

Court File No.: CV-14-5059885-00CP

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL,  
LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS,  
EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

Made as of the 31<sup>st</sup> day of January, 2023

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## SETTLEMENT AGREEMENT

### SECTION 1 – RECITALS

#### 1.1 WHEREAS:

A. The Plaintiff commenced this Action and alleged that Imperial Metals Corporation (“**Imperial**”)’s continuous disclosure documents contained misrepresentations at law and within the meaning of Part XXIII.1 of the *OSA* and, if necessary, the other Securities Legislation during the Class Period by failing to disclose the adverse conditions at Imperial’s tailings storage facility at the Mount Polley mine;

B. The Ontario Superior Court of Justice dismissed the Plaintiff’s motion for leave under section 138.3(1) of the *OSA* by Order of Justice Belobaba dated September 23, 2020;

C. The Ontario Court of Appeal reversed the Order of Justice Belobaba dated September 23, 2020, and returned the leave motion to the Superior Court of Justice for consideration, in a Decision dated November 25, 2021;

D. The Plaintiff and the defendants Imperial Metals Corporation, J. Bryan Kynoch, Andree Deepwell, Larry G. Moller, and Laurie Pare (the “**Imperial Defendants**”) have negotiated a Settlement of the Action that is subject to and conditional upon approval of the Court;

E. The Defendants deny liability in respect of the claims alleged in this Action and vigorously deny any wrongdoing or liability of any kind whatsoever;

F. The Imperial Defendants state that they would have actively and deliberately pursued affirmative defences at the leave/certification motions and trial had this Action not been settled;

G. The Plaintiff and the Imperial Defendants, through counsel, have engaged in hard-fought and extensive arm’s-length settlement discussions and negotiations in respect of this Settlement through a mediation with Joel Wiesenfeld, mediator;

H. As a result of these settlement discussions and negotiations, the Plaintiff and the Imperial Defendants have entered into this Agreement, which embodies all of the terms and conditions of the Settlement among the Imperial Defendants and the Plaintiff, both individually and on behalf of the Class and subject to approval of the Court;

I. The Imperial Defendants and the Plaintiff have negotiated and entered into this Agreement to fully, definitively and permanently resolve, settle and release and discharge all claims asserted, or which could have been asserted against the Defendants and related entities and individuals by the Plaintiff on her own behalf and/or on behalf of the Class or by a third party for contribution and indemnity in respect of a claim asserted against them by the Plaintiff, and to avoid the further expense, inconvenience, and burden of this litigation and avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

J. The Plaintiff has agreed to accept this Settlement, in part, because of the Settlement Amount to be provided by the Contributing Parties under this Agreement, as well as the attendant risks of litigation in light of the potential defences that may have been asserted at trial by the Defendants;

K. The Defendants do not admit, through the execution of the Agreement, any of the conduct alleged in this Action and expressly deny any and all allegations of wrongdoing;

L. The Plaintiff and Class Counsel confirm that neither the Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiff's allegations against the Defendants;

M. The Plaintiff and Class Counsel have reviewed and fully understand the terms of the Agreement and, based on their analyses of the facts and law applicable to the Plaintiff, and having regard to the burdens and expense in prosecuting this Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement is fair, reasonable and in the best interests of the Plaintiff and the Class. The Plaintiff and the Imperial Defendants therefore wish to, and hereby do, finally resolve, without admission of liability, this Action; and

N. For the purposes of settlement only and contingent on the conditions described herein, the Plaintiff has consented to a dismissal of this Action without costs and with prejudice.

**NOW THEREFORE**, in consideration of the covenants, agreements, promises and releases set forth herein and for other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, it is agreed by the Plaintiff and the Imperial Defendants that this Action be settled on the merits, subject to the approval of the Settlement by the Court, and that all Released Claims against the Defendants which any Releasor shall or may have or assert against any of the Defendants and related entities and individuals be forever extinguished and released on the following terms and conditions:

## **SECTION 2 – DEFINITIONS**

### **2.1 Definitions**

For the purposes of the Agreement, including the Recitals and Schedules hereto:

- (1) **Action** means *Claire Baldwin v Imperial Metals Corporation, et al*, brought in the Ontario Superior Court of Justice under Court File No. CV-14-509885-00CP.
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of disseminating notices and the fees, disbursements and taxes paid to the Administrator, the person appointed to receive and report on objections to the Settlement to the Court, and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses do not include Class Counsel Fees.
- (3) **Administrator** means the third-party firm appointed by the Court to administer the Agreement, and any employees of such firm.
- (4) **Agreement** means this settlement agreement, including the Recitals and Schedules.
- (5) **Authorized Claimant** means any Class Member who has been approved for compensation by the Administrator.
- (6) **Claim Form** means the form or forms which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to the Agreement.
- (7) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator which date shall be set

out in the Second Notice and which shall be at least one hundred twenty days (120) days after the date on which the Second Notice is last disseminated.

(8) **Class or Class Members** means all persons and entities, wherever they may reside or be domiciled, who acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014, other than the Excluded Persons.

(9) **Class Counsel** means Siskinds LLP and Groia & Company Professional Corporation.

(10) **Class Counsel Fees** means the fees, disbursements, and any applicable taxes and a *pro rata* share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.

(11) **Class Period** means the period from August 15, 2011 through to August 4, 2014, inclusive.

(12) **Contributing Parties** means Imperial Metals Corporation, J. Bryan Kynoch, Andre Deepwell, Larry G. Moller, and Laurie Pare and their insurers who have or will fund the Settlement.

(13) **Court** means the Ontario Superior Court of Justice.

(14) **CPA** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended.

(15) **Defendants** means Imperial Metals Corporation, J. Brian Kynoch, Andre Deepwell, Larry G. Moeller, Laurie Pare, N. Murray Edwards, Edco Financial Holdings Ltd. and Edco Capital Corporation.

(16) **Effective Date** means either: (i) the date on which the Second Order has become a final order and the time for any appeals has expired; or (ii) if an appeal is taken from the Second Order, relating only to Class Counsel Fees, then thirty (30) days after the issuance of the Second Order.

(17) **Escrow Account** means the interest-bearing Canadian currency trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Ontario, initially under the control of Siskinds LLP and then transferred to the control of the Administrator once the Settlement is final.

- (18) ***Escrow Settlement Amount*** means the Settlement Amount plus any interest accruing thereon as a result of investment thereof after payment of Class Counsel Fees and any Administration Expenses.
- (19) ***Excluded Persons*** means
- (a) J. Brian Kynoch, Andre Deepwell, Larry G. Moeller, Laurie Pare and N. Murray Edwards;
  - (b) Imperial Metals Corporation, Edco Financial Holdings Ltd and Edco Capital Corporation and their past or present subsidiaries, affiliates, legal representatives, General Counsel, predecessors, successors and assigns;
  - (c) any person who was an officer or director of Imperial Metals Corporation, Edco Financial Holdings Ltd and Edco Capital Corporation during the Class Period;
  - (d) any immediate member of the Individual Defendants' families; and
  - (e) all persons who opted out of the Action.
- (20) ***First Motion*** means the motion brought before the Court, for an order:
- (a) setting the date for the hearing of the Second Motion;
  - (b) certifying the Action as a class proceeding;
  - (c) approving the form of the First Notice;
  - (d) approving and authorizing publication and dissemination of the First Notice pursuant to the Plan of Notice;
  - (e) approving the Opt-Out Deadline and process for opting out of the Action; and
  - (f) appointing the Administrator to receive and report on objections to the Settlement, if any, to receive and report on person opting out of the class action, if any, and assist in the dissemination of First Notice.
- (21) ***First Notice*** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule "B".



