

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-001130-216

SUPERIOR COURT
(Class Action)

DR. OMID ZAHEDI NIAKI, [REDACTED]
[REDACTED]

Applicant

-vs-

DESJARDINS TRUST INC., a legal person, duly constituted according to law, with its head office located at 1 Complexe Desjardins, South Tower, 14th floor, Montreal, Province of Quebec, H5B 1E4

-and-

DESJARDINS INVESTMENTS INC., a legal person, duly constituted according to law, with its head office located at 1 Complexe Desjardins, South Tower, 25th floor, Montreal, Province of Quebec, H5B 1B3

-and-

FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC, a legal person, duly constituted according to law, with its head office located at 100 rue des Commandeurs, Lévis, Province of Quebec, G6V 7N5

Respondents

**ORIGINATING APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Sections 574 and following C.C.P.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

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(Sections 574 and following C.C.P.)



A. SUMMARY

1. This Application shall be presented in the following manner:

- A. SUMMARY;
- B. GENERAL PRESENTATION;
- C. DEFINED TERMS;
- D. THE PARTIES;
- E. THE FACTS;
 - i. The *Desjardins Funds*;
 - ii. The Desjardins Trust Instruments;
 - iii. Actively Managed versus Passive Mutual Funds;
 - iv. The Alleged Misconduct;
 - v. Excessive Trading Costs;
 - vi. The Alleged Misrepresentations;
- F. THE APPLICANT'S PERSONAL CLAIMS;
- G. THE RESPONDENTS' LIABILITY;
 - i. Breach of obligations under the Desjardins Trust Instruments and the *CCQ*;
 - ii. Infringement of rights under the *Charter*;
 - iii. Breach of obligations under the *Securities Act* and the Other Canadian Securities Legislation;
- H. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION (art. 575 *CCP*);
 - i. The claims of the members of the Class raise identical, similar or related issues of law or fact (art. 575 (1) *CCP*);
 - ii. The facts alleged appear to justify the conclusions sought (art. 575 (2) *CCP*);
 - iii. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (art. 575 (3) *CCP*);
 - iv. The Applicant is in a position to properly represent the Class Members (art. 575 (4) *CCP*);
- I. JUDICIAL DISTRICT;

B. GENERAL PRESENTATION

2. Applicant Dr. Omid Zahedi Niaki (hereinafter referred to the "**Applicant**") wishes to institute a class action on behalf of the class of persons herein after described, namely:

"All persons, wherever they reside, who held or hold units of the *Desjardins*

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Funds at any time from January 17, 2005 to the date that this motion is authorized.

("Class" or "Class Members");

3. Each of the *Desjardins Funds* is a mutual fund, an investment fund, and a trust under Quebec law;
4. The action that the Applicant wishes to institute on behalf of the Class is an action for breach of trust, fiduciary, contractual, and extra-contractual obligations, breach of securities laws and infringement of sections 6 and 49 of the *Charter*;
5. The action arises out of the Respondents' receipt of Excess Management Fees which were paid, without any right, from the *Desjardins Funds* trust patrimonies contrary to the interests of the beneficiaries, including the Applicant, who held units of the *Desjardins Funds*;
6. The Applicant seeks restitution and general and punitive damages;
7. During the Class Period, Respondent Desjardins Trust was the trustee of each of the *Desjardins Funds*, which were managed first by Respondent Caisses Desjardins and, since January 1, 2012, by Respondent Desjardins Investments;
8. The Respondents represented to Class Members that each of the *Underlying Funds* was actively managed and charged the *Desjardins Funds* substantial fees for this purportedly active management;
9. In truth, in managing the *Underlying Funds* during the Class Period, the Respondents used an investment strategy that closely tracked the performance of the Benchmark of the *Underlying Funds*;
10. The Closet Indexing Strategy was not true active management, the aim of which is to outperform the declared benchmark. Because of the Closet Indexing Strategy, the *Underlying Funds* had no reasonable prospect of ever outperforming the Benchmark after accounting for management fees paid for purportedly "active" management;
11. The Closet Indexing Strategy and its associated risks were not disclosed to investors including the Class Members during the Class Period;
12. The performance (before management fees) of the *Underlying Funds* closely tracked the Benchmark and, as a result, the *Underlying Funds* did not outperform the Benchmark after accounting for management fees;
13. The Excess Management Fees and Excess Trading Costs associated with the Closet Indexing Strategy were incurred by the *Underlying Funds* and the *Portfolio Funds* which held the *Underlying Funds*;
14. Those fees and trading costs were unreasonable, improper, and unjustified;
15. Class Members suffered significant loss from the Respondents' use of the Closet Indexing Strategy and the Excess Management Fees and Excess Trading Costs that were paid from

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the patrimony of each of the *Desjardins Funds*;

C. DEFINED TERMS

16. In this Application for Authorization, and in addition to the terms defined elsewhere herein, capitalized terms have the meanings set out below:

- (a) "**2005 Management Agreement**" means the Amended and Restated Master Management Agreement between Desjardins Trust (as trustee) and Caisses Desjardins (as manager) dated January 17, 2005, as amended and supplemented from time to time;
- (b) "**2012 Management Agreement**" means the Amended and Restated Master Management Agreement between Desjardins Trust (as trustee) and Desjardins Investments (as manager) dated January 1, 2012, as amended and supplemented from time to time;
- (c) "**AMF**" means the Autorité des marchés financiers;
- (d) "**Benchmark**" means the S&P TSX Composite Index, which was the declared benchmark of each of the *Underlying Funds*;
- (e) "**Caisses Desjardins**" means the Fédération des Caisses Desjardins du Québec;
- (f) "**CCP**" means the *Code of Civil Procedure*, R.S.Q., c.C-25.01, as amended;
- (g) "**CCQ**" means the *Civil Code of Quebec*, S.Q. 1991, c. 64, as amended;
- (h) "**Charter**" means the *Charter of human rights and freedoms*, R.S.Q., c. C-12, as amended;
- (i) "**Class Period**" means from January 17, 2005 to the date on which the order authorizing this action is made;
- (j) "**Closet Indexing Strategy**" means an investment strategy designed to closely track the performance of the Benchmark;
- (k) "**Current DOT**" means the Amended and Restated Master Declaration of Trust of the *Desjardins Funds*, dated January 5, 2015, as amended and supplemented from time to time;
- (l) "**Desjardins Funds**" means, collectively, the *Underlying Funds* and the *Portfolio Funds*;
- (m) "**Desjardins Investments**" means Desjardins Investments Inc.;
- (n) "**Desjardins Trust**" means Desjardins Trust Inc.;

- (o) "**Desjardins Trust Instruments**" means, collectively, all declarations of trust or similar trust instruments that govern, have governed, or may govern the *Desjardins Funds*, including, without limitation, the Current DOT;
- (p) "**First Equity Fund**" means the *Desjardins Canadian Equity Fund*, the mutual fund trust constituted by a Desjardins Trust Instrument, including all series of units of that trust, which merged with the *Desjardins Fidelity True North Fund* on May 7, 2010 to continue as the *Growth Fund*;
- (q) "**Growth Fund**" means the *Desjardins Canadian Equity Growth Fund*, the mutual fund trust constituted by a Desjardins Trust Instrument, including all series of units of that trust, which merged with the *Second Equity Fund* on March 23, 2018 to continue as the *Second Equity Fund*;
- (r) "**ETF**" means exchange-traded fund;
- (s) "**Excess Management Fees**" means any unreasonable portion of the management fees that have been paid to the Respondents during the Class Period from the assets of the *Desjardins Funds*;
- (t) "**Excess Trading Costs**" means any unreasonable amount of trading costs incurred by the *Desjardins Funds*;
- (u) "**Excluded Persons**" means the Respondents, their past and present subsidiaries, affiliates, parent corporations, and their:
 - (i) officers, directors, legal representatives, predecessors, successors and assigns; and
 - (ii) employees having responsibility for managing the investment risk and performance reporting of the *Desjardins Funds*, and the past and present members of the independent review committees of the *Desjardins Funds*;
- (v) "**Form 81-101F1**" means Form 81-101F1 – Contents of Simplified Prospectus, as amended;
- (w) "**Form 81-101F2**" means Form 81-101F2 – Contents of Annual Information Form, as amended;
- (x) "**Management Agreements**" means, collectively, all management agreements pursuant to which Caisses Desjardins and Desjardins Investments act, acted, or may act as manager of any of the *Desjardins Funds* including, without limitation, the 2005 Management Agreement and the 2012 Management Agreement;
- (y) "**NI 81-101**" means *National Instrument 81-101 – Mutual Fund Prospectus Disclosure*, as amended;

