para. 3.

without the combined help, knowledge and capacity of the Royal Bank of Canada, NFG would not have been able to create the OIS structure used to defraud the Class members;

The "Growth" of the OIS

62. A spur in Olympus United Funds shares subscriptions occurred in 2001, peaked in 2002 with over $ CDN 90 million raised, and ended in 2004[19];

63. During 2003 and 2004, while subscriptions were in the $ CDN 40 and 50 million, redemptions were almost as high;

64. From June 2002 to march 2004, the collaboration between RBC and Norshield intensified: the RBC SOHO Option financing went from $ USD 100 million to $ USD 353,1 million;

65. The first refinancing occurred in June 2002, where a second Option agreement extended an extra $33,33 million financing to Mosaic as appears from the **Exhibit P-39** June 28, 2002 Cash-Settled Call Option Letter Agreement[20];

66. Then, during the thirteen months between September 2002 and October 2003, the P-39 agreement was amended and augmented eight times by RBC to end up totaling $245,33 million as appears from the **Exhibit P-40** September 30, 2002 to October 31, 2003 Confirmation Letters;

67. In March 2004, the P-30 and P-39 RBC SOHO Options were merged by the **Exhibit P-41** March 31, 2004 Amendment Letter Merging First and Second RBC SOHO Options, the total RBC SOHO Option financing then representing $353,1 million;

68. These massive financing augmentations were the direct and almost sole contributions to the augmentation of assets in the Mosaic basket of hedge funds, the whole as appears form the combined **Exhibit P-42** RBCCM NOR1 and NOR2 SOHO Option Valuation Reports;

69. As discussed in paragraphs 28 to 35 of this Motion, these leveraged asset augmentations were used to artificially augment the value of the OIS, and of the *Olympus United Funds* shares;

70. This illusion of growth and value would not have been possible had it not been for the exclusive and massive financial help provided by RBC;

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[19] P-06 (exhibit 4) and P-12 to P-15.

[20] The second RBC SOHO Option agreement, also referred to as NY-3551 or NOR2;

71. Hence, not only did RBC directly participated in the creation of the fraudulent investment structure by providing its foundation but, by ever extending OIS access to leveraged capital, RBC also participated in the ongoing illusion that the Class members' money was there, and was growing;

* * *

72. RBC did not only help NFG create and maintain an illusion of value in the OIS by providing massive leveraged assets; RBC also publicly lent its credibility to NFG end the OIS;

73. On January 19th 2004, RBC presented to the Canadian public and investment professionals the *RBC Olympus United Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1* (the RBC/Olympus PPN), as appears from the **Exhibit P-43** RBC/*Norshield Financial Group* Press release;

74. The P-43 press release mentioned that RBC and Norshield Financial Group "are proud to bring (investors) the Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1"

75. The P-43 press release also praised Norshield Financial Group as "Canada's most successful and established Fund of Hedge Funds manager ";

76. That press release came at a time when most of the new money entering the OIS was never invested and was almost entirely needed to pay redemption requests[21];

77. The RBC/Olympus PPN was offered through the **Exhibit P-44** Information Statement;

78. The first page of the P-44 Information Statement displays the RBC, NFG and Olympus logos on its front page, and designates Olympus United Group inc. as placement agent for the product;

* * *

79. In January 2004, had RBC done a diligent assessment of NFG and the OIS, it would have discovered that:

    - Canadian retail investor's money was not making its way down the

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[21] P-06, exhibit 4;

OIS;

- the subscriptions were then almost entirely used to pay redemptions;
- NFG was over-evaluating the OIS by as much as the amount due to RBC on the Mosaic basket of hedge funds;

80. Instead, RBC partnered with NFG in a product that duplicated the OIS, thereby bolstering both NFG and the OIS;

Due diligence, Know-your-client and anti-money laundering obligations

81. The banking and finance industry, in Canada and overseas, is required to self-regulate in order to provide the public with a safe financial environment; over the years, financial frauds have been gravely affecting retails investors;