- (22) **First Order** means the order made by the Court granting the relief sought on the First Motion, substantially in the form of the order at Schedule “A”.
- (23) **Imperial Defendants** means Imperial Metals Corporation, J. Brian Kynoch, Andre Deepwell, Larry G. Moeller and Laurie Pare.
- (24) **Individual Defendants** means J. Brian Kynoch, Andre Deepwell, Larry G. Moeller, Laurie Pare and N. Murray Edwards.
- (25) **Notes** means Imperial Metals Corporation’s 7% Senior Unsecured Notes due March 2019.
- (26) **OSA** means *Securities Act*, R.S.O. 1990, c. S.5.
- (27) **Plaintiff** means Claire Baldwin.
- (28) **Plan of Allocation** means the plan, as approved by the Court, which shall substantially be in accordance with the plan at Schedule “F”.
- (29) **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class, as approved by the Court, which shall substantially be in accordance with the plan attached as Schedule “C”.
- (30) **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever and wherever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity or at common law, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees relating or connected in any way to trading in Securities during the Class Period.
- (31) **Releasees** means the Defendants and their respective past and present affiliates, and subsidiaries, and each of their respective 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.

(32) **Releasors** means, jointly and severally, the Plaintiff, the Class Members and their respective past and present predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, consultants, underwriters, lenders, shareholders, advisors, representatives, lawyers, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.

(33) **Second Motion** means the motion brought in the Court for an order:

- (a) approving the Settlement;
- (b) appointing the Administrator;
- (c) approving the Second Notice;
- (d) approving the Plan of Allocation;
- (e) dismissing this Action without costs and with prejudice; and
- (f) approving Class Counsel Fees.

(34) **Second Notice** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “E”.

(35) **Second Order** means the order made by the Court granting the relief sought on the Second Motion, substantially in the form of the order at Schedule “D”.

(36) **Securities** means Imperial Metals Corporation’s common shares, Notes, or such other securities as defined in the Securities Legislation.

(37) **Securities Legislation** means, collectively, the *OSA*, the *Securities Act*, RSBC 1996, c 418, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, CQLR c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

(38) **Settlement** means the settlement provided for in the Agreement.

(39) **Settlement Amount** means \$6,000,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement.

### **SECTION 3 – THE MOTIONS**

#### **3.1 Nature of Motions**

(1) The Plaintiff and the Imperial Defendants shall use their best efforts to implement the Agreement and to secure the prompt, complete and final resolution of the Action, including a final dismissal of this Action, without costs and with prejudice.

(2) The First Motion shall be brought as soon as is reasonably possible following the execution of the Agreement. The Imperial Defendants shall have an opportunity to review and comment on the First Motion materials prior to filing. The Imperial Defendants shall consent to the First Order.

(3) Following the determination of the First Motion, the First Notice shall be disseminated in accordance with section 8.1 of the Agreement.

(4) Following the determination of the First Motion, the Second Motion will be brought and the Imperial Defendants shall consent to the Second Order except for the parts of that Order dealing with Class Counsel Fees and the Plan of Allocation. The Imperial Defendants shall have an opportunity to review and comment on the Second Motion materials prior to filing.

(5) Following the determination of the Second Motion, provided that the Settlement is approved by the Court, the Second Notice shall be disseminated in accordance with section 8.2 of the Agreement.

### **SECTION 4 – THE SETTLEMENT AMOUNT**

#### **4.1 Payment of Escrow Settlement Amount**

(1) The Contributing Parties, or some of them, on behalf of the Imperial Defendants, shall pay an amount required to reimburse the reasonable expenses incurred for the fees,

disbursements, and taxes of the administrator, in seeking Court approval of the proposed settlement, up to a maximum amount of \$200,000 (the “**Advanced Payment**”). In the event that the proposed settlement is not approved by the Court, the full amount of the Advanced Payment shall be repaid in full by the representative Plaintiff, and counsel for the representative Plaintiff shall guarantee the obligation of the representative Plaintiff to repay the full amount of the Advanced Payment.

(2) The Contributing Parties, or some of them, on behalf of the Imperial Defendants, shall pay the Settlement Amount to Siskinds LLP, in trust, within 30 days of the Court order approving the Settlement Agreement. Siskinds LLP shall deposit the Settlement Amount in an interest-bearing trust account which shall be held to the order of the Contributing Parties and shall be paid out to Siskinds LLP upon the Settlement becoming final.

#### **4.2 Interim Investment of Escrow Account**

Siskinds LLP, and then the Administrator after the Settlement becomes final, shall hold the Settlement Amount in the Escrow Account and shall invest the Settlement Amount in a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest-bearing account in a Canadian Schedule 1 bank and shall not pay out any amount from the Escrow Account, except in accordance with the terms of the Agreement.

#### **4.3 Taxes on Interest**

(1) Except as provided in section 4.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class’ responsibility and shall be paid by Class Counsel or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate, and the Contributing Parties shall have no liability for any taxes payable on the interest.

(2) If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of the Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties to be allocated by agreement among themselves.

## **SECTION 5 – NO REVERSION**

Unless the Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

## **SECTION 6 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT**

If the Settlement becomes final as contemplated by section 10, the Administrator shall distribute the monies in the Escrow Account in accordance with the following priorities:

- (a) to pay Class Counsel Fees;
- (b) to pay all of the costs and expenses, not otherwise covered by the Advanced Payment, incurred in connection with the provision of notices, not locating Class Members for the sole purpose of providing notice to them, and soliciting Class Members to submit a Claim Form. For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (c) to pay all of the costs and expenses reasonably and actually incurred by the Administrator, relating to determining eligibility, the filing and processing of Claim Forms, resolving disputes arising from the processing of Claim Forms and administering and distributing the Settlement Amount;
- (d) to pay any taxes required by law to be paid to any governmental authority; and
- (e) to pay a *pro rata* share of the balance of in the Escrow Account to each Authorized Claimant in accordance with the Plan of Allocation.

## **SECTION 7 – EFFECT OF SETTLEMENT**

### **7.1 No Admission of Liability**

Neither the Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Defendants, or as a concession or

admission by the Defendants of the truthfulness or merit of any claim or allegation asserted in this Action. Neither the Agreement, nor anything contained herein, shall be used or construed as an admission by the Defendants of any fault, omission, liability or wrongdoing in connection with any oral or written statement, release or written document or financial report.

## **7.2 Agreement Not Evidence**

(1) Whether or not the Agreement is terminated, the Plaintiff and the Imperial Defendants agree that neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any current or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding in any jurisdiction as any presumption, concession or admission:

- (a) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiff against the Defendants, or the deficiency of any defence that has been or could have been asserted in this Action;
- (b) of wrongdoing, fault, neglect or liability by the Defendants; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in this Action after trial.

(2) Notwithstanding section 7.2(1), the Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

## **7.3 Best Efforts**

The Plaintiff and the Imperial Defendants shall use their best efforts to implement the terms of the Agreement. The Plaintiff and the Imperial Defendants agree to hold in abeyance all steps in this Action, other than proceedings provided for in the Agreement, the First Motion, the Second Motion and such other proceedings required to implement the terms of the Agreement, until the date the Settlement becomes final or the termination of the Agreement.

## **SECTION 8 – NOTICE TO THE CLASS**

### **8.1 First Notice**

Class Counsel shall cause the First Notice to be disseminated in accordance with the Plan of Notice and the costs of doing so shall be paid from the Advance Payment as provided in section 4.1(1).

### **8.2 Second Notice**

Class Counsel shall cause the Second Notice to be disseminated in accordance with the Plan of Notice and the costs of so doing shall be paid from the Advance Payment as provided in section 4.1(1).

### **8.3 Notice of Termination**

If the Agreement is terminated, Class Counsel will cause the notice of termination, in a form approved by the Court, to be disseminated as directed by the Court.