- (z) "**NI 81-107**" means *National Instrument 81-107 – Independent Review Committee for Investment Funds*, as amended;
- (aa) "**Other Canadian Securities Legislation**" means the *Securities Act*, R.S.A. 2000, c. S-4; the *Securities Act*, R.S.B.C. 1996, c. 418; the *Securities Act*, C.C.S.M. c. S.50; the *Securities Act*, S.N.B. 2004, c. S-5.5; the *Securities Act*, R.S.N.L. 1990, c. S-13; the *Securities Act*, S.N.W.T. 2008, c. 10; the *Securities Act*, R.S.N.S. 1989, c. 418; the *Securities Act*, S. Nu. 2008, c. 12; *Securities Act*, R.S.O. 1990, c. S.5, as amended; the *Securities Act*, R.S.P.E.I. 1988, c. S-3.1; the *Securities Act*, 1988, S.S. 1988-89, c. S-42.2; and the *Securities Act*, S.Y. 2007, c. 16, all as amended;
- (bb) "**Portfolio Fund**" means any mutual fund trust constituted by a Desjardins Trust Instrument, including all series of units of that trust, that holds or held one or more units of the *First Equity Fund*, the *Growth Fund*, or the *Second Equity Fund* at any time during the Class Period including, but not limited to, the following:
- (i) *Melodia Moderate Growth Portfolio*
 - (ii) *Melodia Diversified Growth Portfolio*
 - (iii) *Melodia Balanced Growth Portfolio*
 - (iv) *Melodia Aggressive Growth Portfolio*
 - (v) *Melodia Maximum Growth Portfolio*
 - (vi) *Melodia Very Conservative Income Portfolio*
 - (vii) *Melodia Conservative Income Portfolio*
 - (viii) *Melodia Moderate Income Portfolio*
 - (ix) *Melodia Diversified Income Portfolio*
 - (x) *Chorus II Conservative Portfolio*
 - (xi) *Chorus II Balanced Income Portfolio*
 - (xii) *Chorus II Balanced Growth Portfolio*
 - (xiii) *Chorus II Growth Portfolio*
 - (xiv) *Chorus II High Growth Portfolio*
 - (xv) *Chorus II Dynamic Growth Portfolio*
 - (xvi) *Chorus II Aggressive Growth Portfolio*
 - (xvii) *Chorus II Maximum Growth Portfolio*
- (cc) "**Respondents**" means, collectively, Desjardins Trust, Desjardins Investments, and Caisses Desjardins;
- (dd) "**Second Equity Fund**" means the mutual fund trust constituted by the Current DOT, including all series of units of that trust, which was formed on September 30, 2016 and merged with the *Growth Fund* on March 23, 2018;
- (ee) "**Securities Act**" means the *Securities Act*, R.S.Q., c. V-1.1;
- (ff) "**Simplified Prospectus**" means a simplified prospectus as referred to in NI 81-101; and

(gg) "**Underlying Funds**" means, collectively, the *First Equity Fund*, the *Growth Fund*, and the *Second Equity Fund*.

D. THE PARTIES

17. The Applicant is the holder of 372,573 units of the *Chorus II Aggressive Growth Portfolio*, the whole as it appears from the print screen from the Accès-D platform, attached herewith as **Exhibit P-1**;
18. The Respondent Desjardins Trust is formerly a Quebec incorporated company which was granted continuance as a federally incorporated trust company on July 1, 2005;
19. Desjardins Trust is a wholly-owned subsidiary of Caisses Desjardins and carries on business in Quebec, where it registered as a trust company with the AMF;
20. Produced herewith as **Exhibit P-2** is a copy of Desjardins Trust's corporate information with the Registraire des entreprises;
21. Produced herewith as **Exhibit P-3** is the AMF's "Data Record of Firm" for Desjardins Trust;
22. The Respondent Desjardins Investments is a company incorporated under the laws of Quebec with its head office in Montreal, Quebec;
23. Desjardins Investments is a wholly-owned subsidiary of Caisses Desjardins and carries on business in Quebec, where it is registered as an investment fund manager with the AMF;
24. Produced herewith as **Exhibit P-4** is a copy of Desjardins Investment's corporate information with the Registraire des entreprises;
25. Produced herewith as **Exhibit P-5** is the AMF's "Data Record of Firm" for Desjardins Investments;
26. The Respondent Caisses Desjardins is a company incorporated under the laws of Quebec with its head office in Lévis, Quebec;
27. Caisses Desjardins carries on business in Quebec, where it is registered as an investment fund manager with the AMF;
28. Produced herewith as **Exhibit P-6** is a copy of Caisses Desjardins' corporate information with the Registraire des entreprises;
29. Produced herewith as **Exhibit P-7** is the AMF's "Data Record of Firm" for Caisses Desjardins;

E. THE FACTS

i. The *Desjardins Funds*

30. Each of the *Desjardins Funds* is, and was at the material times, a trust governed by the ORIGINATING APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (Sections 574 and following C.C.P.)

terms of a Desjardins Trust Instrument;

31. Pursuant to section 2.4 of the Current DOT, and the equivalent provisions of the other Desjardins Trust Instruments, the Desjardins Trust Instruments must be construed and interpreted in accordance with the laws of Quebec;
32. Each of the *Desjardins Funds* is, and was at material times, an “investment fund” and a “mutual fund” as those terms are defined in the *Securities Act* and the Other Canadian Securities Legislation;
33. Each *Desjardins Fund* is, and was at the material times, a reporting issuer in Quebec and in all other provinces and territories of Canada;
34. During the Class Period, the structure of the *Underlying Funds* changed as follows:
 - (a) In May 2010, the *First Equity Fund* merged with the *Desjardins Fidelity True North Fund* to form the *Growth Fund*;
 - (b) In March 2018, the *Growth Fund* merged with the *Second Canadian Equity Fund*, which had been formed in September 2016.
35. Produced herewith as **Exhibit P-8** is a copy of the *Growth Fund's* Interim Management Report of Fund Performance as at March 31, 2010;
36. Produced herewith as **Exhibit P-9** is a copy of the *Second Equity Fund's* Interim Management Report of Fund Performance as at March 31, 2018;

ii. The Desjardins Trust Instruments

37. Under the applicable Desjardins Trust Instruments, Desjardins Trust holds all property of each of the *Desjardins Funds* in trust for the benefit of the unitholders of each respective *Desjardins Fund*;
38. The Class Members are or were unitholders of the *Desjardins Funds* and beneficiaries of those trusts;
39. Desjardins Trust undertook trustee responsibilities at all material times in respect of each the *Desjardins Funds* as described below;
40. Pursuant to section 7.2 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times), Desjardins Trust, as trustee of each of the *Desjardins Funds*, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interest of each of the *Desjardins Funds*, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
41. Produced herewith as **Exhibit P-10** is a copy of the Current DOT;
42. Pursuant to section 7.3 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times)

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Desjardins Trust delegated to Caisses Desjardins and Desjardins Investments full authority and responsibility for the provision of management of, and administrative services to, the *Desjardins Funds*;

43. Pursuant to 7.3 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times) and sections 3.01 and 12.02 of the 2005 Management Agreement (and the equivalent provisions of the 2012 Management Agreement and other Management Agreements applicable to the *Desjardins Funds* at material times), Caisses Desjardins and Desjardins Investments, respectively, undertook to comply with the Desjardins Trust Instruments applicable to the *Desjardins Funds* at the material times;
44. Produced herewith as **Exhibit P-11** is a copy of the 2005 Management Agreement;
45. Pursuant to section 7.5 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times), section 9.01 of the 2005 Management Agreement and the equivalent provision of the 2012 Management Agreement, each of Caisses Desjardins and Desjardins Investments, as manager of the *Desjardins Funds*, was at the applicable material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interest of each of the *Desjardins Funds*, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
46. Pursuant to section 7.5 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times), section 9.01 of the 2005 Management Agreement and the equivalent provision of the 2012 Management Agreement, each of Caisses Desjardins and Desjardins Investments was at the applicable material times responsible for any loss that arises out of its failure to exercise its powers or discharge its duties as manager in accordance with that standard of care;
47. Pursuant to section 10.2 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times), Caisses Desjardins and Desjardins Investments received a management fee from the property of each *Desjardins Fund* in an amount governed the Management Agreements, including the 2005 Management Agreement (applicable to Caisses Desjardins) and the 2012 Management Agreement (applicable to Desjardins Investments). The 2005 Management Agreement and 2012 Management Agreement do not specify the amount of the management fees payable to, respectively, Caisses Desjardins and Desjardins Investments in respect of the *Underlying Funds* and the *Portfolio Funds*;
48. Caisses Desjardins and Desjardins Investments received the management fees out of the assets of each of the *Desjardins Funds*;
49. The management fees were removed from the trust patrimonies by Desjardins Trust which then paid them to Caisses Desjardins and Desjardins Investments;
50. In addition, or in the alternative, the management fees were removed from the trust patrimonies directly by Caisses Desjardins and Desjardins Investments;