82. Those who know the trade, who are in the trade, are required to be vigilant, to be the public's watch dogs;

83. The first hint that should have raised RBC management's eyebrows was the provenance of the original $ USD 15 million premium necessary to initiate the RBC SOHO Option financing;

84. Second hint: the gross overstatements of its assets by Mosaic, RBC's direct client in the case at bar;

85. Mosaic was RBC's direct client from June 1999 to November 2004, with whom it had repeatedly concluded financial agreements worth hundreds of millions of dollars;

86. Plaintiff Calder submits that basic due diligence on the part of RBC of the Mosaic Financial Statements on or before every SOHO Option re-financings would have revealed the gaping discrepancy between the valuation of about half of reported assets and the reality: the Channel Entities had no value;

87. Mosaic's P-20 2003 Financial Statements show that, in 2002, Mosaic reported $ USD 212 Million worth of assets in Channel Fixed Income Fund Ltd; in 2003 that value was increased to $ USD 333 Million;

88. Those values correspond almost exactly with the liability linked to the RBC SOHO Option financings for those two years;

89. A basic but diligent study of Mosaic's statement of accounts, at least for those two years, should have brought RBC to look into the Channel entities;

90. The **Exhibits P-45 and P-46** Channel Entities Financial Statement for the years 2002 and 2003 would have then instructed RBC that:

   a) the majority of the Channel entities' assets were acquired and disposed of by way of non-monetary transactions such as exchanges in shares or for accounts receivables;

   b) the majority of those acquisitions and dispositions were done with related entities like First Horizon Holdings Ltd, Globe-X, iForum, Olympus United Holdings, Mount Real, Cardinal International, Bice International and even Mosaic Composite, its owner;

   c) the Channel entities assets were not liquid because not quoted in active markets;

   d) several recorded assets were subject to option agreements for which the options had not been exercised;

91. By questioning further from those clues, RBC should have noticed that valuations of the Channel entities' assets were done by Mount Real Innovation Center, itself an investee in the Channel entities, and closely related to Xanthoudakis;

92. During those crucial years, not only did RBC had Know your clients obligations, but it also had anti-laundering and anti-terrorist monitoring obligations that should have prompted it to question Mosaic's financial foundation, its business model and its relation with and role within NFG and the IOS;

93. Third, by lending more than $ USD 350 million to NFG and by the nature of RBC's ongoing implication in the monthly management of the fruit of that business, RBC acted not only as NFG's banker, but more or less a business partner of NFG;

94. That business partnership grew one step deeper in January 2004 with the structuring and marketing of the P-44 RBC/Olympus PPN, a product closely related to the OIS and its founding structure;

95. As a long term banker and business partner of NFG, RBC had a unique opportunity to understand what was really going on, link the dots, and blow the whistle;

96. Instead, RBC turned a blind eye, all the way to the end;

ASSIGNEMENT OF the RBC SOHO OPTION TO UNIVEST MULTI-STRATEGY FUND II LTD. (MS-II)

97. On November 10, 2004, Mosaic assigned its interest in the RBC SOHO Option to Univest Multi-Strategy Fund II Ltd. (MS-II) as appears from the **Exhibit P-47** Assignment Agreement;

98. As per the RBC SOHO Option agreements, RBC had to grant consent to any assignment, and hence was a party to P-47;

99. When the P-47 Assignment occurred, Mosaic's interest in the RBC SOHO Option was its main asset[22] which had, if liquidated, a net value $ USD 52.4 million[23];

100. The P-47 Assignment was made "for good and valuable consideration" received, which appear to have been Class A and B shares of MS-II[24];

101. The P-47 Assignment was made in a manner that Mosaic could maintain an economical interest in the SOHO Option basket of hedge funds, in order to continue to base the OIS value on the said basket of hedge funds[25];

102. The P-47 Assignment was made retro-active to October 29, 2004;

103. On October 25, 2004, the **Exhibit P-48** RBC Due Diligence Questionnaire had been signed by Terri-Engleman Rhodes, for MS-II;