## **SECTION 9 – TERMINATION OF THE AGREEMENT**

### **9.1 General**

- (1) The Plaintiff or the Contributing Parties may terminate this Agreement if, and only if:
  - (a) the Second Order (excluding paragraphs 1, 3(b)-(d), 4-5, 10-14 thereof) is not granted by the Court, substantially in accordance with the form at Schedule “D”;  
or
  - (b) the Second Order is reversed on appeal and the reversal becomes final.
- (2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate the Agreement.
- (3) Notice of termination of this Agreement by the Plaintiffs or the Defendants must be provided in writing to their respective undersigned counsel.
- (4) In the event the Agreement is terminated in accordance with its terms, or is not approved by the Court, or the Second Order is reversed, vacated or terminated by any appellate court and/or the Second Order does not become final:

- (a) the Plaintiff and the Defendants will be restored to their respective positions prior to the execution of the Agreement;
  - (b) the Agreement will have no further force and effect;
  - (c) the Settlement Amount will be returned to the Contributing Parties, and
  - (d) the Agreement will not be introduced into evidence or otherwise referred to in any litigation or proceeding against the Defendants.
- (5) Notwithstanding the provisions of section 9.1(4), if the Agreement is terminated, the provisions of this section and sections 2, 4.1(1), 4.2, 4.3, 7, 9.1(3), 9.2, 9.3, 15.1(1), 15.1(2), 15.2, 15.3, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11, 15.12, 15.13, 15.14 and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect.

## **9.2 Allocation of Monies in the Escrow Account Following Termination**

- (1) If the Agreement is terminated, the Plaintiff shall, within thirty (30) days after termination, apply to the Court for an order:
- (a) declaring the Agreement null and void and of no force or effect except for the provisions of those sections listed in section 9.1(5);
  - (b) requiring the notice of termination to be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
  - (c) setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Agreement; and
  - (d) authorizing the payment of all funds in the Escrow Account, including accrued interest, to the Contributing Parties, apportioned *pro rata* based on their respective contributions, directly or indirectly, to the Escrow Account, as the case may be.
- (3) Subject to section 9.3, the Imperial Defendants shall consent to the orders sought in any motion made by the Plaintiff pursuant to section 9.2(2).



### **9.3 Disputes Relating to Termination**

If there are any disputes about the termination of the Agreement, the Court shall determine any dispute by motion on notice to the Plaintiff and the Defendants. The Contributing Parties shall be granted standing in respect of any such motion, should they deem it appropriate to intervene or otherwise make representations.

## **SECTION 10 – DETERMINATION THAT THE SETTLEMENT IS FINAL**

- (1) The Settlement shall be considered final on the Effective Date.
- (2) Within ten (10) days after the Effective Date, Siskinds LLP shall transfer the Escrow Account to the Administrator.

## **SECTION 11 – RELEASES AND JURISDICTION OF THE COURT**

### **11.1 Release of Releasees**

As of the Effective Date, provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers in exchange for and in consideration of the foregoing, and inasmuch as the terms and conditions of the Settlement are approved by the Court, forever and absolutely release the Releasees from the Released Claims.

### **11.2 No Further Claims**

- (1) As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto; and
- (2) For greater certainty, the Releasers acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, they shall have fully, definitively and permanently settled, waived and released and discharged all claims, no matter if they were unknown, unsuspected, not disclosed, and regardless of the subsequent

discovery of facts different from those they are aware of on the Effective Date. By means of the Settlement, the Releasors waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the release and discharge of the unknown claims and bar against the commencement of new claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Releasors agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

### **11.3 Dismissal of the Action**

Except as otherwise provided in the Agreement and the Second Order, and as a condition of Settlement, this Action shall be dismissed without costs and with prejudice.

## **SECTION 12 – ADMINISTRATION**

### **12.1 Appointment of the Administrator**

(1) The Court will appoint the Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.

### **12.2 Conclusion of the Administration**

(1) Following the Claims Bar Deadline, and in accordance with the terms of the Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, the Administrator shall distribute the amount that remains in the Escrow Account to Authorized Claimants.

(2) No claims or appeals shall lie against the Releasees, the Defendants, the Defendants' counsel, Class Counsel, the Administrator, based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

(3) If the Escrow Account is in a positive balance after one hundred eighty (180) days from the date of distribution to the Authorized Claimants, the Administrator shall, if economically feasible, allocate and distribute such balance among Authorized Claimants in an equitable

fashion. If there is a balance in the Escrow Account after an initial distribution and it is uneconomical to allocate and distribute the remaining balance in the Escrow Account to Authorized Claimants, the remaining funds shall be paid *cy prè*s to a recipient selected by the Plaintiff. The Administrator shall advise the Imperial Defendants of the intention to make a *cy prè*s payment and the Imperial Defendants shall have an opportunity to comment.

### **SECTION 13 – THE PLAN OF ALLOCATION**

- (1) Class Counsel shall propose for approval by the Court a Plan of Allocation in the form attached as Schedule “F” or such other form as Class Counsel may advise. The approval of the Plan of Allocation may be considered separately from the approval of the Agreement and is not a condition of the approval of the Agreement itself.
- (2) The Defendants shall have no obligation to consent to but shall not oppose the approval of the Plan of Allocation.
- (3) Section 13(2) is not an acknowledgement that the Defendants have standing to make any submissions regarding the Plan of Allocation.

### **SECTION 14 – CLASS COUNSEL FEES**

#### **14.1 Motion for Approval of Class Counsel Fees**

- (1) At the Second Motion, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.
- (2) The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they shall not oppose the approval and they will not make any submissions to the Court concerning Class Counsel Fees.
- (3) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the

Agreement or affect or delay the finality of the Second Order and the Settlement of the Action as provided herein.

#### **14.2 Payment of Class Counsel Fees**

(1) Forthwith after the Settlement becomes final, Siskinds LLP or the Administrator shall pay to Class Counsel the Class Counsel Fees approved by the Court from the Escrow Account.

### **SECTION 15 – MISCELLANEOUS**

#### **15.1 Motions for Directions**

(1) Any one or more of the Plaintiff, the Defendants, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to the Agreement and Plan of Allocation.

(2) All motions contemplated by the Agreement shall be on notice to the Plaintiff and the Defendants.

#### **15.2 Defendants Have No Responsibility or Liability for Administration**

Except for the obligation to pay the Settlement Amount, none of the Releasees, the Defendants, or the Defendants' counsel shall have any responsibility for or any liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation, including, without limitation, the processing and payment of claims by the Administrator.

#### **15.3 Headings, etc.**

(1) In the Agreement:

- (a) the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
- (b) the terms “the Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement and not to any particular section or other portion of the Agreement;

- (c) unless otherwise indicated, all amounts referred to are in lawful money of Canada; and
  - (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.
- (2) In the computation of time in the Agreement, except where a contrary intention appears:
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
  - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **15.4 Governing Law**

- (1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (2) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of the Agreement. Issues related to the administration of the Agreement, and the Escrow Account shall be determined by the Court.

#### **15.5 Entire Agreement**

The Agreement constitutes the entire agreement among the Plaintiff and the Imperial Defendants and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Plaintiff and the Imperial Defendants will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Agreement, unless expressly incorporated herein. The Agreement may not be modified or amended except in writing and on consent of all Plaintiff and the Imperial Defendants and any such modification or amendment must be approved by the Court.

## **15.6 Binding Effect**

(1) If the Settlement is approved by the Court and becomes final, the Agreement shall be binding upon, and enure to the benefit of the Plaintiff, the Class Members, the Defendants, the Individual Defendants, the Releasees, the Releasors, the Contributing Parties and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

- (2) The person signing the Agreement represents and warrants (as applicable) that:
- (a) he/she has all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on his/her own behalf;
  - (b) the execution, delivery, and performance of the Agreement and the consummation of the Actions contemplated herein have been duly authorized by all necessary corporate action;
  - (c) the Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations;
  - (d) he/she agrees to use his/her best efforts to satisfy all conditions precedent to the Effective Date.

## **15.7 Survival**

The representations and warranties contained in the Agreement shall survive its execution and implementation.

## **15.8 Negotiated Agreement**

The Agreement and the Settlement have been the subject of negotiations and many discussions among the Plaintiff and the Imperial Defendants. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Agreement shall have no force and effect. The Plaintiff and the Imperial

Defendants further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

### **15.9 Confidentiality**

(1) The Plaintiff and the Imperial Defendants agree that prior to the filing of the First Motion:

- (a) this Settlement Agreement, its terms, and the Settlement Amount are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, entity, publication or member of the media, except as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement Agreement, or as otherwise agreed by the Plaintiff and Imperial Defendants; and
- (b) any one of the Plaintiff or Imperial Defendants intending to disclose such information as may be required by law, judicial process or order of a court, will notify the other of its intention and give the non-disclosing party a reasonable opportunity to object.

