SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nº : 500-06-000256-046

DATE : February 29, 2024

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

CLAUDE RAVARY
Plaintiff
v.
FONDS MUTUELS CI INC.
and
AIC GLOBAL HOLDINGS INC.
Defendants

JUDGMENT
(Art. 241 *Code of Civil Procedure*)

---

[1] **WHEREAS** on May 19, 2023, the Plaintiff filed the Expert Report of Samuel T. London dated May 18, 2023 (the "**London Report**");

[2] **WHEREAS** on January 31, 2023, the Defendants provided the Court with their *Application to Dismiss an Expert Report in Part* (the "**Application**") and submissions pertaining primarily to Sections VIII, IX and X of the London Report;

[3] **WHEREAS** the Court takes note of the parties' submissions with regard thereto;

[4] **WHEREAS** the Parties have now come to a mutually satisfactory agreement regarding the Application to Dismiss an Expert Report in Part (the "**Agreement**"), which is appended to this Judgment as Appendix A;

[5] **WHEREAS** Mr. London has prepared a draft amendment of the London Report, which is appended to this Judgment as Appendix B;

[6] **WHEREAS** the Defendants consider that this amended London Report resolves in part its objections raised in the Application and that the London Report continues to raise questions relative to the criterion of necessity and to the probative value of the London Report;

[7] **WHEREAS** the Parties have indicated their willingness to defer to the merits said alleged issues which relate to the necessity and/or probative value of the London Report;

FOR THESE REASONS, THE COURT:

[8] **GRANTS** the Defendants' Application to Dismiss an Expert Report in Part in part;

[9] **TAKES COGNISANCE** of the Parties' Agreement, including without limitation the Plaintiff's undertaking to notify and file an amended report of Samuel London in accordance with the draft attached to this Judgment; and

[10] **DEFERS** consideration of objections raised by the Defendants to trial insofar as they relate to the probative value or necessity of the expert report of Samuel London;

[11] **THE WHOLE**, without costs.

MARTIN F. SHEEHAN, J.S.C.

Mtre Normand Painchaud
Mtre Sophie Estienne
Mtre Catherine Sylvestre
SYLVESTRE PAINCHAUD ET ASSOCIÉS S.E.N.C.R.L.
Counsel for the Plaintiff

Mtre Alexander L. De Zordo
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Counsel for the Defendant AIC Global Holdings Inc.

Mtre Marie-Louise Delisle
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WOODS S.E.N.C.R.L.
Counsel for the Defendant Fonds Mutuels CI Inc.

APPENDIX A

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions Division)

No.: 500-06-00256-046

CLAUDE RAVARY

(the "**Plaintiff**")

v.

AIC GLOBAL HOLDINGS INC.

and

FONDS MUTUELS CI INC.

(together, the "**Defendants**")

AGREEMENT AS TO APPLICATION TO DISMISS AN EXPERT REPORT IN PART

WHEREAS the Plaintiff and the Defendants (together, the "**Parties**") are party to *Ravary v. AIC Global Holdings et al.* before the Superior Court of Québec, file no. 500-06-00256-046 (the "**Proceedings**");

WHEREAS on May 19, 2023, the Plaintiff filed the Expert Report of Samuel T. London dated May 18, 2023 (the "**London Report**");

WHEREAS on January 31, 2024, the Defendants provided the Court with their *Application to Dismiss an Expert Report in Part* (the "**Application**") and submissions pertaining primarily to Sections VIII, IX and X of the London Report;

WHEREAS Mr. London has prepared a draft amendment of the London Report, which is appended hereto as Appendix B (the "**Amended London Report**");

WHEREAS the Parties now wish to resolve the disagreements raised with regard to the Application;

THEREFORE, THE PARTIES NOW AGREE AS FOLLOWS:

1. **PREAMBLE**. The Preamble forms an integral part of this Agreement.

2. **CONSENT TO JUDGMENT**. The Parties shall consent to a judgment in the form attached hereto as Appendix A (the "**Draft Judgment**").

3. **FILING AMENDED LONDON REPORT**. Not more than five days from the Court's approval of the Draft Judgment or a judgment substantially conforming with the Draft Judgment, the Plaintiff shall notify and file the Amended London Report.

4. The Defendants shall not object to the amendments to the Amended London Report.

5. **WITHOUT PREJUDICE**. Notwithstanding any provision above, this Agreement is without prejudice to the Defendants' rights:

   5.1. to raise any argument as to the probative value or necessity of the London Report or of any portion thereof; and

   5.2. to raise any objection to the London Report that could have been raised in the absence of the Application.

6. **COSTS**. Both parties waive their costs with regard to the Application.

7. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or email (PDF). Such execution and delivery shall be legal and binding as if the facsimile copy or the email contained the original signature of the signing Parties.

8. **APPLICABLE LAW**. This Agreement is governed by and construed in accordance with the laws of the Province of Québec and laws of Canada.

9. **LANGUAGE**. This Agreement is drafted in the English language pursuant to the express wish of all of the Parties. *La présente convention a été rédigée en anglais à la demande expresse des parties*.

AND THE PARTIES HAVE SIGNED:

Sylvestre Painchaud et associés, on behalf of CLAUDE RAVARY

Executed in __________, by:

Sylvestre Painchaud et associés
____
Name:

Date: February 14, 2024

Borden Ladner Gervais LLP, on behalf of AIC GLOBAL HOLDINGS INC.

Executed in __________, by:

BLG
____
Name:

Date: February 28, 2024

Woods LLP, on behalf of FONDS MUTUELS CI INC.

Executed in Montreal, by:

Woods s.e.n.c.r.l. /LLP
____
Name: Woods LLP

Date: February 14, 2024

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions Division)

No.: 500-06-00256-046

CLAUDE RAVARY

Plaintiff

v.

AIC GLOBAL HOLDINGS INC.

And

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FOR THESE REASONS, THE COURT:

GRANTS the Defendants' *Application to Dismiss an Expert Report in Part* in part;

TAKES COGNISANCE of the Parties' Agreement, including without limitation the Plaintiff's undertaking to notify and file an amended report of Samuel London in accordance with the draft attached to this Judgment; and

DEFERS consideration of objections raised by the Defendants to trial insofar as they relate to the probative value or necessity of the expert report of Samuel London;

THE WHOLE, without costs.

____

MARTIN F. SHEEHAN, J.C.S.

Court File No. 500-06-000256-046

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
SUPERIOR COURT

CLAUDE RAVARY

- and -

CI INVESTMENTS, INC. AIC GLOBAL HOLDINGS, INC.

Expert Report of
Samuel T. London, CPA, CA, MBA

May 18, 2023
As amended, February 9, 2024

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I. Introduction

A. Scope of Report

1. I have been retained by *Sylvestre Painchaud et associés s.e.n.c.r.l.*. as an expert to assist the Quebec Superior Court in understanding the duties and responsibilities of mutual fund managers ("Fund Managers") in Canada during the period January 1, 2000 to September 30, 2003 (the "Class Period") as relates to the practice known as market timing of open-ended mutual funds.

2. This class action concerns transactions by hedge funds, institutional traders and certain other investors who engaged in frequent short-term trading activity in certain identified mutual funds (the "Funds at Issue") of the defendants during the Class Period. It is alleged that the defendants, CI and AIC, did not put in place reasonable or prudent measures consistent with their duties and responsibilities as Fund Managers that would have prevented material harm to their funds and fund investors from the aforementioned activity by such traders.

3. I have specifically been asked to provide an opinion on the following issues:

i) What was the nature, extent and characteristics of the frequent short-term trading activity that took place in the most actively traded client accounts of the defendants ("Accounts at Issue") during the Class Period?

ii) What harm was generally caused by frequent short-term market timing trading activity in mutual funds during the Class Period?

iii) What were the industry standards governing Fund Managers in the Canadian mutual fund industry during the Class Period as they relate to frequent short-term market timing trading activity?

iv) What reasonable measures did Fund Managers in Canada take to protect their funds and fund investors from the harm caused by the frequent short-term market timing trading activity during the Class Period?

v) Did the defendants fail in upholding their duties and responsibilities as Fund Managers in respect of the frequent short-term market timing trading activity during the Class Period? and

vi) Was it reasonable or prudent for Fund Managers to enter into confidential Switch Agreements (also known as "Program Agreements") of the type entered into by the defendants during the Class Period which expressly permitted frequent short-term trading activity in their funds with hedge funds and other institutional traders?

4. The following key terms used in this report are defined in **Appendix I**:

- dilution
- frequent short-term trading activity
- Fund Manager(s)
- hedge fund
- market timer
- market timing
- mutual fund(s) or fund(s)
- net asset value ("NAV")
- redemption
- Short-term Trading Fee(s)
- simplified prospectus and annual information form ("AIF")
- stale value(s) (or stale price(s))
- switch or transfer
- Switch Agreement

5. In preparing this report and rendering my opinion, I have relied on the following:

a) Personal knowledge and experience during the Class Period with the subject;

b) My review and analysis of the evidentiary record, including pleadings in this action, documents, transcripts and other material referred to in **Appendix II**.

B. Qualifications

6. I have a Bachelor of Commerce and a Master of Business Administration degree from the University of Toronto, a professional accounting designation (CPA) in Ontario, and have completed specialized securities courses, including the Canadian Securities course and the Partners, Directors, and Senior Officer (PDO) course, required to be a senior officer or director of a securities dealer firm. I have been actively employed in the mutual fund and financial services industry in Canada continuously for over 32 years.

7. I began my financial services career in 1990 in a senior management role at Global Strategy Financial Inc. ("Global Strategy") (associated with the N.M Rothschild group of companies), a Canadian Fund Manager that specialized in foreign mutual funds. As part of the senior leadership team, I was involved in all major decisions involving the manager and the funds including new fund launches, fund mergers, changes to fees and commission structure, annual fund prospectuses and AIFs, tax and other compliance matters, and was involved in negotiating and finalizing material contracts and financings of deferred load sales commissions. I worked closely with fund administration, accounting, sales, legal and compliance departments in carrying out my duties.

8. Global Strategy was both a trustee and manager to about 20 mutual funds. I was involved in many instances where a matter arose where the interests of the manager and funds were potentially in conflict or where there was a conflict vis-à-vis different classes of unitholder. In my role, I understood clearly that Global Strategy had a duty in all of these situations to act in the best interests of the funds and its unitholders, both in its capacity as Fund Manager and as trustee.

9. Beginning in 1998 through 2002, I was employed in a senior management role with Mackenzie Financial Corporation ("Mackenzie"), a large Canadian Fund Manager. I was Chief Financial Officer of the MRS Group of Companies ("MRS"), which included Mackenzie's trust company, securities dealer and mutual fund dealer, and was also employed as Senior Vice President of Corporate Development at Mackenzie.

10. As part of the senior leadership team at Mackenzie and MRS, I worked closely with my colleagues at Mackenzie in sales, marketing, fund administration, compliance, finance, legal and executive management on various fund related issues including new fund launches and other strategic initiatives.

11. MRS Trust Company was the trustee of the Keystone family of funds managed by Mackenzie. As a senior officer of MRS, I helped oversee strategy, sales, marketing and compliance responsibilities of the Keystone fund family and was a signatory to the Keystone Funds Prospectus and the AIF where I would affirm that they constituted "full, true and plain disclosure of all material facts" relating to the Keystone Funds.

12. From 1992 through September 1998, I represented Global Strategy, and from October 1998 to 2002, Mackenzie, as an active member of the Investment Funds Institute of Canada ("IFIC") taxation steering committee. Through this Committee, I was involved in a range of issues impacting a broad cross section of Fund Managers relating to tax and compliance issues. I also developed life-long working relationships with numerous Canadian fund industry contemporaries.

13. Since 2002, I have served as founder and president of Chartview Investments Inc. ("Chartview"). Chartview is a boutique financial advisory firm that provides advice to a diverse range of mutual fund firms and other financial services firms contemplating strategic initiatives.

14. I also served as a founding member of the Independent Review Committee ("IRC") for the Hartford Mutual Funds in Canada from 2007 to 2010, including drafting its initial charter. The IRC's mandate was to review and provide an opinion on conflict-of-interest matters between the Fund Manager and the funds.

15. I was retained as an expert witness in the parallel Ontario class action ("the Ontario action"), Fischer et al v CI Mutual Funds et al, which also relates to frequent short-term market

timing trading activity by atypical investors in CI and AIC funds during the period September 1, 1998 to September 30, 2003.[1]

16. Further details of my pertinent qualifications and experience are in my Curriculum Vitae in **Appendix III**.

II. Summary of Principal Conclusions

17. The frequent short-term trading activity that took place in the Accounts at Issue during the Class Period in the Funds at Issue was extraordinary in size and scope and highly unusual in the Canadian mutual fund industry. Said trading activity amounted to more than $34 billion at CI and more than $11 billion at AIC, which activity was highly concentrated in accounts belonging to a Bermuda based hedge fund and other atypical institutional clients who were investing primarily in Global, International, European and Asian mutual funds. The activity was taking place with the knowledge of senior management at CI and AIC, was actively promoted by two advisors well known in the industry, and was being facilitated by Switch Agreements between CI and AIC and those atypical clients.

18. A hallmark of market timing (or time zone arbitrage) is that purchases or switches-in takes place on days when there is an upward movement in North American markets that had not yet been reflected in the valuation of foreign equity mutual funds as the funds' net asset values ("NAVs") would be priced based on "stale values" from foreign markets that had closed many hours earlier. Effectively, this results in purchases at a discount to the true NAV. For both CI and AIC, the results of analysis done by Raymond Chabot Grant Thornton ("RCGT") on the activity

[1] The Ontario action covers a longer period than this class action as it extended from September 1, 1998 to September 30, 2003, consistent with the period the Ontario Securities Commission conducted its review of the trading activity of the defendants.

in the Accounts at Issue during the Class Period is highly indicative of market timing activity. For CI, 91% of the purchases in 67 of the most active accounts took place on days when the S&P 500 was up. For AIC, the S&P was up in 87% of the days when purchases in the Accounts at Issue were made. By contrast, for the January 1, 2000 to December 31, 2003 period as a whole the S&P 500 was up in only 48.6% of the days.

19. The RCGT analysis similarly indicated that redemptions or switches-out for both the CI and AIC Accounts at Issue were timed in a way that could exploit stale values. The analysis showed that, in about 80% of cases, redemptions or switches out during the Class Period occurred when there was a decline in the North American markets. This is also indicative of market timing as the expectation is that the NAV of the foreign equity fund would decline when they opened for trading the next day and the market timer would therefore receive higher redemption proceeds than they would based on the true NAV.

20. Dilution refers to the diminishment in value to long-term fund investors resulting from market timers purchasing or redeeming fund units that include securities priced with stale values in order to earn arbitrage profits for themselves. This is the greatest source of harm to long-term investors from frequent short-term market timing trading activity.

21. Other damaging consequences are also caused by frequent short-term market timing trading activity, included increased brokerage costs, inefficient portfolio management caused by maintaining cash or cash equivalents to meet redemption or switch out requirements, and disruption to the portfolio manager's investment strategy.

22. The need to protect long-term mutual fund investors from speculators and aggressive traders exploiting stale value prices to earn arbitrage profits was known in the industry prior to the start of the Class Period. I was personally aware of the issue when my employer launched a

Japan fund in the mid-1990s and Fidelity Canada, a leading Fund Manager in the industry, had included precise disclosure highlighting this specific risk in its simplified prospectus in 1998.

23. While hedge funds and other institutional traders were generating profits in the Accounts at Issue, many long-term investors in CI and AIC's Funds at Issue were incurring substantial losses during the Class Period. For example, CI's largest fund, the CI Global Fund, one of the biggest targets of market timers, had abysmal performance of -26.6% and -19.4% in 2001 and 2002, respectively. This shows that the arbitrage strategies were being effectively implemented by the Accounts at Issue. Neither CI nor AIC ever considered, let alone performed analysis of the profits being earned in those accounts, despite the massive volumes of unusual activity taking place, and while the funds were losing significant value.

24. Prudent and diligent Fund Managers in Canada met the industry standard for prudent fund management during the Class Period, and thereby prevented substantial harm to investors in the relevant funds from the frequent short-term trading activity of market timers, by taking some or all of the following actions:

a) Implementing reasonable policies and procedures to detect and monitor frequent trading activity and taking steps to even-handedly enforce the requirements of their funds' simplified prospectuses and AIFs related to Short-Term Trading Fees during the Class Period;

b) Refusing to enter into or continue any Switch Agreements with hedge funds and other atypical investors that facilitated frequent short-term trading activity, given that such arrangements were inconsistent with prospectus disclosure, not in the funds' and long-term unitholders' best interests, were not publicly disclosed, favoured certain investors over others, and created a clear conflict which placed the interests of the Fund Manager ahead of the interests of the funds;

c) Acting upon obvious red flags and exercising additional care and diligence in reviewing the account activities of hedge funds or other institutional clients known or suspected to be engaging in frequent short-term market timing trading activity;

d) Enforcing an outright ban on frequent short-term trading activity by freezing offending accounts, refusing transactions and prohibiting new purchases and, while

less common during the Class Period, utilizing fair value pricing to discourage arbitrage techniques used by market timers.

25. There are many examples of Canadian Fund Managers that fulfilled the professional obligations expected of them during the Class Period. Such managers prevented substantial harm to their funds and to fund investors from market timing activities. Four such Fund Managers highlighted in detail in this report are: RBC Funds Inc., Fidelity Investments Canada Limited, Mackenzie and CIBC Asset Management Inc. In my opinion, their conduct, as contrasted with that of CI and AIC, demonstrated conduct by Fund Managers that met the professional standards of responsible Fund Managers.

26. The specific actions taken by the aforementioned Fund Managers included:

a) Putting policies and procedures in place to actively monitor higher dollar value short-term trading through daily reports needed to comply with applicable prospectus requirements;

b) Issuing warning letters to the dealer, advisor and/or the client who repeatedly engaged in frequent short-term trading activity;

c) Strictly enforcing a minimum 1% or 2% Short-Term Trading Fee or outright banning all such activity;

d) Prohibiting further trading, except for redemptions, by the account holder;

e) Paying extra attention to funds susceptible to stale prices, including Global, International and Far East funds;

f) Not allowing Switch Agreements that facilitate frequent short-term trading; and

g) Utilizing fair value pricing in some instances.

27. CI and AIC, on the other hand, engaged in conduct which failed to protect the funds and fund investors in question and utilized none of the available aforementioned measures.

28. CI and AIC each also failed to collect and pay the Short-Term Trading Fees owed to their funds and which they were required to collect as specified in the relevant simplified prospectuses and AIFs. In the case of CI, the simplified prospectuses and the AIFs contained, throughout the

Class Period, an inconsistency which did not give CI the leeway to reduce Short-Term Trading Fees as they did. In AIC's case, they failed to abide by the stated terms of their mutual fund trust simplified prospectuses for the Funds at Issue, which also did not give flexibility to reduce Short-Term Trading Fees. Had CI enforced the terms of their simplified prospectuses and AIFs they would have been required to collect about $654 million in Short-Term Trading Fees from market timers and pay this to the funds instead of the $9.4 million actually collected and paid. AIC would have been required to collect and pay $220 million to its funds instead of $0.5 million.

29. From my perspective, as a Canadian industry expert, I draw the following conclusions:

a) CI and AIC each entered into numerous confidential Switch Agreements on terms that benefited the Fund Manager, were detrimental to their funds and long-term unitholders, offered preferential treatment to one class of investors over another, and engaged in little to no ongoing effective monitoring or oversight of accounts engaged in frequent short-term trading; no long-term investor would have knowingly invested in a fund that allowed and facilitated massive volumes of frequent short-term trading activity; and

b) CI and AIC each ignored numerous red flags that, if acted upon, would have alerted them to the substantial harm inflicted on long-term investors from aggressive frequent short-term trading activity with the obvious potential to exploit stale values in their Global, International, Europe and Asia Funds. This permitted hedge funds and others to profit at the expense of long-term investors in the Funds.

c) CI and AIC each failed to follow industry standards by reasonably or appropriately enforcing the existing Short-Term Trading Fee requirements set out in their own funds' simplified prospectuses and AIFs;

III. Background

A. Mutual Funds and Market Timing

30. Mutual funds are investment vehicles that pool money from investors with similar investment objectives. A mutual fund may own securities of different types, or from different asset classes – such as equities, bonds, money market instruments – depending on the fund's

investment objectives. Mutual funds provide a means by which retail Canadian investors can obtain portfolio diversification and professional investment management.

31. Investors in a mutual fund, in effect, own a portion of the fund's net assets. The legal form of ownership is a unit, in the case of a mutual fund organized as a trust, and a share, in the case of a mutual fund offered as a class of shares of a mutual fund corporation. Subject to potential fees (including Short-Term Trading Fees) and applicable policies set out in a fund's simplified prospectus and AIF, investors can freely redeem units or shares of a mutual fund for cash or can switch into other mutual funds of a Fund Manager.

32. Mutual funds in Canada are valued only once a day at the end of the trading day in North America. However, during the Class Period, foreign securities (e.g., Asian and/or European equities) held by such mutual funds typically would have been valued based on the valuation obtained from a foreign stock exchange that, depending on the foreign market, closed some 6 to 12 hours earlier. Thus, during the Class Period, the net asset value of the units (or shares) of a particular mutual fund did not always reflect the most accurate fair market value of all of the securities it held. Sophisticated and aggressive short-term traders could exploit such temporary pricing inefficiencies to the detriment of a mutual funds' long-term investors. They did so by purchasing funds at an effective discount to the true value and/or redeeming those funds for an effective premium by exploiting stale values within the fund. Such activity in European, Asian, International or Global mutual funds, would generate profits for the arbitrageurs which diluted the value of the units (or shares) held by long-term investors.

33. The potential for arbitrageurs to exploit stale values in portfolios in Japan and Far East Funds was an issue known to me in the mid-1990s after my employer at the time, Global Strategy, launched a Japan fund and an Asia fund. It was a fairly obvious issue based on the known

limitations of then existing fund valuation methodologies since there was up to a 12-hour delay between when foreign markets closed and when funds were priced in Canada at the end of the trading day.

34. The following disclosure from Fidelity Investments Canada Limited's September 1998 mutual fund simplified prospectus (p. 43) also shows that the market timing issue and the risks of aggressive arbitrage traders taking advantage of stale prices were known in the Canadian fund industry before the start of the Class Period:

> **VALUING SECURITIES IN A FUND**
>
> *[V]alues may be materially affected by events occurring after the closing of a foreign market. In these cases, Fidelity may take extra steps to properly determine the fair value of securities that have been affected by these events. The number of securities valued in this way may be limited to a few stocks or may extend to an entire market.*
>
> *We call this process fair value pricing because it serves the best interests of fund investors by helping to ensure that the prices at which they buy and sell units are fair and accurate, reflecting all information available at the time of pricing.*
>
> ***This process also helps to protect our long-term investors against speculators and aggressive traders who try to take advantage of pricing inefficiencies in the market**. These inefficiencies can happen with foreign securities, whose closing prices may no longer reflect their true value if there are major changes after overseas markets close. Hong Kong, for example, ends its trading day half a day before the TSE closes, and much can change during that time.* [Emphasis added.]

35. The focus of this report is on the duties and responsibilities of Fund Managers related to frequent short-term market timing trading activity occurring in Global, International, European and Asian equity funds. During the Class Period many Fund Managers, including the defendants, had disclosure in their funds' simplified prospectus and AIF related to short-term trading activity and the specific policies it had to protect investors from the harmful impact of such trading, including the imposition of meaningful Short-Term Trading Fees payable to the funds.

B. The Regulatory Investigation of Market Timing in Canada by the OSC

36. On September 3, 2003, the Attorney General of New York announced the largest probe ever into mutual fund industry practices in the U.S., alleging widespread abusive practices of "market timing" and "late trading."

37. The announcement received extensive press coverage in both the U.S. and Canada and led to what came to be regarded as the largest mutual fund scandal ever in both countries with major reverberations occurring over the months and years that followed.

38. Soon after the U.S. probe was announced, the Ontario Securities Commission ("OSC") launched a similar investigation in November 2003 into the practices of Canadian Fund Managers. The OSC investigation started with an industry-wide review of 105 mutual fund companies and was completed over 15 months in three stages. In the second stage, the list of Fund Managers under review was reduced to 36 and, based on its findings, the list was trimmed again in the third and most intensive investigative stage which involved an onsite review of 20 Fund Managers considered of greatest potential concern.

39. Of the 20 Fund Managers reviewed in the final investigative phase, the OSC ultimately referred five Fund Managers to OSC Enforcement and concluded that the other 15 Fund Managers "*had taken reasonable steps to identify and prevent harm to their funds and their investors*."[2]

40. The Report on Mutual Fund Trading Practices Probe (the "OSC Report") summarizing the findings of the OSC investigation was issued in March 2005**.** It found frequent trading market

[2] See OSC, "Report on Mutual Fund Trading Practices Probe," March 2005, attached hereto as **Schedule "A",** p.18.

timing activity to have caused substantial harm to fund investors at CI, AIC and the other three offending fund companies that were referred to OSC Enforcement.

41. The OSC Report identified the following harm that results from market timing (all of which have a significant adverse impact on a fund's long-term performance):

- dilution of the value of other security holders' investments in the fund;
- increased brokerage transaction costs;
- inefficient management of a fund caused by maintaining cash or cash equivalents and/or monetization of investments to meet redemption requirements; and
- disruption to the portfolio manager's investment strategy.

42. The OSC Report reached the following fundamental conclusions:

a) "*Our case against the five fund managers referred to enforcement was based on their failure to protect fully the best interests of the affected funds. These fund managers had a duty to have regard to the potentially harmful impact of frequent trading market timing on a fund and its investors, and take reasonable steps to protect the fund from harm, to the extent that a reasonably prudent person would have done in the circumstances*."[3]

b) *"As illustrated in Table 1, we found some level of frequent trading market timing activity in certain funds managed by some of the 15 fund managers not referred for enforcement action. However, none of the factors indicating risk of harm to investors were found to be present in a material way. In addition, our consideration of other relevant factors led us to conclude that these fund managers had taken reasonable steps to identify and prevent harm to their funds and their investors. As a result, and as illustrated in Chart 2, the impact of the frequent trading market timing activity to investors in those funds was found to be minimal on a relative basis."* [4]

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[3] Schedule "A", pp. 16-17.

[4] Schedule "A", p. 18.

43. The settlement agreement entered into by each of CI and AIC with the OSC included the following passages:

a) **For CI**: "*Five institutional investors holding accounts in CI Funds have been identified as having profited as a result of frequent trading market timing strategies that were pursued in certain of the CI Funds (the "Relevant Funds") in the period from September 1998 to September 2003 (the "Market Timing Traders"). The total profit realized in CI Funds by the Market Timing Traders … was approximately $90.2 million…*"[5]

b) **For AIC**: "*Three institutional investors holding accounts in AIC Funds have been identified as having profited as a result of frequent trading market timing strategies that were pursued in certain of the AIC Funds (the "Relevant Funds") in the period from January 1999 to September 2003 (the "Market Timing Traders"). The total profit realized in AIC Funds by the Market Timing Traders … was approximately $127 million…*"[6]

44. In preparing this report, I have reviewed the account statements and Excel files produced by the defendants that included detailed trading activity of the aforementioned "Market Timing Traders" which were produced in this action. In addition, trading activity related to many other accounts that had been identified as abnormally active was also provided in this class action. Abnormally active accounts included all accounts of CI and AIC where at least 50 short-term round-trip (or "switch") transactions had taken place during the Class Period.

45. My conclusions and opinions, all independently formed and corroborated through multiple sources, were consistent with the findings of the OSC both in relation to the substantial number of Canadian Fund Managers that had met a prudent manager industry standard to prevent

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[5] CI Settlement Agreement with OSC, December 10, 2004, p. 4,5 and attached as **Schedule "B"**.

[6] AIC Settlement Agreement with OSC, December 14, 2004, p. 4,5 and attached as **Schedule "C"**.

material harm to their funds from frequent short-term market timing trading activity during the Class Period and that CI and AIC failed to meet said appropriate industry standard.

IV. Nature, Extent and Characteristics of Trading in Defendants' Accounts at Issue

46. Trades executed by market timers differ markedly from those executed by long-term investors in volume and frequency. In particular, frequent short-term market timing trading activity often involves excessively large amounts invested in Global, International, European and Asian equity funds that are switched into money market funds shortly thereafter. Some of the trades executed by market timers in the defendants' foreign mutual funds during the Class Period amounted to tens of millions of dollars in a single "switch in" and "switch out" transaction and, as highlighted later in this report, at times represented a relatively high percentage of the net asset value of certain funds (well in excess of 5%). Such enormous trades raise red flags that would cause a prudent manager to conduct follow-up activity and take appropriate action to prevent harm to their funds and unitholders.

