CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N° : 500-06-000435-087

SUPERIOR COURT
(Class Action Division)

SHEILA CALDER

Plaintiff

v.

ROYAL BANK OF CANADA

and

RBC CAPITAL MARKETS CORPORATION

Defendants

and

RSM RICHTER INC. *et al.*

Mis en cause

DEFENDANTS' PLEA

IN SUPPORT OF THEIR PLEA, DEFENDANTS ROYAL BANK OF CANADA AND RBC CAPITAL MARKETS CORPORATION (HEREINAFTER COLLECTIVELY the "RBC Parties") RESPECTFULLY SUBMIT AS FOLLOWS:

1. The RBC Parties admit the allegations contained in paragraph 1 of the Motion to Institute Proceedings (the **"Motion"**);

2. The RBC Parties admit the allegations contained in paragraph 2 of the Motion as regards the conclusions sought, but deny that they are well-founded;

3. The RBC Parties admit the allegations contained in paragraph 3 of the Motion;

4. The RBC Parties deny the allegations contained in paragraph 4 of the Motion;

5. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 5 and 6 of the Motion;

6. The RBC Parties deny the allegations contained in paragraph 7 of the Motion;

7. The RBC Parties can neither admit nor deny the allegations contained in paragraph 8 of the Motion;

8. The RBC Parties deny the allegations contained in paragraph 9 of the Motion;

9. The RBC Parties can neither admit nor deny the allegations contained in paragraph 10 of the Motion;

10. As regards paragraph 11 of the Motion, the RBC Parties admit that the Plaintiff is seeking to establish the veracity of the allegations at points a) to d), but deny the veracity of these allegations;

11. As regards paragraph 12 of the Motion, the RBC Parties admit that the Plaintiff is asking the Court to resolve the issues listed, but submit that the answer to every question is no;

12. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 13 to 29 of the Motion;

13. The RBC Parties can neither admit nor deny the allegations contained in paragraph 30 of the Motion, but deny any qualification of the RBC SOHO option as a loan of any kind;

14. The RBC Parties can neither admit nor deny the allegations contained in paragraph 31 of the Motion;

15. The RBC Parties deny the allegations contained in paragraph 32 of the Motion;

16. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 33 to 41 of the Motion;

17. The RBC Parties refer to Exhibit P-25 and deny any allegation contained in paragraph 42 of the Motion that is inconsistent therewith;

18. The RBC Parties deny the allegations contained in paragraphs 43 to 45 of the Motion;

19. The RBC Parties can neither admit nor deny the allegations contained in paragraph 46 of the Motion;

20. The RBC Parties deny the allegations contained in paragraphs 47 to 49 of the Motion;

21. The RBC Parties can neither admit nor deny the allegations contained in paragraph 50 of the Motion;

22. The RBC Parties can neither admit nor deny the allegations contained in paragraph 51 of the Motion;

23. The RBC Parties deny the allegations contained in paragraph 52 of the Motion;

24. The RBC Parties refer to Exhibit P-27 and deny any allegation contained in paragraph 53 of the Motion that is inconsistent therewith;

25. The RBC Parties refer to Exhibits P-28, P-29 and P-30 and deny any allegation contained in paragraph 54 of the Motion that is inconsistent therewith;

26. The RBC Parties refer to Exhibit P-30 and deny any allegation contained in paragraph 55 of the Motion that is inconsistent therewith;

27. The RBC Parties refer to Exhibits P-29 and P-30 and deny any allegation contained in paragraph 56 of the Motion that is inconsistent therewith;

28. The RBC Parties refer to Exhibits P-31 and P-32 and deny any allegation contained in paragraph 57 of the Motion that is inconsistent therewith;

29. The RBC Parties can neither admit nor deny the allegations contained in paragraph 58 of the Motion;

30. The RBC Parties deny the allegations contained in paragraphs 59 to 61 of the Motion;

31. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 62 and 63 of the Motion;

32. The RBC Parties deny the allegations contained in paragraph 64 of the Motion;

33. The RBC Parties refer to Exhibit P-39 and deny any allegation contained in paragraph 65 of the Motion that is inconsistent therewith;

34. The RBC Parties refer to Exhibit P-40 and deny any allegation contained in paragraph 66 of the Motion that is inconsistent therewith;

35. The RBC Parties refer to Exhibit P-41 and deny any allegation contained in paragraph 67 of the Motion that is inconsistent therewith

36. The RBC Parties admit Exhibit P-42, but deny the remainder of paragraph 68 of the Motion;

37. The RBC Parties deny the allegations contained in paragraphs 69 to 72 of the Motion;

38. The RBC Parties refer to Exhibit P-44 and deny any allegation contained in paragraph 73 of the Motion that is inconsistent therewith, adding that Exhibit P-43 is a press release issued by Canadian Hedge Watch Inc., not RBC;

39. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 74 to 76 of the Motion;

40. The RBC Parties refer to Exhibit P-44 and deny any allegation contained in paragraphs 77 and 78 of the Motion that is inconsistent therewith;

41. The RBC Parties deny the allegations contained in paragraphs 79 to 84 of the Motion;

42. The RBC Parties deny, as drafted, the allegations contained in paragraph 85 of the Motion;

43. The RBC Parties deny the allegations contained in paragraph 86 of the Motion;

44. The RBC Parties can neither admit nor deny the allegations contained in paragraph 87 of the Motion;

45. The RBC Parties deny the allegations contained in paragraphs 88 to 96 of the Motion;

46. The RBC Parties refer to Exhibit P-47 and deny any allegation contained in paragraph 97 of the Motion that is inconsistent therewith;

47. The RBC Parties refer to Exhibits P-29 and P-47 and deny any allegation contained in paragraph 98 of the Motion that is inconsistent therewith;

48. The RBC Parties refer to Exhibits P-42 and P-47 and deny any allegation contained in paragraph 99 of the Motion that is inconsistent therewith;

49. The RBC Parties refer to Exhibit P-47 and deny any allegation contained in paragraph 100 of the Motion that is inconsistent therewith;

50. The RBC Parties deny the allegations contained in paragraph 101 of the Motion;

51. The RBC Parties refer to Exhibit P-47 and deny any allegation contained in paragraph 102 of the Motion that is inconsistent therewith;

52. The RBC Parties refer to Exhibit P-48 and deny any allegation contained in paragraph 103 of the Motion that is inconsistent therewith;

53. The RBC Parties deny the allegations contained in paragraph 104 of the Motion;

54. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 105 and 106 of the Motion;

55. The RBC Parties refer to Exhibit P-51 and deny any allegation contained in paragraphs 107 and 108 of the Motion that is inconsistent therewith;

56. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 109 and 110 of the Motion;

57. The RBC Parties deny the allegations contained in paragraphs 111 to 114 of the Motion;

58. The RBC Parties deny, as drafted, the allegations contained in paragraph 115 of the Motion;

59. The RBC Parties can neither admit nor deny the allegations contained in paragraphs 116 to 118 of the Motion;

60. The RBC Parties deny as drafted the allegations contained in paragraph 119 of the Motion;

61. The RBC Parties deny the allegations contained in paragraph 120 of the Motion;

62. The RBC Parties deny the allegations contained in paragraphs 121 and 122 of the Motion;

63. The RBC Parties can neither admit nor deny the allegations contained in paragraph 123 of the Motion, adding that Exhibit P-53 constitutes inadmissible hearsay;

64. The RBC Parties can neither admit nor deny the allegations contained in paragraph 124 of the Motion, adding that Exhibit P-53 constitutes inadmissible hearsay;

65. The RBC Parties deny the allegations contained in paragraphs 125 to 127 of the Motion;

AND IN FURTHER SUPPORT OF ITS PLEA, RBC ADDS THAT:

OVERVIEW

66. As appears from the Olympus Structure, Exhibit P-11, the RBC Parties' limited involvement with the Norshield structure is very far removed from Olympus United Funds Corporation ("**Olympus**"), the entity in which the class members invested.

67. As will be further detailed below, the only involvement the RBC Parties had with the Norshield structure is the following:

- Royal Bank of Canada ("**RBC**") entered into the SOHO Option (as defined below), which cannot be likened to a margin loan, with Mosaic Composite Ltd. ("**Mosaic**") and, eventually, Univest Multi-Strategy Fund II Ltd. ("**Univest II**");

- RBC issued the Deposit Notes to investors other than the class members and engaged Norshield Asset Management (Canada) Ltd. as basket manager and Olympus United Group Inc. as placement agent; and

- Globe-X Canadiana Limited ("**Globe-X**") had an account with RBC in the Bahamas and transferred US$15 million from that account to the account held by Norshield Mosaic Fund Limited at another bank. Neither company had any involvement with the SOHO Option.

68. None of the above constitutes a fault. RBC fulfilled all of its legal obligations in relation thereto, including having Mosaic and Univest II fill out questionnaires.

69. Given its limited involvement, in spite of its diligence, it was not possible for RBC to be aware of the alleged fraud.

70. The Class members were advised, through the Olympus offering memoranda, of the risks inherent in investing in Olympus. They assumed those risks, and those risks materialized. This is the cause of their alleged damages, which have absolutely nothing to do with RBC. Both the Olympus offering memoranda and the Deposit Notes clearly advised their readers that they could not rely on RBC's involvement with the Olympus Structure in their decision to invest in Olympus.