(2) The Plaintiff and the Imperial Defendants agree not to disclose the substance of the negotiations that led to this Settlement Agreement including the merits of any positions taken by the Plaintiff and the Imperial Defendants except as necessary to provide the Court with information necessary to consider approval of the Settlement. Notwithstanding the foregoing, any Defendants may disclose such information to a regulatory authority if he/she/it determines that disclosure is warranted.

### **15.10 Recitals and Schedules**

(1) The recitals and schedules to the Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.

(2) The schedules to the Agreement are:

- (a) Schedule “A” – First Order
- (b) Schedule “B” – First Notice

- (c) Schedule “C” – Plan of Notice
- (d) Schedule “D” – Second Order
- (e) Schedule “E” – Second Notice
- (f) Schedule “F” – Plan of Allocation

### **15.11 Acknowledgements**

Each of the Plaintiff and Imperial Defendants hereby represents, affirms and acknowledges that:

- (a) he, she or its representative has the authority to bind the person or entity with respect to the matters set forth herein and has read and understood the Agreement;
- (b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and
- (c) he, she or its representative fully understands each term of the Agreement and its effect.

### **15.12 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the person or entity for whom he or she is signing.

### **15.13 Counterparts**

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

### **15.14 Notice**

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Agreement or any other report or document to be given by any of the Plaintiff or the Defendants to the Plaintiff or any of the other Imperial Defendants shall be in



writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

**Counsel for the Plaintiff:**

**Siskinds LLP**

Barristers and Solicitors

275 Dundas Street, Unit

London, ON N6B 3L1

Tel: 519-672-7409

**Michael G. Robb** (LSO#: 45787G)

[michael.robb@siskinds.com](mailto:michael.robb@siskinds.com)

**Garrett Hunter** (LSO#: 71800D)

[garret.hunter@siskinds.com](mailto:garret.hunter@siskinds.com)

**GROIA & COMPANY PROFESSIONAL CORPORATION**

365 Bay Street, Suite 1100

Toronto, ON M5H 2V1

Tel: 416-203-2115

**Joseph Groia** (LSO#: 20612J)

[jgroia@groiaco.com](mailto:jgroia@groiaco.com)

**Kevin Richard** (LSO#: 43160P)

[krichard@groiaco.com](mailto:krichard@groiaco.com)

**Bethanie Pascutto** (LSO#: 78098F)

[bpascutto@groiaco.com](mailto:bpascutto@groiaco.com)

**Counsel for the Defendants:**

**Lenczner Slaght Royce Smith Griffin LLP**

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

**Lawrence E. Thacker** (LSO#: 36939M)

[lthacker@litigate.com](mailto:lthacker@litigate.com)

**Brian Kolenda** (LSO#: 60153N)

[bkolenda@litigate.com](mailto:bkolenda@litigate.com)

**Aoife Quinn** (LSO#: 71033H)

[aquinn@litigate.com](mailto:aquinn@litigate.com)

**Kathleen Glowach** (LSO#: 79967R)

[kglowach@litigate.com](mailto:kglowach@litigate.com)

**N. Murray Edwards**

Suite 3220-255 5 Ave SW

Calgary, AB T2P 3G6

**Edco Financial Holdings Ltd.**

Suite 3220-255 5 Ave SW

Calgary, AB T2P 3G6

**Edco Capital Corporation**

Suite 3220-255 5 Ave SW

Calgary, AB T2P 3G6

The Plaintiff and the Imperial Defendants have executed the Agreement as of the date on the cover page.

**Claire Baldwin**



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**Imperial Metals Corporation**

By: \_\_\_\_\_  
Name  
Title

**J. Brian Kynoch**

---

**Andre Deepwell**

---

**Larry G. Moeller**

---

**Laurie Pare**

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Siskinds LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

**Siskinds LLP**

By: \_\_\_\_\_  
Name:  
Title:

**Claire Baldwin**

\_\_\_\_\_

**Imperial Metals Corporation**

By:   
Name DARBY DILLON  
Title CFO

**J. Brian Kynoch**

\_\_\_\_\_

**Andre Deepwell**

\_\_\_\_\_

**Larry G. Moeller**

\_\_\_\_\_

**Laurie Pare**

\_\_\_\_\_

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**Siskinds LLP**

By: \_\_\_\_\_  
Name:  
Title:

**Claire Baldwin**

\_\_\_\_\_

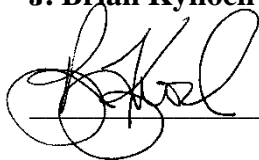
**Imperial Metals Corporation**

By: \_\_\_\_\_

Name

Title

**J. Brian Kynoch**



\_\_\_\_\_

**Andre Deepwell**

\_\_\_\_\_

**Larry G. Moeller**

\_\_\_\_\_

**Laurie Pare**

\_\_\_\_\_

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**Siskinds LLP**

By: \_\_\_\_\_

Name:

Title:

**Claire Baldwin**

\_\_\_\_\_

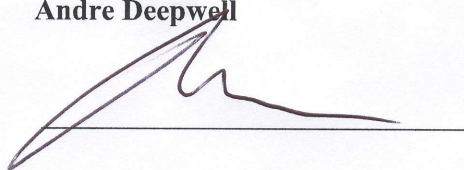
**Imperial Metals Corporation**

By: \_\_\_\_\_  
Name  
Title

**J. Brian Kynoch**

\_\_\_\_\_

**Andre Deepwell**



\_\_\_\_\_

**Larry G. Moeller**

\_\_\_\_\_

**Laurie Pare**

\_\_\_\_\_

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**Siskinds LLP**

By: \_\_\_\_\_  
Name:  
Title:

**Claire Baldwin**

\_\_\_\_\_

**Imperial Metals Corporation**

By: \_\_\_\_\_  
Name  
Title

**J. Brian Kynoch**

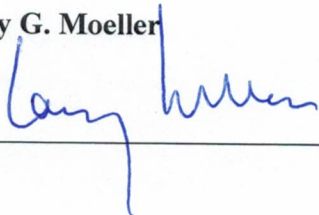
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**Andre Deepwell**

\_\_\_\_\_

**Larry G. Moeller**

\_\_\_\_\_



**Laurie Pare**

\_\_\_\_\_

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**Siskinds LLP**

By: \_\_\_\_\_  
Name:  
Title:



**Claire Baldwin**

\_\_\_\_\_

**Imperial Metals Corporation**

By: \_\_\_\_\_  
Name  
Title

**J. Brian Kynoch**

\_\_\_\_\_

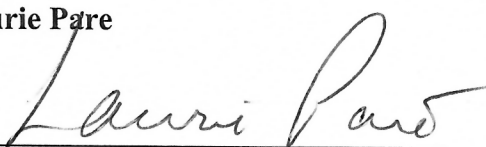
**Andre Deepwell**

\_\_\_\_\_

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\_\_\_\_\_

**Laurie Pare**

  
\_\_\_\_\_

Siskinds LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

**Siskinds LLP**

By:   
Name: **Garrett Hunter**  
Title: **Lawyer**

Schedule A

Court File No.: CV-14-5059885-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_  
)  
)  
JUSTICE GLUSTEIN ) DAY OF \_\_\_\_\_, 20\_\_

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL,  
LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS,  
EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Certification and Notice Approval)**

**THIS MOTION**, made by the Plaintiff, for an Order certifying this action as a class proceeding for settlement purposes only and approving the form and content of the notices of settlement approval hearing and the method of dissemination of such notices was heard this day at the courthouse, 330 University Avenue, Toronto, Ontario.