47. In two reports each dated December 16, 2022 (the "RCGT Reports"), titled "Analysis of CI transaction data" and "Analysis of AIC transaction data" Raymond Chabot Grant Thornton ("RCGT") compiled detailed analysis of transaction data for the period January 1, 2000 to December 31, 2003, that was provided to them by CI and AIC pursuant to a judgment of the Quebec Superior Court related to the Accounts at Issue.

48. Based on my review and analysis of the trading data provided by CI and AIC, together with account statements as well as other production material provided in this action, I have compiled the following summary of trading activity for the Accounts at Issue in the Funds at Issue for the period January 1, 2000 to December 31, 2003:

Total Volume of CI Trading Activity in Accounts at Issue – January 1, 2000 to December 31, 2003

Account #	Account Name of Market Timing Traders[7]	Dealer	Advisor	$ Value of Purchases
11213667	Reliable Capital Ltd.	RBC Dominion Securities	Larry Ullman	15,048,844,811
29330933	SII Limited	TD Waterhouse	Devon Yuill	12,583,093,626
13922471	Triangle Investments	BMO Nesbitt Burns	Devon Yuill	773,380,798
25615659	Credit Lyonnais	BMO Nesbitt Burns	Devon Yuill	3,005,400,000
28900728	Tie Limited	RBC Dominion Securities	Gordon Brown	251,439,741
29478807	Nesbitt Burns	BMO Nesbitt Burns	Pat Quirk	817,356,105
25940651	Cambridge Investments	BMO Nesbitt Burns	Paul Hartle	173,022,188
Sub-total Identified Investors				32,652,537,269
Other Accounts at Issue (60 accounts)				1,566,699,912
Total				34,219,237,181

Total Volume of AIC Trading Activity in Accounts at Issue – January 1, 2000 to December 31, 2003

Account #	Account Name of Market Timing Traders	Dealer	Advisor	$ Value of Purchases
11902780	Reliable Capital Ltd.	RBC Dominion Securities	Larry Ullman	4,487,565,046
13832845	Triangle Investments	BMO Nesbitt Burns	Devon Yuill	2,482,096,564
15780695	Credit Lyonnais	BMO Nesbitt Burns	Devon Yuill	2,729,600,000
18419325	SII Limited	TD Waterhouse	Devon Yuill	827,754,837
15627102	Pentagon Capital Mgmt.	TD Waterhouse	Glen Daniel	243,768,389
16047755	Pentagon Capital Mgmt.	TD Waterhouse	Glen Daniel	201,063,471
Sub-total Identified Investors				10,971,848,307
Other Accounts at Issue (9 accounts)				246,751,329
Total				11,218,599,636

49. The volume of frequent short-term trading activity by the Accounts at Issue at CI was in excess of $34 billion and for the Accounts at Issue at AIC it was in excess of $11 billion. In the context of Canadian fund complexes the size of CI and AIC, this enormous volume of trading by such few accounts over this period of time was unprecedented. Monitoring such extraordinary

[7] As identified by the OSC and summarized in paragraph 53 hereof.

activity was required by any prudent Fund Manager and, given how much of the volume related to relatively few accounts, would not have been in any way onerous.

50. A hallmark of market timing (time zone arbitrage) is that this trading activity takes place on days when there is an upward movement in North American markets that had not yet been reflected in the valuation of foreign equity mutual funds, as these funds' NAVs would be priced based on the earlier "stale values" when the overseas markets (i.e., Europe and Asia) had closed. The RCGT Reports calculated the percentage of purchases in the Accounts at Issue for CI and AIC that took place on days when the S&P 500 was up. For both CI and AIC, the results were highly indicative of market timing activity or time zone arbitrage.

51. The RCGT Report for CI determined that 91% of the purchases in 67 of the most active CI accounts identified took place on days when the S&P 500 was up. For AIC, the S&P was up in 87% of the days when purchases in the 15 AIC Accounts at Issue were made. This resulted in significant one-day gains on those purchases based on the next day NAV of the Funds at Issue. By contrast, for the January 1, 2000 to December 31, 2003 period as a whole the S&P 500 was up in only 48.6% of the days.

52. The RCGT Reports also showed one-day gains on redemptions that were timed to take advantage of stale prices. This would occur if a decline in North American markets took place that had not yet been reflected in the NAV of the applicable foreign equity funds. RCGT found that 79% of the 67 CI Accounts at Issue and 82% of the 15 AIC Accounts at Issue redeemed on days when the S&P 500 had declined.

53. As noted earlier in this report, the OSC settlement agreements identified five institutional market timing traders (referred to as "Market Timing Traders") at CI and three at AIC who made a combined profit of $217 million (at CI: $90 million, at AIC: $127 million). Such gains are

generally consistent with the aggregate profits I reviewed in the production material for the Accounts at Issue during the Class Period at CI and AIC. Based on the detailed trading and account information and other production material I reviewed in this action and which were publicly filed in the Ontario action, I am able to identify and summarize these Market Timing Traders and the principal trading accounts used by them as follows.[8]

OSC Identified CI Market Timing Traders

Account Name of Market Timing Trader	Advisor	Account #	Type of Trader	Location of Trader	Switch Agreement
1. Reliable Capital Ltd	Larry Ullman	**11213667**	Hedge Fund	Bermuda	Yes
2. SII Limited/ Triangle Investments/ Credit Lyonnais	Devon Yuill	**29330933** **13922471** **25615659**	Hedge Fund	Bermuda	Yes
3. Tie Limited	Gordon Brown	**28900728**	Hedge Fund	Bermuda	No
4. Nesbitt Burns	Patrick Quirk	**29478807**	Institutional	Toronto	Yes
5. Cambridge Investments	Paul Hartle	**25940651**	Hedge Fund	Cayman Islands	No

OSC Identified AIC Market Timing Traders

Account Name of Market Timing Trader	Advisor	Account #	Type of Trader	Location of Trader	Switch Agreement
1. Reliable Capital Ltd	Larry Ullman	**11902780**	Hedge Fund	Bermuda	Yes
2. SII Limited/ Triangle Investments/ Credit Lyonnais	Devon Yuill	**18419325** **13832845** **15780695**	Hedge Fund	Bermuda	Yes (for SII only)
3. Pentagon Capital Management	Glenn Daniel	**15627102** **16047755**	Hedge Fund	United Kingdom	Yes

[8] The list of trading accounts shown is not inclusive as there were several other accounts used by the identified Market Timing Traders where less than 50 transactions took place as per RCGT Reports filed in 2020 and per publicly filed documents in the Ontario action. See for example, AIC accounts #19890532 and #19890524 belonging to Pentagon that were identified in the 2020 RCGT Report. See also CI account # 30511877 belonging to Tie Limited, CI accounts #31062433 and #21062492 belonging to Cambridge as per CI's closing submissions in the Ontario action. It is likely there are other trading accounts belonging to the Identified Market Timers as CI did not disclose names of all account holders to RCGT in this action.

54. The identified Market Timing Traders listed for CI were confirmed in various documents publicly filed in the Ontario action, including confirmation that SII, Triangle and Credit Lyonnais were all the same Bermuda hedge fund. Trading data for the aforementioned CI accounts of Market Timing Traders were publicly filed in the Ontario action. Strangely, while AIC did provide the trading data and account statements for SII (account #18419325), Triangle (account #13832845) and Credit Lyonnais (account #15780695) in this action, AIC only provided data for SII in the parallel Ontario action and not[9] for Triangle and Credit Lyonnais. It is worth highlighting that SII, Triangle and Credit Lyonnais were all accounts for which Devon Yuill was the advisor of record. Devon Yuill moved from BMO Nesbitt to TD Waterhouse in late 2001, at which time accounts in the name of SII were opened at both CI and AIC and the accounts in the name of Triangle and Credit Lyonnais at both CI and AIC were closed.

55. As is evident from the above summaries, Larry Ullman and Devon Yuill clients accounted for a substantial majority of trading volumes and profits earned by frequent short-term market timers. Ullman and Yuill were well known financial advisors in the industry as both were extremely active in aggressively promoting market timing activity throughout the Class Period.

56. Ullman's and Yuill's names appear frequently in letters, email correspondence, Switch Agreements, account statements and other documents included in the discovery material provided by CI and AIC dating throughout the Class Period.

57. It is highly noteworthy that in an email dated October 28, 1999, Peter Anderson (Executive Vice-President, Sales and Marketing of CI) advised Michael Killeen (General Counsel and Corporate Secretary of CI) that Triangle was "*a $1.8 billion Bermuda based off-shore hedge*

[9] Underlined in the original version of this report.

fund" and a "*market time*" [sic].[10] This shows that senior executives at CI knew this key information and yet still allowed the activity of this hedge fund to continue unabated in their funds throughout the Class Period. The same email also highlighted that offshore hedge funds don't typically invest in retail mutual funds: "*John Platt questioned why they were buying retail mutual funds, but said that the client was aware of the higher fees than an institutional pool*".

58. Various correspondence and account statements at AIC also indicated they were aware that they were allowing this activity with a Bermuda-based institutional client.[11]

59. Hedge funds do not typically invest in retail mutual funds as this would add another layer of management fees in addition to the fees they charge. Hedge funds were also known by industry professionals for utilizing sophisticated arbitrage investing techniques.

60. The CI and AIC account statements for Reliable Capital, SII, Credit Lyonnais and SII all had virtually the same Bermuda address. From the documents in this action and publicly filed in the Ontario action, including the confidentiality provisions of the Switch Agreements with CI, and the identical signatories to the Switch Agreements with Reliable Capital and SII, it was clear that the Bermuda hedge fund was a single large, sophisticated hedge firm known as Trout Management Company ("Trout"). Trout was renamed Tewksbury Investment Management ("Tewksbury") in 2002 when the founder sold the firm to his successor Matthew Tewksbury. Mr. Tewksbury personally signed two of the amendments to the Reliable Capital Switch Agreements with AIC in April 2002 and August 2002.

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[10] Email from Peter Anderson to Michael Killeen, dated October 28, 1999, attached as **Appendix IV**.

[11] See summary of cross examination of Neil Murdoch summarized on AIC's closing submissions in the Ontario action dated May 24, 2022, on pg. 96 attached as **Appendix V,** as well as the name and address shown on Reliable Capital account statements with AIC (Appendix XI below).

61. The trading data and volumes contained in the RCGT reports was consistent with my own independent review of trading activity and volumes shown in the account statements for each of the identified Market Timing Traders. The CI account statements for SII and Reliable alone, were each well in excess of 100 pages with 15-20 round trip switch transactions reported on each page.

62. The data summarized in the RCGT reports was also largely consistent with an in-depth investigative report by the Globe and Mail dated June 21, 2004 (the "Globe and Mail article"), that included total inflows and outflows (the "churn rate") for Global, Europe and Asian Funds of CI and AIC. The data supplied to the Globe and Mail came from IFIC reports (which included all sales, redemptions, switches-in and switches-out) that had been submitted by Fund Managers. The Globe and Mail article is attached hereto as **Appendix VI**.

63. The churn rates in 2002, for the CI and AIC Global, European and Asian equity funds listed were among the highest of all of the fund complexes included in the Globe and Mail article. The tables below highlight the CI and AIC funds with the highest[12] churn rates.

Frequent Short-Term Trading Activity in CI Funds

Fund Name	**Fund Size ($000's)**[13] (Dec 31, 2003)	**2002 Churn Rate**[14]
CI International Balanced	466,400	1,300%
CI Pacific Fund	115,800	1,138%
CI Global Fund	1,235,500	967%
BPI Global Equity	597,000	896%
CI International RSP	11,300	894%

[12] Underlined in the original version of this report.
[13] Appendix VI.
[14] Appendix VI.

BPI International Equity	125,400	801%
CI Global Small Companies Fund	107,200	683%

Frequent Short-Term Trading Activity in AIC Funds

Fund Name	Fund Size ($000's) [15] (Dec 31, 2003)	2002 Churn Rate[16]
AIC Global Advantage	126,300	1,046%
AIC Global Diversified	38,500	900%
AIC World Advantage	148,000	444%
AIC World Equity	293,900	713%

64. By the end of 2002, CI's largest fund, the CI Global Fund had shrunk from $2.5 billion to $1.5 billion[17] yet a review of the Reliable and SII account statements shows that the Bermuda-based hedge fund (Trout/Tewksbury) was putting through individual switch trades in amounts that had escalated to about $120 million by December of 2002. These individual trades represented about 8% of the assets of the CI Global Fund at December 31, 2002, over six times the purported 1.25% limit of total assets per fund set out in the relevant Switch Agreement.

65. It is worth noting that while the Trout/Tewksbury hedge fund was earning profits from its short-term market timing arbitrage trading strategies, the CI Global Fund recorded two consecutive years of extremely poor performance in 2001 and 2002: -26.6% and -19.4%, respectively.[18]

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[15] Appendix VI.

[16] Appendix VI.

[17] As per the 2001 and 2002 financial statements for the CI Global Fund.

[18] As per the 2001 and 2002 financial statements for the CI Global Fund.

66. In summary, the nature, volume and profitability of the frequent short-term market timing trading activity that took place in the Accounts at Issue of the defendants during the Class Period was extraordinary and atypical. Many billions of dollars of frequent short-term trading took place in Global, European and Asian equity mutual funds which was highly concentrated in accounts belonging to hedge funds and other non-typical institutional accounts. The activity was taking place with the knowledge of senior management at CI and AIC, was actively promoted by two advisors well known in the industry and was being facilitated by Switch Agreements.

67. It is important context for the conclusions in this report that the nature, volume, profitability, and unusual trading patterns of hedge funds and other institutional investors included in the Accounts at Issue would, in of themselves, have raised numerous red flags upon which a prudent Fund Manager would act upon to take appropriate action to ensure that the trading by market timers in these accounts were not earning profits at the expense of long-term investors and causing substantial harm from their frequent short-term trading strategies at a time when most other investors in the funds were suffering losses.

V. Harm Generally Caused by Frequent Short-Term Market Timing Trading Activity

68. Mutual funds are intended primarily for long-term investors. This is particularly true for the foreign equity funds used most frequently by market timers during the Class Period. Frequent short-term market timing trading activity by its very nature was and is antithetical to the long-term nature of such mutual funds.

69. Most fund companies stressed the long-term nature of such funds in their marketing material and/or simplified prospectuses. CI stated in its simplified prospectuses during the Class Period that all of its foreign equity funds were suitable for investors who are "*investing for the*

longer term." AIC stated in its prospectuses for all of its foreign equity funds that they were suitable for investors who are "*planning to hold for a long time."* AIC's motto in fact was "*Buy, Hold and Prosper*." The frequent short-term market timing trading activity knowingly permitted in their funds by CI and AIC was directly contradictory to these suitability guidelines and interfered with portfolio managers' ability to invest in accordance with a fund's investment objectives.[19]

70. Prior to the start of the Class Period, Short-Term Trading Fees (also sometimes known as early or short-term redemption fees), were already in place at the vast majority of fund companies in Canada. In fact, Short-Term Trading Fees were referenced in a widely read seminal report on mutual fund regulation written by Glorianne Stromberg in 1995 where she noted the harmful impact of frequent short-term trading on fund performance and the need for imposing meaningful Short-Term Trading Fees payable to the funds to discourage such activity.[20]

71. From 1999 through 2003, CI published this explicit warning to investors in its funds' simplified prospectuses (or language substantially similar): "*Frequent trading can hurt a fund's performance. It forces the fund to keep higher levels of cash in its portfolio than would otherwise be needed. It can also increase the fund's transaction costs*." CI's AIF included the additional statement that Short-Term Trading Fees were in place, "*to discourage frequent trading*". Other Fund Managers had similar language in their funds' prospectuses and AIFs during that time.

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[19] I reviewed various emails provided in the discovery documents for both CI and AIC referencing concerns raised by portfolio managers of the activity of frequent traders included as **Appendix VII.**

[20] See Section 27.03 on pages 264 of January 1995 report titled: "Regulatory Strategies for the Mid-90s. Recommendations for Regulating Investment Funds in Canada" prepared by Glorianne Stromberg.

72. As noted earlier in this report, dilution of the value of other security holders' investment in a fund is the first type of harm caused by frequent short-term market timing trading activity. Dilution refers to the diminishment in value to other fund investors' units (or shares) resulting from market timers purchasing or redeeming units (or shares) that are priced with stale values for their own profit.

73. Dilution is not the only harm inflicted upon a fund and long-term investors by market timers. Among other harms, frequent short-term large dollar value switch trades require a fund to maintain excessive cash balances to enable redemptions, or force it to liquidate positions to meet cash requirements for market timers' redemptions. Market timers can also interfere substantially with a portfolio fund manager's ability to invest a fund's cash in securities and may thereby disrupt the fund's investment strategy and impair a fund's performance. Clearly, the larger the dollar volume of frequent short-term trading activity taking place the greater the potential for harm to investors.

74. Determining a range of damages from dilution and other harms suffered by long-term investors in the defendants' Funds at Issue during the Class Period was not specifically part of the scope or mandate of this report. In the Ontario action, Professor Eric Zitzewitz did have this mandate and used a variety of sophisticated methodologies to calculate damages. However, Professor Zitzewitz referenced that this was based on a more limited data set of 12 client accounts for CI and 8 for AIC that had been provided to the plaintiffs' in the Ontario action.

VI. Industry Standards of Canadian Fund Managers During Class Period

75. Having worked at two Canadian fund managers as a senior member of the management team during the Class Period with finance, tax, compliance and accounting responsibilities, I have

a very good appreciation of the professional obligations and duties expected of a Canadian Fund Manager during the Class Period.

76. Many of my responsibilities required me to work closely with internal and external legal counsel. This also has given me a much greater appreciation from an industry perspective, of the professional obligations and duties expected of a Fund Manager.

77. The starting point in considering these duties and obligations is the language in mutual fund management agreements, declarations of trust, codes of ethics and requirements under corporate, securities and, where applicable, trust law.

78. For virtually all Fund Managers and fund trustees during the Class Period, the applicable duties were essentially identical: to act honestly, in good faith and in the best interests of the fund and its unit holders. This language is identical to that as set out in the comparable CI and AIC Code of Ethics and trust documents the key passage of which is as follows:

> *A mutual fund manager is required to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund. In so doing, it must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.*[21]

79. It was understood in the industry that these duties were the same whether performed in the capacity of a Fund Manager (who has discretionary investment management responsibilities) or in the capacity of a fund trustee.

80. Whether the defendants were acting as Fund Managers or as fund trustees, this would not result in any difference in their duties or obligations. In all circumstances, they would have to act

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[21] See, e.g., AIC Code of Ethics, dated July 7, 2000, attached as **Appendix VIII** at section 2.1; CI Code of Ethics and Conduct, dated May 31, 2001, attached as **Appendix IX**, at section A.4.

in accordance with the same obligation or standard. Both the CI and AIC codes of conduct acknowledged the existence of the duties they owed to the funds and their unitholders.[22]

81. In determining appropriate industry standards, it is important context to know that it has always been fairly easy for a Fund Manager to recognize and detect significant spikes in frequent short-term trading activity as monitoring daily inflows and outflows in a fund are essential to the investment process. New monies coming into a fund need to be invested and money flowing out requires cash either from a fund's existing cash reserves or through the sale of securities. While small dollar value transactions and trading may go undetected, larger transactions or unusual trading patterns could not continue for long before being discovered.

82. Policies and procedures to detect frequent short-term trading were needed in order to monitor and comply with requirements under a fund's offering documents to collect and pay Short-Term Trading Fees to their funds. It is worth stressing that simply utilizing a range of procedures to monitor, detect and prevent frequent short-term trading activity as necessary to enforce existing prospectus requirements would, in of itself, have been sufficient to prevent material harm from this activity by market timers.

83. In my opinion, a prudent Fund Manager should have taken the following measures in order to comply with their obligations and industry standards in order to prevent harm to funds and fund investors from the frequent short-term trading activity of market timers during the Class Period:

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[22] See Appendix VIII at section 2.1; Appendix IX at section A.4.

Comply with the Short-Term Trading Fee requirements of the funds' simplified prospectus and AIFs through the following measures:

a) Ensure that the Fund Manager has policies and procedures in place sufficient to adequately detect and monitor trading activity necessary to enforce the Short-Term Trading Fee requirements. This can be achieved through daily trading reports above a certain dollar amount (e.g., $50,000);

b) If overall short-term trading activity increases markedly or unusual activity is detected, review and revisit the foregoing and revise as needed. Pay particular attention to high dollar values and high frequency of transactions and transactions with funds that are most susceptible to stale values such as Global, Far East and Europe;

c) When offensive trading behavior is detected in an account, immediately notify the financial advisor whose client has been engaging in the activity and send a warning letter requesting that the activity cease, and advise that strict enforcement of the Short-Term Trading Fees payable to the funds will take place if there is any reoccurrence;

d) If a fixed 1% or 2% Short-Term Trading Fee is applicable, the fixed fee should be charged, collected and paid to the relevant funds as required;

e) If discretion is allowed, a Fund Manager should not exercise such discretion in waiving or lowering Short-Term Trading Fees in a way that is prejudicial to the funds or beneficial only to certain larger institutional investors. The fee should be meaningful enough (at least 1%) to discourage the offensive activity;

f) If a significant red flag is detected, exercise additional care and diligence in reviewing the applicable account (including hedge funds or larger institutional investors) and any potential harm to the fund or to fund investors. Take all necessary and prudent steps to ensure any inappropriate or harmful trading in that account ceases.

Do not enter into any written or verbal Switch Agreement that permits or facilitates frequent Short-Term Trading Activity in the funds.

The fact that frequent short-term trading activity is harmful to fund performance was spelled out in detail in the simplified prospectuses and AIFs of several fund companies, throughout the Class Period.

Prudent Fund Managers would not enter into the Switch Agreements of the type entered into during the Class Period by AIC and CI given the terms of the prospectuses, as this would run contrary to a Fund Manager's duty to investors.

***Highly unusual activity that would have raised red flags and warranted further enquiries and follow-up*.**

a) The activity of Ullman and Yuill for their offshore hedge fund client(s) ought to have triggered numerous red flags that warranted additional care and diligence. This included the following: i) offshore institutional investors were highly unusual for retail mutual funds in Canada, ii) the dollar value of transactions was extraordinarily high as was the frequency of trading activity, iii) entering into Switch Agreements was itself unique and highly unusual, and iv) the high concentration of activity in certain types of Global, Europe and Asian funds was unusual. All of these anomalies should have served as red flags to a prudent and diligent Fund Manager; and

b) A diligent manager would have taken the measures described above to prevent harm to the funds from frequent short-term trading activity before many of the red flags appeared.

84. While the above noted measures would be sufficient in eliminating or mitigating the harm from the frequent short-term trading activities of market timers, it is worth noting that there were two other measures that were also used by some prudent managers during the Class Period to address this issue. These other measures included enforcing an outright ban on excessive trading by freezing offending accounts and disallowing new purchases (effectively forcing the account to be closed) and utilizing fair value pricing to discourage arbitrage techniques used by market timers.

85. As described in the next section of this report, CIBC Asset Management Inc. provides a detailed example of a Fund Manager that utilized, from a certain point in time, many of the aforementioned tools to monitor and prevent frequent short-term market timing trading activity in its funds. RBC Funds Inc. is an example of a firm that enforced a ban on this activity and

Fidelity Canada also used a variety of the aforementioned techniques as well as fair value pricing, in select circumstances, as an additional preventative tool during the Class Period.[23]

VII. Measures Taken by Prudent Fund Managers During the Class Period

86. In order to illustrate how a Canadian Fund Manager could properly discharge its professional obligations consistent with the reasonable and prudent measures described in the previous section, I have reviewed the practices of a number of Fund Managers who acted prudently in discharging their professional obligations in respect of the frequent short-term trading activity of market timers during the Class Period.

87. As will be illustrated, this did not mean these Fund Managers stopped 100% of the frequent short-term trading activity of market timers during the Class Period, but rather each took reasonable steps, from at least a point in time during the Class Period, to identify and prevent such activity and thereby prevent material harm to their funds and fund investors.

88. The following Fund Managers' practices during the Class Period are reviewed in detail this report:

- CIBC Asset Management Inc. (formerly Talvest Fund Management Inc.)
- RBC Funds Inc.
- Fidelity Investments Canada Limited
- Mackenzie Financial Corporation

Additional practices followed by other Fund Managers are also summarized including TD Mutual Funds, Philip, Hager and North Investment Management Ltd. ("PH&N"), Dynamic Mutual Funds Inc. and AIM Funds Management Inc.

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[23] However, the use of fair value pricing was still relatively crude and was not widely used in Canada during the Class Period. It became far more commonly used in the industry and much more refined in the years after 2004.

89. The analysis in this section is based on my own industry knowledge as confirmed through multiple sources including:

a) Simplified prospectus and AIF disclosures for the CIBC, RBC, Fidelity and Mackenzie Funds managed by each Fund Manager applicable during the Class Period;

b) Documents provided by CIBC and confirmed in an earlier settlement agreement with them in this action;

c) Facts described in the OSC Report and IDA settlement agreements related to market timing;

d) Direct conversations with individuals who held senior positions with Fund Managers during the Class Period; and

e) In-depth investigative newspaper articles related to the Class Period.

A. CIBC Asset Management Inc. (formerly Talvest Fund Management Inc.)

90. As at December 31, 2003, Canadian Imperial Bank of Commerce ("CIBC") had in total approximately $38 billion in assets under management and was the fourth largest fund complex in Canada. CIBC operated through two Fund Managers, CIBC and CIBC Asset Management Inc. ("CAMI"). Of the $38 billion in total assets under management about $10 billion was in Talvest Funds managed by CAMI and the remainder in other CIBC Funds managed by CIBC.

91. CAMI is unique among the prudent Fund Managers reviewed in this section. That is because it underwent the most significant transformation of its policies and procedures in respect of excessive short-term market timing trading activity during the Class Period. The change happened beginning in the latter part of April 2001, just before CIBC acquired full voting control of Talvest Fund Management Inc. ("Talvest").

92. As Talvest was to become a wholly-owned subsidiary, CIBC was in a position to introduce more effective policies and procedures that it believed necessary to properly respond

to the frequent trading activity of market timers taking place at the time. Such activity was determined to be harmful to Talvest funds and long-term fund investors. [24]

93. Prior to April 2001, Talvest allowed a limited number of market timers to engage in frequent trading activities for its global and sector funds. [25]

94. Beginning in late April 2001, extensive new measures were adopted by Talvest to address frequent trading activity by market timers. These measures were phased in and included the following: [26]

a) Hiring a new compliance manager to work with Talvest management and compliance staff in adopting and implementing new policies and procedures specifically designed to detect and prevent speculative short-term trading activity by market timers.

b) Terminating the Switch Arrangements that had permitted short-term trading activity of certain market timers.

c) Establishing the production and review of daily reports, which met certain specific criteria to detect short-term transactions, including those likely to constitute market timing. Those reports identified two types of speculative activity:

    i. all transactions in Talvest China Plus Fund; and

    ii. short-term trading in all other Talvest Funds.

[24] Defense of CIBC Inc. dated January 26, 2016, as confirmed through review by Plaintiffs' expert.

[25] Defense of CIBC Inc. dated January 26, 2016, as confirmed through review by Plaintiffs' expert.

[26] Defense of CIBC Inc. dated January 26, 2016, as confirmed through review by Plaintiffs' expert.

d) The daily reports were used to identify offending accounts which then enabled Talvest to send a warning letter to financial advisors whose clients were engaged in frequent short-term trading activity.

e) The warning letters requested that investment advisors ensure that their clients terminate all short-term trading activity or transfer the account to another financial institution. The warning letters included the following language:

> *If it is your client's intent to continue her market timing activities, it would be preferable that she transfers her assets to another family of Funds or financial institution. Otherwise, Talvest reserves the right to either reject your client's purchase orders or apply short-term trading fees. We are confident that you will understand that this measure is intended to protect all Talvest unitholders and that you will convey Talvest's position to your client.*

f) The daily monitoring of funds and warning letter proved very effective as in the vast majority of cases the frequent trading practices by market timers ended without the need for additional measures.

g) During periods of particular market volatility, Talvest took additional steps to review all of the transactions of certain higher-risk funds (including Talvest China Plus Fund), going beyond the requirements of the regular procedures then in place. As a result of these additional procedures, Talvest endeavoured to reject certain higher risk purchases as they occurred.

h) These additional steps were intended to protect Talvest investors from aggressive traders attempting to take advantage of pricing inefficiencies, which through dilution, transaction costs, and other factors would result in a direct loss to investors remaining in the fund.