71. Not only are the class members going after entities that had nothing to do with their investments, but, in doing so, they are attempting to bypass all other creditors not only of

Olympus, but of all of the entities separating Olympus from the SOHO Option in the Olympus Structure. The only party who has standing to institute this type of action is RSM Richter Inc. ("**Richter**"), who examined the issue and chose not to sue.

72. Subsidiarilly, and without prejudice to the foregoing:

- the damages sought are artificially inflated and based on false representations made to the class members by an entity that has no relation to the RBC Parties;
- the actual damages allegedly suffered must be calculated on an individual basis and collective recovery is not possible; and
- any compensatory, punitive, recursory or other damages caused by or attributable to KPMG must be deducted.

CLARIFICATION OF THE FACTS

The Norshield structure

73. Plaintiff filed, as Exhibit P-11, a chart allegedly representing the interrelation between the four levels of Olympus investment structure (the "**Olympus Structure**"). Defendants can neither admit nor deny the accuracy of the Olympus Structure.

74. The class members are the Canadian retail investors referred to at the top level of the Olympus Structure.

75. The SOHO Option can be found at the bottom left of the Olympus Structure.

76. There are 4 levels, spanning from Canada, to Barbados, to the Bahamas, to the US, separating the class members from the SOHO Option.

77. While entities with similar names can be found on the Olympus Structure, Univest II is not mentioned therein, in spite of the link between Univest II and Mosaic described below.

78. With respect to the Deposit Notes, it should be mentioned that neither the basket manager, Norshield Asset Management (Canada) Ltd. nor the placement agent, Olympus United Group Inc. appear on the Olympus Structure.

The SOHO Option

a) The creation of the SOHO Option

79. On or about June 8, 1999, RBC Dominion Securities ("**RBCDS**"), as agent for RBC, entered into a letter agreement with respect to a structured call option transaction with an entity of the Norshield Financial Group, as appears from Exhibit P-25.

80. On or about June 29, 1999, Terri Engelman Rhoads filled out and signed a confidential client questionnaire for institutional clients requesting collateralized derivative facilities,

for Norshield Composite Limited, later known as Mosaic, as appears from Exhibit P-27 (the "**Mosaic Questionnaire**").

81. On July 30, 1999, RBC and Mosaic entered into an ISDA Master Agreement, as appears from Exhibit P-29 (the "**ISDA Master Agreement**").

82. The ISDA Master agreement governs the transactions to be entered into between RBC and Mosaic unless the documents or other confirming evidence (each a "**Confirmation**") provide otherwise.

83. On July 30, 1999, RBC (as seller) and Mosaic (as buyer) entered into the first Confirmation, Exhibit P-30 (the "**First Confirmation**") for a Call Option with a Premium of US$15 million and a Strike Price of US$85 million ("**NOR1**") (NOR1 and NOR2 (as defined below) will be collectively referred to as the "**SOHO Option**").

b) About Cash-Settled Index Call Options

84. The SOHO Option is an example of a derivative financial product known as a cash-settled index call option (a "**Call Option**"). A Call Option is a financial contract between two parties, the buyer (here, Mosaic and eventually Univest II) and the seller (here, RBC), wherein the buyer of the option has the right, but not the obligation, to buy an agreed quantity of an underlying equity asset (e.g. a stock, a bond or a basket of hedge funds) (the "**Index**") from the seller of the option at a certain time (the "**Expiration Date**") for a certain price (the "**Strike Price**"). The seller is obligated to sell the asset should the buyer so decide. The buyer pays an initial fee (the "**Premium**") for this right.

85. When the buyer pays the Premium upon creation of the Call Option, the seller does not "pocket" the fee. Instead, the seller contributes the Premium to the Index, as well as an additional amount, invested from the seller's own assets, equal to the Strike Price.

86. As such, at the outset, the Index is composed of the Premium plus the Strike Price. The Index is then invested and its value will fluctuate over time.

87. A cash-settled Call Option is one in which the seller is not ever required to physically deliver the underlying security, but instead ultimately pays the purchaser the difference between the value of the security and the Strike Price and Cumulative Time Decay (as defined below).

88. The buyer's profits can be unlimited, but its risks are limited to the Premium paid. The seller, RBC, on the other hand, risks losing as much as the Strike Price if the Index does not perform well and its profits are limited to the value of the Cumulative Time Decay.

c) Particulars of the SOHO Option

89. The terms of the First Confirmation demonstrate the functioning of the SOHO Option:

a) RBC was the seller and Mosaic was the buyer (Section 1).

b) The Index was to be comprised of brokerage accounts, investment vehicles and / or unallocated cash, initially as detailed in Annex 1 to the First Confirmation, but which

may change from time to time in accordance with Section 9 of the First Confirmation (Section 2).