104. From November 1, 2004 to November 30, 2004, NFG's interest in the RBC SOHO Option was almost entirely liquidated, in three consecutive transactions of $ USD 15 million each;

105. On November 1, 2004, Mosaic sold 16 667 Class A shares of MS-II to two related Univest funds[26] for the price of $ USD 15 million, as appears from the **Exhibit P-49** Letter Agreement;

106. Following the P-49 sale, wire transfers of $ USD 4.5 million and $ USD 10.5 million were requested from the accounts of the Univest Purchasers to the in trust account of a certain Hart St-Pierre, the whole as appears from the **Exhibit P-50** Norshield Investment Partners inc. letter of November 11, 2004;

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[22] P-07, para. 66.
[23] P-42 Valuation Reports.
[24] P-07, para 68.
[25] P-07, para. 67.
[26] Univest Convertible Arbitrage Fund Ltd. and Univest High Yield Fund Ltd.

107. On November 19, 2004, MS-II requested the partial termination of the RBC SOHO Option, from which MS-II would receive USD $ 15 million, the whole as appears from the **Exhibit P-51** Partial Termination Agreement;

108. At page 2 of P-51, MS-II requested that the proceeds be wired to the JP Morgan Chase bank account of a Daiwa Securities Trust & Banking (Europe), London;

109. On November 30, 2004, Mosaic requested to MS-II the redemption of its MS-II class B shares, as appears from the **Exhibit P-52** Redemption Request;

110. As appears from P-52, Mosaic asked that the $ USD 15 million proceeds be transferred to the Royal Trust Corp of Canada (London) account of Cardinal International;

111. These transactions and the paying of their proceeds to third parties caused OIS assets to be irremediably lost to the Class members;

112. Those transactions would not have occurred without the complicit help of RBC, in circumstances as described hereafter that demonstrate RBC's complicity;

113. Before the occurrence of the P-47 Assignment, the Globe-X Joint Liquidators had indicated to Mosaic and RBC-DS that they questioned the legitimate ownership of the interest in the RBC SOHO Option[27];

114. As early as July 2004, the Globe-X Liquidators had expressed those doubts in writing to Mosaic and RBC-DS[28]; Neither Mosaic nor RBC provided answers or comments to requested documents and informations;

115. In August 2004, the Globe-X Liquidators petitioned the courts to obtain discovery of Mosaic and RBC-DS about the ownership of the interest in the RBC SOHO Option; these proceedings were served to RBC-DS before a hearing that took place on August 12, 2004;

116. Adjournments and delays were sought and obtained by Mosaic on August 12, 2004, September 16, 2004, September 23, 2004;

117. On November 26, 2004 Mosaic finally provided partial and unsatisfactory documents;

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[27] The initial $ USD 15 million premium paid to obtain the original RBC SOHO Option financing had come from a Globe-X account (see parass 45 to 48 of the present Motion)

[28] P-02, paras. 3.23 to 3.25.

118. On December 2, 2004, the Joint Liquidators instructed their counsel to proceed with the August 2004 court application requesting discovery of RBC;

119. RBC obtained more adjournments, and the matter was finally heard on February 28, 2005, and RBC was ordered to give full and complete discovery in regards to the RBC SOHO Option, within 14 days;

120. On April 12, 2005[29], RBC had still not complied with the Order;

121. But by then anyway, NFG, with the accord of RBC had long assigned its direct interest in the SOHO Option, and then had proceeded to liquidate almost 90% of its value;

122. RBC again proved to be loyal ally to NFG, helpfully allowing the ultimate NFG manipulations made to spirit away of any real value within the OIS;

* * *

123. Montreal paper La Presse published an article on January 26, 2007 in which reporter Francis Vaille reports, *inter alia,* on the business relation between RBC, Norshield International and other entities in the Bahamas, and reproduces answers provided by RBC's spokesperson to certain questions, the whole as appears from the **Exhibit P-53** La Presse article;