95. All of the aforementioned measures allowed CAMI to effectively eliminate the presence of market timing investors in the targeted Talvest Funds from May 2001 onward.[27]

96. It is noteworthy that in an earlier settlement agreement in this action commenced against CAMI, the original class of investors that included those who held their Talvest units between January 1, 2000 and December 31, 2003, was subsequently revised to create a sub-group limited to those holding Talvest units January 1, 2000 to May 31, 2001.[28]

97. Talvest investors holding units after May 31, 2001 were not eligible to participate in the settlement with CAMI as the Plaintiffs' experts concluded that: "*the practice of frequent short-term transactions ended for all practical purposes in May 2001 in all the targeted funds.*"[29]

98. It is noteworthy that CAMI, though one of 20 firms selected by the OSC to be subject to the third and final phase of its market timing investigation, was never sanctioned as CAMI was deemed to have taken reasonable steps to protect investors from material harm.

B. RBC Funds Inc.

99. As at December 31, 2003, RBC Funds Inc. ("RBC Funds" or "Royal") had approximately $37.6 billion in assets under management and was the fifth largest fund complex in Canada.

100. RBC Funds was the strictest of the four firms reviewed in this section in that it publicly disclosed an outright ban on frequent/excessive trading in the RBC Funds' simplified prospectus in each of the years 1998 through 2003 inclusive.

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[27] Settlement Agreement with CIBC Inc. dated March 7, 2019.

[28] Settlement Agreement with CIBC Inc. dated March 7, 2019.

[29] Settlement Agreement with CIBC Inc. dated March 7, 2019.

101. As per the simplified prospectus disclosure shown below, this ban was imposed based on RBC's stated understanding that frequent/excessive trading activity was harmful to its funds as such activity reduced fund performance (returns) for investors.

102. While there were slight differences in each year's disclosure, the following language taken from Royal Mutual Funds' August 2000 simplified prospectus (p. 191) is representative:

> ***Excessive trading***
>
> ***We may refuse your order to buy or switch units or any future orders if you trade excessively, which we explain below.*** *If we refuse your order to buy, we'll immediately return all the money we received with your order.*
>
> ***Mutual funds are considered long-term investments, so we discourage investors from buying, redeeming or switching units frequently.*** *A switch is the Redemption of units of one Royal Mutual Fund to purchase units of another.*
>
> ***We discourage investors from excessive trading because it generates significant costs for a fund. This can reduce a fund's returns, which affects all unitholders.*** *As a result, we may refuse your order if:*
>
> - *you try to buy units of a fund within 90 days of redeeming units of the same fund*
> - *you try to switch into units of any fund within 90 days of making a switch from any other fund*
> - *your order to buy or switch would disrupt the efficient and cost-effective management of the funds.*
>
> ***Whether your trading is considered to be excessive will be determined by RMFI in its sole discretion.***

103. Enforcing a prohibition against excessive trading was a principal tool used by RBC Funds throughout the Class Period to prevent market timers from harming investors in Royal funds. Beginning in 2001, RBC Fund's simplified prospectus also implemented a 2% Short-Term Trading Fee for frequent trading activity to discourage frequent trading.

104. RBC Funds acted decisively to ensure that the abusive trading activity ceased and the offending account closed after being identified. For example, in March 2002, certain market

timing trades were identified in three Royal funds and the client (a sophisticated offshore investor) was advised (through its investment advisor) to immediately cease this activity.[30]

105. A vice-president at RBC Funds was quoted in the June 21, 2004, Globe and Mail article (attached in Appendix VI) stating, "*The firm monitors its funds for Market Timers. When they're caught, they get booted out.*"

106. In addition, as a prudent Fund Manager, RBC Funds did not allow Switch Agreements with market timers. In one case, an investment advisor approached RBC requesting that it enter into a written Switch Agreement for RBC Funds with an offshore client to facilitate a frequent trading market timing strategy under specific parameters. The proposal was not accepted by RBC Funds. [31]

107. Consistent with industry standards, Switch Agreements were reviewed by senior legal and compliance officers. They determined that it would be unacceptable for RBC Funds to enter into such Switch Agreements; they concluded that the requested excessive trading activity would be harmful to the funds and was also not permitted under the RBC Funds' simplified prospectus.

108. Since RBC Funds did not permit ordinary individuals to engage in excessive trading activity in accordance with its simplified prospectus, clearly it would not knowingly allow a sophisticated offshore investor to do so where the potential for harm was much greater.

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[30] Page 13, paragraphs 30 - 34 of February 8, 2005, IDA Settlement Agreement, attached as **Schedule "D".**

[31] For example, see page 13, paragraphs 35 and 36 of Schedule "D".

C. Fidelity Investments Canada Limited

109. As at December 31, 2003, Fidelity Investments Canada Limited ("Fidelity") had approximately $30 billion in assets under management and was the eighth largest fund complex in Canada.

110. Throughout the period 1998 to September 2003, Fidelity utilized a range of policies and procedures designed to prevent frequent short-term trading activity in its funds by market timers, consistent with an understanding that such activity was harmful to its funds and to long-term fund investors.

111. The risk of market timing was the greatest in Fidelity funds that had so-called "time-zone risks". These were funds with significant equity holdings in Asia and Europe where markets closed well before the end of the trading day in North America.

112. As per the detailed prospectus disclosure noted in paragraph 34 of this report, by 1998, if not earlier, Fidelity was aware of the risks to fund investors of aggressive market timers who attempted to exploit the stale pricing of foreign securities.

113. The prospectus disclosure makes it clear that Fidelity was particularly concerned by the potential dilution impact from market timers. In describing the profits earned by market timers, a vice-president of Fidelity was quoted in a June 21, 2004, Globe and Mail article saying, "*This gain doesn't come out of thin air. It comes out of the pockets of other investors*."

114. One measure Fidelity took to prevent the speculative arbitrage activity arising from "stale prices" was to introduce fair value pricing in the late 1990s. As noted earlier in this report, the September 1998 simplified prospectus of the Fidelity Funds included the following language related to fair value pricing:

“This process also helps to protect our long-term investors against speculators and aggressive traders who try to take advantage of pricing inefficiencies in the market.”

115. In addition to adopting fair value pricing, Fidelity also implemented further measures to combat arbitrage market timers during the Class Period.

116. As noted below, by at least September 1998, Fidelity disclosed a mandatory minimum 1% Short-Term Trading Fee on specific funds that were most prone to abuse by market timers. This fee was for trading activity within 30 days of purchase. Fidelity also retained flexibility to charge up to an additional 1% (2% in total) for all trading of funds within 90 days of purchase.

117. Below are some key sample excerpts from Fidelity prospectuses in 1998 and 2001:

a) ***Short-Term Trading Fee*** *[from September 1998 prospectus]*

We ***will*** *charge a fee of at least 1% of any Focus Fund units you sell or transfer within 30 days of buying them.* ***This policy is strictly enforced.*** *If you sell or transfer units of a Focus Fund between 30 and 90 days of buying them, we may charge the usual fee of up to 2%. We’ll deduct the fee from the amount you sell or transfer and pay it to the Fund.*

b) ***Short-Term Trading Fee*** *[from September 2001 prospectus]*

If you redeem or transfer within 30 days of purchase units of any series of Fidelity Far East Fund, Fidelity RSP Far East Fund, Fidelity Japanese Growth Fund, Fidelity RSP Japanese Growth Fund and Fidelity Focus Funds, you ***will*** *be charged a Short-Term Trading Fee of 1% of the value of the units. If you redeem or transfer units of these funds between 31 and 90 days of purchase, you may be charged a Short-Term Trading Fee of 1% of the value of the units.*

This fee is designed to protect unitholders from other investors moving quickly in and out of the funds*.* ***Frequent trading can hurt a fund’s performance*** *by forcing the portfolio manager to keep more cash in the fund than would otherwise be needed or to sell investments at an inappropriate time. It may also increase the fund’s transaction costs.*

Short-Term Trading Fees are paid to the fund and are in addition to any initial sales charge, deferred sales charge, or transfer charge. [Emphasis added.]

118. Throughout the Class Period, Fidelity faced requests from investment advisors wishing to have their clients engage in frequent trading strategies in Fidelity funds. In circumstances where

an investment advisor would ask Fidelity to facilitate the frequent trading activities of market timers either through written or verbal agreements (which invariably would include a request to lower or eliminate Fidelity's Short-Term Trading Fees), Fidelity would refuse such requests.

119. The fact that Fidelity Funds were not subject to OSC sanctions for market timing is particularly noteworthy as Fidelity was one of the larger fund complexes offering exactly the type of large Global and Far East funds most appealing to market timers during the Class Period. This was the result of the prudent measures taken by Fidelity throughout the Class Period.

D. Mackenzie Financial Corporation

120. As at December 31, 2003, Mackenzie had approximately $33.6 billion in assets under management and was the seventh largest fund complex in Canada.

121. While some frequent short-term trading activity took place at Mackenzie prior to 2002, the vast majority of such activity ceased in Mackenzie funds after it conducted a detailed review in late 2001.

122. It was the request for Mackenzie to enter into a Switch Agreement in late 2001 that prompted Mackenzie to conduct a thorough review of the type of frequent short-term trading activity requested under such arrangements.

123. Mackenzie senior management reviewed detailed analysis that had been performed and concluded that entering into the special arrangements contemplated would be extremely harmful to Mackenzie funds and fund investors and that the proposed fees to be paid to Mackenzie funds under such Switch Agreements (about 0.03% instead of 2%) would not come anywhere close to adequately compensating the funds and their long-term unitholders for this activity.

124. Based on this analysis, Mackenzie decided not to enter into Switch Agreements, nor knowingly permit any frequent short-term trading activity. As a prudent Fund Manager, it took increased measures to ensure this activity was discouraged after 2001, including more active monitoring and greater enforcement of Short-Term Trading Fees.

E. Other Prudent Fund Managers during the Class Period

125. On February 8, 2005, the Investment Dealers Association ("IDA") (subsequently known as Investment Industry Regulatory Organization of Canada ("IIROC")) entered into settlement agreements with three IDA dealer firms for offensive market timing activity taking place through these firms. As opposed to the conduct of Fund Managers, who were the focus of the review by the OSC, the IDA reviewed the conduct of dealer firms and their financial advisors, who were placing trades and acting on behalf of their market timer clients. The Schedule "D" IDA settlement agreements were entered into with the dealer firms BMO Nesbitt, RBC Securities, and TD Waterhouse, the same dealer firms through which Ullman and Yuill had entered into Switch Agreements with CI and AIC on behalf of their clients.

126. According to the IDA settlement agreements, both TD Mutual Funds ("TDMF") and Royal Mutual Funds were also each separately approached and asked to enter into a Switch Agreement to allow a client to conduct frequent trading market timing during the Class Period.

127. TDMF advised in writing in May 2002, that it had rejected the proposal, advising that their analysis indicated that the market timing strategy proposed under the special arrangement (i.e., Switch Agreement) would have a "significant negative impact on the performance of the

funds involved." Royal Mutual Funds likewise rejected a similar proposal made to it as elaborated upon in the IDA settlement agreement[32]:

> *"In May 2003, an investment advisor employed by the Respondent approached Royal with a proposal for a special arrangement to conduct Market Timing activities on behalf of Client A…. Royal did not accept the proposal.*"

128. It was also reported in the IDA settlement agreements that BMO Nesbitt had received at least 21 written warnings from approximately 15 mutual fund companies about the harmful effects of market timing.[33] To quote directly from the IDA settlement agreement:

> *"The majority of the written warnings put the Respondent (BMO Nesbitt) on notice that Market Timing was potentially harmful to long term unitholders, was not welcome or permitted by the funds and that the mutual fund companies may impose a short-term trading fee of up to 2% of the value of the mutual fund units that were held for fewer than 90 days, in accordance with the funds' prospectuses.*
>
> *The language of the majority of the written warnings confirmed that the objective of the Short-Term Trading Fee was to protect long term unitholders from potentially negative consequences of Market Timing. The mutual fund companies issued the warnings because they had determined that Market Timing was potentially harming the funds and the long term unitholders*."[34]

129. As noted in the foregoing, many Fund Managers had concluded during the Class Period that market timing was harmful to long-term unitholders. Mackenzie, Royal and TDMF refused requests to enter into Switch Agreements. Many other Fund Managers, including CIBC provided written warnings to financial advisors that they would impose Short-Term Trading Fees in accordance with their funds' prospectuses to those clients engaged in frequent short-term trading activity.

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[32] Pages 13 and 22 of Schedule "D".

[33] Page 6, paragraph 37 of Schedule "D".

[34] Page 6, paragraphs 38 and 39 of Schedule "D".

130. Other specific Fund Managers who had prudent policies and procedures during the Class Period related to market timing included TD Mutual Funds, Philip, Hager and North Investment Management Ltd. ("PH&N") and, as relates to the period after 2001, Dynamic Mutual Funds Inc. and AIM Funds Management Inc.

131. These four other fund companies were also examined in the June 21, 2004, comprehensive investigation by the Globe and Mail that tracked churn rates (indicative of high switching activity) based on IFIC data for certain Global, Europe and Asia funds in the period 2000 through 2003.

132. The Globe and Mail investigation found little or no churn activity for TD Funds and PH&N Funds and a substantial reduction in churn rates for Dynamic and AIM Funds beginning after 2001.

133. Some select references from the Appendix VI Globe and Mail article include the following:

> *Since 1996, TD Asset, Canada's sixth-largest fund manager, has slapped an automatic 2-per-cent penalty fee on anyone who redeems their money within 90 days of investing it.*
>
> *At Vancouver-based PH&N, anyone who makes a round-trip trade in five days -- by moving cash from a money market fund to an equity fund and back again -- can be hit with a 2-per-cent penalty.*
>
> *"In the event they want to continue it, we're not the firm they want to deal with," said Richard Self, a PH&N vice-president. As a result, he said, the firm's experience with Market Timers is virtually non-existent.*
>
> *Dynamic Mutual Funds Ltd. had a handful of international funds with active traders in 2001. But they appear to have gone elsewhere in 2002 and 2003, after the firm took steps to discourage them.*
>
> *AIM Funds had active traders in several of its funds in 2001 but there were few if any signs of their presence in later years. Spokesman Dwayne Dreger said the last time fund managers suspected the activity was in early 2003. "There were one or two attempts, but nothing since then," he said.*

134. In contrast to the Fund Managers that had taken reasonable steps to prevent market timing in their funds, William Holland CEO of CI was also quoted in the Globe and Mail article acknowledging that CI had not paid attention to the activities of market timers:

> *CI's Mr. Holland said nobody believed the timers could make money at what they were doing because nobody was paying attention to their activities. "We never thought about it," he said. "It wasn't topical."*

VIII. Did Defendants Meet Industry Standards Expected of Fund Managers

A. CI and AIC Undertook None of the Measures Followed by Prudent Fund Managers

135. CI and AIC during the Class Period were both relatively large Canadian Fund Managers who held themselves out as highly skilled, professional Fund Managers. As at December 31, 2003, CI had approximately $38.6 billion in assets under management and was manager to in excess of 100 mutual funds and was the second largest fund complex in Canada. AIC on this date had approximately $12.7 billion in assets under management and was manager to about 47 mutual funds and was the 12th largest fund complex in Canada.

136. Section IV of this report[35] described in detail the nature, extent and characteristics of the frequent short-term trading that took place in the defendants' Accounts at Issue in the Funds at Issue during the Class Period. Any determination of whether or not CI and AIC met industry standards expected of prudent Fund Managers must be made in the context of that highly unusual and atypical activity which was taking place in unprecedented volumes and highly concentrated in relatively few accounts.

137. It is clear that the nature, size, frequency and type of round-trip frequent short-term transactions of the Accounts at Issue was highly unusual, and the cumulative dollar amounts of

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[35] At pages 18 to 26.

trading volume of over $34 billion at CI and over $11 billion at AIC were staggering, particularly in relation to the relevant CI and AIC funds and the Canadian mutual fund industry in general. When coupled with the fact that the majority of these transactions took place with known hedge funds and institutional traders that had entered into Switch Agreements, these transactions would have been highly suspicious and warranted greater scrutiny, tracking and follow-up by any prudent manager.

138. The frequent short-term trading activity that was taking place were subject to specific restrictions, fees and in some cases outright prohibitions in the vast majority of Canadian mutual fund simplified prospectuses during the Class Period. This included both CI and AIC. The restrictions and fees payable to the funds set out in the applicable prospectuses and AIFs were intended to discourage all frequent short-term trading and to protect fund investors from the harmful effects that all such activity could inflict.

139. Industry standards would require that CI and AIC would need to enforce these provisions, particularly in respect of frequent short-term trading activity where dollar volumes were large and accounts had already been flagged due to existing Switch Agreements.

140. Entering into multiple Switch Agreements with known hedge funds and other institutional investors throughout the Class Period, were themselves unreasonable and a breach of industry standards applicable to Fund Managers. This is discussed in greater detail in the next section of this report.

141. It is clear that CI and AIC undertook virtually none of the many different measures taken by prudent Fund Managers to detect, deter and prevent frequent short-term market timing trading as described in the previous section which would have prevented material harm to long-term

mutual fund investors from this activity. It is therefore my firm opinion that CI and AIC failed to meet the industry standards of prudent Fund Managers during the Class Period in respect of this activity. Some specific examples of some of the more egregious or reckless actions and behaviour by CI and AIC are described below.

B. CI Failed to Uphold its Own Stated Policies and Procedures

142. CI's own stated policies were contrary to their actions taken for the Accounts at Issue. These policies were clearly expressed in a letter written by a senior officer of CI who described the type of prudent measures that, had they been uniformly enacted, would have been consistent with industry standards at that time and would have prevented material harm to long-term investors.

143. In a letter dated August 17, 2001, Patrick Lefrançois, Vice President, Sales, responded to a request from a potential large Quebec investor in one of CI's funds as follows[36]:

> *"Cl Funds Inc. is very interested in having the opportunity to manage part of your client's portfolio in our Sector structure of funds.*
>
> *As you know, we have a fiduciary responsibility to the other investors that are already in the different funds, therefore we must evaluate the impact a large investment might have on the existing unitholders. As mentioned in the prospectus, we do not want frequent trading that might hurt the fund's performance or increase the fund's transaction costs.*
>
> *Your client may invest in the Cl sector funds, however because of the large investment, we will request that you stay in the fund for a minimum of 120 days. Once the 120 days have passed you may transfer the assets to any one of our Sector funds or redeem the funds. If the assets are redeemed prior to the 120 days we will impose a 1% penalty on the total assets.*
>
> *I hope you understand that these conditions are put in place to protect the existing unitholders. Once these conditions are approved by your client, please sign the attached copy and return to Cl Funds with the appropriate documents to open the account."*

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[36] CI letter dated August 17, 2001, Exhibit PMC-4 to Plaintiff's motion dated February 11, 2020.

144. Had CI simply followed their own procedures consistent with what was set out in their August 17, 2001 letter they would have avoided the substantial harm inflicted on long-term investors in their funds by frequent short-term trading market timers and would have met the industry standards of a prudent Canadian Fund Manager at that time. They clearly did not.

145. Contrary to what was articulated in the foregoing letter, CI in responding to the frequent short-term trading activities of market timers:

a) Did not enforce their prospectus and AIF requirements related to frequent short-term trading;
b) Did not otherwise monitor or restrict frequent short-term trading which could harm a fund by imposing at least a 1% minimum fee to discourage this activity and protect existing unitholders;
c) Did not evaluate the impact large short-term investments might have on existing unitholders;
d) Instead, entered into Switch Agreements with known hedge funds that facilitated short-term trading activity in large volumes with only a very nominal fee collected for the funds which was a tiny fraction of the 2% specified in the simplified prospectus and AIF.

C. AIC Failed to Follow Through with its Own Dilution Analysis

146. Vickie Ringelberg (Vice President of Finance 1998-2002, and CFO in 2002) conducted various quantitative analysis prior to entering into Switch Agreements with Reliable Capital. She reviewed hypothetical situations in which the fund's NAV rose or fell immediately following large short-term investments. Ms. Ringelberg's analysis showed that a market rise following such investments would dilute long-term investors in the fund. However, she concluded that it was "a random walk" as future outcomes could not be predicted and as such permitted AIC to enter into the Switch Agreement.[37]

[37] See Vickie Ringelberg out of Court deposition dated September 29, 2017, at pages 82 to 86.

147. However, AIC never tested the "random walk" assertion against the account statements of Reliable Capital or of any other short-term frequent traders. Had AIC done so, it would have discovered that the frequent short-term traders' strategy was not a random process, but was being profitably implemented. As a result, AIC continued to permit frequent short-term trading in the Funds at Issue throughout the Class Period.

148. AIC failed to check its "random walk" theory against Reliable Capital's account statements even though Mr. Ullman told Mr. Neil Murdoch in an email dated September 17, 2001, that his client had been successfully implementing the frequent trading strategy for close to five years.[38]

149. Had AIC exercised caution based on Ms. Ringelberg's quantitative analysis it would either have refused to enter into Switch Agreements in the first instance, or at a minimum would have followed up and closely monitored Reliable Capital and other frequent short-term traders accounts and discovered that they were not having a random walk and were instead causing significant harm to long-term investors in the Funds at Issue through dilution.

D. CI and AIC Allowed Increasingly Abusive Frequent Trading Market Timing Activity

150. CI and AIC each entered into multiple versions of Switch Agreements through Ullman and Yuill with an offshore hedge fund based in Bermuda beginning in 1999 and continuing through 2003.

151. The Switch Agreements at CI arranged through Yuill were for aggregate dollar amounts that started at $20 million in October 1999 (under the name Triangle) and increased several times

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[38] See VR-9 exhibit to Vicky Ringleberg's out of Court deposition.

to $150 million, at which it remained (under the name SII) from February 2002 until September 2003.

152. The Switch Agreement arranged through Ullman between CI and his client Reliable Capital started at $85.5 million in April 2000 and was increased to $150 million from June 2002 until September 2003.

153. By June 2002, these two Switch Agreements alone (SII and Reliable Capital) at CI totaled $300 million in aggregate. This meant that $300 million could be invested in CI Funds at any time. However, since these Switch Agreements each allowed five (5) switches per month per fund, this meant that CI had committed to permitting up to $18 billion annually in frequent short-term trading activity under these two agreements alone.

154. In 2002, the trading in the CI Global Fund alone averaged about four switches-in and four switches-out (four "round trips") per month in amounts ranging from about $60 to $83 million (each trade) from SII and about $37 to $54 million (each trade) from Reliable Capital. As just one example (out of more than 100), on May 13, 2002, SII switched $67.1 million into the CI Global Fund and Reliable Capital switched $48 million into the same fund on the exact same day. Two days later, on May 15, SII switched out $68.5 million from the CI Global Fund and Reliable Capital switched out $49 million, for a total combined investment of $115.1 million and a total profit for the Trout/Tewksbury hedge fund of $2.4 million in two days. [39]

155. This identical trading pattern (on multiple CI funds) existed continuously between SII and Reliable Capital from at least November 2001 through early September 2003. In 2002 alone, SII and Reliable Capital together executed about 86 round trips (43 round trips each) in just that one

[39] See samples of CI Account Statements with Reliable Capital and SII attached as **Appendix X**.

CI Global Fund for a combined total volume of frequent short-term trading activity of about $10 billion (counting both switches-in and switches-out).

156. A similar abusive market timing example trade for AIC (out of the numerous such trades in its funds) occurred on the exact same days. On May 13, 2002, Reliable Capital switched $33 million and SII switched $10.3 million into AIC's World Equity Fund for a combined investment of $43.3 million in this fund. Two days later, on May 15, 2002, Reliable Capital and SII switched out $33.75 million and $10.5 million, respectively, from AIC's World Equity Fund, for a total profit of $0.95 million for the Trout/Tewksbury hedge fund. These trades can be seen in the sample AIC client account statement pages for Reliable Capital (with Ullman shown as the advisor) and for SII (with Yuill shown as advisor) attached to this report as **Appendix XI**.

157. In various emails and other documents which I reviewed that were provided by AIC through the discovery process, it was evident that AIC portfolio managers were concerned by the amount of frequent trading activity taking place by traders switching in and out of their funds. While the various emails suggest that some monitoring of larger switchers was taking place, the client statements provided by AIC together with the other documents I reviewed indicated that the Switch Agreements that market timers entered into with AIC were not terminated and remained in effect up until September 2003. Most importantly, AIC, like CI, never reviewed any of the account statements of these market timers which would have shown how they were deliberately and profitably executing their frequent short-term trading market timing arbitrage strategies.

158. Internal emails at AIC also indicated that they were aware that other Fund Managers including Fidelity, AIM and AGF were not allowing "switchers" at that time; yet despite this information they continued to allow this activity.[40]

159. Another email demonstrating reckless behaviour at AIC was from Angela Burlock, Manager Dealer Relations, dated November 19, 2002. This email indicated that trade limits per Switch Agreements with Larry Ullman and his client Reliable Capital were being exceeded. However, instead of enforcing the limit and reining in the offending activity the solution was to increase the limits. The email also indicated that if the higher limits were again exceeded to not reject future trades but accept them and advise Neil Murdoch, Executive Vice President and Portfolio Manager. [41]

E. Findings are Consistent with the OSC Report

160. As noted earlier in this report, after concluding its 15-month investigation, the OSC ultimately only referred CI, AIC and three additional Fund Managers to OSC Enforcement. All other Fund Managers from the original 105 surveyed, including 15 of the 20 firms investigated in detail, were found to have implemented adequate measures to prevent significant harm to investors and to have acted responsibly.

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[40] See email from Shamena Khan to Miles Radoja dated July 11, 2003, attached to this report as **Appendix XII**.

[41] See email from Angela Burlock dated November 19, 2002, attached to this report as **Appendix XIII**, which reads in part: "*The trading limits have been changed for this account. As per Shamena's instructions if the limits increase again, we are to accept the increase and send an e-mail and voicemail to Neil Murdoch*."

161. The OSC Chairman at the time, David Brown, was quoted upon the release of the OSC Report as saying there was a "huge gulf" between the market-timing profits of market timers at the five firms referred for enforcement, as compared with the remaining 15 firms. In respect of the other 15 firms, he stated that the "Harm to investors in those funds was negligible", and that "We felt that these funds had acted appropriately."

162. David Brown's statement was consistent with the summary table of findings included on pages 11 and 12 of the OSC Report which determined an overall risk rating for the final 20 firms investigated based on three measures: i) market timers' profit; ii) gross management fees earned by the Fund Manager; and iii) volume of redemptions (i.e., switching and other redemptions). The higher the rating, the greater the concern. Based on this methodology, the average risk rating for the five fund companies sanctioned by the OSC was 13.4 out of 15, which was almost double the next highest Fund Manager.

163. With respect to the five Fund Managers referred to enforcement, including CI and AIC, the OSC stated that "*These fund managers had a duty to have regard to the potentially harmful impact of frequent trading market timing on a fund and its investors, and take reasonable steps to protect the fund from harm, to the extent that a reasonably prudent person would have done in the circumstances*." The OSC determined that these fund managers had failed to "*protect fully the best interests of the affected funds*."[42] In contrast to the Fund Managers not referred to enforcement, there were insufficient steps taken by CI, AIC and the other three Fund Managers who were sanctioned by the OSC to safeguard fund investors from the harm from frequent trading market timing.

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[42] OSC Report, Schedule "A" hereto, at pages 16-17.

164. Based on my detailed analysis of the evidentiary record in this action, for the reasons noted previously, I found no evidence which contradicted the findings of the OSC as they relate to CI and AIC.

IX. Review of Switch Agreements Entered into by CI and AIC

165. Based on my own extensive industry experience, entering into Switch Agreements and remaining in such agreements was clearly inconsistent with industry standards applicable to a Fund Manager.

166. Attached as **Appendix XIV** is the last known Switch Agreement entered into by CI dated June 25, 2002. It is with an institutional investor identified as Reliable Capital (known to be the hedge fund Trout/Tewksbury). It was the third and last known version of the agreement with Reliable Capital, with the first dated April 6, 2000.

167. In reviewing the Appendix XIV Switch Agreement, I note that it contained the following key provisions:

- *You agree to invest in any of the Funds managed by CI Mutual Funds Inc. to the extent of no greater than 1.25% of the total assets of each Fund.*
- *We confirm that your current investments under the Program* ***exceed***[43] *this percentage, for certain Funds, but they are currently acceptable to us.*
- *We confirm that you have invested CDN $150 million under the Program.*
- *You will maintain only one account in connection with the Program.*
- *You agree to pay a fee to CI*[44] *of three (3) basis points on all switches into any of the Funds, excluding initial purchases with new money (the "Fee").*
- *The arrangements set forth herein are based on your agreement to undertake no more than five (5) switches per Fund per month within the Program.*

[43] Underlined in the original version of this report.
[44] Underlined in the original version of this report.