c) Mosaic had the right, but not the obligation, to buy the Index from RBC at the Expiration Date, here July 30, 2014, subject to the earlier termination provisions, for a certain price (Sections 6 and 11).

d) Since the SOHO Option was cash settled, upon the Expiration Date, RBC would pay Mosaic an amount called the cash settlement amount (the "**Cash Settlement Amount**") (Section 7).

e) In consideration for this right, Mosaic paid an initial fee, the Premium, here US$15 million, on the trade date, here August 2, 1999 (Sections 1 and 3).

f) The Premium, along with a contribution made by RBC, the Strike Price, here US$85 million, would then be contributed to the Index, the initial valuation of which was equal to the notional amount, here US$100 million (representing the US$15 million Premium contributed by Mosaic and the US$85 million Strike Price contributed by RBC) (Sections 1, 3 and 5).

90. The Cash Settlement Amount payable to Mosaic on the Expiration Date is calculated as follows, but can never be less than zero (Section 7 of the First Confirmation):

> Cash Settlement Amount = Final Index Level – Strike Price – Cumulative Time Decay

91. At any time during the term of the Call Option, the Index level is calculated as follows (Sections 5 and 10 of the First Confirmation):

> Index Level = (Beginning Index Level (or notional amount) * (1 + percentage return)) – Advisory Fee

92. The final Index level is the Index level calculated in accordance with the above described formula on the Expiration Date (Sections 5 and 7 of the First Confirmation).

93. The cumulative time decay is an amount which is calculated on a monthly basis in accordance with the following formula and compounded (Section 4 of the First Confirmation) (the "**Cumulative Time Decay**"):

> Cumulative Time $Decay_T$ = Time $Decay_T$ + (Cumulative Time $Decay_{T-1}$ x (1 + (LIBOR + Spread) x Day Count / 360))

94. T is assigned a value for each calendar month, the first month of the term being T=1, the second T=2, and so forth until July 2014 where T=60 (Section 4 of the First Confirmation).

95. The Day Count is the number of days in the current month (Section 4 of the First Confirmation).

96. The Time Decay is calculated in accordance with the following formula:

Time $Decay_T$ = (Capital Basis x Spread / 12) + (Strike Price x LIBOR x Day Count / 360)

97. In the absence of any releveraging or deleveraging, the Capital Basis is essentially the same as the notional amount (Section 4 of the First Confirmation).

98. The Spread is determined based on the Capital Basis as follows (Section 4 of the First Confirmation):

Spread	**Capital Basis**
1.90%	Capital Basis < $145 million
1.80%	$145 million ≥ Capital Basis < $200 million
1.70%	Capital Basis ≥ $200 million

99. For example, using a LIBOR rate of 0.15%, the Cumulative Time Decay for the first three months of NOR 1 (August, September and October 1999) would be $169,312.50, $338,560.08 and $508,470.23. Using the October 1999 Cumulative Time Decay, the following table demonstrates the profits and losses to Mosaic and RBC depending on the performance of the Index if the option was unwound at that time:

Index Level	Cash Settlement Amount	Mosaic profit / (loss)	Amount returned to RBC	RBC profit / (loss)
$50 million	0	($15,000,000)	$50,000,000	($35,000,000)
$100 million	$14,491,529.77	($508,470.23)	$85,508,470.23	$508,470.23
$150 million	$64,491,529.77	$49,491,529.77	$85,508,470.23	$508,470.23
$200 million	$114,491,529.77	$99,491,529.77	$85,508,470.23	$508,470.23

100. The table above demonstrates that, for Mosaic, its profits can be unlimited but its risk is limited to the Premium paid. As for RBC, if the Index does not perform well, it risks losing as much as the Strike Price. However, as long as the Index level is higher than the Strike Price, RBC can make a profit up to the value of the Cumulative Time Decay.

101. As is evident from the above, the sale of a Call Option cannot be likened to a margin loan. Rather, a seller of a Call Option (here RBC) *invests* in the option, with all the risks that such an investment entails.

102. The notes to the financial statements of Olympus audited by KPMG LLP ("**KPMG**") include the following description of the accounting treatment of Call Options:

> Purchased options – The Company purchases call or put options for which premiums are paid. Such premiums are recorded as an asset and are subsequently adjusted to the fair value of the options purchased. Premiums paid for the options, which expire, are treated as realized losses. Premiums paid for options are exercised or closed, are offset against proceeds or amounts paid on the transaction to determine the realized gain or loss.[1]

103. Since Mosaic has no obligation to repay the Strike Price, but rather has a right to receive the Cash Settlement Amount on the expiry date, it is evident that a Call Option is not a loan, but an investment vehicle.

d) the evolution of the SOHO Option over time

104. On June 28, 2002, RBCDS, as agent for RBC, entered into a second Confirmation (the "**Second Confirmation**"), with Mosaic, regarding a second Call Option ("**NOR2**"), as appears from Exhibit P-39.