**ON READING** the material filed, including the settlement agreement entered into between the Plaintiff and Imperial Defendants dated ● (the “**Settlement Agreement**”), a copy of which is attached as Schedule “A”, and on hearing the submissions of the lawyers for the parties;

**ON BEING ADVISED** that the Plaintiff and the Imperial Defendants consent to this Order;

**AND ON BEING ADVISED** that RicePoint Administration Inc. consents to being appointed as Settlement Notice, Opt-Out and Claims Administrator for the purposes of the Settlement Agreement;

1. **THIS COURT ORDERS** that, except to the extent they are modified by this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that it will decide whether to:

- (a) approve the Settlement Agreement;
- (b) approve the Plan of Allocation;
- (c) approve the fees and disbursements of Class Counsel; and
- (d) deal with any related matters

at a hearing to be held on ●, 2023, beginning at 10:00 a.m. at the courthouse, 330 University Avenue, Toronto, Ontario (the “**Settlement Approval Hearing**”).

3. **THIS COURT ORDERS** that the date and time of the Settlement Approval Hearing shall be set forth in the Notice but may be subject to adjournment by the Court without further publication of notice to Class Members, other than notice of such adjournment which shall be posted on the settlement website, ●.

4. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes and all opt outs delivered pursuant to this Order, shall be set aside and declared null and void and of no force or effect, without the need for any further order of this Court.

5. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Imperial Defendants pursuant to section 5 of the *Class Proceedings Act, 1992*, solely for settlement purposes and subject to the terms of the Settlement Agreement.

6. **THIS COURT ORDERS** that Claire Baldwin is appointed as the representative plaintiff for the Class Members.

7. **THIS COURT ORDERS** that the class certified for purpose of the settlement with the Imperial Defendants is defined as:

all persons and entities, wherever they may reside or be domiciled, who acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014, other than the Excluded Persons.

8. **THIS COURT ORDERS** that Siskinds LLP and Groia & Company Professional Corporation are appointed Class Counsel.

9. **THIS COURT ORDERS** this action is certified as a class proceeding on the basis of the following common issue:

Did one or more of the Impugned Documents, as defined in the Second Fresh as Amended Statement of Claim, contain a misrepresentation within the meaning of the Securities Legislation?

10. **THIS COURT ORDERS** that the notice advising the Class Members of consent certification, the Approval Hearing, the right to opt-out of the action and the procedure to object to the settlement, generally in the form attached as Schedule “B” to this Order, is approved.
11. **THIS COURT ORDERS** that on or before ●, 2023, the Class Members shall be given notice of this Order, the right to opt out and the Approval Hearing in accordance with the Plan of Notice, in the form as attached as Schedule “C” to this Order, is approved.
12. **THIS COURT ORDERS AND DECLARES** that the notice to the Class Members described in paragraph 11 satisfies the requirements of section 17(6) of the *Class Proceedings Act, 2002*.
13. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed as Administrator for (i) the coordination and administration of Notice of the Certification Order and Settlement Approval Hearings pursuant to the Plan of Notice and related tasks; (ii) coordination and administration of the opt-out process, as described below; and (iii) coordination and administration of objections to the settlement, distribution protocol and fee request, as described below.
14. **THIS COURT ORDERS** that Class Members may exclude themselves from this proceeding by, no later than April 21, 2023 (the “**Opt Out Deadline**”), sending a written request to Opt Out to the Settlement Notice and Claims Administrator (“**Opt Out Election**”):

RicePoint Administration Inc.  
1480 Richmond Street  
Suite 204  
London, ON N6G 0J4  
Email: [imperialmetals@ricepoint.com](mailto:imperialmetals@ricepoint.com)

15. **THIS COURT ORDERS** that the Opt Out Election must include the following:
- (a) a statement of intention to opt out of the action by the Class Member or a person authorized to bind the Class Member;
  - (b) a listing of all transactions in Imperial securities during the Class Period showing, for each transaction, the type of transaction (purchase or sale), the number of Imperial securities purchased or sold and the date of the transaction, and state the number of securities held at the close of trading on the TSX on August 4, 2014;
  - (c) the transactions must be supported by documents to evidence such transactions, in the form of trade confirmations, brokerage statements or other transaction records allowing the Administrator to verify the transactions
  - (d) the Class Member's full name, current mailing address, telephone number, fax number and email address (as may be available); and
  - (e) may, at the option of the Class Member, contain a statement of the Class Member's reason for opting out.
16. **THIS COURT ORDERS** that all Class Members who do not validly Opt Out of this proceeding by the Opt Out Deadline shall be bound by the terms of the Settlement Agreement, if it is approved by this Court, and may not Opt Out of the action in the future.
17. **THIS COURT ORDERS** that any Class Member who elects to Opt Out of this class action in accordance with the provisions of this Order may not also object to or comment on the Settlement Agreement and any such objection or comments received therefrom shall be deemed withdrawn.
18. **THIS COURT ORDERS** that any Class Member who Opts Out of this class action in accordance with the provisions of this Order shall not be bound by the Settlement Agreement, shall not be entitled to receive any benefits or compensation in connection with the Settlement Agreement, shall cease to be a putative class member in this action and any limitation periods otherwise applicable to said class member shall be deemed to re-commence running as of the Opt Out Deadline.

19. **THIS COURT ORDERS** that at the Approval Hearing, the Court will consider objections to the Settlement Agreement by Class Members if their objections are sent in written form by no later than April 21, 2023 to:

RicePoint Administration Inc.  
1480 Richmond Street  
Suite 204  
London, ON N6G 0J4  
Email: [imperialmetals@ricepoint.com](mailto:imperialmetals@ricepoint.com)

20. **THIS COURT ORDERS** that the written objections must include the following:

- (f) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);
- (g) a statement that the Class Member acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014;
- (h) a brief statement of the nature of and reasons for the objection; and
- (i) the objector intends to appear at the Approval Hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

21. **THIS COURT ORDERS** that RicePoint Administration Inc. shall, on or before ●, report to the Court, by affidavit, with a copy to counsel for the Plaintiff and counsel for the Defendants, the names of the persons who objected and copies of any materials filed in connection with the objections.

22. **THIS COURT ORDERS** that any party affected by this Order may apply to the Court for further directions.

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

---

JUSTICE GLUSTEIN



# NOTICE OF THE PROPOSED SETTLEMENT OF THE IMPERIAL METALS CORPORATION CLASS ACTION

**Read this notice carefully as it may affect your rights.**

**This notice is directed to all persons and entities, excluding certain persons associated with the Defendants who acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014.**

On August 7, 2014, a proposed class action was commenced in the Ontario Superior Court of Justice (the "Action"). The Plaintiff alleges that Imperial Metals Corporation's continuous disclosure documents contained misrepresentations at law and within the meaning of Part XXIII.1 of the *Securities Act*, R.S.O. 1990, c. S.5 and, if necessary, the other provincial and territorial securities legislation from August 15, 2011 through to August 4, 2014, inclusive, by failing to disclose the adverse conditions at Imperial Metals Corporation's tailings storage facility at the Mount Polley mine.

The parties have reached a proposed settlement of the Action, without an admission of liability by the Defendants, subject to the approval by the Court. This notice provides a summary of the proposed settlement.

On •, 2023, the action was certified on consent for settlement purposes. The certified class includes persons, other than Excluded Persons, who acquired Imperial Metals Corporation's securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014.

The persons included in the class are entitled to participate in the settlement.

## **THE TERMS OF THE PROPOSED SETTLEMENT**

The Imperial Defendants will pay \$6 million, in full and final settlement of all claims against the Defendants. The \$6 million, less the lawyers' fees, disbursements and taxes, and the costs of administration of the settlement will be distributed to the Class in accordance with a plan of allocation. The Settlement Agreement may be viewed at •.

## **THE APPROVAL HEARING**

The Court will be asked to approve the proposed settlement and the lawyers' fees, disbursements, expenses and taxes at a hearing to be held on •, 2023 at • a.m. at the courthouse located at 330 University Avenue, Toronto. The lawyers for the Class will ask the Court to approve legal fees of • (•) percent of \$6 million which is \$•, plus disbursements and taxes.