- *Over the course of any nine (9) month period, you will be entitled to redeem, on a monthly basis, up to a maximum of 1/9 of the aggregate investments in the Program without any early redemption fee being applied. Redemptions in excess of this amount will be subject to an early redemption fee of 2%.*

- *Upon ten (10) days prior written notice to you, we reserve the right to terminate the above arrangement at any time if we deem it necessary.*

- *You agree to keep the terms and conditions of the Program confidential.*

168. Based on these terms, I note that this Switch Agreement failed to protect the interests of the funds and its long-term investors in several important respects. In entering into this Switch Agreement, CI expressly permitted abusive frequent short-term trading to the detriment of long-term investors. They set out the parameters for such trading activity, which they further relaxed or failed to enforce over time, and committed to charging market timers fees that were low enough to make their activities profitable. In particular:

- The 1.25% limit per fund was relaxed over time as the original limit in this agreement was 0.75% of the assets in a fund. More importantly, CI acknowledged in the agreement that the 1.25% limit was being exceeded[45] in certain CI Funds. This rendered the provision ineffective, as it was not being enforced.

- The agreement specified that a fee of three (3) basis points was to be paid to CI. Earlier versions of this agreement from April and October of 2000 stated that CI would pay the fee to the applicable fund, but that language was dropped from the 2002 agreement. It is unclear why this change was made if CI intended to continue paying the fee to the fund.

- The 3-bps fee (.03%) on switching on up to 5 switches per month was an extraordinarily small fee, which would allow an inordinate amount of aggregate frequent short-term trading activity (e.g., $750 million per month or $9 billion per year on an investment of $150 million per the Switch Agreement).

- Permitting up to 5 round trips per month effectively meant that holding periods of 1 to 5 days were being allowed despite the 60 to 90-day period for the application of Short-Term Trading Fees set out in the simplified prospectus and AIF. In other words, by agreeing to allow up to five round trips in a one-month period meant that very short holding periods were condoned under the agreement.

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[45] Underlined in the original version of this report.

- Despite the massive amount of switch activity permitted, the 3-bps fee collected on switches up to 5 times per month, represented a discount of some 98.5% from the 200-bps fee stated in the simplified prospectus and AIF.

- By contrast, short-term trading via redemptions for cash was effectively disallowed as any such activity in excess of $16.7 million per month (from a money market fund) would be subject to a fee of the full 200-bps (2%) or 67 times greater than the switch fee outlined in the Switch Agreement, clearly indicating that CI, as a Fund Manager, were looking after their interest and not those of the long-term unitholders

- The limit of one account per client was not being enforced; as noted earlier in this report, Reliable Capital was executing identical trades as another Bermuda client known at CI as SII and both were fairly easily identifiable as belonging to the hedge fund Trout/Tewksbury.

- Prior to September 2003, CI never exercised its rights to terminate any Switch Agreement despite significant evidence of harm to the CI Funds referenced in internal emails, including: some CI Funds repeatedly going into overdraft, unnecessary trading in securities, increased transaction costs and negative cash cover (a regulatory infraction).

169. Based on the above terms and the facts disclosed earlier in this report, it is unreasonable to suggest that entering into Switch Agreements was anything other than extremely detrimental to the CI Funds and to CI Fund investors and a clear failure to meet industry standards.

170. One of the few provisions that could offer any protection to the funds (namely the 1.25% limit) was not being enforced as the CI Global Fund (as one example) was permitting switching activity in 2002 of over 7.5% of the total asset value (through just SII and Reliable Capital trading), well in excess of purported limits or what a Fund Manager would prudently need to retain as cash in the fund.

171. The Switch Agreements entered into by AIC were also reviewed and contained many comparable provisions to those entered into by CI, but allowed even lower Short-Term Trading Fees of 2-bps instead of 200-bps.

172. There was nothing unique in the AIC Switch Agreements that in any meaningful way would alleviate or change the aforementioned conclusions drawn from the detailed review of CI's

Switch Agreements. A sample Switch Agreement entered into by AIC with Reliable Capital dated November 7, 2001, is attached as **Appendix XV**.

173. It is also noteworthy that the simplified prospectus and AIF disclosure used by both CI and AIC in an attempt to justify lowering the Short-Term Trading Fees charged to market timers for switches in the Switch Agreements is not supported by a more in-depth review of the relevant simplified prospectuses and AIFs of CI and AIC during the Class Period. As per the analysis shown in the next section of this report (paragraphs 179 to 203), CI and AIC each failed to collect and pay the required Short-Term Trading Fees owed to the funds as specified in the relevant simplified prospectuses and AIFs.

174. Contrary to the CI Funds' simplified prospectus, the AIF for CI Funds does not include the "up to 2%" language mentioned by the defendants as the AIF states that "The fee is 2% of the value of the units or shares traded." Had CI charged and collected the 200 bps fee instead of a 3 to 4 bps fee, it would have collected and paid the CI funds $654 million, rather than the $9.4 million it actually collected.

175. For AIC, the relevant disclosure was contained in its simplified prospectus for the AIC Funds at Issue. This prospectus for these mutual fund trusts did not have an "up to 2%" formulae. Instead, it referred to: "*The fee equals the amount necessary to increase the [front end] commission you paid to 2% of the purchase price of the units redeemed.*" In AIC's case this meant they should have collected and paid the funds $220 million instead of the $0.5 million it collected.

Summary of Defendant <u>Failures to Meet Industry Standards</u>

176. Based on my review of Switch Agreements and the other documents and productions provided to me, in my opinion, CI and AIC failed to meet <u>industry standards</u>. A summary follows in the table below.

Defendants' <u>Failures to Meet Industry Standards</u>	**<u>Pertinent facts</u>**
Fund Managers did not act in the best interests of the Funds	• The simplified prospectus of CI stated that *frequent trading can hurt a fund's performance*, yet CI entered into Switch Agreements that allowed a tremendous amount of such activity. • Taking into account all actual and opportunity costs, including dilution, the total costs related to the level of switch activity taking place at CI and AIC funds was substantially higher than the 2 to 4-bps collected in fees on behalf of the funds. This was also far less than a more typical 100 bp minimum.
Fund Managers created a conflict of interest and placed their own interests ahead of the Funds	• CI and AIC earned management fees from the Switch Agreements as the institutional investors agreed to maintain substantial amounts invested in their funds for a minimum period of time or would be required to pay the full 2.0% (200 bps) Short-Term Trading Fee to the funds if they redeemed out of the fund family.

Defendants' Failures to Meet Industry Standards	**Pertinent facts**
Agreements were not disclosed and preferential treatment was given to certain institutional investors	• Switch Agreements were not publicly disclosed and this preferential treatment was not available to all investors in a fund. • No reasonable investor would have knowingly invested in a fund that allowed Switch Agreements that permitted market timing by institutional investors. • Discounts of 98% to 99% from the disclosed Short-Term Trading Fees were given for switching under these agreements. • 5 round trips were permitted per fund per month, which facilitated an extremely short permitted hold period (1 to 5 days), without a full Short-Term Trading Fee being applied, much shorter than the 60 to 90-day period specified in the simplified prospectus and AIF.
There was little to no effective monitoring of the accounts with Switch Agreements	• Monitoring at CI was done by sales and marketing personnel instead of by compliance personnel. • Despite the offensive frequent short-term trading activity, no action was ever taken to curtail or end the abusive activity at either CI or AIC before regulatory investigations began in September 2003.
Numerous red flags were ignored	• From early on, having a major offshore Bermuda investor did not prompt further investigation. • Multiple warning signs were ignored including: the location, identical trading patterns, and even the actual name of the hedge fund on the Switch Agreement. If followed up on, CI and AIC would have identified that the Bermuda entity was a hedge fund (Trout/Tewksbury) known for sophisticated arbitrage short-term trading strategies. • Extremely frequent and high dollar value trading patterns in Global, Europe and Asia Funds were not followed up on. • Profits generated in the Accounts at Issue in the context of negative returns for the funds were ignored.

Defendants' <u>Failures to Meet Industry Standards</u>	**<u>Pertinent facts</u>**
	• Market timing activity escalated in 2002 and early 2003, when other fund companies had already shut down this type of trading activity. • AGF on July 3, 2003 issued an unusual press release titled: "*AGF Takes Steps to Protect Longer-Term Investors: Will Enforce Rights to Apply Fees to Highly Active, High-Volume Traders*." This was a public acknowledgement by a direct and closely followed competitor of the need to protect long-term investors from the harm inflicted by highly active, high-volume traders. Even this did not cause CI and AIC to immediately take similar action. • Switch Agreements were renewed in 2001 and 2002, and the relationships at CI and AIC with abusive traders remained in place until September 2003. By this time, virtually all other Fund Managers had terminated these relationships.

177. Based on the foregoing, it cannot reasonably be argued that Switch Agreements entered into by CI and AIC offered any meaningful protection to the funds or fund investors; on the contrary:

a) These agreements were extremely harmful and detrimental to CI and AIC fund performance over the entire duration of the Class Period.

b) CI and AIC placed themselves in a conflict of interest by entering into Switch Agreements and put their own self-interest ahead of the funds.

c) CI and AIC did not treat all investors in their funds equally. Through secret arrangements, one class of investors was conferred a benefit and afforded special treatment that was not accessible to other investors.

d) Entering into Switch Agreements and then failing to exercise appropriate diligence in monitoring the activity of known offshore hedge fund investors suggest CI and AIC were willingly blind to the potential harm inflicted on the funds.

e) Numerous red flags ought to have prompted further investigation. The gains made by aggressive traders (market timers) taking advantage of pricing inefficiencies in

Global, Europe and Asia funds at the expense of other investors should have been evident to CI and AIC just as it had been to other firms.

178. Many other prudent and diligent fund companies in the Class Period refused to enter into Switch Agreements. They were acting in the interests of their long-term investors and acting in accordance with the industry standards of prudent Fund Managers.

X. Short-term Trading Fees per CI and AIC Simplified Prospectus and AIF

A. Review of CI Funds Disclosure and Collection of Short-Term Trading Fees

179. As noted in the definitions in Appendix I, under applicable securities requirements (NI 81-101), the AIF is filed concurrently each year with the funds' annual renewal of its simplified prospectus. The AIF is incorporated by reference and forms part of the full, true and plain disclosure in the simplified prospectus. Typically, information in the AIF is intended to be supplemental disclosure to the simplified prospectus and comprehensible on its own as an independent document.

180. The table below summarizes the disclosure in the CI Funds' simplified prospectuses and AIFs from July 17, 2000 until September 30, 2003, representing a majority of the Class Period and the period of greatest market timing activity. As shown in the table, there was a significant inconsistency between the two disclosures in respect of the amount of Short-Term Trading Fees to be collected.

181. **CI Disclosure - July 17, 2000 to September 30, 2003**[46]

CI Simplified Prospectus	**CI Annual Information Form**
Dated July 17, 2000, July 31, 2001, August 28, 2002 and July 15, 2003	Dated July 17, 2000, July 31, 2001, August 28, 2002 and July 15, 2003

[46] Relevant extracts from CI and AIC Simplified Prospectuses and AIFs, attached as **Appendix XVI**.

Short-term trading fee	***Short-term trading fee***
*Frequent trading can hurt a fund's performance. It forces the fund to keep higher levels of cash in its portfolio than would otherwise be needed. It can also increase the fund's transaction costs. To discourage frequent trading, we may charge you a short-term trading **fee of up to 2%** [47] of the **total amount you bought** [48], if you sell or transfer your units or shares within 60 days of buying them. This fee does not apply to the C.I. Money Market Fund or the C.I. US Money Market Fund.*	*To discourage frequent trading, we may charge a short-term trading fee if you sell, transfer or convert any units or shares within 60 days of buying them. **The fee is 2%** [49] of the **value of the units or shares traded** [50]. We will deduct the fee from the amount you sell, transfer or convert and **pay it to the fund** [51] from which you sold, transferred or converted your units or shares. The fee does not apply to CI Money Market Fund or CI US Money Market Fund.*

(bolding and underlining added for emphasis and to highlight differences)

182. (…).

183. (…).

184. Contrary to the disclosure in CI's simplified prospectus, its AIF states that when this fee is to be charged, "The fee is 2%[52] of the value of the units or shares traded." It does not contain the up to 2% language contained in the simplified prospectus. The AIF also includes full disclosure details of how the Short-Term Trading Fee is deducted and how it is to be paid to the fund, which is not disclosed in the CI simplified prospectus.

185. (…).

186. (…).

187. (…).

[47] Underlined in the original version of this report.
[48] Underlined in the original version of this report.
[49] Underlined in the original version of this report.
[50] Underlined in the original version of this report.
[51] Underlined in the original version of this report.
[52] Underlined in the original version of this report.

188. This discrepancy regarding the Short-Term Trading Fee remained in place uncorrected for four consecutive annual prospectus renewal periods. This is also noteworthy as these were the years with the most active frequent trading activity by market timers.

189. According to the CI Settlement Agreement with the OSC, CI collected and paid approximately $9.4 million in Short-Term Trading Fees to the CI funds from Market Timing Traders operating under the Switch Agreements. This was based on Short-Term Trading Fees of 0.03% or 0.04% as set out in the Switch Agreements or approximately 3/200ths or 4/200ths of the 2.0% fee.

190. Based on the $32.7 billion in total frequent short-term trading by Market Timing Traders as shown in Section IV of this report, CI grossly underpaid the amount of fees owed to the funds. Instead of the $9.4 million of the Short-Term Trading Fees collected by CI and paid to the Funds, CI ought to instead have collected and paid $654 million (2% of $32.7 billion) in fees to the CI Funds based on the 2% disclosure in the AIF**.**

191. CI could easily have avoided this issue by reviewing and updating the simplified prospectus and AIF to make the disclosures consistent as any prudent manager would do or to more accurately fully disclose that they were only charging 0.03% to 0.04% in Short-Term Trading Fees to certain large hedge fund and institutional investors with whom they had entered into Switch Agreements.

192. Even in the unlikely event that the existing simplified prospectus were deemed to overrule the AIF disclosure, it is highly questionable whether fees of 0.03% or 0.04% are even supportable under this disclosure. Despite the "up to 2%" language in the simplified prospectus, it is inconceivable that a prudent reader would expect Short-Term Trading Fees of such a small

fraction as 0.03% or 0.04% to compensate for the volume and frequency of the type of harmful short-term trading activity taking place under Switch Agreements.

193. While not as significant, it is also worth highlighting another inconsistency in that the simplified prospectus disclosed that the short-term trading fee would be based on the original investment cost while the AIF during the same four-year period disclosed that the fee would be calculated based on the value traded.

194. Discrepancies between the simplified prospectus and AIF are highly atypical in the mutual fund industry. The ones noted for CI are indicative of an overall carelessness in how CI approached its disclosure and compliance obligations related to Short-Term Trading Fees payable to the funds. In my experience, Fund Managers are never so careless with fees that instead belong to the Fund Manager.

B. Review of AIC Funds Disclosure and Collection of Short-Term Trading Fees

195. AIC in its Switch Agreements charged market timers 0.02% (2 bps) for switches between funds instead of 2% (200 bps). Like CI, this arrangement was never specifically disclosed in the AIC fund simplified prospectus or AIF.

196. While AIC did not have an inconsistency between its simplified prospectus and AIF, it does not appear that AIC collected the correct fee from market timers based on the disclosure in the AIC trust funds' simplified prospectus relevant for the AIC Funds at Issue. [53]

197. From June 30, 1999 until September 30, 2003, the following disclosures existed in the applicable AIC trust funds' simplified prospectus and AIF.

[53] There were two separate simplified prospectuses throughout the Class Period for AIC funds that were trusts and those that were corporations. However, since AIC Corporate Funds are not included in the Funds at Issue, such disclosure is not relevant here.

198. **AIC Trust Funds Disclosure - June 30, 1999 to September 30, 2003**[54]

AIC Simplified Prospectus Dated June 30, 1999, August 16, 2000, August 23, 2001, August 21, 2002 and July 24, 2003	**AIC Annual Information Form** Dated June 30, 1999, August 16, 2000, August 23, 2001, August 21, 2002 and July 24, 2003
Short-term trading fee *You may be charged a short-term trading fee if you redeem your Mutual Fund Units or Class F Units (other than Units of the Money Market Funds) within ninety days of purchase and you paid a front end sales charge commission of less than 2%. <u>The fee equals the amount necessary to increase the commission you paid to 2% of the purchase price of the units redeemed</u>.* [55] *This fee is paid to the Fund.*	Not applicable each year

(Underlying added for emphasis)

199. As per the AIC Settlement Agreement with the OSC, AIC collected and paid approximately $0.5 million to the AIC Funds from Market Timing Traders operating under the Switch Agreements. This was based on fees of 0.02% as set out in the applicable Switch Agreements.

200. However, based on the above disclosure in the AIC Trust simplified prospectus, the required fee to be collected from market timers and paid to the funds should be the difference between 2% and the front-end commission. This language did not provide discretion to charge a lesser amount once a fee was to be charged. Since typically no front-end sales commission was charged to market timers, AIC also appeared to have substantially undercharged the required fees paid to the AIC Funds.

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[54] Relevant extracts from CI and AIC Simplified Prospectuses and AIFs, attached as Appendix XVI.

[55] <u>Underlined in the original version of this report.</u>

201. Based on the $11 billion in frequent short-term trading as shown in Section IV of this report, AIC also grossly underpaid the amount of fees owed to the funds. Instead of the $0.5 million of the Short-Term Trading Fees collected by AIC and paid to the Funds, AIC ought to instead have collected and paid $220 million (2% of $11 billion) in fees to the AIC Funds based on the disclosure in the simplified prospectus for the AIC Funds at Issue.

C. Summary of CI and AIC Disclosure and Collection

202. Given the high dollar value and volume of trading that occurred under these Switch Agreements, industry standards would suggest that the simplified prospectuses for CI and AIC ought to have included full disclosure related to such arrangements (…).

203. It is also worth noting as well that the discretion envisioned by this type of disclosure to not charge Short-term Trading Fees was generally intended for one-off situations where investors had a legitimate unanticipated or emergency need for cash within the applicable 90-day time frame. It was not intended for widespread and systematic frequent short-term trading activity by large institutional investors such as hedge funds, and did not contemplate such drastic reductions of the stated 2% figure.

XI. Conclusion

204. Based on my review of all of the pertinent facts, disclosures and other material related to this Action that were provided to me, including detailed trading activity in the Accounts at Issue and also having the benefit of having completing an earlier report and testifying as an expert witness in the parallel Ontario action, I remain firmly of the opinion that the defendants failed to fulfil the duties and responsibilities of prudent Fund Managers in Canada in allowing or failing to prevent frequent short-term market timing trading activity in the Funds at Issue during the Class Period, which caused substantial harm to said funds and fund investors.

Signed: ______________________ Date: February 9, 2024
Samuel T. London

Appendices and Schedules

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Appendix I
Key Definitions

- **dilution**
  Dilution refers to the diminishment in value to long-term fund investors resulting from frequent short-term trading market timers purchasing or redeeming fund units that include securities priced with stale values in order to earn arbitrage profits for themselves. The gain realized by market timers at purchase (switch-in) and at redemption (switch-out) dilutes what would otherwise have been additional value accruing to all other investors remaining in the fund. Dilution can be measured by taking the percentage difference between the fund's stale price and current market value multiplied by the amount switched-in or switched-out.

- **frequent short-term trading activity**
  This refers to the rapid trading in and out of mutual funds through switching activity (also known as transfers in and transfers out) or through frequent purchases and redemptions of a fund.

- **Fund Manager(s)**
  A fund manager is the company responsible for managing the overall business, operations and affairs of a mutual fund or fund family. This includes, for example, providing or arranging professional fund portfolio management, accounting, and administration services.

- **hedge fund**
  A hedge fund is a type of investment fund that is typically open only to accredited or institutional investors, and which is managed aggressively and often uses leverage, derivatives, and other sophisticated investment strategies to generate higher returns. Unlike mutual funds, hedge funds are not typically subject to the same regulations, and may have greater flexibility in their investment strategies. Hedge funds may use arbitrage techniques as an important part of their overall investment strategies. Arbitrage involves taking advantage of price discrepancies in order to make a profit with little or no risk.

- **market timer**
  An institution or individual that engages in frequent short-term trading activity using specific strategies intended to generate profits by exploiting the fact that (during the Class Period), European, Asian, International and Global equity mutual funds included "stale value" securities when the net asset value ("NAV") of such equity mutual funds were priced at the end of the trading day in North America. Market timers in this context are also sometimes referred to as time-zone arbitrageurs.

- **market timing**
  The frequent short-term trading activity of market timers is referred to as market timing in this report.

- **Mutual fund(s) or fund(s)**
  A mutual fund or fund referred to in this report is a type of investment fund that pools money from multiple investors to purchase a diversified portfolio of securities, such as stocks, bonds or money market instruments. A mutual fund is managed by a professional investment manager who makes investment decisions on behalf of the investors. Mutual funds may be units of a trust or shares of a corporation that are redeemable on demand by investors for an amount reflecting a proportionate interest of the mutual fund's net assets. Funds' units or shares are offered continuously under a simplified prospectus and AIF and are not listed on a stock exchange. Mutual funds in Canada are regulated by Canadian securities regulators.

- **net asset value ("NAV")**
  Net asset value or NAV is the value of all of the assets held by a Canadian open-end mutual fund, including securities, cash and equivalents, minus any liabilities. NAV per unit or per share refers to NAV divided by the number of units or shares outstanding. NAV is calculated once daily at the end of the trading day in North America. All purchases and redemptions, including switches-in and switches-out, take place based on the NAV as determined by the Fund Manager.

- **redemption**
  A redemption (when not part of a switch or transfer transaction) refers to selling (redeeming) a mutual fund for cash proceeds. When a redemption occurs the monies leave the fund family completely and are no longer included in the fund manager's assets under management upon which it earns fees.

- **Short-Term Trading Fee(s)**
  This is a fee paid directly to the mutual fund and not the fund manager. It is payable by investors who only hold mutual funds for short periods of time (typically less than 30 to 90 days during the Class Period) before switching, transferring or redeeming. The details on how and when it is charged and payable vary by fund complex and are disclosed in the simplified prospectus and AIF for each applicable fund complex.

  The Short-Term Trading Fee is intended to discourage frequent short-term trading activity and, if this activity occurs, to protect funds from the additional costs and harmful effects of investors rapidly trading in and out of a fund. As a result, this fee, when applicable, represents an asset of the fund.

  The Short-Term Trading Fee is separate and distinct from all other fees and charges paid by a fund investor related to the purchase or sale of a fund. The amount of this fee is sometimes specified as a fixed percentage and sometimes a maximum percentage, and generally ranges from 1% to 2% of the amount switched, transferred or redeemed.

- **simplified prospectus and annual information form (“AIF”)**
  In order to sell mutual funds to the public during the Class Period, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) and, prior to February 1, 2000, National Policy No. 36, required a conventional mutual fund to prepare and file:

  - a simplified prospectus, and
  - an annual information form (“AIF”)

  Information on the disclosure required in a simplified prospectus and AIF was prescribed under NI 81-101 and NP 36 during the Class Period. NI 81-101 also sets out other requirements for mutual fund prospectuses, including requirements regarding the filing of prospectus amendments, the incorporation by reference of specified documents, audit and review requirements for financial statements incorporated by reference and document delivery to investors.

  A mutual fund can distribute its securities under its simplified prospectus and AIF for 12 months. After 12 months, the simplified prospectus and AIF lapse and must be renewed, unless a lapse date extension is received.

  The AIF is incorporated by reference and forms part of the full, true and plain disclosure in the simplified prospectus. Typically, information in the AIF is intended to be supplemental disclosure to the simplified prospectus and comprehensible on its own as an independent document.

- **stale value(s) (or stale price(s))**
  Stale values can occur in mutual fund portfolios when the prices of securities upon which a mutual fund’s NAV is based do not take account of the most recently available market information and do not accurately reflect their current market values.

- **switch or transfer (switching or transferring between funds)**
  A switch or transfer is the redemption of units or shares of a fund where the proceeds are directly used to purchase units or shares of another fund within the same fund complex on the same business day. A switch-in or transfer-in is the purchase of units or shares of the fund and a switch-out or transfer-out is the redemption of units or shares of the fund. A switch-in (or transfer-in) to a fund followed shortly thereafter by a switch-out (or transfer-out) from a fund is sometimes referred to herein as a round-trip.

- **Switch Agreement**
  A written (or verbal) confidential arrangement made between a fund manager and investor during the Class Period that expressly permitted frequent short-term trading activity (e.g., 4 or 5 switches or “round-trips” per month) by those investors within a fund complex under specified terms and conditions.

  In all these agreements, the frequent trader received a substantial reduction (typically a discount of 98% to 99%) of the specified Short-Term Trading Fee when frequent switch or transfer activity took place, but with no discount if redemptions out of the fund family took place. Switch Agreements no longer exist as the last ones in Canada were terminated in September 2003 after investigations into market timing became public in the U.S.

Appendix II
Material Reviewed

I have reviewed and considered, among other things, the following in rendering my opinion:

- The pleadings in the Class Action.
- Documents and affidavits filed by the parties in various motions heard in the Class Action.
- Certain documents produced in the discovery process.
- Reports prepared by Raymond Chabot Grand Thornton (RCGT) related to this Class Action.
- Account trading records of abnormally active clients of CI and AIC during the Class Period.
- The transcripts of the examinations for discovery.
- Publicly filed simplified prospectuses, AIFs, financial statements, declarations of trusts and management agreements of the CI Funds and AIC Funds from the Class Period.
- Publicly filed simplified prospectuses, annual information forms, financial statements of select Canadian Fund companies from the Class Period including Fidelity, RBC Funds, Mackenzie, Talvest, CIBC Funds, TD Funds and AIM Funds.
- The Ontario Securities Commission Report on Mutual Fund Trading Practices Probe dated March 2005.
- IDA Settlement Agreement - In The Matter Of A Discipline Hearing Pursuant To By-Law 20 Of The Investment Dealers Association Of Canada Re: BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., TD Waterhouse (Canada) Inc. dated December 16, 2004.
- MFDA Settlement Agreement with Investors Group Financial Services Inc. dated December 16, 2004.
- Regulatory Strategies for the Mid-90s. Recommendations for Regulating Investment Funds in Canada" prepared by Glorianne Stromberg dated January 1995.
- IFIC Bulletin Number 23, March 2002, Fair Valuing Portfolio Securities.
- The pleadings, decisions and publicly filed documents rendered in the parallel market timing Ontario class action against CI and AIC.
- CIBC Settlement Agreement in this Class Action.
- Globe and Mail in-depth investigative article dated June 21, 2004: "Market Timing, Select few reap unfair gain".
- Best Practices Standards on Anti Market Timing and Associated Issues for CIS, dated October 2005.
- Fortune Magazine, in depth article, dated April 19, 2004: "The Secrets of Eddie Stern If you think you know how bad the mutual fund scandal is, you're wrong. It's worse."
- An extensive variety of other news articles and press releases related to the Class Period.

Appendix III

SAMUEL T. LONDON, CPA, CA, MBA

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PROFILE

A seasoned financial executive in the mutual fund and financial services sector with more than 30 years of experience with expertise in financing, investment funds, mergers and acquisitions, financial reporting, due diligence, regulatory compliance, negotiations, investment product development, corporate governance, investment management and tax planning.

PROFESSIONAL EXPERIENCE

President and Founder — **May 2002 – Present**
CHARTVIEW INVESTMENTS INC., *Toronto, Ontario*
www.chartview.ca

Chartview is a boutique advisory firm that provides a wide range of consulting, advisory and litigation support services. Advisory services are primarily to wealth management and investment fund management companies contemplating a range of strategic initiatives, including acquisitions and divestitures, strategic partnerships and new investment product initiatives. Services include due diligence, strategic review, contract negotiations, risk analysis, financial analysis, litigation support, regulatory review, contract review and valuation services. Client base primarily mutual fund and other financial services firms.