105. The strike price for NOR2 is US$28,333,333 and the premium is US$5 million, for a total notional amount of US$33,333,333 (Sections 1 and 3 of the Second Confirmation).

106. Over the years, NOR2 was amended a number of times in order to increase the amounts of the Premium, Strike Price and notional amount as follows (in US dollars), as appears from Exhibit P-40 and **Exhibit D-1** ***en liasse*** filed in support hereof:

Date	Premium	Strike Price	Notional Amount
September 30, 2002	$10 million	$56,666,666	$66,666,666
November 29, 2002	$13 million	$73,666,666	$86,666,666
December 31, 2002	$18 million	$102 million	$120 million
January 31, 2003	$23 million	$130,333,333	$153,333,333
April 30, 2003	$25,700,000	$145,633,333	$171,333,333
June 30, 2003	$30,700,000	$173,966,666	$204,666,666
July 31, 2003	$34,200,000	$193,799,999	$227,999,999
October 31, 2003	$36,800,000	$208,533,333	$245,333,333

[1] Exhibit P-15, p. 6, note 1 (ii).

107. On March 31, 2004, RBC and Mosaic entered into an amendment to NOR2 pursuant to which the economics of NOR1 and NOR2 were combined, leaving NOR2 with a Premium of US$53,300,000, a Strike Price of US$287,533,333 and a notional amount of US$353,125,333, as appears from Exhibit P-41.

108. On or about October 25, 2004, Terri Engelman Rhoads filled out the RBC Capital Markets Corporation and RBC due diligence questionnaire for entities on behalf of Univest II, of which he was a director, as appears from Exhibit P-48 (the "**Univest II Questionnaire**").

109. On or about November 10, 2004, Mosaic, Univest II and RBC entered into an assignment agreement pursuant to which Mosaic assigned all of its rights and obligations in NOR2 to Univest II, with RBC's consent, as appears from Exhibit P-47.

110. The answer provided to question 6 of the Univest II Questionnaire, regarding the ownership and structure of Univest II, demonstrates that, by transferring the rights and obligations in NOR2 to Univest II, Mosaic was not removing it from the Norshield corporate structure, since the non-voting shareholders of Univest II are Mosaic, Univest Convertible Arbitrage Fund Ltd. and Univest High Yield Fund Ltd. and the only voting shareholder of Univest II is Norshield Investment Partners Inc.

111. In fact, the letter dated March 4, 2005 from John Xanthoudakis to RBC clearly establishes that it is only John Xanthoudakis, the same person who controlled the Norshield Structure, who was authorized to request a cash withdrawal, as appears from a copy of the letter filed in support hereof as **Exhibit D-2**.

112. On or about November 19, 2004, RBC and Univest II agreed to terminate approximately 272 of the NOR2 options, effective November 30, 2004. The Cash Settlement Amount for said options was US$15 million. This amount was paid by RBC to Daiwa Securities Trust & Banking (Europe) Plc, London as requested by Univest II, as appears from the agreement dated November 19, 2004 filed in support hereof as **Exhibit D-3**.

113. The actual amount of NOR2 options terminated on November 30, 2004 was 261, leaving 739 options with a strike price of $147,444,282.35 (739 x 199,518.65) as appears from Exhibit P-42.

114. On or about February 22, 2005, RBC and Univest II entered into an amendment to NOR2 pursuant to which, *inter alia*, the notional amount would be US$220,385,191 for the remaining options, as appears from the amendment to NOR2 filed in support hereof as **Exhibit D-4**.

The Deposit Notes

115. On or about January 19, 2004, RBC issued the Olympus United Univest Principal Protected Hedge Fund Linked Deposit Notes, Series 1 (the "**Deposit Notes**"), as appears from the information statement dated January 19, 2004, Exhibit P-44 (the "**Information Statement**").

116. The overall objective of the Deposit Notes was (page iv of the Information Statement):

> The Notes are structured (i) to provide a return linked to the performance of a notional portfolio consisting generally of Hedge Funds (the "Basket") and (ii) to ensure the repayment of the Principal Amount on the Maturity Date.

117. As such, the Deposit Notes were a senior debt obligation of RBC which provide for the minimum repayment of the principal if held to maturity, as explained at page 16 of the presentation entitled "Alternative Assets Group Hedge Fund Structured Products and Services 2012" filed in support hereof as **Exhibit D-5**.

118. There is absolutely no indication whatsoever that any class members held any Deposit Notes. In addition, there is no indication that any holder of the Deposit Notes was not repaid in full or would have a claim to make against RBC in relation thereto.

119. The only alleged link between the Deposit Notes and the present action is that the basket manager for the Deposit Notes is an entity called Norshield Asset Management (Canada) Ltd. and the placement agent is an entity called Olympus United Group Inc. (page iv of the Information Statement).

