

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
Nº: 500-06-000435-087

SUPERIOR COURT
(Class Action Division)

SHEILA CALDER

Plaintiff

v.

ROYAL BANK OF CANADA

-and-

RBC CAPITAL MARKETS
CORPORATION

Defendants

-and-

LE FONDS D'AIDE AUX ACTIONS
COLLECTIVES

Mis en cause

DATE: December 7, 2020

JUDGMENT

- (1) **CONSIDERING** that Plaintiff was authorized on October 30, 2013 to commence a class action (the "**Action**") against Royal Bank of Canada and RBC Capital Markets Corporation (together, the "**Defendants**") on behalf of the following class (the "**Autorization Judgment**")¹:

"All Canadian retail investors who purchased one of the Olympus United Funds Corporation² 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, but to the exclusion of any person who is or was in any way related to John Xanthoudakis or any former director, administrator, representative or employee of the Norshield Financial Group.";

- (2) **CONSIDERING** that in the Action, Plaintiff alleges, among other things, that the Norshield Financial Group offered OUFC shares to Canadian retail investors, founding the value of said shares on leveraged assets

JD2836

¹ *Calder c. Banque Royale du Canada*, 2013 QCCS 5296, judgment corrected on November 1, 2013.

² Olympus United Funds Corporation will be referred to hereinafter as OUFC.

acquired by way of a structured financial product offered by Royal Bank of Canada; said structured financial product was obtained by an affiliate of Norshield through RBC's agent RBC Capital Markets Corporation (then RBC Dominion Securities Corporation);

- (3) **CONSIDERING** that Plaintiff also alleges that the Norshield Financial Group, among other things through the OUFC offer, defrauded the Plaintiff and Class Members of the total value of their unredeemable shares of OUFC, approximately \$159,000,000 as of June 29, 2005, and that Defendants knew or ought to have known of the fraudulent investment scheme, but failed to act accordingly;
- (4) **CONSIDERING** that Defendants have denied and continue to deny having committed any fault or wrongdoing, deny responsibility, and challenge the validity of the allegations and damages claimed in the Action;
- (5) **CONSIDERING** that the principal questions of fact and law to be considered on a collective basis are identified in the Authorization Judgment as follows:
 - a. Did RBC³ 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

³ The Defendants were collectively referred to as RBC in the Authorization Judgment.

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 Financial structure* that caused such assets to be diverted from assets that would have benefited the Group?
 - 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?⁴
- (6) **CONSIDERING** that settlement discussions between the parties commenced in August 2018 and resulted in a settlement agreement dated August 6, 2020 (the "**Settlement Agreement**"), exhibit R-1;
- (7) **CONSIDERING** that, subject to Court approval, the parties have negotiated and entered into the Settlement Agreement, without any admission of liability, to fully, definitively and permanently resolve, settle and release the Releasees (as defined in the Settlement Agreement and Release) from all Released Claims related to or connected with, directly or indirectly, whether known or unknown, the Action against Defendants by Plaintiff on her own behalf and/or on behalf of the Class she seeks to represent, to avoid the further expense, inconvenience, distraction of burdensome litigation and risks inherent to this uncertain, complex and protracted litigation, and thereby resolve this class action;
- (8) **CONSIDERING** that the Settlement Agreement provides for an all-inclusive monetary payment by Defendants of CAD\$6,000,000 (the "**Settlement Amount**");
- (9) **CONSIDERING** that by way of her Application to Approve a Settlement Agreement, Approve Counsel's Fees and for Other Relief (the "**Application**"), Plaintiff seeks an order *inter alia*:
- a. Approving the Settlement Agreement;
 - b. Approving the Plan of Allocation;
 - c. Approving the Claim Form;

⁴ *Supra* note 1, par. 66.

- d. Setting the Claims Bar Deadline; and
- e. Approving the Class Counsel Fees.