124. RBC's spokesperson Raymond Chouinard is cited saying:

> « Nous avons des normes de contrôle très strictes. Si nous détectons quoi que ce soit d'irrégulier, nous intervenons immédiatement, faisons enquête et allons nous-mêmes transmettre l'information à la police ou aux autorités réglementaires.
>
> (...) une chose est très claire: avant d'accueillir un nouveau client, nous faisons un examen rigoureux de l'identité du client et nous tentons de découvrir ses intentions. Par exemple, on va exiger d'un déposant qu'il nous fasse une déclaration de provenance des fonds.
>
> (...) Cette déclaration existe depuis une douzaine d'année dans la réglementation canadienne, mais nous le faisions avant. S'il se pose un doute, on a pas d'autres choix que de refuser d'exécuter la transaction. On examine même la planification fiscale du client afin de s'assurer que la législation fiscale du pays s'applique. »

[29] Date of the P-02 Report.

125. Plaintiff Sheila Calder respectfully submits that, had RBC done a fraction of what it purports to do from the words of Mr. Chouinard cited above, a lot of harm could have been avoided and, in the huge OIS catastrophe, some small recoveries could even have been saved in the last days;

126. At the level of intensity and complexity of the type off shore, leveraging, hedging and optioning transactions that occurred between NFG and RBC during the Class period, where the financial mechanisms are so complex and the vocabulary are so specialized as to being virtually opaque to the retail investors and even to some seasoned practitioners, RBC had no only regular but enhanced due diligence and self-regulatory obligations, which it did not meet;

127. RBC had the obligation to set aside its own financial interest and adopt reasonable and diligent rules of conduct; Plaintiff submits that RBC failed to do so, and by so failing it participated to NFG's perpetration of a fraud that caused harm to the Class members;

WHEREFORE, PETITIONER PRAYS THIS HONOURABLE COURT TO:

GRANT the present class action;

CONDEMN Respondents to pay to the Class members the balance in Canadian dollars attributed to their unredeemed shares of Olympus United Funds Corporation or its predecessor First Horizon Holdings Ltd. as of June 29, 2005, less any amount received by class members pursuant to the judgment rendered by this Court on July 26th 2012, in court file 500-06-000434-080, and subject to the judgment of July 26th 2012 in the present instance, plus legal interest and the special indemnity provided by Article 1619 of the Civil Code of Quebec calculated from the first date of the service of the proceedings;

ORDER the collective recovery of the damages;

THE WHOLE with costs, including experts' fees.

MONTREAL, MARCH 18, 2014.

Sylvestre Fafard Painchaud

SYLVESTRE FAFARD PAINCHAUD s.e.n.c.r.l.
Attorneys for Plaintiff

SUPERIOR COURT
(Class action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000435-087

SHEILA CALDER

Plaintiff

-c-

ROYAL BANK OF CANADA

-and-

RBC CAPITAL MARKETS CORPORATION

Defendant

MOTION TO INSTITUTE PROCEEDINGS
(CLASS ACTION)
(Sections 1011 ss. C.c.p)

ORIGINAL

ND: 17310/13 BS0962

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Exhibit C

MEMORANDUM OF AGREEMENT ENTERED INTO THIS 8 DAY OF ~~AUGUST~~ October, 2019

BY AND BETWEEN:

RICHTER ADVISORY GROUP INC., herein acting in its quality of Court appointed Receiver of Gestion de Placements Norshield (Canada) Ltée/Norshield Asset Management (Canada) Ltd., Gestion des Partenaires d'Investissement Norshield Ltée/Norshield Investment Partners Holdings Ltd., Olympus United Funds Holdings Corporation, Corporation de Fonds Unis Olympus/Olympus United Funds Corporation, Olympus United Bank and Trust SCC, Groupe Olympus United Inc./Olympus United Group Inc., Norshield Capital Management Corporation/Corporation Gestion de l'Actif Norshield, Honeybee Software Technologies Inc./Technogolies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation d'Investissement Norshield and related entities,

(hereinafter referred to as "**Richter**")

THE PARTY OF THE FIRST PART

AND:

RAYMOND MASSI and CLIFFORD CULMER, herein acting as Joint Official Liquidators of Olympus Univest Limited and Mosaic Composite Limited, now Mosaic Composite Limited (US), INC.