120. It is clearly stated, in bold, at the top of the cover page of the Information Statement that its use for any purpose other than making a decision to invest in the Deposit Notes is strictly prohibited:

> This Information Statement has been prepared for the sole purpose of assisting potential investors in making an investment decision with respect to the Olympus United Univest Principal Protect Hedge Fund Linked Deposit Notes, Series I described herein (the "Notes"). The use of this Information Statement for any purpose other than to evaluate participation in the offering described herein is strictly prohibited.

121. Furthermore, pages i, 6 and 21 of the Information Statement add:

> Royal Bank of Canada makes no assurances, representations or warranties with respect to the accuracy, reliability or completeness of information obtained from or regarding the Basket Manager, the Placement Agent, the Trustee or the Registrar (each as defined herein).
>
> (...)
>
> Note Holders may not rely upon the Royal Bank in any way with respect to the selection of the Basket Manager, the Basket or any Basket Component. Royal Bank makes no representation as to the performance or risks of the Basket, or the suitability of the Basket Manager or its objectives or strategies generally, or any of the Note Holder's investment purposes or objectives. As a result, Note Holders must perform their own due diligence with respect to the Basket Manager.
>
> (...)
>
> *No Investment Advice or Other Advice.* (...) Royal Bank has not and will not recommend the Basket, the Basket Manager, or any of the Basket Components and has not evaluated whether the Basket, the Basket Manager, or the Basket Components are suitable or appropriate generally or for any potential investor in any respect.

/

RBC had no knowledge of the alleged fraud

122. The RBC Parties did not have access to the bank account information of the various Norshield accounts. The only information RBC had access to was information regarding the SOHO Option. However, since RBC kept a certain level of control over the SOHO Option, no funds were stolen therefrom.

123. Based on the first report of the joint liquidators of Gobe-X and Globe-X Management Limited, Globe-X had an account with RBC in the Bahamas and, on July 28, 1999, transferred US$15 million to the account held by Norshield Mosaic Fund Limited at the Royal Bank of Scotland, Nassau, a different bank unrelated to RBC, as appears from Exhibit P-01, paragraph 6.17.

124. In order to trace the funds in question, the joint liquidators had to review a memo dated July 22, 1999 from Steve Davis of Cardinal International to Robert Daviault of Norshield International, copied to Terri Engelman Rhoads of Norshield Asset Management International Ltd., Chicago and Stephen-Hancock of Cardinal International, pursuant to which Norshield Mosaic Fund Limited would have made an internal transfer to make the US$15 million available to Mosaic.

125. To date, RBC has not seen a copy of this memo or any information stemming from the Royal Bank of Scotland, or any other bank through which the funds in question would have transited, which confirms this assertion.

126. It follows that, even today, RBC has no knowledge of whether the US$15 million premium which Mosaic paid for NOR1 originated from Globe-X or not.

127. Contrary to Plaintiff's assertions, RBC did not know, and could not have known, what transactions occurred in the accounts of the various entities of the Norshield structures at various banks and was not and could not have been aware of the alleged fraud.

RBC DID NOT COMMIT A FAULT

Entering into the SOHO Option does not constitute a fault

128. Once the above described facts are clarified, it becomes apparent that the only alleged links between RBC and the Olympus Structure are the following:

- RBC entered into the SOHO Option, which is not a margin loan, with Mosaic and, eventually, Univest II;
- RBC issued the Deposit Notes and engaged Norshield Asset Management (Canada) Ltd. as basket manager and Olympus United Group Inc. as placement agent; and
- Globe-X had an account with RBC in the Bahamas and transferred US$15 million from that account to the account held by Norshield Mosaic Fund Limited at the Royal Bank of Scotland, Nassau.

129. RBC's involvement in all of the above does not constitute a fault.

130. Furthermore, by having Mosaic fill out the Mosaic Questionnaire and Univest II fill out the Univest II questionnaire, RBC fulfilled all of its legal obligations, as they existed at the relevant time.

131. RBC had no obligation to investigate the entire Olympus Structure prior to entering into the SOHO Option or at any other time.

132. The information available to RBC based on all of its above implications clearly demonstrates that RBC did not know, and could not have known, that any fraud was being perpetrated.

133. It follows that RBC did not commit any fault and the present class action should be dismissed on this basis alone.

THERE IS NO CAUSATION

134. When the members of the class invested in Olympus, they had no knowledge of RBC or the SOHO Option. The only documents provided to investors in Olympus were the Olympus offering memoranda, the first version of which is dated June 27, 1999, before the SOHO Option was entered into, Exhibit P-33.