Senior Vice President, Corporate Development — **October 2000 – May 2002**
MACKENZIE FINANCIAL CORPORATION, *Toronto, Ontario*

Senior Vice President & Chief Financial Officer — **September 1998 – May 2002**
M.R.S. TRUST COMPANY, M.R.S. SECURITIES SERVICES INC. AND MULTIPLE RETIREMENT SERVICE INC. *Toronto, Ontario*
(Wholly-owned subsidiaries of Mackenzie Financial Corporation)

Senior finance officer for three financial services companies combined with corporate development role at Mackenzie. Provided assistance in wide range of issues affecting Mackenzie, the Mackenzie Funds and the MRS Group of Companies (an OSFI regulated trust company, an IIROC member firm and an MFDA member firm). Involved in mergers and acquisitions, corporate development and new investment product initiatives at Mackenzie. Served on MRS Executive Committee. Participated in strategic planning, annual budgeting and business planning. Managed 15-person accounting and finance department and trustee services group. Responsible for completion of financial reports, regulatory filings and audited financial statements. Served on investment committee and had various compliance functions. M.R.S. Trust acted as trustee to the Keystone mutual funds and was also responsible for all sales and marketing activity.

Director, Corporate Finance — **June 1990 – August 1998**
GLOBAL STRATEGY FINANCIAL INC., *Toronto, Ontario*
(Mutual fund manager specializing in global mutual funds – Associated with the N.M. Rothschild group of companies)

Member of senior management team with responsibilities for corporate finance, tax matters, oversight and compliance for fund manager, mutual fund trusts and mutual fund corporations. Responsibilities included

financing deferred sales commissions, fund and corporate tax compliance and planning, financial reporting, regulatory compliance, strategic planning, budgeting and business planning. Also responsible for assisting in drafting and clearing prospectuses and AIFs, offering memorandum and information circulars for numerous mutual funds and limited partnership offerings. Involved in all new fund launches, fund mergers, fee decisions and fund reorganization activities.

Tax Manager **September 1985 – June 1989**

ERNST & YOUNG, *Toronto, Ontario*

- Consultative role with corporate clients
- Structured detailed corporate tax planning strategies
- Reviewed corporate, trust and personal income tax returns
- Planned and executed audited files

ACADEMIC BACKGROUND

Master of Business Administration (Major: Finance) Dean's List 1990
Rotman School of Management/University of Toronto

CPA In-depth Tax Course 1989
Chartered Professional Accountants of Canada/CICA

CPA, CA 1987
Chartered Professional Accountants of Ontario/Institute of Chartered Accountants of Ontario

Bachelor of Commerce (graduated with High Distinction) 1985
University of Toronto

OTHER ACHIEVEMENTS AND DIRECTORSHIPS

- Past member of the Independent Review Committee for Hartford Mutual Funds (2007-2010)
- Past member of Investment Funds Industry of Canada - Tax Steering Committee (1992-2002)
- Past Treasurer and member of Board of Directors of Toronto division of Make-A-Wish Foundation
- Past member of Board of Directors of M.R.S. Securities Services Inc., Multiple Retirement Services Inc. and Winfund Software Corp.
- Past member of Investment Funds Industry of Canada - Tax Steering Committee
- Partners, Directors and Senior Officers Course (PDO)
- Canadian Securities Course with Honours
- Corporate Finance and Securities Law Course (U. of T. Faculty of Law)
- University of Toronto Open (MBA) Fellowship
- Loewen, Ondaattje, McCutcheon & Company Limited, Prize in Finance

APPENDIX B

Court File No. 500-06-000256-046

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
SUPERIOR COURT

CLAUDE RAVARY

- and -

CI INVESTMENTS, INC. AIC GLOBAL HOLDINGS, INC.

Expert Report of
Samuel T. London, CPA, CA, MBA

May 18, 2023
As amended, February 9, 2024

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I. Introduction

A. Scope of Report

1. I have been retained by *Sylvestre Painchaud et associés s.e.n.c.r.l.*. as an expert to assist the Quebec Superior Court in understanding the duties and responsibilities of mutual fund managers ("Fund Managers") in Canada during the period January 1, 2000 to September 30, 2003 (the "Class Period") as relates to the practice known as market timing of open-ended mutual funds.

2. This class action concerns transactions by hedge funds, institutional traders and certain other investors who engaged in frequent short-term trading activity in certain identified mutual funds (the "Funds at Issue") of the defendants during the Class Period. It is alleged that the defendants, CI and AIC, did not put in place reasonable or prudent measures consistent with their duties and responsibilities as Fund Managers that would have prevented material harm to their funds and fund investors from the aforementioned activity by such traders.

3. I have specifically been asked to provide an opinion on the following issues:

i) What was the nature, extent and characteristics of the frequent short-term trading activity that took place in the most actively traded client accounts of the defendants ("Accounts at Issue") during the Class Period?

ii) What harm was generally caused by frequent short-term market timing trading activity in mutual funds during the Class Period?

iii) What were the industry standards governing Fund Managers in the Canadian mutual fund industry during the Class Period as they relate to frequent short-term market timing trading activity?

iv) What reasonable measures did Fund Managers in Canada take to protect their funds and fund investors from the harm caused by the frequent short-term market timing trading activity during the Class Period?

v) Did the defendants fail in upholding their duties and responsibilities as Fund Managers in respect of the frequent short-term market timing trading activity during the Class Period? and

vi) Was it reasonable or prudent for Fund Managers to enter into confidential Switch Agreements (also known as "Program Agreements") of the type entered into by the defendants during the Class Period which expressly permitted frequent short-term trading activity in their funds with hedge funds and other institutional traders?

4. The following key terms used in this report are defined in **Appendix I**:

- dilution
- frequent short-term trading activity
- Fund Manager(s)
- hedge fund
- market timer
- market timing
- mutual fund(s) or fund(s)
- net asset value ("NAV")
- redemption
- Short-term Trading Fee(s)
- simplified prospectus and annual information form ("AIF")
- stale value(s) (or stale price(s))
- switch or transfer
- Switch Agreement

5. In preparing this report and rendering my opinion, I have relied on the following:

a) Personal knowledge and experience during the Class Period with the subject;

b) My review and analysis of the evidentiary record, including pleadings in this action, documents, transcripts and other material referred to in **Appendix II**.

B. Qualifications

6. I have a Bachelor of Commerce and a Master of Business Administration degree from the University of Toronto, a professional accounting designation (CPA) in Ontario, and have completed specialized securities courses, including the Canadian Securities course and the Partners, Directors, and Senior Officer (PDO) course, required to be a senior officer or director of a securities dealer firm. I have been actively employed in the mutual fund and financial services industry in Canada continuously for over 32 years.

7. I began my financial services career in 1990 in a senior management role at Global Strategy Financial Inc. (“Global Strategy”) (associated with the N.M Rothschild group of companies), a Canadian Fund Manager that specialized in foreign mutual funds. As part of the senior leadership team, I was involved in all major decisions involving the manager and the funds including new fund launches, fund mergers, changes to fees and commission structure, annual fund prospectuses and AIFs, tax and other compliance matters, and was involved in negotiating and finalizing material contracts and financings of deferred load sales commissions. I worked closely with fund administration, accounting, sales, legal and compliance departments in carrying out my duties.

8. Global Strategy was both a trustee and manager to about 20 mutual funds. I was involved in many instances where a matter arose where the interests of the manager and funds were potentially in conflict or where there was a conflict vis-à-vis different classes of unitholder. In my role, I understood clearly that Global Strategy had a duty in all of these situations to act in the best interests of the funds and its unitholders, both in its capacity as Fund Manager and as trustee.

9. Beginning in 1998 through 2002, I was employed in a senior management role with Mackenzie Financial Corporation (“Mackenzie”), a large Canadian Fund Manager. I was Chief Financial Officer of the MRS Group of Companies ("MRS"), which included Mackenzie’s trust company, securities dealer and mutual fund dealer, and was also employed as Senior Vice President of Corporate Development at Mackenzie.

10. As part of the senior leadership team at Mackenzie and MRS, I worked closely with my colleagues at Mackenzie in sales, marketing, fund administration, compliance, finance, legal and executive management on various fund related issues including new fund launches and other strategic initiatives.

11. MRS Trust Company was the trustee of the Keystone family of funds managed by Mackenzie. As a senior officer of MRS, I helped oversee strategy, sales, marketing and compliance responsibilities of the Keystone fund family and was a signatory to the Keystone Funds Prospectus and the AIF where I would affirm that they constituted "full, true and plain disclosure of all material facts" relating to the Keystone Funds.

12. From 1992 through September 1998, I represented Global Strategy, and from October 1998 to 2002, Mackenzie, as an active member of the Investment Funds Institute of Canada ("IFIC") taxation steering committee. Through this Committee, I was involved in a range of issues impacting a broad cross section of Fund Managers relating to tax and compliance issues. I also developed life-long working relationships with numerous Canadian fund industry contemporaries.

13. Since 2002, I have served as founder and president of Chartview Investments Inc. ("Chartview"). Chartview is a boutique financial advisory firm that provides advice to a diverse range of mutual fund firms and other financial services firms contemplating strategic initiatives.

14. I also served as a founding member of the Independent Review Committee ("IRC") for the Hartford Mutual Funds in Canada from 2007 to 2010, including drafting its initial charter. The IRC's mandate was to review and provide an opinion on conflict-of-interest matters between the Fund Manager and the funds.

15. I was retained as an expert witness in the parallel Ontario class action ("the Ontario action"), Fischer et al v CI Mutual Funds et al, which also relates to frequent short-term market

timing trading activity by atypical investors in CI and AIC funds during the period September 1, 1998 to September 30, 2003.[1]

16. Further details of my pertinent qualifications and experience are in my Curriculum Vitae in **Appendix III**.

II. Summary of Principal Conclusions

17. The frequent short-term trading activity that took place in the Accounts at Issue during the Class Period in the Funds at Issue was extraordinary in size and scope and highly unusual in the Canadian mutual fund industry. Said trading activity amounted to more than $34 billion at CI and more than $11 billion at AIC, which activity was highly concentrated in accounts belonging to a Bermuda based hedge fund and other atypical institutional clients who were investing primarily in Global, International, European and Asian mutual funds. The activity was taking place with the knowledge of senior management at CI and AIC, was actively promoted by two advisors well known in the industry, and was being facilitated by Switch Agreements between CI and AIC and those atypical clients.

18. A hallmark of market timing (or time zone arbitrage) is that purchases or switches-in takes place on days when there is an upward movement in North American markets that had not yet been reflected in the valuation of foreign equity mutual funds as the funds' net asset values ("NAVs") would be priced based on "stale values" from foreign markets that had closed many hours earlier. Effectively, this results in purchases at a discount to the true NAV. For both CI and AIC, the results of analysis done by Raymond Chabot Grant Thornton ("RCGT") on the activity

[1] The Ontario action covers a longer period than this class action as it extended from September 1, 1998 to September 30, 2003, consistent with the period the Ontario Securities Commission conducted its review of the trading activity of the defendants.

in the Accounts at Issue during the Class Period is highly indicative of market timing activity. For CI, 91% of the purchases in 67 of the most active accounts took place on days when the S&P 500 was up. For AIC, the S&P was up in 87% of the days when purchases in the Accounts at Issue were made. By contrast, for the January 1, 2000 to December 31, 2003 period as a whole the S&P 500 was up in only 48.6% of the days.

19. The RCGT analysis similarly indicated that redemptions or switches-out for both the CI and AIC Accounts at Issue were timed in a way that could exploit stale values. The analysis showed that, in about 80% of cases, redemptions or switches out during the Class Period occurred when there was a decline in the North American markets. This is also indicative of market timing as the expectation is that the NAV of the foreign equity fund would decline when they opened for trading the next day and the market timer would therefore receive higher redemption proceeds than they would based on the true NAV.

20. Dilution refers to the diminishment in value to long-term fund investors resulting from market timers purchasing or redeeming fund units that include securities priced with stale values in order to earn arbitrage profits for themselves. This is the greatest source of harm to long-term investors from frequent short-term market timing trading activity.

21. Other damaging consequences are also caused by frequent short-term market timing trading activity, included increased brokerage costs, inefficient portfolio management caused by maintaining cash or cash equivalents to meet redemption or switch out requirements, and disruption to the portfolio manager's investment strategy.

22. The need to protect long-term mutual fund investors from speculators and aggressive traders exploiting stale value prices to earn arbitrage profits was known in the industry prior to the start of the Class Period. I was personally aware of the issue when my employer launched a

Japan fund in the mid-1990s and Fidelity Canada, a leading Fund Manager in the industry, had included precise disclosure highlighting this specific risk in its simplified prospectus in 1998.

23. While hedge funds and other institutional traders were generating profits in the Accounts at Issue, many long-term investors in CI and AIC's Funds at Issue were incurring substantial losses during the Class Period. For example, CI's largest fund, the CI Global Fund, one of the biggest targets of market timers, had abysmal performance of -26.6% and -19.4% in 2001 and 2002, respectively. This shows that the arbitrage strategies were being effectively implemented by the Accounts at Issue. Neither CI nor AIC ever considered, let alone performed analysis of the profits being earned in those accounts, despite the massive volumes of unusual activity taking place, and while the funds were losing significant value.

24. Prudent and diligent Fund Managers in Canada met the industry standard for prudent fund management during the Class Period, and thereby prevented substantial harm to investors in the relevant funds from the frequent short-term trading activity of market timers, by taking some or all of the following actions:

a) Implementing reasonable policies and procedures to detect and monitor frequent trading activity and taking steps to even-handedly enforce the requirements of their funds' simplified prospectuses and AIFs related to Short-Term Trading Fees during the Class Period;

b) Refusing to enter into or continue any Switch Agreements with hedge funds and other atypical investors that facilitated frequent short-term trading activity, given that such arrangements were inconsistent with prospectus disclosure, not in the funds' and long-term unitholders' best interests, were not publicly disclosed, favoured certain investors over others, and created a clear conflict which placed the interests of the Fund Manager ahead of the interests of the funds;

c) Acting upon obvious red flags and exercising additional care and diligence in reviewing the account activities of hedge funds or other institutional clients known or suspected to be engaging in frequent short-term market timing trading activity;

d) Enforcing an outright ban on frequent short-term trading activity by freezing offending accounts, refusing transactions and prohibiting new purchases and, while

less common during the Class Period, utilizing fair value pricing to discourage arbitrage techniques used by market timers.

25. There are many examples of Canadian Fund Managers that fulfilled the professional obligations expected of them during the Class Period. Such managers prevented substantial harm to their funds and to fund investors from market timing activities. Four such Fund Managers highlighted in detail in this report are: RBC Funds Inc., Fidelity Investments Canada Limited, Mackenzie and CIBC Asset Management Inc. In my opinion, their conduct, as contrasted with that of CI and AIC, demonstrated conduct by Fund Managers that met the professional standards of responsible Fund Managers.

26. The specific actions taken by the aforementioned Fund Managers included:

a) Putting policies and procedures in place to actively monitor higher dollar value short-term trading through daily reports needed to comply with applicable prospectus requirements;

b) Issuing warning letters to the dealer, advisor and/or the client who repeatedly engaged in frequent short-term trading activity;

c) Strictly enforcing a minimum 1% or 2% Short-Term Trading Fee or outright banning all such activity;

d) Prohibiting further trading, except for redemptions, by the account holder;

e) Paying extra attention to funds susceptible to stale prices, including Global, International and Far East funds;

f) Not allowing Switch Agreements that facilitate frequent short-term trading; and

g) Utilizing fair value pricing in some instances.

27. CI and AIC, on the other hand, engaged in conduct which failed to protect the funds and fund investors in question and utilized none of the available aforementioned measures.

28. CI and AIC each also failed to collect and pay the Short-Term Trading Fees owed to their funds and which they were required to collect as specified in the relevant simplified prospectuses and AIFs. In the case of CI, the simplified prospectuses and the AIFs contained, throughout the

Class Period, an inconsistency which did not give CI the leeway to reduce Short-Term Trading Fees as they did. In AIC's case, they failed to abide by the stated terms of their mutual fund trust simplified prospectuses for the Funds at Issue, which also did not give flexibility to reduce Short-Term Trading Fees. Had CI enforced the terms of their simplified prospectuses and AIFs they would have been required to collect about $654 million in Short-Term Trading Fees from market timers and pay this to the funds instead of the $9.4 million actually collected and paid. AIC would have been required to collect and pay $220 million to its funds instead of $0.5 million.

29. From my perspective, as a Canadian industry expert, I draw the following conclusions:

a) CI and AIC each entered into numerous confidential Switch Agreements on terms that benefited the Fund Manager, were detrimental to their funds and long-term unitholders, offered preferential treatment to one class of investors over another, and engaged in little to no ongoing effective monitoring or oversight of accounts engaged in frequent short-term trading; no long-term investor would have knowingly invested in a fund that allowed and facilitated massive volumes of frequent short-term trading activity; and

b) CI and AIC each ignored numerous red flags that, if acted upon, would have alerted them to the substantial harm inflicted on long-term investors from aggressive frequent short-term trading activity with the obvious potential to exploit stale values in their Global, International, Europe and Asia Funds. This permitted hedge funds and others to profit at the expense of long-term investors in the Funds.

c) CI and AIC each failed to follow industry standards by reasonably or appropriately enforcing the existing Short-Term Trading Fee requirements set out in their own funds' simplified prospectuses and AIFs;

III. Background

A. Mutual Funds and Market Timing

30. Mutual funds are investment vehicles that pool money from investors with similar investment objectives. A mutual fund may own securities of different types, or from different asset classes – such as equities, bonds, money market instruments – depending on the fund's

investment objectives. Mutual funds provide a means by which retail Canadian investors can obtain portfolio diversification and professional investment management.

31. Investors in a mutual fund, in effect, own a portion of the fund's net assets. The legal form of ownership is a unit, in the case of a mutual fund organized as a trust, and a share, in the case of a mutual fund offered as a class of shares of a mutual fund corporation. Subject to potential fees (including Short-Term Trading Fees) and applicable policies set out in a fund's simplified prospectus and AIF, investors can freely redeem units or shares of a mutual fund for cash or can switch into other mutual funds of a Fund Manager.

32. Mutual funds in Canada are valued only once a day at the end of the trading day in North America. However, during the Class Period, foreign securities (e.g., Asian and/or European equities) held by such mutual funds typically would have been valued based on the valuation obtained from a foreign stock exchange that, depending on the foreign market, closed some 6 to 12 hours earlier. Thus, during the Class Period, the net asset value of the units (or shares) of a particular mutual fund did not always reflect the most accurate fair market value of all of the securities it held. Sophisticated and aggressive short-term traders could exploit such temporary pricing inefficiencies to the detriment of a mutual funds' long-term investors. They did so by purchasing funds at an effective discount to the true value and/or redeeming those funds for an effective premium by exploiting stale values within the fund. Such activity in European, Asian, International or Global mutual funds, would generate profits for the arbitrageurs which diluted the value of the units (or shares) held by long-term investors.

33. The potential for arbitrageurs to exploit stale values in portfolios in Japan and Far East Funds was an issue known to me in the mid-1990s after my employer at the time, Global Strategy, launched a Japan fund and an Asia fund. It was a fairly obvious issue based on the known

limitations of then existing fund valuation methodologies since there was up to a 12-hour delay between when foreign markets closed and when funds were priced in Canada at the end of the trading day.

34. The following disclosure from Fidelity Investments Canada Limited's September 1998 mutual fund simplified prospectus (p. 43) also shows that the market timing issue and the risks of aggressive arbitrage traders taking advantage of stale prices were known in the Canadian fund industry before the start of the Class Period:

> **VALUING SECURITIES IN A FUND**
>
> *[V]alues may be materially affected by events occurring after the closing of a foreign market. In these cases, Fidelity may take extra steps to properly determine the fair value of securities that have been affected by these events. The number of securities valued in this way may be limited to a few stocks or may extend to an entire market.*
>
> *We call this process fair value pricing because it serves the best interests of fund investors by helping to ensure that the prices at which they buy and sell units are fair and accurate, reflecting all information available at the time of pricing.*
>
> ***This process also helps to protect our long-term investors against speculators and aggressive traders who try to take advantage of pricing inefficiencies in the market****. These inefficiencies can happen with foreign securities, whose closing prices may no longer reflect their true value if there are major changes after overseas markets close. Hong Kong, for example, ends its trading day half a day before the TSE closes, and much can change during that time.* [Emphasis added.]

35. The focus of this report is on the duties and responsibilities of Fund Managers related to frequent short-term market timing trading activity occurring in Global, International, European and Asian equity funds. During the Class Period many Fund Managers, including the defendants, had disclosure in their funds' simplified prospectus and AIF related to short-term trading activity and the specific policies it had to protect investors from the harmful impact of such trading, including the imposition of meaningful Short-Term Trading Fees payable to the funds.

B. The Regulatory Investigation of Market Timing in Canada by the OSC

36. On September 3, 2003, the Attorney General of New York announced the largest probe ever into mutual fund industry practices in the U.S., alleging widespread abusive practices of "market timing" and "late trading."

37. The announcement received extensive press coverage in both the U.S. and Canada and led to what came to be regarded as the largest mutual fund scandal ever in both countries with major reverberations occurring over the months and years that followed.

38. Soon after the U.S. probe was announced, the Ontario Securities Commission ("OSC") launched a similar investigation in November 2003 into the practices of Canadian Fund Managers. The OSC investigation started with an industry-wide review of 105 mutual fund companies and was completed over 15 months in three stages. In the second stage, the list of Fund Managers under review was reduced to 36 and, based on its findings, the list was trimmed again in the third and most intensive investigative stage which involved an onsite review of 20 Fund Managers considered of greatest potential concern.

39. Of the 20 Fund Managers reviewed in the final investigative phase, the OSC ultimately referred five Fund Managers to OSC Enforcement and concluded that the other 15 Fund Managers "*had taken reasonable steps to identify and prevent harm to their funds and their investors*."[2]

40. The Report on Mutual Fund Trading Practices Probe (the "OSC Report") summarizing the findings of the OSC investigation was issued in March 2005**.** It found frequent trading market

[2] See OSC, "Report on Mutual Fund Trading Practices Probe," March 2005, attached hereto as **Schedule "A",** p.18.

timing activity to have caused substantial harm to fund investors at CI, AIC and the other three offending fund companies that were referred to OSC Enforcement.

41. The OSC Report identified the following harm that results from market timing (all of which have a significant adverse impact on a fund's long-term performance):

- dilution of the value of other security holders' investments in the fund;
- increased brokerage transaction costs;
- inefficient management of a fund caused by maintaining cash or cash equivalents and/or monetization of investments to meet redemption requirements; and
- disruption to the portfolio manager's investment strategy.

42. The OSC Report reached the following fundamental conclusions:

a) "*Our case against the five fund managers referred to enforcement was based on their failure to protect fully the best interests of the affected funds. These fund managers had a duty to have regard to the potentially harmful impact of frequent trading market timing on a fund and its investors, and take reasonable steps to protect the fund from harm, to the extent that a reasonably prudent person would have done in the circumstances*."[3]

b) *"As illustrated in Table 1, we found some level of frequent trading market timing activity in certain funds managed by some of the 15 fund managers not referred for enforcement action. However, none of the factors indicating risk of harm to investors were found to be present in a material way. In addition, our consideration of other relevant factors led us to conclude that these fund managers had taken reasonable steps to identify and prevent harm to their funds and their investors. As a result, and as illustrated in Chart 2, the impact of the frequent trading market timing activity to investors in those funds was found to be minimal on a relative basis."* [4]

---

[3] Schedule "A", pp. 16-17.

[4] Schedule "A", p. 18.

43. The settlement agreement entered into by each of CI and AIC with the OSC included the following passages:

a) **For CI**: "*Five institutional investors holding accounts in CI Funds have been identified as having profited as a result of frequent trading market timing strategies that were pursued in certain of the CI Funds (the "Relevant Funds") in the period from September 1998 to September 2003 (the "Market Timing Traders"). The total profit realized in CI Funds by the Market Timing Traders … was approximately $90.2 million…*"[5]

b) **For AIC**: "*Three institutional investors holding accounts in AIC Funds have been identified as having profited as a result of frequent trading market timing strategies that were pursued in certain of the AIC Funds (the "Relevant Funds") in the period from January 1999 to September 2003 (the "Market Timing Traders"). The total profit realized in AIC Funds by the Market Timing Traders … was approximately $127 million…*"[6]

44. In preparing this report, I have reviewed the account statements and Excel files produced by the defendants that included detailed trading activity of the aforementioned "Market Timing Traders" which were produced in this action. In addition, trading activity related to many other accounts that had been identified as abnormally active was also provided in this class action. Abnormally active accounts included all accounts of CI and AIC where at least 50 short-term round-trip (or "switch") transactions had taken place during the Class Period.

45. My conclusions and opinions, all independently formed and corroborated through multiple sources, were consistent with the findings of the OSC both in relation to the substantial number of Canadian Fund Managers that had met a prudent manager industry standard to prevent

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[5] CI Settlement Agreement with OSC, December 10, 2004, p. 4,5 and attached as **Schedule "B"**.

[6] AIC Settlement Agreement with OSC, December 14, 2004, p. 4,5 and attached as **Schedule "C"**.

material harm to their funds from frequent short-term market timing trading activity during the Class Period and that CI and AIC failed to meet said appropriate industry standard.

IV. Nature, Extent and Characteristics of Trading in Defendants' Accounts at Issue

46. Trades executed by market timers differ markedly from those executed by long-term investors in volume and frequency. In particular, frequent short-term market timing trading activity often involves excessively large amounts invested in Global, International, European and Asian equity funds that are switched into money market funds shortly thereafter. Some of the trades executed by market timers in the defendants' foreign mutual funds during the Class Period amounted to tens of millions of dollars in a single "switch in" and "switch out" transaction and, as highlighted later in this report, at times represented a relatively high percentage of the net asset value of certain funds (well in excess of 5%). Such enormous trades raise red flags that would cause a prudent manager to conduct follow-up activity and take appropriate action to prevent harm to their funds and unitholders.

47. In two reports each dated December 16, 2022 (the "RCGT Reports"), titled "Analysis of CI transaction data" and "Analysis of AIC transaction data" Raymond Chabot Grant Thornton ("RCGT") compiled detailed analysis of transaction data for the period January 1, 2000 to December 31, 2003, that was provided to them by CI and AIC pursuant to a judgment of the Quebec Superior Court related to the Accounts at Issue.

48. Based on my review and analysis of the trading data provided by CI and AIC, together with account statements as well as other production material provided in this action, I have compiled the following summary of trading activity for the Accounts at Issue in the Funds at Issue for the period January 1, 2000 to December 31, 2003:

Total Volume of CI Trading Activity in Accounts at Issue – January 1, 2000 to December 31, 2003

Account #	Account Name of Market Timing Traders[7]	Dealer	Advisor	$ Value of Purchases
11213667	Reliable Capital Ltd.	RBC Dominion Securities	Larry Ullman	15,048,844,811
29330933	SII Limited	TD Waterhouse	Devon Yuill	12,583,093,626
13922471	Triangle Investments	BMO Nesbitt Burns	Devon Yuill	773,380,798
25615659	Credit Lyonnais	BMO Nesbitt Burns	Devon Yuill	3,005,400,000
28900728	Tie Limited	RBC Dominion Securities	Gordon Brown	251,439,741
29478807	Nesbitt Burns	BMO Nesbitt Burns	Pat Quirk	817,356,105
25940651	Cambridge Investments	BMO Nesbitt Burns	Paul Hartle	173,022,188
Sub-total Identified Investors				32,652,537,269
Other Accounts at Issue (60 accounts)				1,566,699,912
Total				34,219,237,181

Total Volume of AIC Trading Activity in Accounts at Issue – January 1, 2000 to December 31, 2003

Account #	Account Name of Market Timing Traders	Dealer	Advisor	$ Value of Purchases
11902780	Reliable Capital Ltd.	RBC Dominion Securities	Larry Ullman	4,487,565,046
13832845	Triangle Investments	BMO Nesbitt Burns	Devon Yuill	2,482,096,564
15780695	Credit Lyonnais	BMO Nesbitt Burns	Devon Yuill	2,729,600,000
18419325	SII Limited	TD Waterhouse	Devon Yuill	827,754,837
15627102	Pentagon Capital Mgmt.	TD Waterhouse	Glen Daniel	243,768,389
16047755	Pentagon Capital Mgmt.	TD Waterhouse	Glen Daniel	201,063,471
Sub-total Identified Investors				10,971,848,307
Other Accounts at Issue (9 accounts)				246,751,329
Total				11,218,599,636

49. The volume of frequent short-term trading activity by the Accounts at Issue at CI was in excess of $34 billion and for the Accounts at Issue at AIC it was in excess of $11 billion. In the context of Canadian fund complexes the size of CI and AIC, this enormous volume of trading by such few accounts over this period of time was unprecedented. Monitoring such extraordinary

[7] As identified by the OSC and summarized in paragraph 53 hereof.

activity was required by any prudent Fund Manager and, given how much of the volume related to relatively few accounts, would not have been in any way onerous.