(hereinafter referred to as the "**JOLs**")

THE PARTY OF THE SECOND PART

AND:

SYLVESTRE PAINCHAUD & ASSOCIÉS, herein acting and represented by Me Normand Painchaud, a partner duly authorized for the purposes hereof as he so declares

(hereinafter referred to as "**Sylvestre Painchaud**")

THE PARTY OF THE THIRD PART

WHEREAS Sylvestre Painchaud is currently acting as class counsel in a class action instituted on behalf of Mrs. Sheila Calder, in her capacity as class representative against the Royal Bank of Canada and RBC Capital Markets, before the Superior Court of Quebec in Court File No: 500-06-000435-087 (the "**Class Action Proceedings**");

WHEREAS the members of the class represented by Mrs. Sheila Calder are virtually all former investors in Olympus United Funds Corporation and related entities who have incurred substantial losses;

WHEREAS Sylvestre Painchaud has requested certain information and documentation from Richter and the JOLs for the purpose of prosecuting the Class Action Proceedings;

WHEREAS Richter and the JOLs are prepared to provide such information and documentation to Sylvestre Painchaud upon the terms and conditions hereinafter set forth, including, without limitation, the Court approvals hereinafter referred to.

NOW THEREFORE FOR AND IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS HEREINAFTER SET FORTH, THE FOLLOWING AGREEMENT WITNESSETH:

1. The preamble hereto shall form part hereof and shall avail as if recited at length herein;

2. Sylvestre Painchaud hereby requests Richter and the JOLs to provide certain documents and information which will assist it in making proof of various aspects of the claims set forth in the Class Action proceedings, such as the Judgment on Motion for Authorization to institute class action Proceedings, the Motion to instituted proceedings, a copy of which is annexed hereto as Schedule 1, the Defendant's Plea and the exhibits;

3. The information and documentation requested by Sylvestre Painchaud comprise the following:

   i) the documents and records in the possession of Richter as Court appointed Receiver of Gestion de Placements Norshield (Canada) Ltée/Norshield Asset Management (Canada) Ltd., Gestion des Partenaires d'Investissement Norshield Ltée/Norshield Investment Partners Holdings Ltd., Olympus United Funds Holdings Corporation, Corporation de Fonds Unis Olympus/Olympus United Funds Corporation, Olympus United Bank and Trust SCC, Groupe Olympus United Inc./Olympus United Group Inc., Norshield Capital Management Corporation/Corporation Gestion de l'Actif Norshield, Honeybee Software Technologies Inc./Technogolies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation

d'Investissement Norshield and related entities, which relate to the claims described in the Class Action Proceedings (the "**Norshield Information**");

ii) the documents and records in the possession of the JOLs as Court appointed Joint Official Liquidators of Olympus Univest Limited which relate to the claims described in the Class Action Proceedings (the "**Univest Information**"); and

iii) the documents and records in the possession of the JOLs as Court appointed Joint Official Liquidators of Mosaic Composite Limited (US), INC. which relate to the claims described in the Class Action Proceedings (the "**Mosaic Information**").

4. Richter and the JOLs agree to provide the Norshield Information, Univest Information and Mosaic Information (collectively referred to herein as the "**Requested Assistance**") upon the terms and conditions set forth herein;

5. Sylvestre Painchaud agrees to seek the approval of the Courts to the present agreement to permit Richter and the JOLs to provide the Requested Assistance. Such Court approval shall consist of:

i) a motion to the Superior Court of Justice of Ontario (Commercial List) in Court File No: 05-CL-5965 to approve the terms hereof including, without limitation, the use of the funds of the Receivership of Olympus United Funds Corporation and related entities up to an amount of $75,000.00 plus applicable taxes (the "**Budget**") in conformity with article 6 below. Richter agrees that the cost of presenting a motion to the Ontario Superior Court of Justice will be absorbed by the Receivership of Olympus United Funds Corporation and related entities, subject to Court approval; and

ii) Sylvestre Painchaud will engage Roy Sweeting, Esquire, of Glinton Sweeting O'Brien of Nassau, Bahamas, to prepare and present a motion before the Supreme Court of the Commonwealth of The Bahamas to approve the terms hereof insofar as they relate to the Univest Information, Univest Testimony, Mosaic Information and Mosaic Testimony, the cost of which shall be paid out of the Budget referred to in the immediately preceding paragraph.