135. These offering memoranda contain clear disclaimers regarding the risk assumed by investors in Olympus, such as the following contained in Exhibit P-33:

> There are certain risk factors inherent in the securities offered hereby. There is no guarantee that the Class Funds will earn any positive return in the short or long term. An investment in these securities is appropriate only for investors who have the capacity to absorb a loss of some or all of their investment.
>
> (...)
>
> (g) An investment in the Class Shares offered hereby is appropriate only for investors who have the capacity to absorb a loss of some or all of their investment and should be made only by investors who have a high degree of investment knowledge and sophistication and a high net worth.

136. The March 29, 2003 Offering Memorandum, Exhibit P-35, even explicitly states, in bold, in its first page "this is a risky investment."

137. In addition, Plaintiff's main reproach in this case is that the assets of Mosaic, which they seem to equate to the assets of Olympus in spite of the complex Olympus Structure dividing the two entities, were highly leveraged. However, not only would this not have been a fault, but this eventuality was clearly disclosed in the risk factors in the Olympus Offering Memoranda, as appears from the following extracts form Exhibit P-33:

> As private portfolios, hedge funds usually have a great degree of latitude in terms of investment mandate and may make use of leverage from time to time.
>
> (...)
>
> (d) First Horizon Bank may incur indebtedness secured by assets which comprise the Class Funds. The ability of First Horizon Bank to borrow will

> increase the risk to investors in the event that the securities purchased with the borrowed funds decline in value. There can be no assurance that such a strategy will enhance returns an in fact the strategy may reduce returns.
>
> (...)
>
> (m) There is a risk that the value of one or the other asset pools managed by First Horizon Bank could be reduced below zero ie., its liabilities may exceed its assets. However, those liabilities will nevertheless remain liabilities of First Horizon Bank and may have to be paid out of one or more of the other asset pools managed by First Horizon Bank, inclusive of the asset pools represented by the Class Funds. The likelihood of such an event happening is very low.

138. In fact, in the January 26, 2001 offering memorandum, Exhibit P-34, in addition to the above statements, many descriptions of investment strategies end with "Leverage is often used in connection with this strategy" or "Leverage may be utilized to enhance returns".

139. The March 29, 2003 Offering Memorandum, Exhibit P-35, adds:

> **Trading in Derivatives is Highly Leveraged**
>
> The low margin deposits normally required in trading (typically between 2% and 15% of the value of the derivatives purchased) permit an extremely high degree of leverage. Accordingly, at the time of the purchase, a percentage of the price of a derivative is deposited as margin and a percentage decrease in the price of the contract would result in a total loss of the margin deposit. Thus, like other leveraged investments, trading in a derivative may often result in losses in excess of the amount invested by the Funds.

140. As such, investors in Olympus knew what they were getting themselves into, assumed the risks and those risks materialized. This is the cause of their alleged damages, not any involvement of RBC with the Olympus Structure.

141. Furthermore, the offering memoranda specifically provided that investors should not rely on any information or representations found anywhere other than in the offering memoranda, such as the Deposit Notes, as appears from the following extract of Exhibit P-33:

> No person is authorized to give any information or to make any representation not contained in this Offering Memorandum and any information or representation, other than as contained in this Offering Memorandum, must not be relied upon.

142. As described in paragraphs 119, 120 and 121 above, the Deposit Notes contained the same type of disclaimers.

143. In fact, Plaintiff has admitted that she did not rely on any actions or representations by RBC in her decision to invest in Olympus, as appears from the following extract of Plaintiff's examination on discovery held on January 27th, 2011:

> 69Q- Now, you mentioned earlier that you had noted that when you invested in Olympus, you noticed the presence of KPMG as auditors of the funds.
>
> A- Yes.

> 70Q- Did you notice the name "Royal Bank" at any time in these documents?
>
> A- At that point, no.[2]

144. As such, not only were the class members explicitly warned that they could not rely on RBC's involvement in the Olympus Structure in making a decision to invest, but the facts indicate that, at least with respect to the Plaintiff, she did not, in fact, rely on this involvement.

STANDING

145. The damages sought by the class members herein essentially represent the loss of the value of their shares in Olympus.

146. An action to recover for the loss of value of a company's shares belongs to the company, not the shareholders.

147. On June 29, 2005, Richter was appointed as receiver, to all of the assets, undertakings and properties of Olympus and other entities included in the Norshield Financial Group, as appears from an order of the Ontario Superior Court of Justice (the "**Initial Order**") filed in support hereof as **Exhibit D-6** and from the judgment of the Superior Court of Québec, dated June 30, 2005 enforcing the Initial Order in Quebec filed in support hereof as **Exhibit D-7**.

148. The Initial Order provides, at paragraph 3, that Richter is empowered "to initiate, prosecute and continue the prosecution of any and all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings".

149. It follows that the only party who would have had standing to sue for the loss of the value of the shares of Olympus is Richter.