50. A hallmark of market timing (time zone arbitrage) is that this trading activity takes place on days when there is an upward movement in North American markets that had not yet been reflected in the valuation of foreign equity mutual funds, as these funds' NAVs would be priced based on the earlier "stale values" when the overseas markets (i.e., Europe and Asia) had closed. The RCGT Reports calculated the percentage of purchases in the Accounts at Issue for CI and AIC that took place on days when the S&P 500 was up. For both CI and AIC, the results were highly indicative of market timing activity or time zone arbitrage.

51. The RCGT Report for CI determined that 91% of the purchases in 67 of the most active CI accounts identified took place on days when the S&P 500 was up. For AIC, the S&P was up in 87% of the days when purchases in the 15 AIC Accounts at Issue were made. This resulted in significant one-day gains on those purchases based on the next day NAV of the Funds at Issue. By contrast, for the January 1, 2000 to December 31, 2003 period as a whole the S&P 500 was up in only 48.6% of the days.

52. The RCGT Reports also showed one-day gains on redemptions that were timed to take advantage of stale prices. This would occur if a decline in North American markets took place that had not yet been reflected in the NAV of the applicable foreign equity funds. RCGT found that 79% of the 67 CI Accounts at Issue and 82% of the 15 AIC Accounts at Issue redeemed on days when the S&P 500 had declined.

53. As noted earlier in this report, the OSC settlement agreements identified five institutional market timing traders (referred to as "Market Timing Traders") at CI and three at AIC who made a combined profit of $217 million (at CI: $90 million, at AIC: $127 million). Such gains are

generally consistent with the aggregate profits I reviewed in the production material for the Accounts at Issue during the Class Period at CI and AIC. Based on the detailed trading and account information and other production material I reviewed in this action and which were publicly filed in the Ontario action, I am able to identify and summarize these Market Timing Traders and the principal trading accounts used by them as follows.[8]

OSC Identified CI Market Timing Traders

Account Name of Market Timing Trader	Advisor	Account #	Type of Trader	Location of Trader	Switch Agreement
1. Reliable Capital Ltd	Larry Ullman	**11213667**	Hedge Fund	Bermuda	Yes
2. SII Limited/ Triangle Investments/ Credit Lyonnais	Devon Yuill	**29330933** **13922471** **25615659**	Hedge Fund	Bermuda	Yes
3. Tie Limited	Gordon Brown	**28900728**	Hedge Fund	Bermuda	No
4. Nesbitt Burns	Patrick Quirk	**29478807**	Institutional	Toronto	Yes
5. Cambridge Investments	Paul Hartle	**25940651**	Hedge Fund	Cayman Islands	No

OSC Identified AIC Market Timing Traders

Account Name of Market Timing Trader	Advisor	Account #	Type of Trader	Location of Trader	Switch Agreement
1. Reliable Capital Ltd	Larry Ullman	**11902780**	Hedge Fund	Bermuda	Yes
2. SII Limited/ Triangle Investments/ Credit Lyonnais	Devon Yuill	**18419325** **13832845** **15780695**	Hedge Fund	Bermuda	Yes (for SII only)
3. Pentagon Capital Management	Glenn Daniel	**15627102** **16047755**	Hedge Fund	United Kingdom	Yes

[8] The list of trading accounts shown is not inclusive as there were several other accounts used by the identified Market Timing Traders where less than 50 transactions took place as per RCGT Reports filed in 2020 and per publicly filed documents in the Ontario action. See for example, AIC accounts #19890532 and #19890524 belonging to Pentagon that were identified in the 2020 RCGT Report. See also CI account # 30511877 belonging to Tie Limited, CI accounts #31062433 and #21062492 belonging to Cambridge as per CI's closing submissions in the Ontario action. It is likely there are other trading accounts belonging to the Identified Market Timers as CI did not disclose names of all account holders to RCGT in this action.

54. The identified Market Timing Traders listed for CI were confirmed in various documents publicly filed in the Ontario action, including confirmation that SII, Triangle and Credit Lyonnais were all the same Bermuda hedge fund. Trading data for the aforementioned CI accounts of Market Timing Traders were publicly filed in the Ontario action. Strangely, while AIC did provide the trading data and account statements for SII (account #18419325), Triangle (account #13832845) and Credit Lyonnais (account #15780695) in this action, AIC only provided data for SII in the parallel Ontario action and not[9] for Triangle and Credit Lyonnais. It is worth highlighting that SII, Triangle and Credit Lyonnais were all accounts for which Devon Yuill was the advisor of record. Devon Yuill moved from BMO Nesbitt to TD Waterhouse in late 2001, at which time accounts in the name of SII were opened at both CI and AIC and the accounts in the name of Triangle and Credit Lyonnais at both CI and AIC were closed.

55. As is evident from the above summaries, Larry Ullman and Devon Yuill clients accounted for a substantial majority of trading volumes and profits earned by frequent short-term market timers. Ullman and Yuill were well known financial advisors in the industry as both were extremely active in aggressively promoting market timing activity throughout the Class Period.

56. Ullman's and Yuill's names appear frequently in letters, email correspondence, Switch Agreements, account statements and other documents included in the discovery material provided by CI and AIC dating throughout the Class Period.

57. It is highly noteworthy that in an email dated October 28, 1999, Peter Anderson (Executive Vice-President, Sales and Marketing of CI) advised Michael Killeen (General Counsel and Corporate Secretary of CI) that Triangle was "*a $1.8 billion Bermuda based off-shore hedge*

[9] Underlined in the original version of this report.

fund" and a "*market time*" [sic].[10] This shows that senior executives at CI knew this key information and yet still allowed the activity of this hedge fund to continue unabated in their funds throughout the Class Period. The same email also highlighted that offshore hedge funds don't typically invest in retail mutual funds: "*John Platt questioned why they were buying retail mutual funds, but said that the client was aware of the higher fees than an institutional pool*".

58. Various correspondence and account statements at AIC also indicated they were aware that they were allowing this activity with a Bermuda-based institutional client.[11]

59. Hedge funds do not typically invest in retail mutual funds as this would add another layer of management fees in addition to the fees they charge. Hedge funds were also known by industry professionals for utilizing sophisticated arbitrage investing techniques.

60. The CI and AIC account statements for Reliable Capital, SII, Credit Lyonnais and SII all had virtually the same Bermuda address. From the documents in this action and publicly filed in the Ontario action, including the confidentiality provisions of the Switch Agreements with CI, and the identical signatories to the Switch Agreements with Reliable Capital and SII, it was clear that the Bermuda hedge fund was a single large, sophisticated hedge firm known as Trout Management Company ("Trout"). Trout was renamed Tewksbury Investment Management ("Tewksbury") in 2002 when the founder sold the firm to his successor Matthew Tewksbury. Mr. Tewksbury personally signed two of the amendments to the Reliable Capital Switch Agreements with AIC in April 2002 and August 2002.

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[10] Email from Peter Anderson to Michael Killeen, dated October 28, 1999, attached as **Appendix IV**.

[11] See summary of cross examination of Neil Murdoch summarized on AIC's closing submissions in the Ontario action dated May 24, 2022, on pg. 96 attached as **Appendix V,** as well as the name and address shown on Reliable Capital account statements with AIC (Appendix XI below).

61. The trading data and volumes contained in the RCGT reports was consistent with my own independent review of trading activity and volumes shown in the account statements for each of the identified Market Timing Traders. The CI account statements for SII and Reliable alone, were each well in excess of 100 pages with 15-20 round trip switch transactions reported on each page.

62. The data summarized in the RCGT reports was also largely consistent with an in-depth investigative report by the Globe and Mail dated June 21, 2004 (the "Globe and Mail article"), that included total inflows and outflows (the "churn rate") for Global, Europe and Asian Funds of CI and AIC. The data supplied to the Globe and Mail came from IFIC reports (which included all sales, redemptions, switches-in and switches-out) that had been submitted by Fund Managers. The Globe and Mail article is attached hereto as **Appendix VI**.

63. The churn rates in 2002, for the CI and AIC Global, European and Asian equity funds listed were among the highest of all of the fund complexes included in the Globe and Mail article. The tables below highlight the CI and AIC funds with the highest[12] churn rates.

Frequent Short-Term Trading Activity in CI Funds

Fund Name	**Fund Size ($000's)**[13] (Dec 31, 2003)	**2002 Churn Rate**[14]
CI International Balanced	466,400	1,300%
CI Pacific Fund	115,800	1,138%
CI Global Fund	1,235,500	967%
BPI Global Equity	597,000	896%
CI International RSP	11,300	894%

[12] Underlined in the original version of this report.
[13] Appendix VI.
[14] Appendix VI.

BPI International Equity	125,400	801%
CI Global Small Companies Fund	107,200	683%

Frequent Short-Term Trading Activity in AIC Funds

Fund Name	**Fund Size ($000's)** [15] (Dec 31, 2003)	**2002 Churn Rate**[16]
AIC Global Advantage	126,300	1,046%
AIC Global Diversified	38,500	900%
AIC World Advantage	148,000	444%
AIC World Equity	293,900	713%

64. By the end of 2002, CI's largest fund, the CI Global Fund had shrunk from $2.5 billion to $1.5 billion[17] yet a review of the Reliable and SII account statements shows that the Bermuda-based hedge fund (Trout/Tewksbury) was putting through individual switch trades in amounts that had escalated to about $120 million by December of 2002. These individual trades represented about 8% of the assets of the CI Global Fund at December 31, 2002, over six times the purported 1.25% limit of total assets per fund set out in the relevant Switch Agreement.

65. It is worth noting that while the Trout/Tewksbury hedge fund was earning profits from its short-term market timing arbitrage trading strategies, the CI Global Fund recorded two consecutive years of extremely poor performance in 2001 and 2002: -26.6% and -19.4%, respectively.[18]

[15] Appendix VI.

[16] Appendix VI.

[17] As per the 2001 and 2002 financial statements for the CI Global Fund.

[18] As per the 2001 and 2002 financial statements for the CI Global Fund.

66. In summary, the nature, volume and profitability of the frequent short-term market timing trading activity that took place in the Accounts at Issue of the defendants during the Class Period was extraordinary and atypical. Many billions of dollars of frequent short-term trading took place in Global, European and Asian equity mutual funds which was highly concentrated in accounts belonging to hedge funds and other non-typical institutional accounts. The activity was taking place with the knowledge of senior management at CI and AIC, was actively promoted by two advisors well known in the industry and was being facilitated by Switch Agreements.

67. It is important context for the conclusions in this report that the nature, volume, profitability, and unusual trading patterns of hedge funds and other institutional investors included in the Accounts at Issue would, in of themselves, have raised numerous red flags upon which a prudent Fund Manager would act upon to take appropriate action to ensure that the trading by market timers in these accounts were not earning profits at the expense of long-term investors and causing substantial harm from their frequent short-term trading strategies at a time when most other investors in the funds were suffering losses.

V. Harm Generally Caused by Frequent Short-Term Market Timing Trading Activity

68. Mutual funds are intended primarily for long-term investors. This is particularly true for the foreign equity funds used most frequently by market timers during the Class Period. Frequent short-term market timing trading activity by its very nature was and is antithetical to the long-term nature of such mutual funds.

69. Most fund companies stressed the long-term nature of such funds in their marketing material and/or simplified prospectuses. CI stated in its simplified prospectuses during the Class Period that all of its foreign equity funds were suitable for investors who are "*investing for the*

longer term." AIC stated in its prospectuses for all of its foreign equity funds that they were suitable for investors who are "*planning to hold for a long time."* AIC's motto in fact was "*Buy, Hold and Prosper*." The frequent short-term market timing trading activity knowingly permitted in their funds by CI and AIC was directly contradictory to these suitability guidelines and interfered with portfolio managers' ability to invest in accordance with a fund's investment objectives.[19]

70. Prior to the start of the Class Period, Short-Term Trading Fees (also sometimes known as early or short-term redemption fees), were already in place at the vast majority of fund companies in Canada. In fact, Short-Term Trading Fees were referenced in a widely read seminal report on mutual fund regulation written by Glorianne Stromberg in 1995 where she noted the harmful impact of frequent short-term trading on fund performance and the need for imposing meaningful Short-Term Trading Fees payable to the funds to discourage such activity.[20]

71. From 1999 through 2003, CI published this explicit warning to investors in its funds' simplified prospectuses (or language substantially similar): "*Frequent trading can hurt a fund's performance. It forces the fund to keep higher levels of cash in its portfolio than would otherwise be needed. It can also increase the fund's transaction costs*." CI's AIF included the additional statement that Short-Term Trading Fees were in place, "*to discourage frequent trading*". Other Fund Managers had similar language in their funds' prospectuses and AIFs during that time.

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[19] I reviewed various emails provided in the discovery documents for both CI and AIC referencing concerns raised by portfolio managers of the activity of frequent traders included as **Appendix VII.**

[20] See Section 27.03 on pages 264 of January 1995 report titled: "Regulatory Strategies for the Mid-90s. Recommendations for Regulating Investment Funds in Canada" prepared by Glorianne Stromberg.

72. As noted earlier in this report, dilution of the value of other security holders' investment in a fund is the first type of harm caused by frequent short-term market timing trading activity. Dilution refers to the diminishment in value to other fund investors' units (or shares) resulting from market timers purchasing or redeeming units (or shares) that are priced with stale values for their own profit.

73. Dilution is not the only harm inflicted upon a fund and long-term investors by market timers. Among other harms, frequent short-term large dollar value switch trades require a fund to maintain excessive cash balances to enable redemptions, or force it to liquidate positions to meet cash requirements for market timers' redemptions. Market timers can also interfere substantially with a portfolio fund manager's ability to invest a fund's cash in securities and may thereby disrupt the fund's investment strategy and impair a fund's performance. Clearly, the larger the dollar volume of frequent short-term trading activity taking place the greater the potential for harm to investors.

74. Determining a range of damages from dilution and other harms suffered by long-term investors in the defendants' Funds at Issue during the Class Period was not specifically part of the scope or mandate of this report. In the Ontario action, Professor Eric Zitzewitz did have this mandate and used a variety of sophisticated methodologies to calculate damages. However, Professor Zitzewitz referenced that this was based on a more limited data set of 12 client accounts for CI and 8 for AIC that had been provided to the plaintiffs' in the Ontario action.

VI. Industry Standards of Canadian Fund Managers During Class Period

75. Having worked at two Canadian fund managers as a senior member of the management team during the Class Period with finance, tax, compliance and accounting responsibilities, I have

a very good appreciation of the professional obligations and duties expected of a Canadian Fund Manager during the Class Period.

76. Many of my responsibilities required me to work closely with internal and external legal counsel. This also has given me a much greater appreciation from an industry perspective, of the professional obligations and duties expected of a Fund Manager.

77. The starting point in considering these duties and obligations is the language in mutual fund management agreements, declarations of trust, codes of ethics and requirements under corporate, securities and, where applicable, trust law.

78. For virtually all Fund Managers and fund trustees during the Class Period, the applicable duties were essentially identical: to act honestly, in good faith and in the best interests of the fund and its unit holders. This language is identical to that as set out in the comparable CI and AIC Code of Ethics and trust documents the key passage of which is as follows:

> *A mutual fund manager is required to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund. In so doing, it must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.*[21]

79. It was understood in the industry that these duties were the same whether performed in the capacity of a Fund Manager (who has discretionary investment management responsibilities) or in the capacity of a fund trustee.

80. Whether the defendants were acting as Fund Managers or as fund trustees, this would not result in any difference in their duties or obligations. In all circumstances, they would have to act

[21] See, e.g., AIC Code of Ethics, dated July 7, 2000, attached as **Appendix VIII** at section 2.1; CI Code of Ethics and Conduct, dated May 31, 2001, attached as **Appendix IX**, at section A.4.

in accordance with the same obligation or standard. Both the CI and AIC codes of conduct acknowledged the existence of the duties they owed to the funds and their unitholders.[22]

81. In determining appropriate industry standards, it is important context to know that it has always been fairly easy for a Fund Manager to recognize and detect significant spikes in frequent short-term trading activity as monitoring daily inflows and outflows in a fund are essential to the investment process. New monies coming into a fund need to be invested and money flowing out requires cash either from a fund's existing cash reserves or through the sale of securities. While small dollar value transactions and trading may go undetected, larger transactions or unusual trading patterns could not continue for long before being discovered.

82. Policies and procedures to detect frequent short-term trading were needed in order to monitor and comply with requirements under a fund's offering documents to collect and pay Short-Term Trading Fees to their funds. It is worth stressing that simply utilizing a range of procedures to monitor, detect and prevent frequent short-term trading activity as necessary to enforce existing prospectus requirements would, in of itself, have been sufficient to prevent material harm from this activity by market timers.

83. In my opinion, a prudent Fund Manager should have taken the following measures in order to comply with their obligations and industry standards in order to prevent harm to funds and fund investors from the frequent short-term trading activity of market timers during the Class Period:

[22] See Appendix VIII at section 2.1; Appendix IX at section A.4.

Comply with the Short-Term Trading Fee requirements of the funds' simplified prospectus and AIFs through the following measures:

a) Ensure that the Fund Manager has policies and procedures in place sufficient to adequately detect and monitor trading activity necessary to enforce the Short-Term Trading Fee requirements. This can be achieved through daily trading reports above a certain dollar amount (e.g., $50,000);

b) If overall short-term trading activity increases markedly or unusual activity is detected, review and revisit the foregoing and revise as needed. Pay particular attention to high dollar values and high frequency of transactions and transactions with funds that are most susceptible to stale values such as Global, Far East and Europe;

c) When offensive trading behavior is detected in an account, immediately notify the financial advisor whose client has been engaging in the activity and send a warning letter requesting that the activity cease, and advise that strict enforcement of the Short-Term Trading Fees payable to the funds will take place if there is any reoccurrence;

d) If a fixed 1% or 2% Short-Term Trading Fee is applicable, the fixed fee should be charged, collected and paid to the relevant funds as required;

e) If discretion is allowed, a Fund Manager should not exercise such discretion in waiving or lowering Short-Term Trading Fees in a way that is prejudicial to the funds or beneficial only to certain larger institutional investors. The fee should be meaningful enough (at least 1%) to discourage the offensive activity;

f) If a significant red flag is detected, exercise additional care and diligence in reviewing the applicable account (including hedge funds or larger institutional investors) and any potential harm to the fund or to fund investors. Take all necessary and prudent steps to ensure any inappropriate or harmful trading in that account ceases.

Do not enter into any written or verbal Switch Agreement that permits or facilitates frequent Short-Term Trading Activity in the funds.

The fact that frequent short-term trading activity is harmful to fund performance was spelled out in detail in the simplified prospectuses and AIFs of several fund companies, throughout the Class Period.

Prudent Fund Managers would not enter into the Switch Agreements of the type entered into during the Class Period by AIC and CI given the terms of the prospectuses, as this would run contrary to a Fund Manager's duty to investors.

***Highly unusual activity that would have raised red flags and warranted further enquiries and follow-up*.**

a) The activity of Ullman and Yuill for their offshore hedge fund client(s) ought to have triggered numerous red flags that warranted additional care and diligence. This included the following: i) offshore institutional investors were highly unusual for retail mutual funds in Canada, ii) the dollar value of transactions was extraordinarily high as was the frequency of trading activity, iii) entering into Switch Agreements was itself unique and highly unusual, and iv) the high concentration of activity in certain types of Global, Europe and Asian funds was unusual. All of these anomalies should have served as red flags to a prudent and diligent Fund Manager; and

b) A diligent manager would have taken the measures described above to prevent harm to the funds from frequent short-term trading activity before many of the red flags appeared.

84. While the above noted measures would be sufficient in eliminating or mitigating the harm from the frequent short-term trading activities of market timers, it is worth noting that there were two other measures that were also used by some prudent managers during the Class Period to address this issue. These other measures included enforcing an outright ban on excessive trading by freezing offending accounts and disallowing new purchases (effectively forcing the account to be closed) and utilizing fair value pricing to discourage arbitrage techniques used by market timers.

85. As described in the next section of this report, CIBC Asset Management Inc. provides a detailed example of a Fund Manager that utilized, from a certain point in time, many of the aforementioned tools to monitor and prevent frequent short-term market timing trading activity in its funds. RBC Funds Inc. is an example of a firm that enforced a ban on this activity and

Fidelity Canada also used a variety of the aforementioned techniques as well as fair value pricing, in select circumstances, as an additional preventative tool during the Class Period.[23]

VII. Measures Taken by Prudent Fund Managers During the Class Period

86. In order to illustrate how a Canadian Fund Manager could properly discharge its professional obligations consistent with the reasonable and prudent measures described in the previous section, I have reviewed the practices of a number of Fund Managers who acted prudently in discharging their professional obligations in respect of the frequent short-term trading activity of market timers during the Class Period.

87. As will be illustrated, this did not mean these Fund Managers stopped 100% of the frequent short-term trading activity of market timers during the Class Period, but rather each took reasonable steps, from at least a point in time during the Class Period, to identify and prevent such activity and thereby prevent material harm to their funds and fund investors.

88. The following Fund Managers' practices during the Class Period are reviewed in detail this report:

- CIBC Asset Management Inc. (formerly Talvest Fund Management Inc.)
- RBC Funds Inc.
- Fidelity Investments Canada Limited
- Mackenzie Financial Corporation

Additional practices followed by other Fund Managers are also summarized including TD Mutual Funds, Philip, Hager and North Investment Management Ltd. ("PH&N"), Dynamic Mutual Funds Inc. and AIM Funds Management Inc.

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[23] However, the use of fair value pricing was still relatively crude and was not widely used in Canada during the Class Period. It became far more commonly used in the industry and much more refined in the years after 2004.

89. The analysis in this section is based on my own industry knowledge as confirmed through multiple sources including:

a) Simplified prospectus and AIF disclosures for the CIBC, RBC, Fidelity and Mackenzie Funds managed by each Fund Manager applicable during the Class Period;

b) Documents provided by CIBC and confirmed in an earlier settlement agreement with them in this action;

c) Facts described in the OSC Report and IDA settlement agreements related to market timing;

d) Direct conversations with individuals who held senior positions with Fund Managers during the Class Period; and

e) In-depth investigative newspaper articles related to the Class Period.

A. CIBC Asset Management Inc. (formerly Talvest Fund Management Inc.)

90. As at December 31, 2003, Canadian Imperial Bank of Commerce ("CIBC") had in total approximately $38 billion in assets under management and was the fourth largest fund complex in Canada. CIBC operated through two Fund Managers, CIBC and CIBC Asset Management Inc. ("CAMI"). Of the $38 billion in total assets under management about $10 billion was in Talvest Funds managed by CAMI and the remainder in other CIBC Funds managed by CIBC.

91. CAMI is unique among the prudent Fund Managers reviewed in this section. That is because it underwent the most significant transformation of its policies and procedures in respect of excessive short-term market timing trading activity during the Class Period. The change happened beginning in the latter part of April 2001, just before CIBC acquired full voting control of Talvest Fund Management Inc. ("Talvest").

92. As Talvest was to become a wholly-owned subsidiary, CIBC was in a position to introduce more effective policies and procedures that it believed necessary to properly respond

to the frequent trading activity of market timers taking place at the time. Such activity was determined to be harmful to Talvest funds and long-term fund investors.[24]

93. Prior to April 2001, Talvest allowed a limited number of market timers to engage in frequent trading activities for its global and sector funds.[25]

94. Beginning in late April 2001, extensive new measures were adopted by Talvest to address frequent trading activity by market timers. These measures were phased in and included the following:[26]

a) Hiring a new compliance manager to work with Talvest management and compliance staff in adopting and implementing new policies and procedures specifically designed to detect and prevent speculative short-term trading activity by market timers.

b) Terminating the Switch Arrangements that had permitted short-term trading activity of certain market timers.

c) Establishing the production and review of daily reports, which met certain specific criteria to detect short-term transactions, including those likely to constitute market timing. Those reports identified two types of speculative activity:

    i. all transactions in Talvest China Plus Fund; and

    ii. short-term trading in all other Talvest Funds.

[24] Defense of CIBC Inc. dated January 26, 2016, as confirmed through review by Plaintiffs' expert.

[25] Defense of CIBC Inc. dated January 26, 2016, as confirmed through review by Plaintiffs' expert.

[26] Defense of CIBC Inc. dated January 26, 2016, as confirmed through review by Plaintiffs' expert.

d) The daily reports were used to identify offending accounts which then enabled Talvest to send a warning letter to financial advisors whose clients were engaged in frequent short-term trading activity.

e) The warning letters requested that investment advisors ensure that their clients terminate all short-term trading activity or transfer the account to another financial institution. The warning letters included the following language:

> *If it is your client's intent to continue her market timing activities, it would be preferable that she transfers her assets to another family of Funds or financial institution. Otherwise, Talvest reserves the right to either reject your client's purchase orders or apply short-term trading fees. We are confident that you will understand that this measure is intended to protect all Talvest unitholders and that you will convey Talvest's position to your client.*

f) The daily monitoring of funds and warning letter proved very effective as in the vast majority of cases the frequent trading practices by market timers ended without the need for additional measures.

g) During periods of particular market volatility, Talvest took additional steps to review all of the transactions of certain higher-risk funds (including Talvest China Plus Fund), going beyond the requirements of the regular procedures then in place. As a result of these additional procedures, Talvest endeavoured to reject certain higher risk purchases as they occurred.

h) These additional steps were intended to protect Talvest investors from aggressive traders attempting to take advantage of pricing inefficiencies, which through dilution, transaction costs, and other factors would result in a direct loss to investors remaining in the fund.

95. All of the aforementioned measures allowed CAMI to effectively eliminate the presence of market timing investors in the targeted Talvest Funds from May 2001 onward. [27]

96. It is noteworthy that in an earlier settlement agreement in this action commenced against CAMI, the original class of investors that included those who held their Talvest units between January 1, 2000 and December 31, 2003, was subsequently revised to create a sub-group limited to those holding Talvest units January 1, 2000 to May 31, 2001. [28]

97. Talvest investors holding units after May 31, 2001 were not eligible to participate in the settlement with CAMI as the Plaintiffs' experts concluded that: "*the practice of frequent short-term transactions ended for all practical purposes in May 2001 in all the targeted funds.*" [29]

98. It is noteworthy that CAMI, though one of 20 firms selected by the OSC to be subject to the third and final phase of its market timing investigation, was never sanctioned as CAMI was deemed to have taken reasonable steps to protect investors from material harm.

B. RBC Funds Inc.

99. As at December 31, 2003, RBC Funds Inc. ("RBC Funds" or "Royal") had approximately $37.6 billion in assets under management and was the fifth largest fund complex in Canada.

100. RBC Funds was the strictest of the four firms reviewed in this section in that it publicly disclosed an outright ban on frequent/excessive trading in the RBC Funds' simplified prospectus in each of the years 1998 through 2003 inclusive.

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[27] Settlement Agreement with CIBC Inc. dated March 7, 2019.

[28] Settlement Agreement with CIBC Inc. dated March 7, 2019.

[29] Settlement Agreement with CIBC Inc. dated March 7, 2019.

101. As per the simplified prospectus disclosure shown below, this ban was imposed based on RBC's stated understanding that frequent/excessive trading activity was harmful to its funds as such activity reduced fund performance (returns) for investors.

102. While there were slight differences in each year's disclosure, the following language taken from Royal Mutual Funds' August 2000 simplified prospectus (p. 191) is representative:

> ***Excessive trading***
>
> ***We may refuse your order to buy or switch units or any future orders if you trade excessively, which we explain below.*** *If we refuse your order to buy, we'll immediately return all the money we received with your order.*
>
> ***Mutual funds are considered long-term investments, so we discourage investors from buying, redeeming or switching units frequently.*** *A switch is the Redemption of units of one Royal Mutual Fund to purchase units of another.*
>
> ***We discourage investors from excessive trading because it generates significant costs for a fund. This can reduce a fund's returns, which affects all unitholders.*** *As a result, we may refuse your order if:*
>
> - *you try to buy units of a fund within 90 days of redeeming units of the same fund*
> - *you try to switch into units of any fund within 90 days of making a switch from any other fund*
> - *your order to buy or switch would disrupt the efficient and cost-effective management of the funds.*
>
> ***Whether your trading is considered to be excessive will be determined by RMFI in its sole discretion.***

103. Enforcing a prohibition against excessive trading was a principal tool used by RBC Funds throughout the Class Period to prevent market timers from harming investors in Royal funds. Beginning in 2001, RBC Fund's simplified prospectus also implemented a 2% Short-Term Trading Fee for frequent trading activity to discourage frequent trading.