51. The management fees for each of the *Desjardins Funds* were calculated as a percentage of the series net asset value of each series of each of the *Desjardins Funds* (which management fees were calculated and accrued daily and were payable monthly);
52. The management fees on units of the *Underlying Funds* held by each of the *Portfolio Funds* were in addition to, or are passed through and form part of, the management fees that are paid out of the patrimony of each *Portfolio Fund*;
53. As stated in Simplified Prospectuses issued in respect of the *Desjardins Funds* at the material times, Caisses Desjardins and Desjardins Investments had the discretion to reduce the management fees that they charged to the *Desjardins Funds*;
54. Produced herewith as **Exhibit P-12** is the Simplified Prospectus in respect of the *Desjardins Funds* dated January 17, 2005;
55. Produced herewith as **Exhibit P-13** is a copy of the Simplified Prospectus in respect of the *Desjardins Funds* dated March 28, 2012;
56. Produced herewith as **Exhibit P-14** is a copy of the Simplified Prospectus in respect of the *Desjardins Funds* dated March 29, 2019;
57. Section 10.5 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times) provided for Caisses Desjardins and Desjardins Investments, as the case may be, to accept a lower management fee with respect to units of a class of a *Desjardins Fund* held by a unitholder, and the amount of any reduction in the management fee could be distributed to the unitholder as a “Management Fee Distribution”;
58. The payment of management fees to Caisses Desjardins and Desjardins Investments out of the assets of the *Desjardins Funds* reduced the net asset value of the *Desjardins Funds*, which in turn reduced the value of the units of the *Desjardins Funds* held by the beneficiaries, including the Applicant and the other Class Members;
59. As stated in one or more Simplified Prospectuses disseminated by the Respondents in respect of the *Desjardins Funds*, management fees were among the fees and expenses that were paid by the *Desjardins Funds*, which “will reduce an investor’s return”;
60. Section 3.5 of the Current DOT (and the equivalent provisions of other Desjardins Trust Instruments applicable to the *Desjardins Funds* at material times) allows for the redesignation of units of one class of a *Desjardins Fund* as units of another class of the same *Desjardins Fund*;

iii. Actively Managed versus Passive Mutual Funds

61. Mutual funds are generally classified as either actively managed funds or passive (index) funds;
62. Actively managed funds are operated with the objective of producing excess risk-adjusted returns that outperform a particular market benchmark (providing higher returns or lower risk than the benchmark) by carefully choosing stocks that fit the fund’s investment style

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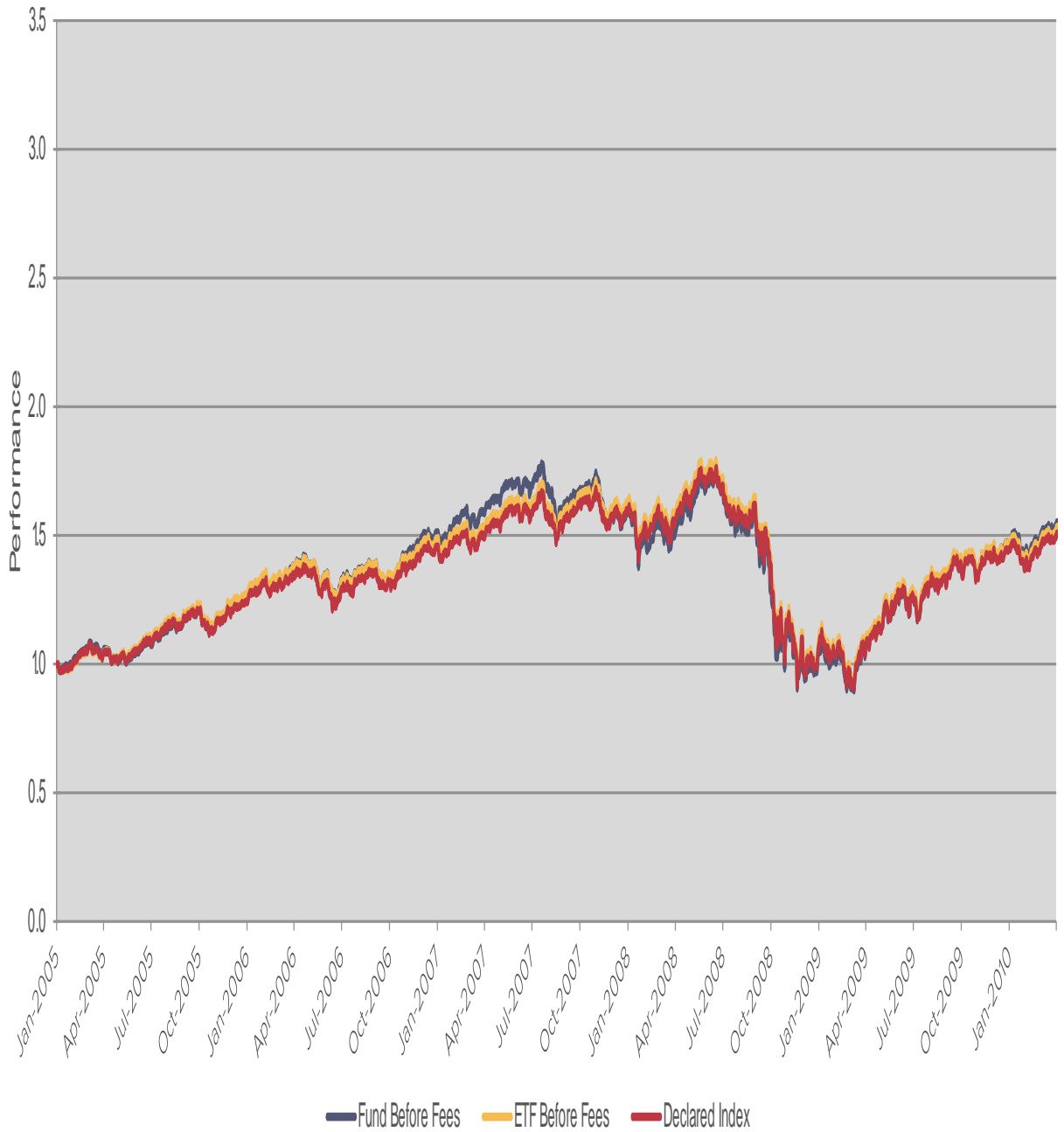
and that the fund manager reasonably expects to collectively outperform the fund's benchmark;

63. Index funds, by contrast, are designed to closely track the performance of a specific benchmark, allowing investors to invest money knowing that they will get performance roughly equal to the performance of that benchmark;
64. Actively managed funds change their portfolio positions on a regular basis in order to hold securities that, in the fund manager's view, are likely to outperform their respective benchmarks;
65. The managers of such funds charge higher fees than index funds because of the higher expenses associated with research to select stocks, and the expenses associated with increased trading activity;
66. Investors purchase an actively managed mutual fund in hopes that it will outperform the fund's benchmark by a margin that offsets the higher fees and costs associated with active management;