## **OBJECTIONS**

Class Members who do not oppose the proposed settlement are not required to appear at the hearing or take any other action at this time to indicate their desire to participate in the proposed settlement. Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

At the approval hearing, the Court will consider an objection to the proposed settlement by a Class Member if the objection is submitted in writing, by prepaid mail or e-mail to the Administrator: RicePoint Administration Inc., 1480 Richmond Street, Suite 204, London, ON N6G 0J4, Email: imperialmetals@ricepoint.com. Class Members who wish to object must do so before April 21, 2023.

A written objection can be submitted in English or French and must include the following information:

- (a) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);
- (b) a statement that the Class Member acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014;
- (c) a brief statement of the nature of and reasons for the objection; and
- (d) the objector intends to appear at the Approval Hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

### **OPTING OUT FROM THE CLASS ACTION**

If you are a Class Member, you will be bound by the outcome of the Action, including the terms of the proposed settlement, if approved, unless you opt out of the Action. Class Members who do not opt out will (i) be entitled to participate in the settlement; (ii) be bound by the terms of the settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendants, or any person released by the approved settlement. Conversely, if you are a Class Member who opts out of the Action (an "**Opt Out Party**"), you will not be able to make a claim to receive compensation from the proposed settlement but will maintain the right to pursue your own claim against the Defendants relating to the matters alleged in the Action.

If you are a Class Member and wish to opt out, you must submit a written election ("**Opt Out Election**"), to the Administrator at the mail or email address set out in the preceding section. Your Opt Out Election must be postmarked or be sent via email by no later than **11:59pm Toronto (Eastern) time on April 21, 2023** ("**Opt Out Deadline**") to be valid.

To be valid, the Opt Out Election: (a) must contain a statement of intention to opt out of the action by the Class Member or person authorized to bind the Class Member; (b) a listing of all transactions in Imperial Securities from and including August 15, 2011 to and including August 4, 2014 (the Class Period) showing, for each transaction, the type of transaction (purchase or sale), the number of Imperial securities purchased or sold and the date of the transaction, and state the number of securities held at the close of trading on the TSX on August 4, 2014; (c) the transactions must be supported by documents to evidence such transactions, in the form of trade confirmations, brokerage statements or other transaction records allowing the Administrator to verify the transactions; (d) must contain the name, address, telephone number and email address of the Class Member; and (e) may, at the option of the Class Member, contain a statement of the Class Member's reason for opting out.

An Opt Out Election that does not contain all of the required information or is postmarked or emailed after the Opt Out Deadline will not be valid, which means that you will be bound by the outcome of the Action, including the proposed settlement, if it is approved.

You may revoke an Opt Out Election by delivering to the Administrator by mail or courier a written statement that you wish to revoke the Opt Out Election, which must be postmarked on or before 11:59pm Toronto (Eastern) time on ● .

## QUESTIONS

Questions for the lawyers for the Class may be directed to:

Garett Hunter  
**Siskinds LLP**  
275 Dundas Street, Unit  
London, ON N6B 3L1  
Tel: 519-660-7802  
[garett.hunter@siskinds.com](mailto:garett.hunter@siskinds.com)

Kevin Richard  
**Groia & Company Professional Corporation**  
Wildeboer Dellelce Place  
1100 - 365 Bay Street  
Toronto, ON M5H 2V1  
Tel: 416.203.2115  
Fax: 416.203.9231  
[krichard@groiaco.com](mailto:krichard@groiaco.com)

**This notice has been approved by the Court. Questions regarding this notice should NOT be directed to the Court.**

Schedule C

Court File No.: CV-14-5059885-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL,  
LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS,  
EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**PLAN OF NOTICE**

1. The First Notice shall be disseminated as follows:
  - (a) The Administrator shall issue a press release containing the content of the First Notice over *Canada Newswire*;
  - (b) The Administrator shall provide the First Notice to the brokerage firms in its proprietary database;
  - (c) Class Counsel shall post the First Notice in English and French on their website;
  - (d) Class Counsel shall e-mail the First Notice to Class Members for whom they have current e-mail addresses; and
  - (e) Class Counsel shall mail the First Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

2. The Second Notice shall be disseminated as follows:

- (a) The Administrator shall issue a press release containing the content of the First Notice over *Canada Newswire*;
- (b) The Administrator shall provide the Second Notice to all brokerage firms in its proprietary database;
- (c) Class Counsel shall post the Second Notice in English and French on their website;
- (d) Class Counsel shall e-mail the First Notice to Class Members for whom they have current e-mail addresses; and
- (e) Class Counsel shall mail the First Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

Schedule D

Court File No.: CV-14-5059885-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE GLUSTEIN ) OF , 2022

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL,  
LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS,  
EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Settlement, Notice, Plan of Allocation and Counsel Fees Approval)**

**THIS MOTION** made by:

- (a) Claire Baldwin for an Order approving the settlement of the Action; and
- (b) Siskinds LLP and Groia & Company Professional Corporation for the approval of the agreement respecting fees and disbursements between Siskinds LLP, Groia & Company Professional Corporation and Claire Baldwin pursuant to subsection 32(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “*CPA*”).

was heard this ● day of ●, 2023 at Toronto, Ontario.

**ON READING** the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavits of:
  - (i) Bethanie Pascutto affirmed January 26, 2023;
  - (ii) Ivan Bobanovic affirmed January 26, 2023.

**AND ON HEARING** the submissions of the Plaintiff and the Imperial Defendants;

**AND ON BEING ADVISED** that:

- (a) the Plaintiff and the Imperial Defendants consent to paragraphs 1, 2, 3(a), 3(b), 4, 5, 7, 8, 9, 10, 11, 12, 13, and 16 of this Order and the Imperial Defendants take no position on paragraphs 3(c), 3(d), 6, 14 and 15 of this Order;
- (b) RicePoint Administration Inc. consents to being appointed Administrator;
- (c) as of ●, there have been ● objections to the proposed settlement received by RicePoint Administration Inc.;

**AND** without any admissions of liability on the part of any of the Defendants, who have denied liability;

1. **THIS COURT ORDERS AND DECLARES** that, except as otherwise stated, for the purposes of this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order and that the following definitions also apply:

- (a) "Claims Bar Deadline" means 5:00 p.m. Eastern Standard Time on ●, 2022;
- (b) "Class Counsel" means Siskinds LLP and Groia & Company Professional Corporation;
- (c) "Fee Agreement" means the agreement between Claire Baldwin, Siskinds LLP and Groia & Company Professional Corporation signed by Claire Baldwin on ●, 2014;
- (d) "Released Claims" means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever and wherever incurred, and rights and

liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity or at common law, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees relating or connected in any way to trading in Securities during the Class Period;

- (e) "Releasees" means the Defendants and their respective past and present affiliates, and subsidiaries, and each of their respective 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;
- (f) "Releasers" means, jointly and severally, the Plaintiff, the Class Members and their respective past and present predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, consultants, underwriters, lenders, shareholders, advisors, representatives, lawyers, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be; and
- (g) "Settlement Agreement" means the settlement agreement dated ●, 2023 (without schedules) attached hereto as Schedule 1.

2. **THIS COURT ORDERS AND ADJUDGES** that the Settlement is fair and reasonable and in the best interests of the Class Members and is approved.

3. **THIS COURT ORDERS** that:

- (a) the Settlement Agreement attached as Schedule 1 to this Order, is approved and shall be implemented in accordance with its terms;
- (b) the Second Notice in the form attached as Schedule 2 to this Order, is approved;
- (c) the Plan of Allocation in the form attached as Schedule 3 to this Order, is approved; and
- (d) the Claim Form in the form attached as Schedule 4 to this Order, is approved.

4. **THIS COURT ORDERS** that the Class Members shall be given notice of this Order substantially in the form of the Second Notice disseminated in accordance with the Plan of Notice.



5. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed:
  - (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
  - (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this Order.
  
6. **THIS COURT ORDERS AND DECLARES** that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Defendants in accordance with the terms thereof, and upon the Plaintiff and all Class Members in accordance with the terms of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.
  
7. **THIS COURT ORDERS AND DECLARES** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
  
8. **THIS COURT ORDERS AND DECLARES** that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from the Released Claims.
  