(10) **CONSIDERING** articles 590 and 596 of the *Code of civil Procedure*;

The Settlement Agreement and the Notification Process

- (11) **CONSIDERING** the applicable criteria to determine the reasonableness and fairness of a proposed settlement of a class action;
- (12) **CONSIDERING** the material filed in the court record, including the Settlement Agreement, exhibit R-1, the facts alleged in the Application, the sworn declarations, the representations made to the Court and the court file;
- (13) **CONSIDERING** that through their counsel, Plaintiff and Defendants have engaged in extensive arms-length settlement negotiations in respect of the Action, the whole resulting in the Settlement Agreement;
- (14) **CONSIDERING** the litigation risks specific to the Action and Plaintiff's burden of establishing the liability of one or both of the Defendants with regards to the allegations and damages suffered by the Class Members;
- (15) **CONSIDERING** the KMPG Settlement, which was approved by the Ontario Superior Court of Justice (Commercial List) on August 22, 2011,⁵ and by the vast majority of the retail investors of OUFC and by the Québec Superior Court (Class Action division)⁶;
- (16) **CONSIDERING** that the proposed Plan of Allocation constitutes an effective, efficient, equitable and comprehensive means of distribution, relying on information collected by the Administrator, as Receiver and/or Monitor during the Norshield Receivership Proceedings and the KPMG Settlement;
- (17) **CONSIDERING** that the Class Members List was updated through a thorough third party update process;
- (18) **CONSIDERING** the anticipated time and additional cost to obtain recovery for the Class Members had the parties not agreed to the proposed settlement;

⁵ Court file No. 05-CL-5965, exhibit R-7.

⁶ *Calder c. KPMG*, I.I.p., 2012 QCCS 4008.

- (19) **CONSIDERING** the risks associated with pursuing the litigation;
- (20) **CONSIDERING** Class Counsel's experience and expertise in class action matters and their recommendation that Plaintiff accept the proposed settlement;
- (21) **CONSIDERING** that no Class Members have submitted objections regarding the Settlement Agreement;
- (22) **CONSIDERING** that the Court is satisfied, in light of the foregoing, that the Settlement Agreement is fair, reasonable and in the best interests of the Class Members;
- (23) **CONSIDERING** the notification process approved by the Court in its judgments of September 10, 2020 and October 1, 2020;
- (24) **CONSIDERING** that the notices to certain class members required subsequent sending, potentially creating a challenge for some Class Members to respect the Claims Bar Deadline set out in the Settlement Agreement;
- (25) **CONSIDERING** the discretion granted to the Court in the Settlement Agreement to extend this time limit;
- (26) **CONSIDERING** that the claim of Mr. Rick MacDougall, who was reached in a supplementary mailing was received shortly after the expiry of the Claims Bar Deadline;
- (27) **CONSIDERING** that in the circumstances, his claim should be honoured;

The Class Counsel Fees

- (28) **CONSIDERING** that Class Counsel seek the Court's approval of their fees and disbursements, plus applicable taxes;
- (29) **CONSIDERING** the material and exhibits filed in the Court record, including the facts alleged in the Motion, the declaration of Mtre Normand Painchaud, exhibit R-23, and the declarations of Maria Hernandez, exhibits R-27 and R-27.1 and the representations made by Class Counsel;
- (30) **CONSIDERING** the factors that the Court must take into account to assess the fairness and reasonableness of counsel fees;
- (31) **CONSIDERING** the Professional Mandate and Agreement on Fees (the "**Professional Mandate**") signed by Plaintiff and Class Counsel on August 24, 2011, exhibit R-8;

- (32) **CONSIDERING** that, pursuant to Section 3 of the Professional Mandate, Class Counsel is entitled to request the approval, as counsel fees, of an amount of 25% of the Settlement Amount, plus applicable taxes;
- (33) **CONSIDERING** that the Fonds d'aide aux actions collectives ("**FAAC**") paid \$171,070.37 to fund fees and disbursements and that Class Counsel undertook to reimburse such amount to the FAAC;
- (34) **CONSIDERING** that the issues raised in this Action are complex and took place many years ago;
- (35) **CONSIDERING** that Class Counsel financially supported this case for over nine years, invested more than 3,400 hours, undertook significant risk, and committed significant efforts and resources in this case;
- (36) **CONSIDERING** Class Counsel's experience and expertise and the time devoted to this Action;
- (37) **CONSIDERING** the result achieved for the Class Members in light of the significant litigation risk and in relation to the KPMG Settlement;
- (38) **CONSIDERING** that additional time will be required for post-settlement approval work;
- (39) **CONSIDERING** that the Court considers that Class Counsel Fees and disbursements are fair and reasonable;