iv. The Alleged Misconduct

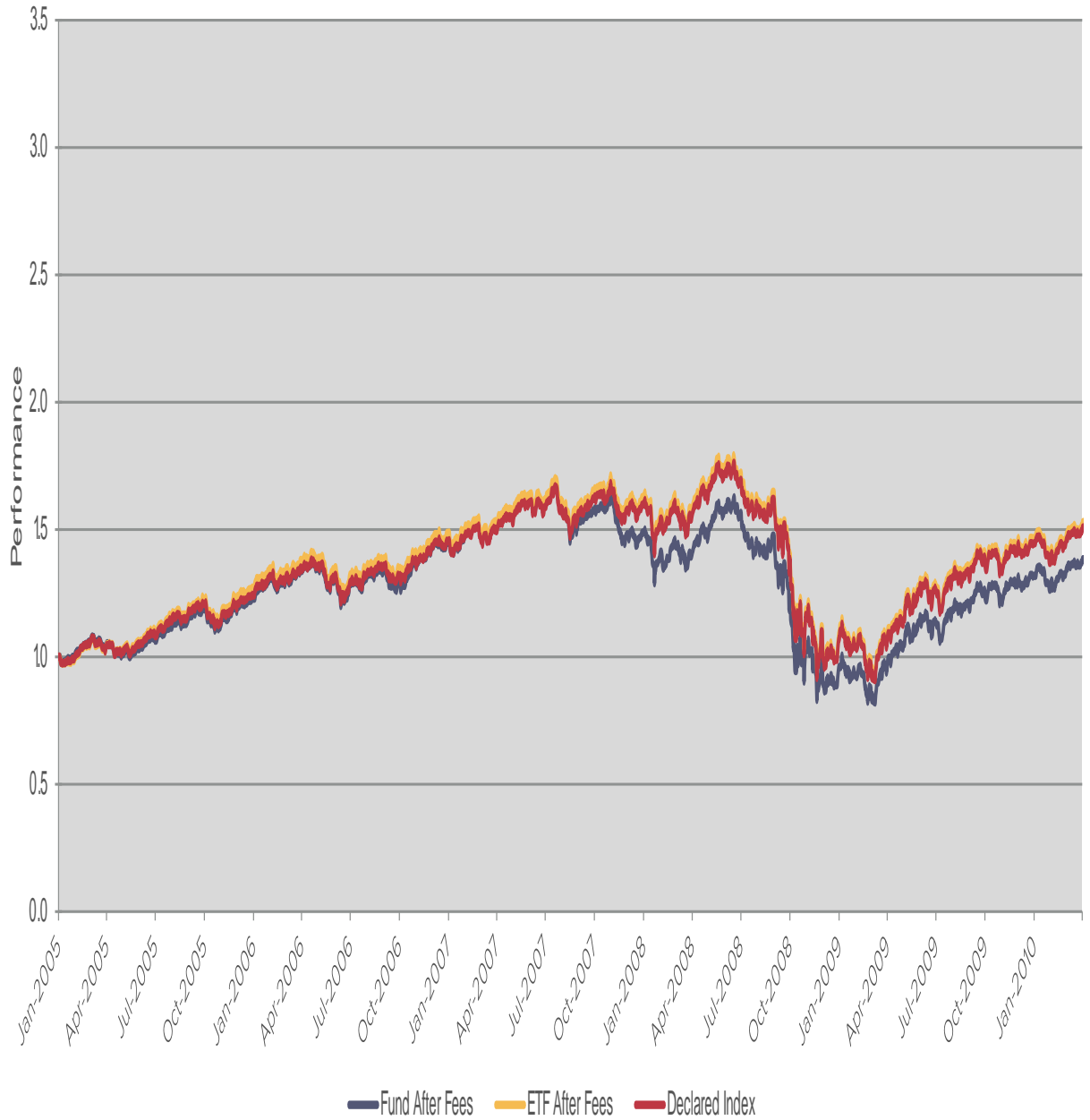
67. In managing each of the *Underlying Funds* during the Class Period, the Respondents used the Closet Indexing Strategy. Specifically, the Closet Indexing Strategy was used:
 - (a) from January 17, 2005 to March 18, 2010 in the *First Equity Fund*;
 - (b) from March 18, 2010 to March 23, 2018 in the *Growth Fund*; and
 - (c) from March 23, 2018 to present in the *Second Equity Fund*.
68. As a result of the Closet Indexing Strategy, the performance of the *Underlying Funds* during the Class Period closely tracked the Benchmark (before management fees) and did not outperform the Benchmark once accounting for management fees, as depicted in the following charts:

Performance Pre-Fees: Desjardins Canadian Equity Fund



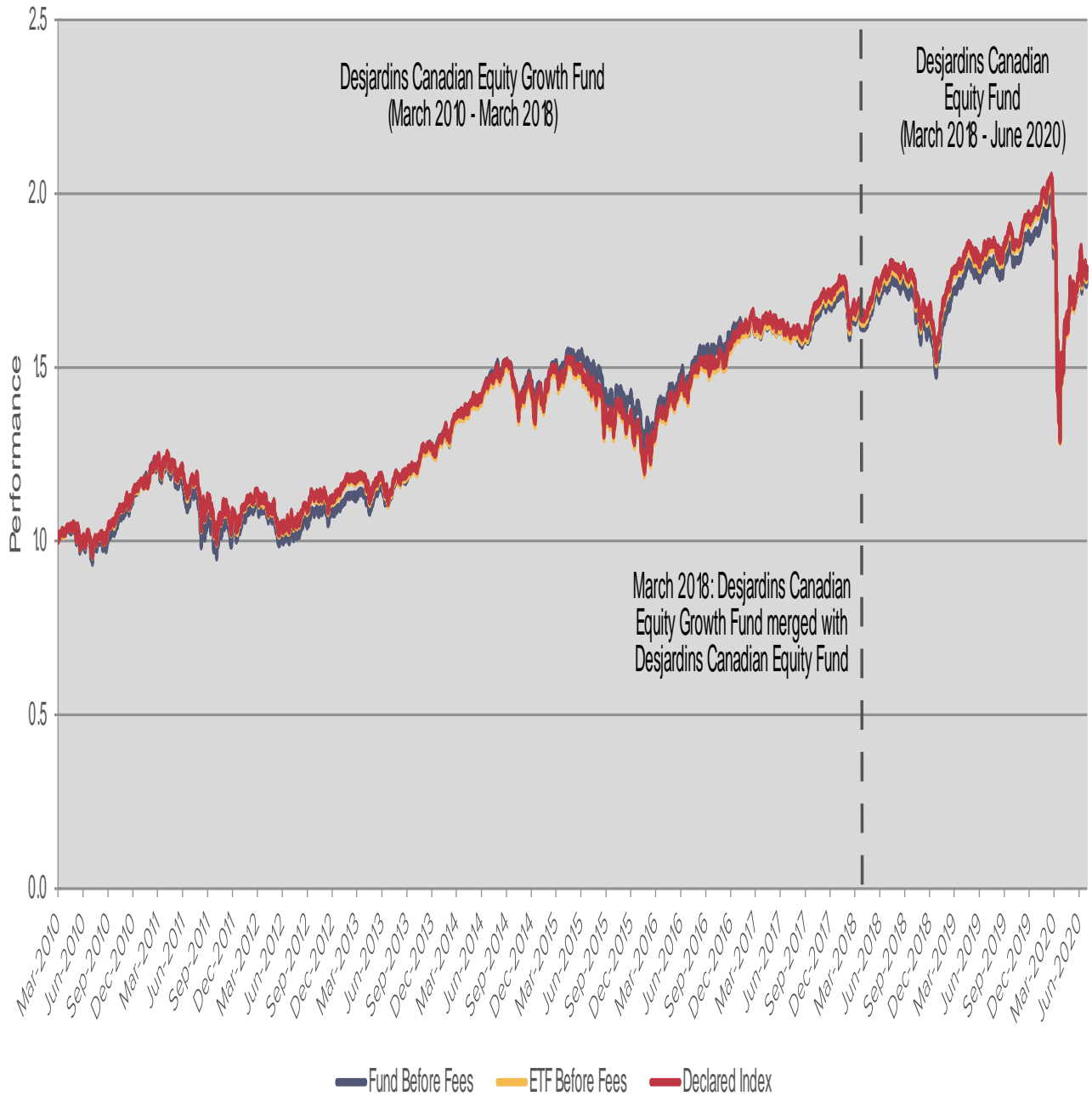
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Performance Post-Fees: Desjardins Canadian Equity Fund



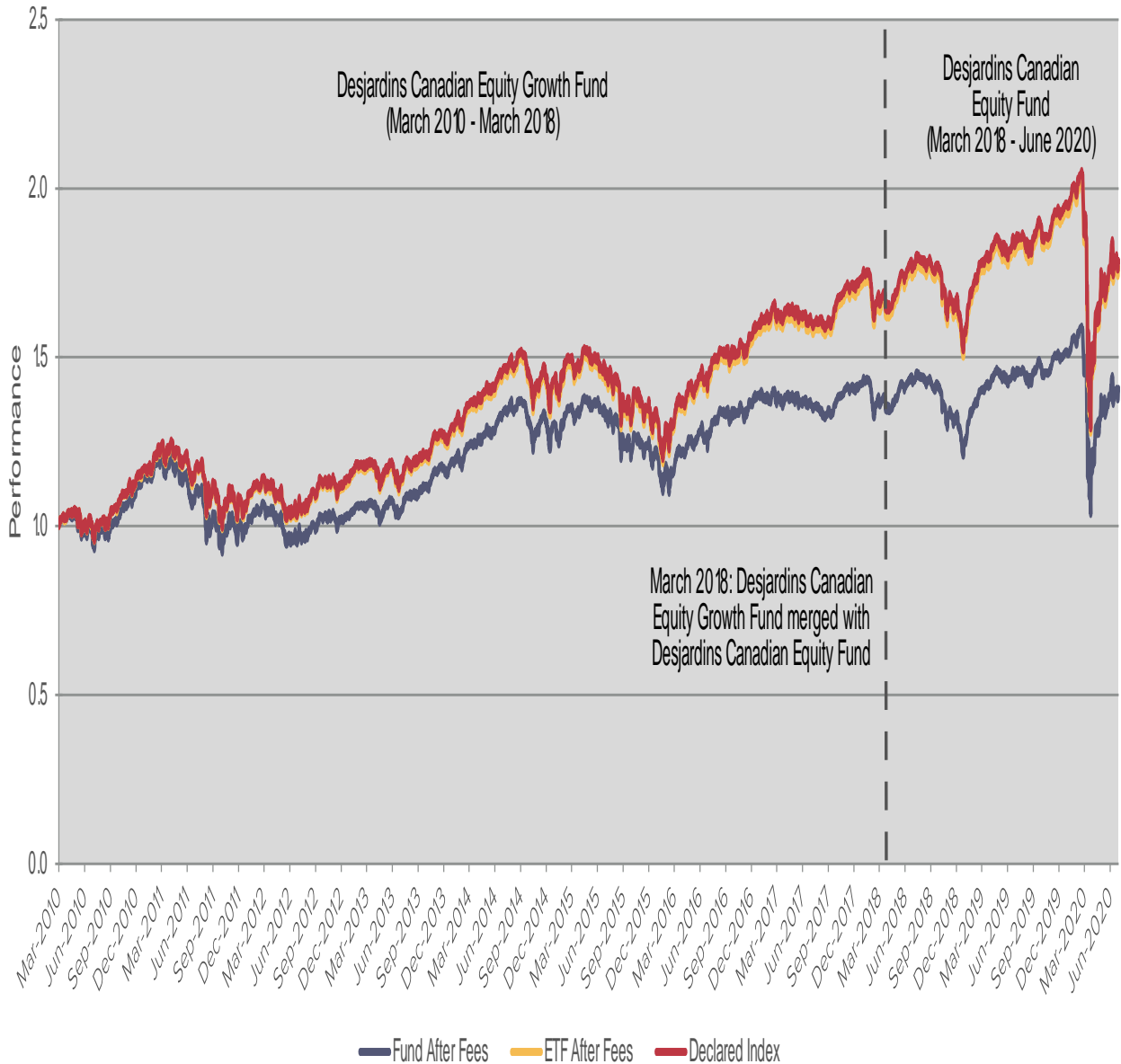
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Performance Pre-Fees