104. RBC Funds acted decisively to ensure that the abusive trading activity ceased and the offending account closed after being identified. For example, in March 2002, certain market

timing trades were identified in three Royal funds and the client (a sophisticated offshore investor) was advised (through its investment advisor) to immediately cease this activity.[30]

105. A vice-president at RBC Funds was quoted in the June 21, 2004, Globe and Mail article (attached in Appendix VI) stating, "*The firm monitors its funds for Market Timers. When they're caught, they get booted out.*"

106. In addition, as a prudent Fund Manager, RBC Funds did not allow Switch Agreements with market timers. In one case, an investment advisor approached RBC requesting that it enter into a written Switch Agreement for RBC Funds with an offshore client to facilitate a frequent trading market timing strategy under specific parameters. The proposal was not accepted by RBC Funds. [31]

107. Consistent with industry standards, Switch Agreements were reviewed by senior legal and compliance officers. They determined that it would be unacceptable for RBC Funds to enter into such Switch Agreements; they concluded that the requested excessive trading activity would be harmful to the funds and was also not permitted under the RBC Funds' simplified prospectus.

108. Since RBC Funds did not permit ordinary individuals to engage in excessive trading activity in accordance with its simplified prospectus, clearly it would not knowingly allow a sophisticated offshore investor to do so where the potential for harm was much greater.

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[30] Page 13, paragraphs 30 - 34 of February 8, 2005, IDA Settlement Agreement, attached as **Schedule "D".**

[31] For example, see page 13, paragraphs 35 and 36 of Schedule "D".

C. Fidelity Investments Canada Limited

109. As at December 31, 2003, Fidelity Investments Canada Limited ("Fidelity") had approximately $30 billion in assets under management and was the eighth largest fund complex in Canada.

110. Throughout the period 1998 to September 2003, Fidelity utilized a range of policies and procedures designed to prevent frequent short-term trading activity in its funds by market timers, consistent with an understanding that such activity was harmful to its funds and to long-term fund investors.

111. The risk of market timing was the greatest in Fidelity funds that had so-called "time-zone risks". These were funds with significant equity holdings in Asia and Europe where markets closed well before the end of the trading day in North America.

112. As per the detailed prospectus disclosure noted in paragraph 34 of this report, by 1998, if not earlier, Fidelity was aware of the risks to fund investors of aggressive market timers who attempted to exploit the stale pricing of foreign securities.

113. The prospectus disclosure makes it clear that Fidelity was particularly concerned by the potential dilution impact from market timers. In describing the profits earned by market timers, a vice-president of Fidelity was quoted in a June 21, 2004, Globe and Mail article saying, "*This gain doesn't come out of thin air. It comes out of the pockets of other investors*."

114. One measure Fidelity took to prevent the speculative arbitrage activity arising from "stale prices" was to introduce fair value pricing in the late 1990s. As noted earlier in this report, the September 1998 simplified prospectus of the Fidelity Funds included the following language related to fair value pricing:

> *"This process also helps to protect our long-term investors against speculators and aggressive traders who try to take advantage of pricing inefficiencies in the market."*

115. In addition to adopting fair value pricing, Fidelity also implemented further measures to combat arbitrage market timers during the Class Period.

116. As noted below, by at least September 1998, Fidelity disclosed a mandatory minimum 1% Short-Term Trading Fee on specific funds that were most prone to abuse by market timers. This fee was for trading activity within 30 days of purchase. Fidelity also retained flexibility to charge up to an additional 1% (2% in total) for all trading of funds within 90 days of purchase.

117. Below are some key sample excerpts from Fidelity prospectuses in 1998 and 2001:

a) ***Short-Term Trading Fee*** *[from September 1998 prospectus]*

We ***will*** *charge a fee of at least 1% of any Focus Fund units you sell or transfer within 30 days of buying them.* ***This policy is strictly enforced.*** *If you sell or transfer units of a Focus Fund between 30 and 90 days of buying them, we may charge the usual fee of up to 2%. We'll deduct the fee from the amount you sell or transfer and pay it to the Fund.*

b) ***Short-Term Trading Fee*** *[from September 2001 prospectus]*

If you redeem or transfer within 30 days of purchase units of any series of Fidelity Far East Fund, Fidelity RSP Far East Fund, Fidelity Japanese Growth Fund, Fidelity RSP Japanese Growth Fund and Fidelity Focus Funds, you ***will*** *be charged a Short-Term Trading Fee of 1% of the value of the units. If you redeem or transfer units of these funds between 31 and 90 days of purchase, you may be charged a Short-Term Trading Fee of 1% of the value of the units.*

This fee is designed to protect unitholders from other investors moving quickly in and out of the funds*.* ***Frequent trading can hurt a fund's performance*** *by forcing the portfolio manager to keep more cash in the fund than would otherwise be needed or to sell investments at an inappropriate time. It may also increase the fund's transaction costs.*

Short-Term Trading Fees are paid to the fund and are in addition to any initial sales charge, deferred sales charge, or transfer charge. [Emphasis added.]

118. Throughout the Class Period, Fidelity faced requests from investment advisors wishing to have their clients engage in frequent trading strategies in Fidelity funds. In circumstances where

an investment advisor would ask Fidelity to facilitate the frequent trading activities of market timers either through written or verbal agreements (which invariably would include a request to lower or eliminate Fidelity's Short-Term Trading Fees), Fidelity would refuse such requests.

119. The fact that Fidelity Funds were not subject to OSC sanctions for market timing is particularly noteworthy as Fidelity was one of the larger fund complexes offering exactly the type of large Global and Far East funds most appealing to market timers during the Class Period. This was the result of the prudent measures taken by Fidelity throughout the Class Period.

D. Mackenzie Financial Corporation

120. As at December 31, 2003, Mackenzie had approximately $33.6 billion in assets under management and was the seventh largest fund complex in Canada.

121. While some frequent short-term trading activity took place at Mackenzie prior to 2002, the vast majority of such activity ceased in Mackenzie funds after it conducted a detailed review in late 2001.

122. It was the request for Mackenzie to enter into a Switch Agreement in late 2001 that prompted Mackenzie to conduct a thorough review of the type of frequent short-term trading activity requested under such arrangements.

123. Mackenzie senior management reviewed detailed analysis that had been performed and concluded that entering into the special arrangements contemplated would be extremely harmful to Mackenzie funds and fund investors and that the proposed fees to be paid to Mackenzie funds under such Switch Agreements (about 0.03% instead of 2%) would not come anywhere close to adequately compensating the funds and their long-term unitholders for this activity.

124. Based on this analysis, Mackenzie decided not to enter into Switch Agreements, nor knowingly permit any frequent short-term trading activity. As a prudent Fund Manager, it took increased measures to ensure this activity was discouraged after 2001, including more active monitoring and greater enforcement of Short-Term Trading Fees.

E. Other Prudent Fund Managers during the Class Period

125. On February 8, 2005, the Investment Dealers Association ("IDA") (subsequently known as Investment Industry Regulatory Organization of Canada ("IIROC")) entered into settlement agreements with three IDA dealer firms for offensive market timing activity taking place through these firms. As opposed to the conduct of Fund Managers, who were the focus of the review by the OSC, the IDA reviewed the conduct of dealer firms and their financial advisors, who were placing trades and acting on behalf of their market timer clients. The Schedule "D" IDA settlement agreements were entered into with the dealer firms BMO Nesbitt, RBC Securities, and TD Waterhouse, the same dealer firms through which Ullman and Yuill had entered into Switch Agreements with CI and AIC on behalf of their clients.

126. According to the IDA settlement agreements, both TD Mutual Funds ("TDMF") and Royal Mutual Funds were also each separately approached and asked to enter into a Switch Agreement to allow a client to conduct frequent trading market timing during the Class Period.

127. TDMF advised in writing in May 2002, that it had rejected the proposal, advising that their analysis indicated that the market timing strategy proposed under the special arrangement (i.e., Switch Agreement) would have a "significant negative impact on the performance of the

funds involved." Royal Mutual Funds likewise rejected a similar proposal made to it as elaborated upon in the IDA settlement agreement[32]:

> *"In May 2003, an investment advisor employed by the Respondent approached Royal with a proposal for a special arrangement to conduct Market Timing activities on behalf of Client A.... Royal did not accept the proposal*."

128. It was also reported in the IDA settlement agreements that BMO Nesbitt had received at least 21 written warnings from approximately 15 mutual fund companies about the harmful effects of market timing.[33] To quote directly from the IDA settlement agreement:

> *"The majority of the written warnings put the Respondent (BMO Nesbitt) on notice that Market Timing was potentially harmful to long term unitholders, was not welcome or permitted by the funds and that the mutual fund companies may impose a short-term trading fee of up to 2% of the value of the mutual fund units that were held for fewer than 90 days, in accordance with the funds' prospectuses.*
>
> *The language of the majority of the written warnings confirmed that the objective of the Short-Term Trading Fee was to protect long term unitholders from potentially negative consequences of Market Timing. The mutual fund companies issued the warnings because they had determined that Market Timing was potentially harming the funds and the long term unitholders*."[34]

129. As noted in the foregoing, many Fund Managers had concluded during the Class Period that market timing was harmful to long-term unitholders. Mackenzie, Royal and TDMF refused requests to enter into Switch Agreements. Many other Fund Managers, including CIBC provided written warnings to financial advisors that they would impose Short-Term Trading Fees in accordance with their funds' prospectuses to those clients engaged in frequent short-term trading activity.

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[32] Pages 13 and 22 of Schedule "D".

[33] Page 6, paragraph 37 of Schedule "D".

[34] Page 6, paragraphs 38 and 39 of Schedule "D".

130. Other specific Fund Managers who had prudent policies and procedures during the Class Period related to market timing included TD Mutual Funds, Philip, Hager and North Investment Management Ltd. ("PH&N") and, as relates to the period after 2001, Dynamic Mutual Funds Inc. and AIM Funds Management Inc.

131. These four other fund companies were also examined in the June 21, 2004, comprehensive investigation by the Globe and Mail that tracked churn rates (indicative of high switching activity) based on IFIC data for certain Global, Europe and Asia funds in the period 2000 through 2003.

132. The Globe and Mail investigation found little or no churn activity for TD Funds and PH&N Funds and a substantial reduction in churn rates for Dynamic and AIM Funds beginning after 2001.

133. Some select references from the Appendix VI Globe and Mail article include the following:

> *Since 1996, TD Asset, Canada's sixth-largest fund manager, has slapped an automatic 2-per-cent penalty fee on anyone who redeems their money within 90 days of investing it.*
>
> *At Vancouver-based PH&N, anyone who makes a round-trip trade in five days -- by moving cash from a money market fund to an equity fund and back again -- can be hit with a 2-per-cent penalty.*
>
> *"In the event they want to continue it, we're not the firm they want to deal with," said Richard Self, a PH&N vice-president. As a result, he said, the firm's experience with Market Timers is virtually non-existent.*
>
> *Dynamic Mutual Funds Ltd. had a handful of international funds with active traders in 2001. But they appear to have gone elsewhere in 2002 and 2003, after the firm took steps to discourage them.*
>
> *AIM Funds had active traders in several of its funds in 2001 but there were few if any signs of their presence in later years. Spokesman Dwayne Dreger said the last time fund managers suspected the activity was in early 2003. "There were one or two attempts, but nothing since then," he said.*

134. In contrast to the Fund Managers that had taken reasonable steps to prevent market timing in their funds, William Holland CEO of CI was also quoted in the Globe and Mail article acknowledging that CI had not paid attention to the activities of market timers:

> *CI's Mr. Holland said nobody believed the timers could make money at what they were doing because nobody was paying attention to their activities. "We never thought about it," he said. "It wasn't topical."*

VIII. Did Defendants Meet Industry Standards Expected of Fund Managers

A. CI and AIC Undertook None of the Measures Followed by Prudent Fund Managers

135. CI and AIC during the Class Period were both relatively large Canadian Fund Managers who held themselves out as highly skilled, professional Fund Managers. As at December 31, 2003, CI had approximately $38.6 billion in assets under management and was manager to in excess of 100 mutual funds and was the second largest fund complex in Canada. AIC on this date had approximately $12.7 billion in assets under management and was manager to about 47 mutual funds and was the 12th largest fund complex in Canada.

136. Section IV of this report[35] described in detail the nature, extent and characteristics of the frequent short-term trading that took place in the defendants' Accounts at Issue in the Funds at Issue during the Class Period. Any determination of whether or not CI and AIC met industry standards expected of prudent Fund Managers must be made in the context of that highly unusual and atypical activity which was taking place in unprecedented volumes and highly concentrated in relatively few accounts.

137. It is clear that the nature, size, frequency and type of round-trip frequent short-term transactions of the Accounts at Issue was highly unusual, and the cumulative dollar amounts of

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[35] At pages 18 to 26.

trading volume of over $34 billion at CI and over $11 billion at AIC were staggering, particularly in relation to the relevant CI and AIC funds and the Canadian mutual fund industry in general. When coupled with the fact that the majority of these transactions took place with known hedge funds and institutional traders that had entered into Switch Agreements, these transactions would have been highly suspicious and warranted greater scrutiny, tracking and follow-up by any prudent manager.

138. The frequent short-term trading activity that was taking place were subject to specific restrictions, fees and in some cases outright prohibitions in the vast majority of Canadian mutual fund simplified prospectuses during the Class Period. This included both CI and AIC. The restrictions and fees payable to the funds set out in the applicable prospectuses and AIFs were intended to discourage all frequent short-term trading and to protect fund investors from the harmful effects that all such activity could inflict.

139. Industry standards would require that CI and AIC would need to enforce these provisions, particularly in respect of frequent short-term trading activity where dollar volumes were large and accounts had already been flagged due to existing Switch Agreements.

140. Entering into multiple Switch Agreements with known hedge funds and other institutional investors throughout the Class Period, were themselves unreasonable and a breach of industry standards applicable to Fund Managers. This is discussed in greater detail in the next section of this report.

141. It is clear that CI and AIC undertook virtually none of the many different measures taken by prudent Fund Managers to detect, deter and prevent frequent short-term market timing trading as described in the previous section which would have prevented material harm to long-term

mutual fund investors from this activity. It is therefore my firm opinion that CI and AIC failed to meet the industry standards of prudent Fund Managers during the Class Period in respect of this activity. Some specific examples of some of the more egregious or reckless actions and behaviour by CI and AIC are described below.

B. CI Failed to Uphold its Own Stated Policies and Procedures

142. CI's own stated policies were contrary to their actions taken for the Accounts at Issue. These policies were clearly expressed in a letter written by a senior officer of CI who described the type of prudent measures that, had they been uniformly enacted, would have been consistent with industry standards at that time and would have prevented material harm to long-term investors.

143. In a letter dated August 17, 2001, Patrick Lefrançois, Vice President, Sales, responded to a request from a potential large Quebec investor in one of CI's funds as follows[36]:

> *"Cl Funds Inc. is very interested in having the opportunity to manage part of your client's portfolio in our Sector structure of funds.*
>
> *As you know, we have a fiduciary responsibility to the other investors that are already in the different funds, therefore we must evaluate the impact a large investment might have on the existing unitholders. As mentioned in the prospectus, we do not want frequent trading that might hurt the fund's performance or increase the fund's transaction costs.*
>
> *Your client may invest in the Cl sector funds, however because of the large investment, we will request that you stay in the fund for a minimum of 120 days. Once the 120 days have passed you may transfer the assets to any one of our Sector funds or redeem the funds. If the assets are redeemed prior to the 120 days we will impose a 1% penalty on the total assets.*
>
> *I hope you understand that these conditions are put in place to protect the existing unitholders. Once these conditions are approved by your client, please sign the attached copy and return to Cl Funds with the appropriate documents to open the account."*

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[36] CI letter dated August 17, 2001, Exhibit PMC-4 to Plaintiff's motion dated February 11, 2020.

144. Had CI simply followed their own procedures consistent with what was set out in their August 17, 2001 letter they would have avoided the substantial harm inflicted on long-term investors in their funds by frequent short-term trading market timers and would have met the industry standards of a prudent Canadian Fund Manager at that time. They clearly did not.

145. Contrary to what was articulated in the foregoing letter, CI in responding to the frequent short-term trading activities of market timers:

a) Did not enforce their prospectus and AIF requirements related to frequent short-term trading;
b) Did not otherwise monitor or restrict frequent short-term trading which could harm a fund by imposing at least a 1% minimum fee to discourage this activity and protect existing unitholders;
c) Did not evaluate the impact large short-term investments might have on existing unitholders;
d) Instead, entered into Switch Agreements with known hedge funds that facilitated short-term trading activity in large volumes with only a very nominal fee collected for the funds which was a tiny fraction of the 2% specified in the simplified prospectus and AIF.

C. AIC Failed to Follow Through with its Own Dilution Analysis

146. Vickie Ringelberg (Vice President of Finance 1998-2002, and CFO in 2002) conducted various quantitative analysis prior to entering into Switch Agreements with Reliable Capital. She reviewed hypothetical situations in which the fund's NAV rose or fell immediately following large short-term investments. Ms. Ringelberg's analysis showed that a market rise following such investments would dilute long-term investors in the fund. However, she concluded that it was "a random walk" as future outcomes could not be predicted and as such permitted AIC to enter into the Switch Agreement.[37]

[37] See Vickie Ringelberg out of Court deposition dated September 29, 2017, at pages 82 to 86.

147. However, AIC never tested the "random walk" assertion against the account statements of Reliable Capital or of any other short-term frequent traders. Had AIC done so, it would have discovered that the frequent short-term traders' strategy was not a random process, but was being profitably implemented. As a result, AIC continued to permit frequent short-term trading in the Funds at Issue throughout the Class Period.

148. AIC failed to check its "random walk" theory against Reliable Capital's account statements even though Mr. Ullman told Mr. Neil Murdoch in an email dated September 17, 2001, that his client had been successfully implementing the frequent trading strategy for close to five years.[38]

149. Had AIC exercised caution based on Ms. Ringelberg's quantitative analysis it would either have refused to enter into Switch Agreements in the first instance, or at a minimum would have followed up and closely monitored Reliable Capital and other frequent short-term traders accounts and discovered that they were not having a random walk and were instead causing significant harm to long-term investors in the Funds at Issue through dilution.

D. CI and AIC Allowed Increasingly Abusive Frequent Trading Market Timing Activity

150. CI and AIC each entered into multiple versions of Switch Agreements through Ullman and Yuill with an offshore hedge fund based in Bermuda beginning in 1999 and continuing through 2003.

151. The Switch Agreements at CI arranged through Yuill were for aggregate dollar amounts that started at $20 million in October 1999 (under the name Triangle) and increased several times

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[38] See VR-9 exhibit to Vicky Ringleberg's out of Court deposition.

to $150 million, at which it remained (under the name SII) from February 2002 until September 2003.

152. The Switch Agreement arranged through Ullman between CI and his client Reliable Capital started at $85.5 million in April 2000 and was increased to $150 million from June 2002 until September 2003.

153. By June 2002, these two Switch Agreements alone (SII and Reliable Capital) at CI totaled $300 million in aggregate. This meant that $300 million could be invested in CI Funds at any time. However, since these Switch Agreements each allowed five (5) switches per month per fund, this meant that CI had committed to permitting up to $18 billion annually in frequent short-term trading activity under these two agreements alone.

154. In 2002, the trading in the CI Global Fund alone averaged about four switches-in and four switches-out (four "round trips") per month in amounts ranging from about $60 to $83 million (each trade) from SII and about $37 to $54 million (each trade) from Reliable Capital. As just one example (out of more than 100), on May 13, 2002, SII switched $67.1 million into the CI Global Fund and Reliable Capital switched $48 million into the same fund on the exact same day. Two days later, on May 15, SII switched out $68.5 million from the CI Global Fund and Reliable Capital switched out $49 million, for a total combined investment of $115.1 million and a total profit for the Trout/Tewksbury hedge fund of $2.4 million in two days. [39]

155. This identical trading pattern (on multiple CI funds) existed continuously between SII and Reliable Capital from at least November 2001 through early September 2003. In 2002 alone, SII and Reliable Capital together executed about 86 round trips (43 round trips each) in just that one

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[39] See samples of CI Account Statements with Reliable Capital and SII attached as **Appendix X**.

CI Global Fund for a combined total volume of frequent short-term trading activity of about $10 billion (counting both switches-in and switches-out).

156. A similar abusive market timing example trade for AIC (out of the numerous such trades in its funds) occurred on the exact same days. On May 13, 2002, Reliable Capital switched $33 million and SII switched $10.3 million into AIC's World Equity Fund for a combined investment of $43.3 million in this fund. Two days later, on May 15, 2002, Reliable Capital and SII switched out $33.75 million and $10.5 million, respectively, from AIC's World Equity Fund, for a total profit of $0.95 million for the Trout/Tewksbury hedge fund. These trades can be seen in the sample AIC client account statement pages for Reliable Capital (with Ullman shown as the advisor) and for SII (with Yuill shown as advisor) attached to this report as **Appendix XI**.

157. In various emails and other documents which I reviewed that were provided by AIC through the discovery process, it was evident that AIC portfolio managers were concerned by the amount of frequent trading activity taking place by traders switching in and out of their funds. While the various emails suggest that some monitoring of larger switchers was taking place, the client statements provided by AIC together with the other documents I reviewed indicated that the Switch Agreements that market timers entered into with AIC were not terminated and remained in effect up until September 2003. Most importantly, AIC, like CI, never reviewed any of the account statements of these market timers which would have shown how they were deliberately and profitably executing their frequent short-term trading market timing arbitrage strategies.

158. Internal emails at AIC also indicated that they were aware that other Fund Managers including Fidelity, AIM and AGF were not allowing "switchers" at that time; yet despite this information they continued to allow this activity.[40]

159. Another email demonstrating reckless behaviour at AIC was from Angela Burlock, Manager Dealer Relations, dated November 19, 2002. This email indicated that trade limits per Switch Agreements with Larry Ullman and his client Reliable Capital were being exceeded. However, instead of enforcing the limit and reining in the offending activity the solution was to increase the limits. The email also indicated that if the higher limits were again exceeded to not reject future trades but accept them and advise Neil Murdoch, Executive Vice President and Portfolio Manager. [41]

E. Findings are Consistent with the OSC Report

160. As noted earlier in this report, after concluding its 15-month investigation, the OSC ultimately only referred CI, AIC and three additional Fund Managers to OSC Enforcement. All other Fund Managers from the original 105 surveyed, including 15 of the 20 firms investigated in detail, were found to have implemented adequate measures to prevent significant harm to investors and to have acted responsibly.

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[40] See email from Shamena Khan to Miles Radoja dated July 11, 2003, attached to this report as **Appendix XII**.

[41] See email from Angela Burlock dated November 19, 2002, attached to this report as **Appendix XIII**, which reads in part: "*The trading limits have been changed for this account. As per Shamena's instructions if the limits increase again, we are to accept the increase and send an e-mail and voicemail to Neil Murdoch*."

161. The OSC Chairman at the time, David Brown, was quoted upon the release of the OSC Report as saying there was a "huge gulf" between the market-timing profits of market timers at the five firms referred for enforcement, as compared with the remaining 15 firms. In respect of the other 15 firms, he stated that the "Harm to investors in those funds was negligible", and that "We felt that these funds had acted appropriately."

162. David Brown's statement was consistent with the summary table of findings included on pages 11 and 12 of the OSC Report which determined an overall risk rating for the final 20 firms investigated based on three measures: i) market timers' profit; ii) gross management fees earned by the Fund Manager; and iii) volume of redemptions (i.e., switching and other redemptions). The higher the rating, the greater the concern. Based on this methodology, the average risk rating for the five fund companies sanctioned by the OSC was 13.4 out of 15, which was almost double the next highest Fund Manager.

163. With respect to the five Fund Managers referred to enforcement, including CI and AIC, the OSC stated that "*These fund managers had a duty to have regard to the potentially harmful impact of frequent trading market timing on a fund and its investors, and take reasonable steps to protect the fund from harm, to the extent that a reasonably prudent person would have done in the circumstances*." The OSC determined that these fund managers had failed to "*protect fully the best interests of the affected funds*."[42] In contrast to the Fund Managers not referred to enforcement, there were insufficient steps taken by CI, AIC and the other three Fund Managers who were sanctioned by the OSC to safeguard fund investors from the harm from frequent trading market timing.

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[42] OSC Report, Schedule "A" hereto, at pages 16-17.

164. Based on my detailed analysis of the evidentiary record in this action, for the reasons noted previously, I found no evidence which contradicted the findings of the OSC as they relate to CI and AIC.

IX. Review of Switch Agreements Entered into by CI and AIC

165. Based on my own extensive industry experience, entering into Switch Agreements and remaining in such agreements was clearly inconsistent with industry standards applicable to a Fund Manager.

166. Attached as **Appendix XIV** is the last known Switch Agreement entered into by CI dated June 25, 2002. It is with an institutional investor identified as Reliable Capital (known to be the hedge fund Trout/Tewksbury). It was the third and last known version of the agreement with Reliable Capital, with the first dated April 6, 2000.

167. In reviewing the Appendix XIV Switch Agreement, I note that it contained the following key provisions:

- *You agree to invest in any of the Funds managed by CI Mutual Funds Inc. to the extent of no greater than 1.25% of the total assets of each Fund.*
- *We confirm that your current investments under the Program **exceed**[43] this percentage, for certain Funds, but they are currently acceptable to us.*
- *We confirm that you have invested CDN $150 million under the Program.*
- *You will maintain only one account in connection with the Program.*
- *You agree to pay a fee to CI[44] of three (3) basis points on all switches into any of the Funds, excluding initial purchases with new money (the "Fee").*
- *The arrangements set forth herein are based on your agreement to undertake no more than five (5) switches per Fund per month within the Program.*

[43] Underlined in the original version of this report.
[44] Underlined in the original version of this report.

- *Over the course of any nine (9) month period, you will be entitled to redeem, on a monthly basis, up to a maximum of 1/9 of the aggregate investments in the Program without any early redemption fee being applied. Redemptions in excess of this amount will be subject to an early redemption fee of 2%.*

- *Upon ten (10) days prior written notice to you, we reserve the right to terminate the above arrangement at any time if we deem it necessary.*

- *You agree to keep the terms and conditions of the Program confidential.*

168. Based on these terms, I note that this Switch Agreement failed to protect the interests of the funds and its long-term investors in several important respects. In entering into this Switch Agreement, CI expressly permitted abusive frequent short-term trading to the detriment of long-term investors. They set out the parameters for such trading activity, which they further relaxed or failed to enforce over time, and committed to charging market timers fees that were low enough to make their activities profitable. In particular:

- The 1.25% limit per fund was relaxed over time as the original limit in this agreement was 0.75% of the assets in a fund. More importantly, CI acknowledged in the agreement that the 1.25% limit was being exceeded[45] in certain CI Funds. This rendered the provision ineffective, as it was not being enforced.

- The agreement specified that a fee of three (3) basis points was to be paid to CI. Earlier versions of this agreement from April and October of 2000 stated that CI would pay the fee to the applicable fund, but that language was dropped from the 2002 agreement. It is unclear why this change was made if CI intended to continue paying the fee to the fund.

- The 3-bps fee (.03%) on switching on up to 5 switches per month was an extraordinarily small fee, which would allow an inordinate amount of aggregate frequent short-term trading activity (e.g., $750 million per month or $9 billion per year on an investment of $150 million per the Switch Agreement).

- Permitting up to 5 round trips per month effectively meant that holding periods of 1 to 5 days were being allowed despite the 60 to 90-day period for the application of Short-Term Trading Fees set out in the simplified prospectus and AIF. In other words, by agreeing to allow up to five round trips in a one-month period meant that very short holding periods were condoned under the agreement.

[45] Underlined in the original version of this report.

- Despite the massive amount of switch activity permitted, the 3-bps fee collected on switches up to 5 times per month, represented a discount of some 98.5% from the 200-bps fee stated in the simplified prospectus and AIF.

- By contrast, short-term trading via redemptions for cash was effectively disallowed as any such activity in excess of $16.7 million per month (from a money market fund) would be subject to a fee of the full 200-bps (2%) or 67 times greater than the switch fee outlined in the Switch Agreement, clearly indicating that CI, as a Fund Manager, were looking after their interest and not those of the long-term unitholders

- The limit of one account per client was not being enforced; as noted earlier in this report, Reliable Capital was executing identical trades as another Bermuda client known at CI as SII and both were fairly easily identifiable as belonging to the hedge fund Trout/Tewksbury.