9. **THIS COURT ORDERS** that the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.
  
10. **THIS COURT ORDERS** that to participate in this Settlement, Class Members must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.

11. **THIS COURT ORDERS** that the Plaintiff and the Defendants, Class Counsel or the Administrator may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.

12. **THIS COURT ORDERS** that no person may bring any action or take any proceedings against the Plaintiff, the Defendants, Administrator, or their employees, directors, officers, partners, agents, trustees, parents, predecessors, or assigns for any matter in any way relating to the administration of the Plan of Allocation of the implementation of this Order except with leave of the Court.

13. **THIS COURT ORDERS** that:

- (a) the Fee Agreement between Claire Baldwin, Siskinds LLP and Groia & Company Professional Corporation is approved; and
- (b) Siskinds LLP and Groia & Company Professional Corporation's fees, disbursements and taxes are fixed at \$● and shall be paid from the Escrow Account forthwith after the Settlement becomes final.

14. **THIS COURT ORDERS** that Claire Baldwin shall be awarded an honorarium of \$● and such amounts shall be paid from the Escrow Account by Siskinds LLP forthwith after the Settlement becomes final.

15. **THIS COURT ORDERS** that this Action, except as provided for in this Order, is dismissed without costs and with prejudice.

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JUSTICE GLUSTEIN

## **NOTICE OF SETTLEMENT OF THE IMPERIAL METALS CORPORATION CLASS ACTION**

**Read this notice carefully as it may affect your rights.**

**This notice is directed to all persons and entities, excluding certain persons associated with the Defendants, who acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014.**

On August 7, 2014, a proposed class action was commenced in Toronto (the "Action"). The Plaintiff alleges that Imperial Metals Corporation's continuous disclosure documents contained misrepresentations at law and within the meaning under Part XXIII.1 of the *Securities Act*, R.S.O. 1990, c. S.5 and, if necessary, the other provincial and territorial securities legislation from August 15, 2011 through to August 4, 2014, inclusive, by failing to disclose the adverse conditions at Imperial Metals Corporation's tailings storage facility at the Mount Polley mine.

The proposed settlement of the Action was approved by Justice Glustein on •. This notice provides a summary of the terms of the settlement.

Persons eligible to participate in the settlement are persons, other than Excluded Persons, who acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014 who did not opt out of the Action.

### **SUMMARY OF THE TERMS OF THE SETTLEMENT**

The Defendants will pay \$6 million, in full and final settlement of all claims, to be distributed in accordance with the following priorities:

- (a) \$• to the lawyers for the Class for fees, disbursements and taxes;
- (b) all costs and expenses incurred in the administration of the settlement, including the costs of RicePoint Administration Inc. the Court-appointed Administrator; and
- (c) a pro rata share of the balance to each Class Member in accordance with the Court-approved claims process and Plan of Allocation.

The Settlement Agreement, the Plan of Allocation and a description of the claims process may be viewed at •.

**A CLAIM FOR COMPENSATION MUST BE MADE BY •, 2023.**

**Each Class Member must submit a completed Claim Form on or before •, 2023 in order to participate in the Settlement. The Claim Form can be accessed or downloaded at • or obtained by calling the Administrator at •. If you do not submit a completed Claim Form by •, 2023, you will not receive any compensation.**

The Claim Form should be submitted to the Administrator by using the secure Online Claims System at • or by e-mail to [imperialmetals@ricepoint.com](mailto:imperialmetals@ricepoint.com). You may submit a paper Claim Form only if you do not have internet access. The paper Claim Form may be sent to mail or courier to:

RicePoint Administration Inc., Administrator, Imperial Metals Corporation Class Action Administration

1480 Richmond Street  
Suite 204  
London, ON N6G 0J4

## QUESTIONS

Questions for the lawyers for the Class may be directed to:

Garett Hunter  
**Siskinds LLP**  
275 Dundas Street, Unit  
London, ON N6B 3L1  
Tel: 519-660 7802  
[garett.hunter@siskinds.com](mailto:garett.hunter@siskinds.com)

Kevin Richard  
**Groia & Company Professional Corporation**  
Wildeboer Dellelce Place  
1100 - 365 Bay Street  
Toronto, ON M5H 2V1  
Tel: 416.203.2115  
Fax: 416.203.9231  
[krichard@groiaco.com](mailto:krichard@groiaco.com)

**This notice has been approved by the Court. Questions regarding this notice should NOT be directed to the Court**

## Schedule F

**PLAN OF ALLOCATION****THE DEFINED TERMS**

1. The definitions set out in the settlement agreement reached between the Plaintiffs and Imperial Defendants dated • (“**Agreement**”), except as modified or defined herein, apply to and are incorporated into this Plan of Allocation:
  - (a) **Acquisition Expense** means the price paid by the Claimant (including brokerage commissions) to acquire a Qualified Security;
  - (b) **Administrator** means RicePoint Administration Inc.;
  - (c) **Authorized Claimant** means a Class Member who: (i) submitted a properly completed Claim Form and all required supporting documentation to the Administrator prior to the Claims Bar Deadline; and (ii) is eligible to receive a Distribution from the Compensation Fund;
  - (d) **Claimant** means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline;
  - (e) **Class Period** means the period from August 15, 2011 through to August 4, 2014, inclusive;
  - (f) **Compensation Fund** means the Settlement Amount less Class Counsel Fees, Administration Expenses and other expenses authorized by the Court, if any. The Compensation Fund is the same as the Escrow Settlement Amount;
  - (g) **Court** means the Ontario Superior Court of Justice;

- (h) **Database** means the database in which the Administrator stores information received from the Claimants and/or acquired through the claims process;
- (i) **Disposition Proceeds** means the price received by the Claimant (without deducting any brokerage commissions) on the disposition of a Qualified Security;
- (j) **Distribution** means payment to Authorized Claimants in accordance with this Plan of Allocation, the Agreement and any order of the Court;
- (k) **Distribution List** means a list containing the name and address of each Authorized Claimant, the calculation of their net loss and the calculation of the Authorized Claimant's *pro rata* share of the Compensation Fund;
- (l) **Notional Entitlement** means the Authorized Claimant's notional damages as calculated pursuant to the formulae set forth in this Plan of Allocation, which forms the basis upon which each Authorized Claimant's *pro rata* share of the Compensation Fund is determined for purposes of the Distribution.
- (m) **Qualified Securities** means Securities purchased or acquired during the Class Period and held until after August 4, 2014;
- (n) **Securities** means Imperial Metals Corporation's common shares, 7% Unsecured Notes due March 2019, or such other securities as defined in the Securities Legislation;
- (o) **Settlement Amount** means \$6,000,000 less the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement; and
- (p) **Website** means the website at [www.♦.com](http://www.♦.com).

## THE OVERVIEW

2. This Plan of Allocation contemplates a determination of eligibility and an allocation and Distribution to each Authorized Claimant of a share of the Compensation Fund determined on the basis of the calculations set forth herein.

## CALCULATION OF THE DISTRIBUTION

3. The Administrator shall apply first in first out principles (whereby securities are deemed to be sold in the same order that they were purchased) to determine the purchase transactions that correspond to the sale of Qualified Securities, including in the calculation of a Claimant's Notional Entitlement.
4. The Administrator shall first determine a Claimant's Notional Entitlement. If the Claimant has a Notional Entitlement greater than zero, they become an Authorized Claimant, and the Administrator will go on to calculate the Authorized Claimant's monetary compensation. A Claimant must have a Notional Entitlement greater than zero in order to be eligible to receive a payment from the Compensation Fund.
5. Transfers of Imperial Metals Corporation's securities between accounts belonging to the same Claimant will not be taken into account in determining a Claimant's Notional Entitlement.
6. The date of an acquisition or disposition shall be the trade date of the transaction, as opposed to the settlement of the transaction or the payment date,
7. **The Notional Entitlement for Qualified Securities will be calculated as follows:**
  - a. No Notional Entitlement shall be recognized for any Qualified Securities disposed of before the close of trading on the Toronto Stock Exchange on August 1, 2014;

## Common Shares

- b. For each common share disposed on or before August 18, 2014 (10 trading days post-correction), the Notional Entitlement is the difference between the Acquisition Expense and the Disposition Proceeds;
- c. For each common share disposed of after August 18, 2014 (10 trading days post-correction), the Notional Entitlement shall be the lesser of:
  - i. the difference between the Acquisition Expense and the Disposition Proceeds; and;
  - ii. the difference between the Acquisition Expense and \$9.97<sup>1</sup>;
- d. For each common share not yet disposed of, the Notional Entitlement is the difference between the Acquisition Expense and \$9.97<sup>2</sup>.