150. Richter took possession of the assets covered by the Initial Order for the purpose of maximizing the return for investors, including the members of the class.

151. In this regard, Richter considered the possibility of instituting proceedings against RBC in relation to the SOHO Option and choose not to do so, as appear from Exhibit P-05, paragraphs 31 and 121 and Exhibit P-06, paragraph 93.

152. In fact, Richter even released RBC from the claim raised by the class members herein, as appears from a copy of the release filed in support hereof as **Exhibit D-8**.

153. Furthermore, as explained above, there are numerous entities separating the SOHO Option from Olympus in the Olympus Structure.

154. For this reason, as explained by Richter in its sixth report, Exhibit P-06:

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[2] Examination on discovery of Sheila Calder by Sylvain Lussier, at p. 20.

> [A]ny claims of the Retail Investors would first be asserted against Olympus Funds, which in turn has claims against Olympus Bank, which in turn has claims against Olympus Univest, and which in turn has claims against Mosaic. [T]he ultimate distribution to the Retail Investors can only be determined once the liquidations of Mosaic, Olympus Univest and Olympus Bank have been completed (...) in accordance with the claims process to be established in each jurisdiction.[3]

155. In its newsletter dated July 31, 2006, filed in support hereof as **Exhibit D-9**, Richter added:

> only a portion of the identified assets will eventually flow back to the Investors in Olympus United Funds Corporation. Olympus United Funds Corporation is one investor amongst others in the Norshield investment structure. The realization proceeds will be distributed among all investors in various jurisdictions.

156. As such, by instituting the present class action, the class members are attempting to bypass the rights not only of the creditors of Olympus, but of the creditors of various entities spanning numerous jurisdictions in the Norshield investment structure.

157. For these reasons, the class members do not have standing to institute the present action, as the only party that would have standing to do so is Richter.

SUBSIDIARILLY, THE DAMAGES SOUGHT ARE ARTIFICIALLY INFLATED, COLLETIVE RECOVERY IS NOT POSSIBLE AND KPMG'S SHARE OF LIABILITY MUST BE DEDUCTED

158. As admitted by Plaintiff at paragraph 33 of the Motion, "the value reported to class members for their shares of Olympus United Funds' was founded on false representations, on no value".

159. It follows that, should this Honourable Court find the Defendants liable for the damages allegedly suffered by the class members, which the Defendants deny should be the case, the quantum of the damages in question cannot be based on false representations made by Norshield to the class members.

160. Instead, the class members must calculate the value of an investment of the same amount, at the same time, in an investment vehicle with the same level of risk in order to quantify the damages which they can claim herein.

161. Given the extremely high level of risk assumed by the class members, as described in paragraphs 135 to 139, there is no question that the quantum sought herein is grossly inflated.

162. Taking into consideration the date or dates of any investment(s) and/or redemption(s) by each class member, the calculation of the damages allegedly suffered by each class member must be done on an individual basis. As such, collective recovery is not possible.

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[3] Exhibit P-06 at par. 132-133. See also Exhibit P-07, par. 17.

163. On July 26, 2012, the Honourable Justice Marc De Wever rendered a judgment declaring, *inter alia*, the following:

> DECLARES that Plaintiff Sheila Calder and the members of the Class must, from now on, limit their claim towards RBC to the damages caused or attributable to RBC, including punitive damages, and, for more certainty, that they cannot claim from RBC any compensatory, punitive, recursory or other damages caused by or attributable to KPMG LLP and this, by any means;

164. Should this Honourable Court find the Defendants liable for the damages allegedly suffered by the class members, which the Defendants deny should be the case, any compensatory, punitive, recursory or other damages caused by or attributable to KPMG must be deducted.

FOR THESE REASONS, DEFENDANTS RESPECTFULLY REQUEST THIS HONOURABLE COURT TO:

GRANT Defendants' Plea;

DISMISS Plaintiff's action;

SUBSIDIARILY, ORDER the individual recovery of the damages;

THE WHOLE with costs, including experts' fees.

MONTREAL, August 14, 2015
(SGD) Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Defendants Royal Bank of Canada and RBC Capital Markets Corporation

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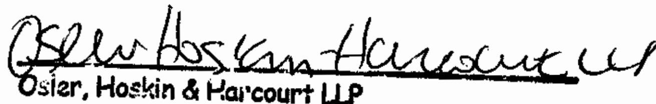

Osler, Hoskin & Harcourt LLP

No: **500-06-000435-087**

SUPERIOR COURT

DISTRICT OF MONTRÉAL

SHEILA CALDER,

Representative Plaintiff

v.

ROYAL BANK OF CANADA
and
RBC CAPITAL MARKETS CORPORATION

Defendants

DEFENDANTS' PLEA

COPY FOR FILE

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