FOR THESE REASONS, THE COURT:

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|---|--|
| <p>(40) ORDERS that for the purposes of this judgment, except to the extent that they are modified in this judgment, the definitions set out in the Settlement Agreement, exhibit R-1, and its schedules apply to and are incorporated into this judgment;</p> | <p>ORDONNE qu'aux fins du présent jugement, sauf si elles ont été modifiées dans le présent jugement, les définitions énoncées dans l'Entente de règlement, pièce R-1, et ses annexes s'appliquent et sont incorporées au présent jugement;</p> |
| <p>(41) DECLARES that the Settlement Agreement is fair and reasonable and in the best interests of the Class Members and APPROVES the Settlement Agreement;</p> | <p>DÉCLARE que l'Entente de règlement est juste et équitable et dans le meilleur intérêt des Membres du Groupe et APPROUVE l'Entente de règlement;</p> |
| <p>(47) ORDERS AND DECLARES that all provisions of the Settlement</p> | <p>ORDONNE ET DÉCLARE que toutes les dispositions de l'Entente</p> |

Agreement (including Recitals and Definitions) form part of this judgment and are binding upon the Parties in accordance with the terms thereof;

(43) **ORDERS** that the Settlement Agreement be implemented according to its terms;

(44) **APPROVES:**

a. the Plan of Allocation, schedule E to the Settlement Agreement;

b. the Claim Form, schedule F to the Settlement Agreement; and

c. the Claims Bar Deadline of seventy-five (75) days following the First Order, i.e., November 24, 2020;

(45) **ORDERS AND DECLARES** that in the event of a conflict between this judgment and the Settlement Agreement, this judgment shall prevail;

(46) **DECLARES** that the Defendants have no responsibility for the administration and management of the Settlement Agreement;

(47) **ORDERS** the Administrator to withhold the sum of \$80,077, plus taxes, on the Settlement Amount for payment of administration fees;

(48) **ORDERS** that if Defendants do not elect to terminate the Settlement Agreement pursuant to the terms of the Settlement

de règlement (y compris les considérants et les définitions) font partie du présent jugement et lient les parties conformément à ses dispositions;

ORDONNE que l'Entente de règlement soit appliquée conformément à ses modalités;

APPROUVE :

a. le Plan de distribution, annexe E de l'Entente de règlement;

b. le Formulaire de réclamation, annexe F de l'Entente de règlement; et

c. la Date limite de réclamation de soixante-quinze (75) jours après la Première ordonnance, soit le 24 novembre 2020;

ORDONNE ET DÉCLARE qu'en cas de conflit entre le jugement et l'Entente de règlement, le jugement prévaudra;

DÉCLARE que les Défendeurs n'ont aucune responsabilité quant à l'administration et à la gestion de l'Entente de règlement

ORDONNE à l'Administrateur de retenir la somme de 80 077 \$ plus taxes sur le montant du Règlement pour le paiement des frais d'administration;

ORDONNE que si les Défendeurs ne décident pas de résilier l'Entente de règlement conformément aux modalités de l'Entente de

Agreement, the Administrator shall be paid from the Escrow Account a fee in an amount to be approved by the Superior Court;

règlement, l'Administrateur sera payé à partir du Compte en fidéicommiss des frais d'un montant devant être approuvé par la Cour supérieure;

- (49) **ORDERS** that if the Settlement Agreement is terminated, the Administrator may apply to the Superior Court pursuant to the terms of the Settlement Agreement for directions relating to the amount it is to be paid for the services it rendered to the date of termination;

ORDONNE qu'en cas de résiliation de l'Entente de règlement, l'Administrateur, conformément aux modalités de l'Entente de règlement, puisse demander à la Cour supérieure des instructions relatives au montant qu'il doit être payé pour les services qu'il a rendus jusqu'à la date de résiliation;