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Performance Post-Fees



- 69. The Closet Indexing Strategy was not true active management because, as a result of its use by the Respondents, each of the *Underlying Funds* had no reasonable prospect of outperforming the Benchmark once the management fees were taken into account. The Respondents knew or ought to have known this;
 - 70. The fees that the Respondents charged to the *Desjardins Funds* for active management of the *Underlying Funds* were therefore unreasonable, unjustified, and improper;
 - 71. The Respondents knew or ought to have known that by using the Closet Indexing Strategy
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they would, and did, cause loss to Class Members, including those who were unitholders of the *Portfolio Funds*;

v. Excessive Trading Costs

72. The Closet Indexing Strategy involved the manager trading in and out stocks to keep each *Underlying Fund's* overall portfolio highly correlated with the performance of the Benchmark;
73. This trading activity also served to conceal the fact that the Closet Indexing Strategy is effectively a “passive” strategy, meaning that a fund can closely track the performance of an index (like the Benchmark) by passively holding the constituent securities that make up the index;
74. At all material times, the trading activity for the Closet Indexing Strategy was significantly greater than the trading activity that occurred in passive index funds that tracked the same Benchmark as the *Underlying Funds*;
75. As a result of the more frequent trading associated with Closet Indexing Strategy, Excess Trading Costs were paid out of the *Desjardins Funds'* assets, thereby reducing the value of Class Members' units of those *Desjardins Funds*;
76. The manager's trading activity associated with the Closet Indexing Strategy also unnecessarily triggered capital gains that were passed on to investors including the Class Members;
77. Had the Respondents' Closet Indexing Strategy, and the risks associated with that investment strategy, been disclosed as required by applicable Canadian securities laws and regulations governing mutual funds, a reasonable investor would have invested in an index mutual fund or an ETF tracking the Benchmark because the management fees of those funds (in the range of 0.05%-0.25% for the ETF during the Class Period), and the associated trading costs, were at all material times a small fraction of the management fees charged by the Respondents for management of the *Underlying Funds* (for e.g., 1.89% for the *Growth Fund's* Class A units);

vi. The Alleged Misrepresentations

78. Form 81-101F1 requires, *inter alia*, that a Simplified Prospectus set out the following material information:
 - (a) “the fundamental investment objectives of the mutual fund, including information that describes the fundamental nature of the mutual fund, or the fundamental features of the mutual fund”;
 - (b) “the principal investment strategies that the mutual fund intends to use in achieving its investment objectives”; and
 - (c) “the process by which the mutual fund's portfolio adviser selects securities for the fund's portfolio, including any investment approach, philosophy, practices or

techniques used by the portfolio adviser or any particular style of portfolio management that the portfolio adviser intends to follow.”

79. Form 81-101F1 further requires, *inter alia*, that a Simplified Prospectus set out specific information concerning any material risks associated with an investment in the mutual fund. The Simplified Prospectus must:

[p]rovide disclosure in the context of the mutual fund’s fundamental investment objectives and investment strategies, outlining the risks associated with any particular aspect of those fundamental investment objectives and investment strategies.

80. In Simplified Prospectuses released during the Class Period, the Respondents made representations about the investment strategies and associated risks applicable to each of the *Underlying Funds* that were in violation of NI 81-101 and Form 81-101F1. Those representations included the following:

(a) *The First Equity Fund*

Investment Objective

The objective of this Fund is to provide unitholders with a reasonable income return and long-term capital appreciation.

The Fund’s portfolio consists primarily of shares of Canadian corporations.

Any modification of the fundamental objective must be approved by the unitholders by a majority vote at a meeting called for this purpose.

Investment Strategies

The management of Canadian securities is assigned to an advisor who favours a growth at a reasonable price management style which is characterized by selecting securities (companies) that display an above average potential for revenue growth in their respective sectors. These securities are considered if they are trading at a reasonable price. The fund manager controls the variations with respect to the sectorial distribution of the Index. The added value comes from both the sectors and the securities the advisor chooses.

In the event of materially hostile market conditions, the advisors reserve the right to depart from the investment strategy to concentrate investments in sheltered securities such as Canadian money market instruments. The Fund may only use derivatives for hedging purposes.

The Fund may invest in foreign property up to the foreign property limit under the Tax Act (currently 30)%.

[...]

What Are the Risks of Investing in the Fund?

The risks pertaining to an investment in the Fund are the following:

- Equity risk;
- Risks related to derivatives;
- Securities lending risk;
- Foreign securities risk; and
- Currency risk.

The degree of risk for this Fund is high over one year and average over five years.

[...]

(b) The *Growth Fund*

Investment Objective

The objective of this Fund is to provide unitholders with a reasonable income return and long-term capital appreciation. The Fund's portfolio consists primarily of equity securities of Canadian corporations.

Any modification of the fundamental objective must be approved by the unitholders by a majority vote at a meeting called for this purpose.

Investment Strategies

The management of the Fund's assets is assigned to Portfolio Subadvisors who favour a growth at a reasonable price management style which is characterized by selecting securities (companies) that display an above-average potential for revenue growth in their respective sectors. These securities are considered if they are trading at a reasonable price. The Portfolio Subadvisors control the variations with respect to the sectorial distribution of the index. The added value comes from both the sectors and the securities the Portfolio Subadvisors choose.

The Portfolio Subadvisors may use equity-related securities such as American Depositary Receipts (ADRs), Global Depositary Receipts (GDRs) and Exchange-Traded Funds (ETFs) in order to gain exposure to a particular stock or sector.

In the event of materially hostile market conditions, the Portfolio Subadvisors reserve the right to depart from the investment strategy to concentrate investments in sheltered securities such as Canadian money market instruments.

[...]

What Are the Risks of Investing in the Fund?

The main risks pertaining to an investment in the Fund are the following:

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- Derivatives risk;
- Large transactions risk;
- Market risk;
- Multiple class risk;
- Securities lending risk;
- Smaller companies risk;
- Specific issuer risk; and
- Tax policy risk.

[...]

(c) *The Second Equity Fund*

Investment Objective

The objective of the Fund is to provide long-term capital appreciation. The Fund invests primarily in equity securities of large-cap Canadian corporations listed on a stock exchange.

Any modification of the fundamental investment objective must be approved by the unitholders by a majority vote at a meeting called for this purpose.

Investment Strategies

The portfolio manager uses a disciplined investment process that relies on fundamental, quantitative and trend analyses of issuers. The Manager will consider, among other things, the corporations' financial health, valuation and growth perspectives, as well as the quality of their management team. Quantitative and trend analyses strengthen the Manager's conviction, but the major source of added value will come mainly from stock selection. However, a disciplined approach to portfolio risk management will ensure a certain sector diversification. Consequently, the sector weightings of the Fund will be comparable to those of the S&P/TSX Composite Index.

The portfolio manager may use equity-related securities such as exchange-traded funds (ETFs) to gain exposure to specific shares or sectors. Investments in ETFs shall be done respecting the requirements of applicable laws and regulations. Furthermore, the Manager has obtained from the Canadian Securities Administrators an exemption from the restrictions contained in National Instrument 81-102 respecting Investment Funds (NI 81-102) that will permit the Fund to purchase and hold:

- (a) securities of exchange-traded funds ("ETFs") that seek to replicate (i) the performance of gold on an unlevered basis; or (ii) the value of a specified derivative the underlying interest of which is gold on an unlevered basis;

(b) securities of ETFs that seek to replicate (i) the performance of silver on an unlevered basis; or (ii) the value of a specified derivative the underlying interest of which is silver on an unlevered basis;

(c) securities of ETFs that seek to replicate (i) the performance of gold and silver on an unlevered basis; or (ii) the value of specified derivatives the underlying interests of which are gold and silver on an unlevered basis; and

(d) Silver and Permitted Silver Certificates and/or to enter into specified derivatives the underlying interest of which is silver on an unlevered basis.