## 7% Unsecured Notes due March 2019 (“Notes”)

- e. For each Note disposed of after August 4, 2014 and prior to March 15, 2019, the Notional Entitlement is the Acquisition Expense less the Disposition Proceeds and any interest payments received on the Note; and
  - f. For each Note redeemed, paid in full or extended on or before March 15, 2019, the Notional Entitlement is nil.
8. Each Authorized Claimant’s actual compensation shall be the portion of the Compensation Fund equivalent to the ratio of their Notional Entitlement to the total Notional Entitlement of all Authorized Claimants multiplied by the Compensation Fund, as calculated by the

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<sup>1</sup> The post-correction 10-day volume weighted average share price.

<sup>2</sup> *Ibid.*



Administrator (defined herein as the “*Pro Rata Distribution*”). However, the amount payable on account of the Notes shall not exceed 10% of the Compensation Fund.

9. Compensation shall be paid to Authorized Claimants in Canadian currency.

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

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

#### **THE ADMINISTRATOR**

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

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

12. The Administrator shall administer the Plan of Allocation under the oversight and direction of the Courts and act as trustee in respect of the monies held within the Escrow Account upon receipt from Class Counsel.
13. The Administrator shall, wherever practical, develop, implement and operate an administration system utilizing web-based technology and other electronic systems for the following:

- (a) receipt of information from Computershare and/or TMX Equity Transfer Services or Broadridge Financial Solutions Inc. concerning the identity and contact information of registered holders or beneficial owners of Securities, respectively;
  - (b) Class notification, as required;
  - (c) claim filing and document collection;
  - (d) claim evaluation, and analysis;
  - (e) distribution analysis and Distribution;
  - (f) cy près award distribution, if any, and reporting thereon;
  - (g) Administration Expense payments; and
  - (h) cash management, audit control and reporting thereon.
14. The Administrator's duties and responsibilities shall include the following:
- (a) receiving the monies in the Escrow Account from Siskinds LLP and investing them in trust in accordance with the Agreement;
  - (b) preparing any protocols required for submissions to and approval of the Court;
  - (c) providing notice of (i) the Second Motion, namely the Settlement was approved, and (ii) details of how, where, and by when to submit completed Claim Forms;
  - (d) providing the hardware, software solutions and other resources necessary for an electronic web-based bilingual claims processing centre to function in a commercially-reasonable manner;
  - (e) providing, training and instructing personnel in such reasonable numbers as are required for the performance of its duties in the most expedient, commercially reasonable manner;

- (f) developing, implementing and operating electronic web-based systems and procedures for receiving, processing, evaluating and decision-making respecting the claims of Class Members, including making all necessary inquiries to determine the validity of such claims;
- (g) if practicable, providing any Claimant whose Claim Form is not properly completed or does not include some of the required supporting documentation, an opportunity to remedy the deficiency as stipulated in the Agreement;
- (h) making timely assessments of eligibility for compensation and providing prompt notice thereof;
- (i) paying all taxes accruing on the interest earned in the Escrow Account and adding that interest (net of taxes) to the Compensation Fund;
- (j) making Distributions from the Compensation Fund in a timely fashion;
- (k) dedicating sufficient personnel to communicate with a Claimant in English or French as the Claimant elects;
- (l) using its best efforts to ensure that its personnel provide timely, helpful and supportive assistance to Claimants in completing the claims application process and in responding to inquiries respecting claims;
- (m) distributing and reporting on any *cy près* awards;
- (n) making payments of Administration Expenses;
- (o) maintaining a Database with all information necessary to permit the Courts to evaluate the progress of the administration, as may, from time to time, be required;

- (p) reporting to the Court respecting claims received and administered, and Administration Expenses; and
  - (q) preparing such financial statements, reports and records as directed by the Court.
15. The Administrator shall pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form, including the notice expenses reasonably and actually incurred by the Administrator and brokerage firms in connection with the provision of notice of this Settlement to Class Members (provided, however, that the Administrator shall not pay in excess CAD\$30,000.00 in the aggregate to all brokerage firms and, if the aggregate amount claimed by such brokerage firms exceeds CAD\$30,000.00, then the Administrator shall distribute the sum of CAD\$30,000.00 to such brokerage firms on a *pro rata* basis).
16. The Administrator shall keep up to date information on the Website on the status of the administration.
17. Once a Claim Form and required supporting documentation is received by the Administrator, the Administrator shall:
- (a) decide whether the Claimant is eligible to participate in the Distribution; and
  - (b) calculate the *Pro Rata* Distribution.

#### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

18. No Distribution shall be made by the Administrator in respect of any amount under \$5, and the name(s) of the Authorized Claimant(s) with claims under this amount shall be excluded from the Distribution List in respect of such claims.

19. Each Authorized Claimant whose name appears on the Distribution List shall comply with any condition precedent to Distribution that the Court may impose.
20. The Administrator shall make Distributions from the Compensation Fund to the Authorized Claimants whose names are on the Distribution List.
21. If the Escrow Account is in a positive balance (whether by reason of tax refunds, uncashed cheques or otherwise) in an amount greater than 10% of the net Settlement Amount after one hundred eighty (180) days from the date of Distribution of the Compensation Fund to the Authorized Claimants, the Administrator shall allocate such balance among Authorized Claimants whose names are on the Distribution List in an equitable fashion up to the limit of each person's actual loss. The Administrator may wait until a CRA T-5 tax slip for investment income is issued by the Schedule 1 bank in respect of the Escrow Account before making this second distribution. If there is a balance in the Escrow Account after each Authorized Claimant is paid up to his/her/its actual loss, the remaining funds shall be paid *cy près* to a recipient selected by Class Counsel.

#### **IRREGULAR CLAIMS AND RESTRICTION ON CLAIMS**

22. Where a Claim Form contains minor omissions or errors or there are minor errors or omissions in supporting documentation, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator and it is a proportionate and efficient use of resources for them to do so.
23. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted. This information must be submitted sixty (60) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request

for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to and bound by the provisions of the Agreement and the releases contained therein.

24. Any Class Member who does not submit a Claim Form and required supporting documentation with the Administrator on or before the Claims Bar Deadline will have their claim disallowed unless the Claims Administrator, in their absolute discretion, determines that allowing the claim would not delay the administration or otherwise impact the efficiency of the administration.
25. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Administrator believes that the claim contains unintentional errors which would materially exaggerate the Notional Entitlement of the Claimant, then the Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate Notional Entitlement is allocated to the Claimant. If the Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the Notional Entitlement of the Claimant, then the Administrator shall disallow the claim in its entirety.
26. Where the Administrator disallows a claim in its entirety, the Administrator shall send to the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the

Claimant disputes the amount of his, her or its Notional Entitlement or his, her or its individual compensation.

27. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
28. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
29. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination. In the event the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.
30. The determination of the Administrator in an administrative review is final and is not subject to further review by any court or other tribunal.
31. Any matter not referred to above shall be determined by analogy by the Administrator in consultation with Class Counsel.
32. No action shall lie against Class Counsel or the Administrator for any decision made in the administration of the Agreement and the Distribution Protocol without an order from a Court authorizing such an action.

**ADMINISTRATION EXPENSES**

33. The Administrator shall pay the fees, disbursements, taxes, levies, and other costs of:

- (a) the Administrator; and
- (b) such other persons at the direction of the Court,

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

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

**NO ASSIGNMENT**

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