- (50) **ORDERS AND DECLARES** that each Releasor has fully, definitively and permanently resolved, settled and released the Releasees from all Released Claims related to or connected with, directly or indirectly, the Action against the Defendants by the Plaintiff on her own behalf and/or on behalf of the Class she represents, to avoid the further expense, inconvenience, distraction of burdensome litigation and risks inherent to this uncertain, complex and protracted litigation, and thereby to put to rest this class action;

ORDONNE ET DÉCLARE que chaque Renonciateur a totalement, définitivement et de manière permanente résolu, réglé et libéré les Renonciataires de toutes les réclamations libérées liées directement ou indirectement, à l'Action contre les Défendeurs par la Demanderesse en son propre nom et/ou au nom du Groupe qu'elle représentait, pour éviter les dépenses supplémentaires, les inconvénients, la distraction d'un contentieux lourd et les risques inhérents à ce litige incertain, complexe et prolongé, et ainsi conclure cette action collective ;

- (51) **ORDERS** that the Class Counsel and Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada, the United States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person

ORDONNE que les Avocats du Groupe et les Renonciateurs ne doivent pas, maintenant ou par la suite, intenter, continuer, maintenir ou affirmer, directement ou indirectement, que ce soit au Canada, aux États-Unis ou ailleurs, en leur propre nom ou au nom d'un groupe ou de toute autre personne, toute action, poursuite, cause d'action, réclamation ou demande

who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto;

contre tout Renonciataire ou toute autre personne qui peut réclamer une contribution ou une indemnité de tout Renonciateur concernant toute Réclamation quittance ou toute question y relative;

(52) **DECLARES**, unless the Class Member is a CCAA Proven Claim Creditor or the Court orders otherwise, that in order to participate in the Settlement Agreement, a Class Member must have submitted a properly completed Claim Form and the required supporting documentation with the Administrator on or before the Claims Bar Deadline;

DÉCLARE, à moins que le membre du groupe ne soit un créancier d'une réclamation prouvée en vertu de la LACC ou que le Tribunal n'en ordonne autrement, que pour participer à l'Entente de règlement, un membre du groupe devait soumettre un Formulaire de réclamation dûment rempli et les pièces justificatives requises à l'Administrateur le ou avant la Date limite de réclamation;

(53) **ORDERS** that notwithstanding paragraph 52 of the present judgment, that the claim of Rick MacDougall be honoured and remains seized over any disputes regarding other claims submitted after the Claims Bar Deadline;

ORDONNE que nonobstant le paragraphe 52 du présent jugement, que la réclamation de Rick MacDougall soit honorée et demeure saisi de tout différend en relation avec toute autre réclamation soumise après la Date limite de réclamation;

(54) **DECLARES** that the Distribution of the Settlement Amount does not generate a new right to claim under the Norshield Receivership Proceedings or the CCAA proceedings;

DÉCLARE que la Distribution du Montant du règlement ne génère pas un nouveau droit de réclamation dans le cadre de la procédure de mise sous séquestre de Norshield ou de la procédure de la LACC;

(55) **DECLARES** that the Distribution of the Settlement Amount does not affect the rights of CCAA Proven Claim Creditor to receive additional distributions, if any, under either the Norshield Receivership Proceedings or the CCAA Proceedings;

DÉCLARE que la Distribution du Montant du règlement n'affecte pas les droits du créancier aux réclamations prouvées en vertu de la LACC de recevoir des distributions supplémentaires, le cas échéant, dans le cadre de la procédure de mise sous séquestre de Norshield ou de la procédure en

vertu de la LACC;

(56) **ORDERS** the Administrator to file with the Superior Court a report on the administration of the Settlement Agreement once the distribution is completed;

ORDONNE à l'Administrateur de déposer auprès de la Cour supérieure un rapport sur l'administration de l'Entente de règlement une fois la distribution terminée;