6. Sylvestre Painchaud agrees that the Budget will only be used to pay the following expenses:

a. all legal fees, court costs and disbursements relating to all legal proceedings concerning *inter alia* obtaining court approval to proceed in whole or in part, according to the present Agreement (except for the proceedings to be

presented by Richter before the Ontario Superior Court of Justice pursuant to article 5(i) hereof), including relating to the legal proceedings to be presented by Roy Sweeting before the Supreme Court of the Commonwealth of The Bahamas to obtain any and all required authorizations to provide the Requested Assistance including, without limitation, a direction of the Court to the JOLs to provide the Requested Assistance, acknowledge that same shall in no way contravene any confidentiality or secrecy provisions under the laws of The Bahamas and ordering that neither Richter nor the JOLs shall incur any liability to any third party for providing the Requested Assistance;

b. time charges incurred by Richter and/or either of the JOLs and their legal counsel to provide the Requested Assistance; and

c. out-of-pocket disbursements and charges incurred by Richter and/or either of the JOLs to provide the Requested Assistance.

7.1 Sylvestre Painchaud acknowledges that in addition to the Court approvals referred to herein, certain of the Requested Assistance may also require additional approvals which may include one or more of the following:

i) the Ontario Securities Commission for any Norshield Information which includes documents or information prepared by Richter on behalf of the Ontario Securities Commission or information and/or documentation obtained by Richter from the Ontario Securities Commission;

ii) l'Autorité des marchés financiers for any Norshield Information which includes documents or information prepared by Richter on behalf of l'Autorité des marchés financiers or information and/or documentation obtained by Richter from l'Autorité des marchés financiers; and

iii) approval of third parties where Richter and/or the JOLs are subject to non-disclosure and/or confidentiality obligations or other legal obligations arising from contractual agreements with or in favor of third parties.

7.2 Sylvestre Painchaud acknowledges that it shall be solely responsible for obtaining all approvals provided for in the present Agreement. Nothing herein shall be interpreted to the effect that Richter and/or the JOLs represent that any or all court approvals can or will be obtained or that all documentation sought may be provided to Sylvestre Painchaud. In the event that Richter and/or the JOLs participate in any legal proceedings, their costs and those of their counsel will be paid out of the Budget;

8. Upon obtaining the Court or other approvals provided for herein, Richter will provide Sylvestre Painchaud with an index of the information and/or documentation in its possession in order to assist Sylvestre Painchaud in identifying the Norshield Information, Univest Information and Mosaic Information;

9. Following receipt of the requests for Requested Assistance from Sylvestre Painchaud, Richter will provide access to the Norshield Information at the premises of Richter in Montreal, during normal business hours at mutually acceptable times and dates;

10. Following receipt of the requests for Requested Assistance from Sylvestre Painchaud, Richter, subject to the consent and on behalf of the JOLs, will provide access to the Univest Information and Mosaic Information at the premises of Richter in Montreal, during normal business hours at mutually acceptable times and dates to the extent such Univest Information and/or Mosaic Information is located at Richter's premises in Montreal when such request is made;

11. In addition, at pre-arranged times, a representative of Richter will be available to answer specific questions that Sylvestre Painchaud may have in respect of the Norshield Information, Univest Information and Mosaic Information provided, however, that such answers will be given to the best of the personal knowledge but without verification or preparation on the part of the representative or Richter;

12. In the event that Sylvestre Painchaud may require copies of any documents included in the Norshield Information, Univest Information and Mosaic Information, these specific documents or records will be identified by Sylvestre Painchaud and an electronic version or hard copy (as determined by Richter) thereof will be provided in a timely manner by Richter and/or the JOLs as the case may be. The cost of providing such copies shall be included in the Budget;