[...]

The Fund may invest up to 10% of its assets in foreign securities.

In the event of materially adverse market conditions, the portfolio manager reserves the right to depart from its investment strategy to concentrate investments in sheltered securities such as Canadian money market instruments.

[...]

It is expected that the Fund will have a high portfolio turnover rate. The Fund's portfolio turnover rate indicates how actively the Fund's Portfolio Manager manages its portfolio investments. A portfolio turnover rate of 100% is equivalent to the Fund buying and selling all of the securities in its portfolio once in the course of the financial year. The higher a Fund's portfolio turnover rate in a financial year, the greater the trading costs payable by the Fund in the period, and the greater the chance of an investor receiving taxable capital gains in the financial year. There is not necessarily a relationship between a high turnover rate and the performance of a fund.

What Are the Risks of Investing in the Fund?

The main risks pertaining to an investment in the Fund are the following:

– Equity risk.

The secondary risks pertaining to an investment in the Fund are the following:

- Currency risk;
- Derivatives risk;
- Exchange-traded funds risk;
- Foreign securities risk;
- Large transactions risk.
- Multiple class risk;
- Securities lending risk;
- Smaller Companies Risk

– Tax policy risk.

[...]

81. The Simplified Prospectuses disseminated by the Respondents in respect of the *Desjardins Funds* failed to disclose an investment strategy, namely the Closet Indexing Strategy, which the Respondents used for the *Underlying Funds* and the risks associated with that strategy, including the substantial risk that the *Underlying Funds* would not outperform the Benchmark after accounting for the management fees paid to Caisses Desjardins and Desjardins Investments;
82. The object, effect, and common import of the representations about the *Underlying Funds'* investment objectives, strategies and associated risks in the Simplified Prospectuses including those set out above, in conjunction with the Respondents' omission of the material facts in respect of the Closet Indexing Strategy and its associated risks, created the impression, and lead investors including the Applicant and other Class Members to reasonably expect, that the Respondents actively managed the *Underlying Funds* with the goal of achieving performance that exceeded the performance of the Benchmark (collectively, the "**Active Management Representation**");
83. As a result of the Closet Indexing Strategy, the Active Management Representation was at all material times false and misleading because the objective of the Closet Indexing Strategy – to closely track the performance of the Benchmark – was at all material times inconsistent with *true* active management, which has the goal of exceeding the performance of the Benchmark;
84. Because of the Respondents' Closet Indexing Strategy, the *Underlying Funds* had no reasonable prospect of outperforming, or otherwise had a substantial risk of not outperforming, and in fact did not and have not outperformed, the Benchmark after accounting for the fees paid to Caisses Desjardins and Desjardins Investments for their purported active management of the *Underlying Funds*;
85. The Respondents knew or ought to have known that this was the case;
86. The Respondents' use of the Closet Indexing Strategy meant that the *Underlying Funds* were managed in a manner that was materially different than or contrary to the representations about the *Underlying Funds'* objectives, strategies, and risks;
87. The Closet Indexing Strategy, which is not a true active investment strategy, did not justify the Excess Management Fees and Excess Trading Costs that were paid out of the *Desjardins Funds'* assets;

F. THE APPLICANT'S PERSONAL CLAIMS

88. The facts upon which the Applicant's personal claims against the Respondents are based are as follows;
89. On or about the year 2015, the Applicant bought 372,573 units of the Chorus II High Growth Portfolio at a price of 14,586\$ representing a total investment of approximately 5 434,35\$;

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90. The *Chorus II High Growth Portfolio* is a *Portfolio Fund* which at the time held units of the *Growth Fund*;
91. On or about the month of November 2016, *Chorus II High Growth Portfolio* was renamed *Chorus II Dynamic Growth Portfolio*, the whole as appears from a press release dated November 3, 2016 attached herewith as **Exhibit P-15**;
92. *Chorus II Dynamic Growth Portfolio* is a *Portfolio Fund* which maintained its unit holding in the *Growth Fund*;
93. On or about the month of April 2018, *Chorus II Dynamic Growth Portfolio* was renamed *Chorus II Aggressive Growth Portfolio*, the whole as appears from an Interim Management Report of Fund Performance as of March 2019, attached herewith as **Exhibit P-16**;
94. *Chorus II Aggressive Growth Portfolio* is a *Portfolio Fund* which continued to hold one of the impugned *Underlying Funds*, especially the *Growth Fund*, the whole as appears from **Exhibit P-16**;
95. As of February 9th 2021, the Applicant still holds 372,573 units in the *Chorus II Aggressive Growth Portfolio*, the whole has it appear from **Exhibit P-1**;

G. THE RESPONDENTS' LIABILITY

i. Breach of obligations under the Desjardins Trust Instruments and the CCQ

96. As trustee of each of the *Desjardins Funds* pursuant to section 1260 of the CCQ, Desjardins Trust is and was at all material been in a fiduciary and trust relationship with the Class Members who hold or held the *Desjardins Funds* and owes, and owed at the material times, trust and fiduciary duties to those Class Members;
97. As manager of the *Desjardins Funds*, Caisses Desjardins and Desjardins Investments were, at all material times, an administrator of the property of others pursuant to section 1299 of the CCQ;
98. Pursuant to the Desjardins Trust Instruments and Management Agreements applicable at material times, Caisses Desjardins and Desjardins Investments undertook full responsibility for the administration of the day-to-day business and affairs of the *Desjardins Funds*;
99. As an administrator, Caisses Desjardins and Desjardins Investments had at the material times an obligation to act honestly and faithfully in the best interest of the beneficiary or of the object pursued pursuant to section 1309 of the CCQ;
100. Caisses Desjardins and Desjardins Investments also had an obligation to abide by their duties set out in the Desjardins Trust Instruments, Management Agreements, and sections 159.1, 159.2 as well as 159.3 of the *Securities Act*;
101. The Respondents therefore expressly or impliedly undertook to act in the best interests of the Class Members as beneficiaries of the *Desjardins Funds*;

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102. By their acts and omissions, the Respondents breached their obligations to the Class Members by (without limitation):
- (a) paying and receiving the Excess Management Fees out of the assets of the *Desjardins Funds*;
 - (b) failing to preserve the property of the *Desjardins Funds*;
 - (c) failing to maximize the value of the units of the *Desjardins Funds*;
 - (d) paying the Excess Management Fees for no purpose;
 - (e) incurring the Excess Trading Costs for no purpose;
 - (f) failing to ensure that the *Underlying Funds* were managed in a manner consistent with their stated investment objective and strategies as expressed in the Simplified Prospectuses;
 - (g) in Desjardins Trust's capacity as trustee of the *Desjardins Funds*, failing to ascertain the nature of the management services being provided by Caisses Desjardins and Desjardins Investments, as manager of the *Underlying Funds*, to the Class Members and to ascribe a reasonable value to those services, to ensure that the assets of the *Desjardins Funds* were being used for proper purposes and in a reasonable amount;
 - (h) making the Active Management Representation, which was false or materially misleading, to Class Members;
 - (i) failing to disclose the use of the Closet Indexing Strategy to Class Members;
 - (j) failing to comply with the *Securities Act* (and if necessary the Other Canadian Securities Legislation) and its subsidiary instruments and regulations;
 - (k) failing to create and make available to Class Members a series of units of the *Desjardins Funds* that carried no Excess Management Fees;
 - (l) failing to advise, permit or cause Class Members to re-designate or reclassify their units of the *Desjardins Funds* into a series of units that carries no Excess Management Fees;
 - (m) in the case of Desjardins Trust, as trustee of each of the *Desjardins Funds*, acting in a conflict of interest by negotiating management fees and paying the Excess Management Fees to affiliated, non-arm's length entities, namely Caisses Desjardins and Desjardins Investments;
 - (n) failing to pay or accept a management fee reduced by the amount of the Excess Management Fees and distributing (rebating) that amount to the Class Members as a "management fee distribution";

- (o) failing to waive payment of the Excess Management Fees; and
- (p) Desjardins Trust, as trustee of the *Underlying Funds*, failing to adequately supervise Caisses Desjardins and Desjardins Investments, as manager of the *Underlying Funds*, and failing to prevent or rectify the manager's misconduct as particularized herein, in breach of the manager's standard of care set out in the Desjardins Trust Instruments, the Management Agreements, sections 159.1, 159.2 and 159.3 of the *Securities Act* (and, if necessary, the Other Canadian Securities Legislation), and section 2.1 of NI 81-107;