- Prior to September 2003, CI never exercised its rights to terminate any Switch Agreement despite significant evidence of harm to the CI Funds referenced in internal emails, including: some CI Funds repeatedly going into overdraft, unnecessary trading in securities, increased transaction costs and negative cash cover (a regulatory infraction).

169. Based on the above terms and the facts disclosed earlier in this report, it is unreasonable to suggest that entering into Switch Agreements was anything other than extremely detrimental to the CI Funds and to CI Fund investors and a clear failure to meet industry standards.

170. One of the few provisions that could offer any protection to the funds (namely the 1.25% limit) was not being enforced as the CI Global Fund (as one example) was permitting switching activity in 2002 of over 7.5% of the total asset value (through just SII and Reliable Capital trading), well in excess of purported limits or what a Fund Manager would prudently need to retain as cash in the fund.

171. The Switch Agreements entered into by AIC were also reviewed and contained many comparable provisions to those entered into by CI, but allowed even lower Short-Term Trading Fees of 2-bps instead of 200-bps.

172. There was nothing unique in the AIC Switch Agreements that in any meaningful way would alleviate or change the aforementioned conclusions drawn from the detailed review of CI's

Switch Agreements. A sample Switch Agreement entered into by AIC with Reliable Capital dated November 7, 2001, is attached as **Appendix XV**.

173. It is also noteworthy that the simplified prospectus and AIF disclosure used by both CI and AIC in an attempt to justify lowering the Short-Term Trading Fees charged to market timers for switches in the Switch Agreements is <u>not</u> supported by a more in-depth review of the relevant simplified prospectuses and AIFs of CI and AIC during the Class Period. As per the analysis shown in the next section of this report (paragraphs 179 to 203), CI and AIC each failed to collect and pay the required Short-Term Trading Fees owed to the funds as specified in the relevant simplified prospectuses and AIFs.

174. Contrary to the CI Funds' simplified prospectus, the AIF for CI Funds does not include the "up to 2%" language mentioned by the defendants as the AIF states that "<u>The fee is 2%</u> of the value of the units or shares traded." <u>Had CI charged and collected the 200 bps fee instead of a 3 to 4 bps fee, it would have collected and paid</u> the CI funds $654 million, rather than the $9.4 million it actually collected.

175. For AIC, the relevant disclosure was contained in its simplified prospectus for the AIC Funds at Issue. This prospectus for these mutual fund trusts did not have an "up to 2%" formulae. Instead, it referred to: "*The fee equals the amount necessary to increase the [front end] commission you paid to 2% of the purchase price of the units redeemed.*" In AIC's case this meant they should have collected and paid the funds $220 million instead of the $0.5 million it collected.

Summary of Defendant <u>Failures to Meet Industry Standards</u>

176. Based on my review of Switch Agreements and the other documents and productions provided to me, in my opinion, CI and AIC failed to meet <u>industry standards</u>. A summary follows in the table below.

Defendants' <u>Failures to Meet Industry Standards</u>	**<u>Pertinent facts</u>**
Fund Managers did not act in the best interests of the Funds	• The simplified prospectus of CI stated that *frequent trading can hurt a fund's performance*, yet CI entered into Switch Agreements that allowed a tremendous amount of such activity. • Taking into account all actual and opportunity costs, including dilution, the total costs related to the level of switch activity taking place at CI and AIC funds was substantially higher than the 2 to 4-bps collected in fees on behalf of the funds. This was also far less than a more typical 100 bp minimum.
Fund Managers created a conflict of interest and placed their own interests ahead of the Funds	• CI and AIC earned management fees from the Switch Agreements as the institutional investors agreed to maintain substantial amounts invested in their funds for a minimum period of time or would be required to pay the full 2.0% (200 bps) Short-Term Trading Fee to the funds if they redeemed out of the fund family.

Defendants' Failures to Meet Industry Standards	**Pertinent facts**
Agreements were not disclosed and preferential treatment was given to certain institutional investors	• Switch Agreements were not publicly disclosed and this preferential treatment was not available to all investors in a fund. • No reasonable investor would have knowingly invested in a fund that allowed Switch Agreements that permitted market timing by institutional investors. • Discounts of 98% to 99% from the disclosed Short-Term Trading Fees were given for switching under these agreements. • 5 round trips were permitted per fund per month, which facilitated an extremely short permitted hold period (1 to 5 days), without a full Short-Term Trading Fee being applied, much shorter than the 60 to 90-day period specified in the simplified prospectus and AIF.
There was little to no effective monitoring of the accounts with Switch Agreements	• Monitoring at CI was done by sales and marketing personnel instead of by compliance personnel. • Despite the offensive frequent short-term trading activity, no action was ever taken to curtail or end the abusive activity at either CI or AIC before regulatory investigations began in September 2003.
Numerous red flags were ignored	• From early on, having a major offshore Bermuda investor did not prompt further investigation. • Multiple warning signs were ignored including: the location, identical trading patterns, and even the actual name of the hedge fund on the Switch Agreement. If followed up on, CI and AIC would have identified that the Bermuda entity was a hedge fund (Trout/Tewksbury) known for sophisticated arbitrage short-term trading strategies. • Extremely frequent and high dollar value trading patterns in Global, Europe and Asia Funds were not followed up on. • Profits generated in the Accounts at Issue in the context of negative returns for the funds were ignored.

Defendants' Failures to Meet Industry Standards	Pertinent facts
	• Market timing activity escalated in 2002 and early 2003, when other fund companies had already shut down this type of trading activity. • AGF on July 3, 2003 issued an unusual press release titled: "*AGF Takes Steps to Protect Longer-Term Investors: Will Enforce Rights to Apply Fees to Highly Active, High-Volume Traders*." This was a public acknowledgement by a direct and closely followed competitor of the need to protect long-term investors from the harm inflicted by highly active, high-volume traders. Even this did not cause CI and AIC to immediately take similar action. • Switch Agreements were renewed in 2001 and 2002, and the relationships at CI and AIC with abusive traders remained in place until September 2003. By this time, virtually all other Fund Managers had terminated these relationships.

177. Based on the foregoing, it cannot reasonably be argued that Switch Agreements entered into by CI and AIC offered any meaningful protection to the funds or fund investors; on the contrary:

a) These agreements were extremely harmful and detrimental to CI and AIC fund performance over the entire duration of the Class Period.

b) CI and AIC placed themselves in a conflict of interest by entering into Switch Agreements and put their own self-interest ahead of the funds.

c) CI and AIC did not treat all investors in their funds equally. Through secret arrangements, one class of investors was conferred a benefit and afforded special treatment that was not accessible to other investors.

d) Entering into Switch Agreements and then failing to exercise appropriate diligence in monitoring the activity of known offshore hedge fund investors suggest CI and AIC were willingly blind to the potential harm inflicted on the funds.

e) Numerous red flags ought to have prompted further investigation. The gains made by aggressive traders (market timers) taking advantage of pricing inefficiencies in

Global, Europe and Asia funds at the expense of other investors should have been evident to CI and AIC just as it had been to other firms.

178. Many other prudent and diligent fund companies in the Class Period refused to enter into Switch Agreements. They were acting in the interests of their long-term investors and acting in accordance with the industry standards of prudent Fund Managers.

X. Short-term Trading Fees per CI and AIC Simplified Prospectus and AIF

A. Review of CI Funds Disclosure and Collection of Short-Term Trading Fees

179. As noted in the definitions in Appendix I, under applicable securities requirements (NI 81-101), the AIF is filed concurrently each year with the funds' annual renewal of its simplified prospectus. The AIF is incorporated by reference and forms part of the full, true and plain disclosure in the simplified prospectus. Typically, information in the AIF is intended to be supplemental disclosure to the simplified prospectus and comprehensible on its own as an independent document.

180. The table below summarizes the disclosure in the CI Funds' simplified prospectuses and AIFs from July 17, 2000 until September 30, 2003, representing a majority of the Class Period and the period of greatest market timing activity. As shown in the table, there was a significant inconsistency between the two disclosures in respect of the amount of Short-Term Trading Fees to be collected.

181. **CI Disclosure - July 17, 2000 to September 30, 2003**[46]

CI Simplified Prospectus	**CI Annual Information Form**
Dated July 17, 2000, July 31, 2001, August 28, 2002 and July 15, 2003	Dated July 17, 2000, July 31, 2001, August 28, 2002 and July 15, 2003

[46] Relevant extracts from CI and AIC Simplified Prospectuses and AIFs, attached as **Appendix XVI**.

Short-term trading fee	***Short-term trading fee***
Frequent trading can hurt a fund's performance. It forces the fund to keep higher levels of cash in its portfolio than would otherwise be needed. It can also increase the fund's transaction costs. To discourage frequent trading, we may charge you a short-term trading ***fee of up to 2%*** [47] *of the* ***total amount you bought*** [48]*, if you sell or transfer your units or shares within 60 days of buying them. This fee does not apply to the C.I. Money Market Fund or the C.I. US Money Market Fund.*	*To discourage frequent trading, we may charge a short-term trading fee if you sell, transfer or convert any units or shares within 60 days of buying them.* ***The fee is 2%*** [49] *of the* ***value of the units or shares traded*** [50]*. We will deduct the fee from the amount you sell, transfer or convert and* ***pay it to the fund*** [51] *from which you sold, transferred or converted your units or shares. The fee does not apply to CI Money Market Fund or CI US Money Market Fund.*

(bolding and underlining added for emphasis and to highlight differences)

182. (…).

183. (…).

184. Contrary to the disclosure in CI's simplified prospectus, its AIF states that when this fee is to be charged, "The fee is 2%[52] of the value of the units or shares traded." It does not contain the up to 2% language contained in the simplified prospectus. The AIF also includes full disclosure details of how the Short-Term Trading Fee is deducted and how it is to be paid to the fund, which is not disclosed in the CI simplified prospectus.

185. (…).

186. (…).

187. (…).

[47] Underlined in the original version of this report.
[48] Underlined in the original version of this report.
[49] Underlined in the original version of this report.
[50] Underlined in the original version of this report.
[51] Underlined in the original version of this report.
[52] Underlined in the original version of this report.

188. This discrepancy regarding the Short-Term Trading Fee remained in place uncorrected for four consecutive annual prospectus renewal periods. This is also noteworthy as these were the years with the most active frequent trading activity by market timers.

189. According to the CI Settlement Agreement with the OSC, CI collected and paid approximately $9.4 million in Short-Term Trading Fees to the CI funds from Market Timing Traders operating under the Switch Agreements. This was based on Short-Term Trading Fees of 0.03% or 0.04% as set out in the Switch Agreements or approximately 3/200ths or 4/200ths of the 2.0% fee.

190. Based on the $32.7 billion in total frequent short-term trading by Market Timing Traders as shown in Section IV of this report, CI grossly underpaid the amount of fees owed to the funds. Instead of the $9.4 million of the Short-Term Trading Fees collected by CI and paid to the Funds, CI ought to instead have collected and paid $654 million (2% of $32.7 billion) in fees to the CI Funds based on the 2% disclosure in the AIF**.**

191. CI could easily have avoided this issue by reviewing and updating the simplified prospectus and AIF to make the disclosures consistent as any prudent manager would do or to more accurately fully disclose that they were only charging 0.03% to 0.04% in Short-Term Trading Fees to certain large hedge fund and institutional investors with whom they had entered into Switch Agreements.

192. Even in the unlikely event that the existing simplified prospectus were deemed to overrule the AIF disclosure, it is highly questionable whether fees of 0.03% or 0.04% are even supportable under this disclosure. Despite the "up to 2%" language in the simplified prospectus, it is inconceivable that a prudent reader would expect Short-Term Trading Fees of such a small

fraction as 0.03% or 0.04% to compensate for the volume and frequency of the type of harmful short-term trading activity taking place under Switch Agreements.

193. While not as significant, it is also worth highlighting another inconsistency in that the simplified prospectus disclosed that the short-term trading fee would be based on the original investment cost while the AIF during the same four-year period disclosed that the fee would be calculated based on the value traded.

194. Discrepancies between the simplified prospectus and AIF are highly atypical in the mutual fund industry. The ones noted for CI are indicative of an overall carelessness in how CI approached its disclosure and compliance obligations related to Short-Term Trading Fees payable to the funds. In my experience, Fund Managers are never so careless with fees that instead belong to the Fund Manager.

B. Review of AIC Funds Disclosure and Collection of Short-Term Trading Fees

195. AIC in its Switch Agreements charged market timers 0.02% (2 bps) for switches between funds instead of 2% (200 bps). Like CI, this arrangement was never specifically disclosed in the AIC fund simplified prospectus or AIF.

196. While AIC did not have an inconsistency between its simplified prospectus and AIF, it does not appear that AIC collected the correct fee from market timers based on the disclosure in the AIC trust funds' simplified prospectus relevant for the AIC Funds at Issue. [53]

197. From June 30, 1999 until September 30, 2003, the following disclosures existed in the applicable AIC trust funds' simplified prospectus and AIF.

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[53] There were two separate simplified prospectuses throughout the Class Period for AIC funds that were trusts and those that were corporations. However, since AIC Corporate Funds are <u>not</u> included in the Funds at Issue, such disclosure is not relevant here.

198. **AIC Trust Funds Disclosure - June 30, 1999 to September 30, 2003**[54]

AIC Simplified Prospectus Dated June 30, 1999, August 16, 2000, August 23, 2001, August 21, 2002 and July 24, 2003	**AIC Annual Information Form** Dated June 30, 1999, August 16, 2000, August 23, 2001, August 21, 2002 and July 24, 2003
Short-term trading fee *You may be charged a short-term trading fee if you redeem your Mutual Fund Units or Class F Units (other than Units of the Money Market Funds) within ninety days of purchase and you paid a front end sales charge commission of less than 2%. The fee equals the amount necessary to increase the commission you paid to 2% of the purchase price of the units redeemed.* [55] *This fee is paid to the Fund.*	Not applicable each year

(Underlying added for emphasis)

199. As per the AIC Settlement Agreement with the OSC, AIC collected and paid approximately $0.5 million to the AIC Funds from Market Timing Traders operating under the Switch Agreements. This was based on fees of 0.02% as set out in the applicable Switch Agreements.

200. However, based on the above disclosure in the AIC Trust simplified prospectus, the required fee to be collected from market timers and paid to the funds should be the difference between 2% and the front-end commission. This language did not provide discretion to charge a lesser amount once a fee was to be charged. Since typically no front-end sales commission was charged to market timers, AIC also appeared to have substantially undercharged the required fees paid to the AIC Funds.

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[54] Relevant extracts from CI and AIC Simplified Prospectuses and AIFs, attached as Appendix XVI.

[55] Underlined in the original version of this report.

201. Based on the $11 billion in frequent short-term trading as shown in Section IV of this report, AIC also grossly underpaid the amount of fees owed to the funds. Instead of the $0.5 million of the Short-Term Trading Fees collected by AIC and paid to the Funds, AIC ought to instead have collected and paid $220 million (2% of $11 billion) in fees to the AIC Funds based on the disclosure in the simplified prospectus for the AIC Funds at Issue.

C. Summary of CI and AIC Disclosure and Collection

202. Given the high dollar value and volume of trading that occurred under these Switch Agreements, industry standards would suggest that the simplified prospectuses for CI and AIC ought to have included full disclosure related to such arrangements (…).

203. It is also worth noting as well that the discretion envisioned by this type of disclosure to not charge Short-term Trading Fees was generally intended for one-off situations where investors had a legitimate unanticipated or emergency need for cash within the applicable 90-day time frame. It was not intended for widespread and systematic frequent short-term trading activity by large institutional investors such as hedge funds, and did not contemplate such drastic reductions of the stated 2% figure.

XI. Conclusion

204. Based on my review of all of the pertinent facts, disclosures and other material related to this Action that were provided to me, including detailed trading activity in the Accounts at Issue and also having the benefit of having completing an earlier report and testifying as an expert witness in the parallel Ontario action, I remain firmly of the opinion that the defendants failed to fulfil the duties and responsibilities of prudent Fund Managers in Canada in allowing or failing to prevent frequent short-term market timing trading activity in the Funds at Issue during the Class Period, which caused substantial harm to said funds and fund investors.

Signed: ______________________ Date: February 9, 2024
Samuel T. London

Appendices and Schedules

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Appendix I
Key Definitions

- **dilution**
  Dilution refers to the diminishment in value to long-term fund investors resulting from frequent short-term trading market timers purchasing or redeeming fund units that include securities priced with stale values in order to earn arbitrage profits for themselves. The gain realized by market timers at purchase (switch-in) and at redemption (switch-out) dilutes what would otherwise have been additional value accruing to all other investors remaining in the fund. Dilution can be measured by taking the percentage difference between the fund's stale price and current market value multiplied by the amount switched-in or switched-out.

- **frequent short-term trading activity**
  This refers to the rapid trading in and out of mutual funds through switching activity (also known as transfers in and transfers out) or through frequent purchases and redemptions of a fund.

- **Fund Manager(s)**
  A fund manager is the company responsible for managing the overall business, operations and affairs of a mutual fund or fund family. This includes, for example, providing or arranging professional fund portfolio management, accounting, and administration services.

- **hedge fund**
  A hedge fund is a type of investment fund that is typically open only to accredited or institutional investors, and which is managed aggressively and often uses leverage, derivatives, and other sophisticated investment strategies to generate higher returns. Unlike mutual funds, hedge funds are not typically subject to the same regulations, and may have greater flexibility in their investment strategies. Hedge funds may use arbitrage techniques as an important part of their overall investment strategies. Arbitrage involves taking advantage of price discrepancies in order to make a profit with little or no risk.

- **market timer**
  An institution or individual that engages in frequent short-term trading activity using specific strategies intended to generate profits by exploiting the fact that (during the Class Period), European, Asian, International and Global equity mutual funds included "stale value" securities when the net asset value ("NAV") of such equity mutual funds were priced at the end of the trading day in North America. Market timers in this context are also sometimes referred to as time-zone arbitrageurs.

- **market timing**
  The frequent short-term trading activity of market timers is referred to as market timing in this report.

- **Mutual fund(s) or fund(s)**
  A mutual fund or fund referred to in this report is a type of investment fund that pools money from multiple investors to purchase a diversified portfolio of securities, such as stocks, bonds or money market instruments. A mutual fund is managed by a professional investment manager who makes investment decisions on behalf of the investors. Mutual funds may be units of a trust or shares of a corporation that are redeemable on demand by investors for an amount reflecting a proportionate interest of the mutual fund's net assets. Funds' units or shares are offered continuously under a simplified prospectus and AIF and are not listed on a stock exchange. Mutual funds in Canada are regulated by Canadian securities regulators.

- **net asset value ("NAV")**
  Net asset value or NAV is the value of all of the assets held by a Canadian open-end mutual fund, including securities, cash and equivalents, minus any liabilities. NAV per unit or per share refers to NAV divided by the number of units or shares outstanding. NAV is calculated once daily at the end of the trading day in North America. All purchases and redemptions, including switches-in and switches-out, take place based on the NAV as determined by the Fund Manager.

- **redemption**
  A redemption (when not part of a switch or transfer transaction) refers to selling (redeeming) a mutual fund for cash proceeds. When a redemption occurs the monies leave the fund family completely and are no longer included in the fund manager's assets under management upon which it earns fees.

- **Short-Term Trading Fee(s)**
  This is a fee paid directly to the mutual fund and not the fund manager. It is payable by investors who only hold mutual funds for short periods of time (typically less than 30 to 90 days during the Class Period) before switching, transferring or redeeming. The details on how and when it is charged and payable vary by fund complex and are disclosed in the simplified prospectus and AIF for each applicable fund complex.

  The Short-Term Trading Fee is intended to discourage frequent short-term trading activity and, if this activity occurs, to protect funds from the additional costs and harmful effects of investors rapidly trading in and out of a fund. As a result, this fee, when applicable, represents an asset of the fund.

  The Short-Term Trading Fee is separate and distinct from all other fees and charges paid by a fund investor related to the purchase or sale of a fund. The amount of this fee is sometimes specified as a fixed percentage and sometimes a maximum percentage, and generally ranges from 1% to 2% of the amount switched, transferred or redeemed.

- **simplified prospectus and annual information form ("AIF")**
  In order to sell mutual funds to the public during the Class Period, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) and, prior to February 1, 2000, National Policy No. 36, required a conventional mutual fund to prepare and file:

  - a simplified prospectus, and
  - an annual information form ("AIF")

  Information on the disclosure required in a simplified prospectus and AIF was prescribed under NI 81-101 and NP 36 during the Class Period. NI 81-101 also sets out other requirements for mutual fund prospectuses, including requirements regarding the filing of prospectus amendments, the incorporation by reference of specified documents, audit and review requirements for financial statements incorporated by reference and document delivery to investors.

  A mutual fund can distribute its securities under its simplified prospectus and AIF for 12 months. After 12 months, the simplified prospectus and AIF lapse and must be renewed, unless a lapse date extension is received.

  The AIF is incorporated by reference and forms part of the full, true and plain disclosure in the simplified prospectus. Typically, information in the AIF is intended to be supplemental disclosure to the simplified prospectus and comprehensible on its own as an independent document.

- **stale value(s) (or stale price(s))**
  Stale values can occur in mutual fund portfolios when the prices of securities upon which a mutual fund's NAV is based do not take account of the most recently available market information and do not accurately reflect their current market values.

- **switch or transfer (switching or transferring between funds)**
  A switch or transfer is the redemption of units or shares of a fund where the proceeds are directly used to purchase units or shares of another fund within the same fund complex on the same business day. A switch-in or transfer-in is the purchase of units or shares of the fund and a switch-out or transfer-out is the redemption of units or shares of the fund. A switch-in (or transfer-in) to a fund followed shortly thereafter by a switch-out (or transfer-out) from a fund is sometimes referred to herein as a round-trip.

- **Switch Agreement**
  A written (or verbal) confidential arrangement made between a fund manager and investor during the Class Period that expressly permitted frequent short-term trading activity (e.g., 4 or 5 switches or "round-trips" per month) by those investors within a fund complex under specified terms and conditions.

  In all these agreements, the frequent trader received a substantial reduction (typically a discount of 98% to 99%) of the specified Short-Term Trading Fee when frequent switch or transfer activity took place, but with no discount if redemptions out of the fund family took place. Switch Agreements no longer exist as the last ones in Canada were terminated in September 2003 after investigations into market timing became public in the U.S.

Appendix II
Material Reviewed

I have reviewed and considered, among other things, the following in rendering my opinion:

- The pleadings in the Class Action.
- Documents and affidavits filed by the parties in various motions heard in the Class Action.
- Certain documents produced in the discovery process.
- Reports prepared by Raymond Chabot Grand Thornton (RCGT) related to this Class Action.
- Account trading records of abnormally active clients of CI and AIC during the Class Period.
- The transcripts of the examinations for discovery.
- Publicly filed simplified prospectuses, AIFs, financial statements, declarations of trusts and management agreements of the CI Funds and AIC Funds from the Class Period.
- Publicly filed simplified prospectuses, annual information forms, financial statements of select Canadian Fund companies from the Class Period including Fidelity, RBC Funds, Mackenzie, Talvest, CIBC Funds, TD Funds and AIM Funds.
- The Ontario Securities Commission Report on Mutual Fund Trading Practices Probe dated March 2005.
- IDA Settlement Agreement - In The Matter Of A Discipline Hearing Pursuant To By-Law 20 Of The Investment Dealers Association Of Canada Re: BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., TD Waterhouse (Canada) Inc. dated December 16, 2004.
- MFDA Settlement Agreement with Investors Group Financial Services Inc. dated December 16, 2004.
- Regulatory Strategies for the Mid-90s. Recommendations for Regulating Investment Funds in Canada" prepared by Glorianne Stromberg dated January 1995.
- IFIC Bulletin Number 23, March 2002, Fair Valuing Portfolio Securities.
- The pleadings, decisions and publicly filed documents rendered in the parallel market timing Ontario class action against CI and AIC.
- CIBC Settlement Agreement in this Class Action.
- Globe and Mail in-depth investigative article dated June 21, 2004: "Market Timing, Select few reap unfair gain".
- Best Practices Standards on Anti Market Timing and Associated Issues for CIS, dated October 2005.
- Fortune Magazine, in depth article, dated April 19, 2004: "The Secrets of Eddie Stern If you think you know how bad the mutual fund scandal is, you're wrong. It's worse."
- An extensive variety of other news articles and press releases related to the Class Period.

Appendix III

SAMUEL T. LONDON, CPA, CA, MBA

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PROFILE

A seasoned financial executive in the mutual fund and financial services sector with more than 30 years of experience with expertise in financing, investment funds, mergers and acquisitions, financial reporting, due diligence, regulatory compliance, negotiations, investment product development, corporate governance, investment management and tax planning.

PROFESSIONAL EXPERIENCE

President and Founder **May 2002 – Present**
CHARTVIEW INVESTMENTS INC., *Toronto, Ontario*
www.chartview.ca

Chartview is a boutique advisory firm that provides a wide range of consulting, advisory and litigation support services. Advisory services are primarily to wealth management and investment fund management companies contemplating a range of strategic initiatives, including acquisitions and divestitures, strategic partnerships and new investment product initiatives. Services include due diligence, strategic review, contract negotiations, risk analysis, financial analysis, litigation support, regulatory review, contract review and valuation services. Client base primarily mutual fund and other financial services firms.

Senior Vice President, Corporate Development **October 2000 – May 2002**
MACKENZIE FINANCIAL CORPORATION, *Toronto, Ontario*

Senior Vice President & Chief Financial Officer **September 1998 – May 2002**
M.R.S. TRUST COMPANY, M.R.S. SECURITIES SERVICES INC. AND MULTIPLE RETIREMENT SERVICE INC. *Toronto, Ontario*
(Wholly-owned subsidiaries of Mackenzie Financial Corporation)

Senior finance officer for three financial services companies combined with corporate development role at Mackenzie. Provided assistance in wide range of issues affecting Mackenzie, the Mackenzie Funds and the MRS Group of Companies (an OSFI regulated trust company, an IIROC member firm and an MFDA member firm). Involved in mergers and acquisitions, corporate development and new investment product initiatives at Mackenzie. Served on MRS Executive Committee. Participated in strategic planning, annual budgeting and business planning. Managed 15-person accounting and finance department and trustee services group. Responsible for completion of financial reports, regulatory filings and audited financial statements. Served on investment committee and had various compliance functions. M.R.S. Trust acted as trustee to the Keystone mutual funds and was also responsible for all sales and marketing activity.

Director, Corporate Finance **June 1990 – August 1998**
GLOBAL STRATEGY FINANCIAL INC., *Toronto, Ontario*
(Mutual fund manager specializing in global mutual funds – Associated with the N.M. Rothschild group of companies)

Member of senior management team with responsibilities for corporate finance, tax matters, oversight and compliance for fund manager, mutual fund trusts and mutual fund corporations. Responsibilities included

financing deferred sales commissions, fund and corporate tax compliance and planning, financial reporting, regulatory compliance, strategic planning, budgeting and business planning. Also responsible for assisting in drafting and clearing prospectuses and AIFs, offering memorandum and information circulars for numerous mutual funds and limited partnership offerings. Involved in all new fund launches, fund mergers, fee decisions and fund reorganization activities.

Tax Manager **September 1985 – June 1989**

ERNST & YOUNG, *Toronto, Ontario*

- Consultative role with corporate clients
- Structured detailed corporate tax planning strategies
- Reviewed corporate, trust and personal income tax returns
- Planned and executed audited files

ACADEMIC BACKGROUND

Master of Business Administration (Major: Finance) Dean's List 1990
Rotman School of Management/University of Toronto

CPA In-depth Tax Course 1989
Chartered Professional Accountants of Canada/CICA

CPA, CA 1987
Chartered Professional Accountants of Ontario/Institute of Chartered Accountants of Ontario

Bachelor of Commerce (graduated with High Distinction) 1985
University of Toronto

OTHER ACHIEVEMENTS AND DIRECTORSHIPS

- Past member of the Independent Review Committee for Hartford Mutual Funds (2007-2010)
- Past member of Investment Funds Industry of Canada - Tax Steering Committee (1992-2002)
- Past Treasurer and member of Board of Directors of Toronto division of Make-A-Wish Foundation
- Past member of Board of Directors of M.R.S. Securities Services Inc., Multiple Retirement Services Inc. and Winfund Software Corp.
- Past member of Investment Funds Industry of Canada - Tax Steering Committee
- Partners, Directors and Senior Officers Course (PDO)
- Canadian Securities Course with Honours
- Corporate Finance and Securities Law Course (U. of T. Faculty of Law)
- University of Toronto Open (MBA) Fellowship
- Loewen, Ondaattje, McCutcheon & Company Limited, Prize in Finance