(57) **DECLARES** that any one or more of the Parties, Class Counsel or the Administrator may apply to the Superior Court for directions in respect of any matter in relation to the Settlement Agreement and/or Plan of Allocation;

DÉCLARE que l'une ou plusieurs des parties, les Avocats du groupe ou l'Administrateur peuvent demander à la Cour supérieure des instructions concernant toute question relative à l'Entente de règlement et/ou au Plan de distribution;

(58) **ORDERS** that no person may bring any action or take any proceedings against the Plaintiff, the Defendants, the Administrator or their employees, insurers, reinsurers, directors, officers, partners, employees, agents, trustees, servants, parents, consultants, underwriters, lenders, advisors, lawyers, representatives, successors, predecessors, assigns and each of their respective heirs, executors, attorneys, administrators, guardians, estates, trustees, successors and assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this judgment except with leave of the Superior Court;

ORDONNE que nul ne puisse intenter une action ou engager des poursuites contre la Demanderesse, les Défendeurs, l'Administrateur ou leurs employés, assureurs, réassureurs, administrateurs, dirigeants, associés, employés, agents, fiduciaires, préposés, parents, consultants, souscripteurs, prêteurs, conseillers, avocats, représentants, successeurs, prédécesseurs, ayants droit et chacun de leurs héritiers, exécuteurs testamentaires, avocats, administrateurs, tuteurs, successions, fiduciaires, successeurs et ayants droit respectifs pour toute question relative de quelque manière que ce soit à l'administration du plan d'attribution ou de l'exécution du présent jugement sauf avec l'autorisation de la Cour supérieure;

(59) **APPROVES:**

a. the fee agreement

APPROUVE :

a. le Mandat

between Sheila Calder and Class Counsel signed on August 24, 2011, Exhibit R-8;

b. Class Counsel Fees in the amount of twenty-five (25) percent of CDN \$6,000,000, plus disbursements of \$199,178.84, plus applicable taxes on Class Counsel Fees and disbursements, shall be paid from the Escrow Account forthwith after the Effective Date;

professionnel entre Sheila Calder et les Avocats du Groupe signé le 24 août 2011, pièce R-8;

b. les honoraires des Avocats du Groupe d'un montant de vingt-cinq (25) pour cent de 6 000 000 \$ CAN, plus les débours de 199 178,84 \$, plus les taxes applicables sur les honoraires et les déboursés, seront payés à partir du Compte en fidéicomis immédiatement après la date d'Entrée en vigueur;

(60) **PRAYS ACT** of Class Counsel's undertaking to reimburse the *Fonds d'aide aux actions collectives* in the sum of \$171,070.37;

PREND ACTE de l'engagement des Avocats du Groupe de rembourser le Fonds d'aide aux actions collectives la somme de 171 070,37 \$;

(61) **ORDERS** that the levy payable to the *Fonds d'aide aux actions collectives* shall be paid according to the applicable regulations;

ORDONNE que la redevance payable au Fonds d'aide aux actions collectives soit payée selon les règlements applicables;

(62) **ORDERS** that in the event that the Settlement Agreement is terminated in accordance with its terms, this judgment shall be declared null and void;

ORDONNE qu'en cas de résiliation de l'Entente de règlement conformément à ses conditions, le présent jugement sera déclaré nul et non avenue;

(63) **ORDERS AND DECLARES** that all persons and entities provided with notice of this motion shall be bound by the declarations made in, and the terms of this judgment;

ORDONNE ET DÉCLARE que toutes les personnes et entités ayant reçu un avis de la présente demande sont liées par les déclarations faites dans le présent jugement et de ses modalités;

(64) **NOTES** that a judgment closing this Action needs to be delivered after the Administrator files a

RAPPELLE qu'un jugement clôturant la présente Action doit être rendu une fois que

final report of the administration
of the Settlement Agreement;

l'Administrateur aura déposé un
rapport final sur l'administration de
l'Entente de règlement;

(65) **THE WHOLE**, without costs.

LE TOUT, sans frais.

December 7, 2020

A handwritten signature in cursive script, appearing to read "Thomas Davis", written in dark ink.

THOMAS M. DAVIS, J.S.C.