- 103. More particularly, the Respondents breached their obligations under sections 6, 7, 1300, 1306, 1309, 1310, 1375, 1457 and 1458 of the CCQ;
- 104. The Applicant and the other Class Members have suffered loss and damage because of the Respondents' breaches of their obligations as particularized above;

ii. Infringement of rights under the *Charter*

- 105. By removing the Excess Management Fees from the patrimony of each *Desjardins Fund*, and thereby diminishing the value of beneficiaries' units of the *Desjardins Funds*, the Respondents deprived the Applicant and Class Members from the peaceful enjoyment and free disposition of their assets as guaranteed under section 6 of the *Charter*;
- 106. By misleading the Applicant and the Class Members, as alleged above, the Respondents lead an unlawful illicit and intentional ploy for the sole purpose of maximizing revenues;
- 107. The Respondents therefore infringed on the Applicant's rights under section 6 of the *Charter*;
- 108. In accordance to section 49 of the *Charter*, the Applicant and the Class Members are entitled to obtain the cessation of such interference and compensation for the material prejudice resulting therefrom;
- 109. In addition, since the Respondents interference is unlawful and intentional, the Applicant and Class Members are also entitled to punitive damages in accordance to section 49 of the *Charter*;

iii. Breach of obligations under the *Securities Act* and the Other Canadian Securities Legislation

- 110. The Applicant asserts the right of action for prospectus misrepresentation in section 218 of the *Securities Act* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation) on his own behalf and on behalf of the Class Members;
- 111. The Respondents prepared, filed and disseminated Simplified Prospectuses to permit the continuous offering to the public of units of the *Desjardins Funds*;
- 112. Pursuant to section 13 of the *Securities Act* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation), the Simplified Prospectuses are and were required to provide full, true and plain disclosure of all material facts relating to the

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securities issued or proposed to be distributed under the Simplified Prospectuses;

113. The Simplified Prospectuses were prospectuses for the purposes of section 218 of the *Securities Act* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation);
114. The Simplified Prospectuses prepared, filed and disseminated by the Respondents in respect of the *Desjardins Funds* have contained at all material times a common representation, namely the Active Management Representation;
115. The Simplified Prospectuses of the *Portfolio Funds* contained the Active Management Representation by virtue of the fact that they incorporated by reference the Simplified Prospectuses and prepared, filed and disseminated by the Respondents in respect of the *Underlying Funds*;
116. The Active Management Representation is a misrepresentation within the meaning of the *Securities Act* (and, if necessary, the Other Canadian Securities Legislation);
117. The Active Management Representation falsely and expressly, or impliedly, represented that the *Underlying Funds* were managed using an active investment strategy aimed at, and having a reasonable prospect of, outperforming the Benchmark, whereas in fact during the Class Period the Respondents used the Closet Indexing Strategy, which meant the *Underlying Funds* had no reasonable prospect of outperforming the Benchmark once management fees were taken into account;
118. The Active Management Representation is, and was at all material times, material to the Class Members;
119. The Respondents certified and signed the Simplified Prospectuses as required by NI 81-101 and Form 81-101F2, and are liable pursuant to section 218 of the *Securities Act* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation);
120. The offering of units of the *Desjardins Funds* to which the Simplified Prospectuses related constituted distributions of the units in Quebec. The offering was governed by the *Securities Act* and its subsidiary instruments and regulations, and was carried out under Quebec securities laws;
121. The Applicant and the other Class Members have suffered loss and damage as a result of the Respondents' acts and omissions as particularized herein;
122. The Respondents' conduct warrants an award of punitive damages under sections 1621 of the CCQ, 6 and 49 of the *Charter*, and 269.2 of the *Securities Act*;

H. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION (art. 575 CCP)

i. The claims of the members of the Class raise identical, similar or related issues of law or fact (art. 575 (1) CCP)

123. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation;

124. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Respondents' misconduct;
125. The claims of the members raise identical, similar or related issues of fact or law, namely:
- (a) Did the Respondents breach their trust, fiduciary, contractual and/or extra-contractual obligations under the CCQ, or applicable common law principles;
 - (b) Did the Respondents breach its statutory obligations under the *Securities Act* (and, as applicable, the Other Canadian Securities Legislation)?
 - (c) Did the Respondents unlawfully interfere with the Class Members' rights guaranteed by section 6 of the *Charter*?
 - (d) Are Class Members entitled to restitution?
 - (e) Are Class Members entitled to material damages?
 - (f) Are Class Members entitled to punitive damages?
 - (g) What are the amounts of the restitution to be paid to the Class?
 - (h) What are the aggregate and/or material and/or punitive damages to be awarded to the Class?

ii. The facts alleged appear to justify the conclusions sought (art. 575 (2) CCP)

126. In this regard, the Applicant refers to paragraphs 2 to 125 of this Application;
127. The action that the Applicant wishes to institute on behalf of the members of the Class is:
- An action for restitution and/or damages to restore the Applicant and the other Class Members to the position they would have been in had the Respondents not removed the Excess Management Fees and Excess Trading Costs from the trust patrimonies of the *Desjardins Funds*.**
128. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:
- (a) **GRANT** the Applicant's action against the Respondents;
 - (b) **DECLARE** that the Respondents breached their trust, fiduciary, contractual and/or extra-contractual obligations arising from the Desjardins Trust Instruments, the Management Agreements, the *Securities Act* and the Other Canadian Securities Legislation, the CCQ, the *Charter* and/or applicable common law principles;
 - (c) **ORDER** the Respondents to retribute to Class Members, amounts to be determined by the Court based on the evidence at trial the whole with interest and the additional indemnity provided by law

- (d) **CONDEMN** the Respondents to pay the Class Members material damages in amounts to be determined by the Court based on the evidence at trial the whole with interest and the additional indemnity provided by law;
 - (e) **CONDEMN** the Respondents to pay the Class Members punitive damages in amounts to be determined by the Court based on the evidence at trial the whole with interest and the additional indemnity provided by law;
 - (f) **ORDER** collective recovery of the total amount of the claims herein;
 - (g) **ORDER** that the claims of the Class Members be the object of individual liquidation in accordance with sections 596 to 598 of the *CCP* or, if impractical or inefficient, order the Respondents to perform any remedial measures that this Honourable Court deems to be in the interests of the Class Members;
 - (h) **CONDEMN** the Respondents to any further relief that the Court may deem just and proper;
 - (i) **THE WHOLE** with legal costs, including the costs of all exhibits, reports, expertise and publication of notices to Class Members;
- iii. **The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (art. 575 (3) CCP)**
- 129. As of September 30, 2005, there were 6,637,750 A-class units of the *First Equity Fund* outstanding representing an asset value of \$232,674, 000;
 - 130. Produced herewith as **Exhibit P-17** is a copy of the *First Equity Fund's* Annual Management Report of Fund Performance as at September 30, 2005;
 - 131. As of September 30, 2014, there were 6,035,869 A-class units and 82,202,844 I-class units of the *Growth Fund* outstanding representing asset values of \$210,865,00 and 1,176,945,000 respectively;
 - 132. Produced herewith as **Exhibit P-18** is a copy of the *Growth Fund's* Annual Management Report of Fund Performance as at September 30, 2014;
 - 133. As of September 30, 2019, there were 8,032,997 A-class units and 151,304,302 I-class units of the *Second Equity Fund* outstanding representing assets values of \$85,614,000 and 1,637,636,000 respectively;
 - 134. Produced herewith as **Exhibit P-19** is a copy of the *Second Equity Fund's* Annual Management Report of Fund Performance as at September 30, 2019;
 - 135. While the Applicant does not have a list of the members of the Class who held the *Desjardins Funds* during the Class Period, the Applicant estimates that thousands, if not tens of thousands, of Quebec investors held *Desjardins Funds* during the Class Period given the length of the Class Period, the number of units outstanding, and the value of the assets under management;

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136. In all likelihood, the Class Members are dispersed throughout the province of Quebec;
137. It would accordingly be difficult or impracticable, if not impossible, for the Applicant to locate and contact all members of the Class and to obtain a mandate to institute proceedings for their benefit;
138. Therefore, the composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings, as per section 575 of the *CPC*;
- iv. The Applicant is in a position to properly represent the Class Members (art. 575 (4) CCP)**
139. The Applicant is a member of the Class;
140. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present action until a final resolution of the matter, the whole for the benefit of the Class, as well as and to dedicate the time necessary for the present action before the Courts, as the case may be, and to collaborate with his attorneys;
141. The Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
142. The Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
143. The Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;
144. The Applicant has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
145. The Applicant has also given instructions to his attorneys to create a *Facebook* page allowing the Class Members to be kept informed of the evolution of the present matter;
146. The Applicant is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;
147. The Applicant understands the nature of the action;
148. The Applicant's interests do not conflict with the interests of other Class Members and further Applicant has no interest that is antagonistic to those of other members of the Class;

149. The Applicant is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

I. JUDICIAL DISTRICT

150. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montreal;

151. A great number of the members of the Class reside in the judicial district of Montreal;

152. Some of the Applicant's attorneys practice their profession in the judicial district of Montreal;

153. The present application is well founded in fact and in law;

WHEREFORE THE APPLICANT PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the Applicant's originating application for authorization to institute a class action and to obtain the status or representative against the Respondents;

ORDER the Respondents to provide the undersigned attorneys, in an electronic format a list of the Class Members;

AUTHORIZE the following class action:

An action for restitution and/or damages to restore the Applicant and the other Class Members to the position they would have been in had the Respondents not removed the Excess Management Fees and Excess Trading Costs from the trust patrimonies of the *Desjardins Funds*.