13. Sylvestre Painchaud irrevocably authorizes and directs Richter and the JOLs, as the case may be, to provide copies in electronic or hard copy form, as the case may be, of all documents provided to it by Richter or the JOLs and, to counsel for the Royal Bank of Canada and RBC Capital Markets in the Class Action Proceedings, all fees and expenses incurred by Richter and the JOLs for additional work being borne by Royal of Canada and/or RBC capital Markets;

14. Notwithstanding anything herein set forth to the contrary, Richter and the JOLs shall be under no obligation to identify the specific source of the Norshield Information, Univest Information and Mosaic Information or any part thereof. Richter and the JOLs reserve the right to refuse, at their sole and unfettered discretion, to provide access to and/or copies of any part of the foregoing information should it consider that it is appropriate to do so, Richter and the JOLs

agreeing to inform Sylvestre Painchaud of all occurrences where such discretion is exercised if any;

15. Sylvestre Painchaud agrees that neither Richter nor the JOLs will be requested to prepare any analyses or perform any additional professional services with respect to the Norshield Information, Univest Information and Mosaic Information other than as specifically herein set forth;

16. Sylvestre Painchaud acknowledges that the legal fees and disbursements of Roy Sweeting for the preparation and presentation of the motion before the Supreme Court of the Commonwealth of The Bahamas, is approximately US $12,000.00 plus applicable taxes;

17. Sylvestre Painchaud acknowledges and agrees that the Budget will not be utilized for the payment of any legal fees of Sylvestre Painchaud or the payment of expert fees or any other costs pertaining to the Class Action Proceedings. Nothing herein shall be construed as obliging Raymond Massi or any other representative of Richter to agree to attend at trial;

18. In the event that the class succeeds in the Class Action Proceedings by way of a final judgment or a settlement, the full amount of the Budget utilized for the purposes hereof shall be reimbursed to the Receivership of Olympus United Funds Corporation and related entities. Sylvestre Painchaud undertake to obtain the Court approval of said reimbursement before the distribution to the members discussed in paragraph 19.

19. Subject to Court approval in the Class Action Proceedings that Sylvestre Painchaud undertake to seek, any and all amounts to be distributed to class members as a result of such final judgment or settlement, shall be distributed to the class members by Richter and Richter shall receive customary payment for its services, whether such distributions are made as a Class Action Proceedings distribution, a distribution under the *Companies Creditors Arrangement Act* or otherwise.

RICHTER ADVISORY GROUP INC.

Per:____________________

____
RAYMOND MASSI

____
CLIFFORD CULMER

SYLVESTRE PAINCHAUD &
ASSOCIÉS

Per:____________________
Normand Painchaud

ONTARIO SECURITIES COMMISSION
Applicant

and

GESTION DE PLACEMENTS NORSHIELD (CANADA) LTÉE / NORSHIELD ASSET MANAGEMENT (CANADA) LTD., GESTION DES PARTENAIRES D'INVESTISSEMENT NORSHIELD LTEE / NORSHIELD INVESTMENT PARTNERS HOLDINGS LTD., OLYMPUS UNITED FUNDS HOLDINGS CORPORATION, CORPORATION DE FONDS UNIS OLYMPUS / OLYMPUS UNITED FUNDS CORPORATION, OLYMPUS UNITED BANK AND TRUST SCC, GROUPE OLYMPUS UNITED INC. / OLYMPUS UNITED GROUP INC., TECHNOLOGIES DE LOGICIELS HONEYBEE INC. / HONEYBEE SOFTWARE TECHNOLOGIES INC. (FORMERLY CORPORATION D'INVESTISSEMENT NORSHIELD / NORSHIELD INVESTMENT CORPORATION), AND CORPORATION GESTION DE L'ACTIF NORSHIELD / NORSHIELD CAPITAL MANAGEMENT CORPORATION
Respondents

Court File No: 05-CL-5965

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced in Toronto

MOTION RECORD

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