GRANT the status of representative to Dr. Omid Zahedi Niaki for the purpose of instituting the said Class action for the benefit of the following group of persons, namely:

“All persons, wherever they reside, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, units or shares of a *Desjardins Fund*.”

“Toute personne, peu importe son lieu de résidence, qui détenait ou détient, à tout moment avant la conclusion du litige relatif aux questions communes soulevées en l’instance, des parts, titres ou actions d’un *Desjardins Fund*.”

IDENTIFY the principal questions of law and of fact to be dealt with collectively as follows:

A. Did the Respondents breach their trust, fiduciary, contractual and/or extra-contractual obligations under the CCQ, or applicable common law principles;

- B. Did the Respondents breach its statutory obligations under the *Securities Act* (and, as applicable, the Other Canadian Securities Legislation)?
- C. Did the Respondents unlawfully interfere with the Class Members' rights guaranteed by section 6 of the *Charter*?
- D. Are Class Members entitled to restitution?
- E. Are Class Members entitled to material damages?
- F. Are Class Members entitled to punitive damages?
- G. What are the amounts of the restitution to be paid to the Class?
- H. What are the aggregate and/or material and/or punitive damages to be awarded to the Class?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

- 1) **GRANT** the Applicant's action against the Respondents;
- 2) **DECLARE** that the Respondents breached their trust, fiduciary, contractual and/or extra-contractual obligations arising from the Desjardins Trust Instruments, the Management Agreements, the *Securities Act* and the Other Canadian Securities Legislation, the *CCQ*, the *Charter* and/or applicable common law principles;
- 3) **ORDER** the Respondents to restate to Class Members, amounts to be determined by the Court based on the evidence at trial the whole with interest and the additional indemnity provided by law
- 4) **CONDEMN** the Respondents to pay the Class Members material damages in amounts to be determined by the Court based on the evidence at trial the whole with interest and the additional indemnity provided by law;
- 5) **CONDEMN** the Respondents to pay the Class Members punitive damages in amounts to be determined by the Court based on the evidence at trial the whole with interest and the additional indemnity provided by law;
- 6) **ORDER** collective recovery of the total amount of the claims herein;
- 7) **ORDER** that the claims of the Class Members be the object of individual liquidation in accordance with sections 596 to 598 of the *CCP* or, if impractical or inefficient, order the Respondents to perform any remedial measures that this Honourable Court deems to be in the interests of the Class Members;
- 8) **CONDEMN** the Respondents to any further relief that the Court may deem just and proper;
- 9) **THE WHOLE** with legal costs, including the costs of all exhibits, reports, expertise and publication of notices to Class Members;

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DECLARE that any Class Members who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the Class action, in accordance with law;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with section 579 of the CCP, pursuant to a further Order of the Court;

ORDER that the class action be tried in the judicial district of Montreal;

THE WHOLE with legal costs, including the costs of all publications of notices, experts and expert reports and the attendance fees of the experts to present these reports in Court.

TORONTO, February 10th, 2021

MONTREAL, February 10th, 2021

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(S) CALEX LEGAL INC.

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TORONTO, February 10th, 2021

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SUMMONS **(sections 145 and following C.C.P.)**

Filing of a judicial application

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

Respondent's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 rue Notre-Dame Est, Montréal, Québec within 15 days of service of this application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the applicant's lawyer or, if the applicant is not represented, to the applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of this summons. However, in family matters or if you have no domicile, residence or establishment in Québec, it must be filed within 3 months after service; or
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Where to file the judicial application

Unless otherwise provided, the judicial application is heard in the judicial district where your domicile is located, or failing that, where your residence or the domicile you elected or agreed to with applicant is located. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the court.

SUMMONS
(sections 145 and following C.C.P.)



However, if the application pertains to an employment, consumer or insurance contract or to the exercise of a hypothecary right on the immovable serving as your main residence, it is heard in the district where the employee's, consumer's or insured's domicile or residence is located, whether that person is the applicant or the respondent, in the district where the immovable is located or, in the case of property insurance, in the district where the loss occurred. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the special clerk of that district and no contrary agreement may be urged against you.

Transfer of application to the Small Claims Division

If you qualify to act as a applicant under the rules governing the recovery of small claims, you may contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the applicant's legal costs will not exceed those prescribed for the recovery of small claims.

Convening a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing that, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the applicant intends to use the following exhibits:

Exhibit P-1 : Print screen from the Accès-D platform ;

Exhibit P-2 : Desjardins Trust's corporate information with the Registraire des entreprises ;

Exhibit P-3 : AMF's "Data Record of Firm" for Desjardins Trust ;

Exhibit P-4 : Desjardins Investment's corporate information with the Registraire des entreprises ;

Exhibit P-5 : AMF's "Data Record of Firm" for Desjardins Investments ;

Exhibit P-6 : Caisses Desjardins' corporate information with the Registraire des entreprises ;

Exhibit P-7 : AMF's "Data Record of Firm" for Caisses Desjardins ;

Exhibit P-8 : *Growth Fund's* Interim Management Report of Fund Performance as at March 31, 2010 ;

Exhibit P-9 : *Second Equity Fund's* Interim Management Report of Fund Performance as at March 31, 2018 ;

Exhibit P-10 : Current DOT ;

SUMMONS
(sections 145 and following C.C.P.)



Exhibit P-11 : 2005 Management Agreement ;

Exhibit P-12 : Simplified Prospectus in respect of the *Desjardins Funds* dated January 17, 2005 ;

Exhibit P-13 : Simplified Prospectus in respect of the *Desjardins Funds* dated March 28, 2012 ;

Exhibit P-14 : Simplified Prospectus in respect of the *Desjardins Funds* dated March 29, 2019 ;

Exhibit P-15 : Press release dated November 3, 2016 ;

Exhibit P-16 : Interim Report of Fund Performance as of March 2019 ;

Exhibit P-17 : *First Equity Fund's* Annual Management Report of Fund Performance as at September 30, 2005 ;

Exhibit P-18 : *Growth Fund's* Annual Management Report of Fund Performance as at September 30, 2014 ;

Exhibit P-19 : *Second Equity Fund's* Annual Management Report of Fund Performance as at September 30, 2019 ;

These exhibits are available on request.

Notice of presentation of an application

Applications filed in the course of a proceeding and applications under Book III or V of the Code— but excluding applications pertaining to family matters under section 409 and applications pertaining to securities under section 480 as well as certain applications under Book VI of the Code, including applications for judicial review, must be accompanied by a notice of presentation, not by a summons. In such circumstances, the establishment of a case protocol is not required.

SUMMONS
(sections 145 and following C.C.P.)



NOTICE OF PRESENTATION

RECIPIENTS : **DESJARDINS TRUST INC.**, a legal person, duly constituted according to law, with its head office located at 1 Complexe Desjardins, South Tower, 14th floor, Montreal, Province of Quebec, H5B 1E4;

ET **DESJARDINS INVESTMENTS INC.**, a legal person, duly constituted according to law, with its head office located at 1 Complexe Desjardins, South Tower, 25th floor, Montreal, Province of Quebec, H5B 1B3;

ET **FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC**, a legal person, duly constituted according to law, with its head office located at 100 rue des Commandeurs, Lévis, Province of Quebec, G6V 7N5;

Respondents

TAKE NOTICE that this *Application for authorization to institute a class action and to obtain the status of representative* will be presented before the Superior Court at the Montréal courthouse, located at 1 Rue Notre-Dame Est, in the city and district of Montréal, on a date to be determined by the coordinating judge of the Class Action Division.

PLEASE ACT ACCORDINGLY.

TORONTO, February 10th 2021

MONTREAL, February 10th 2021

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(S) CALEX LEGAL INC.

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BP3268

NOTICE OF PRESENTATION



TORONTO, February 10th, 2021

TRUE COPY

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CaLex Legal inc.

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Co-Counsels for the Applicant

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Phone: 416 869 9898 #101

NOTICE OF PRESENTATION



Administrative information's

Matter of dispute:
CLASS ACTION

Amount: **N/A**

O/R: **1328-01**

No. **500-06-001130-216**

**SUPERIOR COURT OF QUEBEC
CLASS ACTION
DISTRICT OF MONTRÉAL**

DR. OMID ZAHEDI NIAKI

Applicant

v.

DESJARDINS TRUST INC. ET AL.

Respondents

**ORIGINATING APPLICATION FOR AUTHORIZATION
TO INSTITUTE A CLASS ACTION AND TO OBTAIN
THE STATUS OF REPRESENTATIVE, SUMMON AND
NOTICE OF PRESENTATION
(Sections 574 and following C.C.P.)**

TRUE COPY

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