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NOTIFICATION BY A TECHNOLOGICAL MEANS TRANSMISSION SLIP

(Article 134 CCP)

DATE: January 15, 2016
TIME:

Number of pages
(Including this slip): 11

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CANADA

SUPERIOR COURT
(Class Actions)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000256-046

CLAUDE RAVARY

Plaintiff

v.
GESTION D'ACTIFS CIBC INC. (TALVEST)
and
AIC GLOBAL HOLDINGS INC.
and
FONDS MUTUELS CI INC.

Defendants

NATURE: Defendant AIC Global Holdings Inc.'s Statement of Defence

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and

FONDS MUTUELS CI INC.

Defendants

**DEFENDANT AIC GLOBAL HOLDINGS INC.'S
STATEMENT OF DEFENCE**

DEFENDANT AIC GLOBAL HOLDINGS INC. PLEADS:

1. Defendant AIC Global Holding Inc. ("AIC") agrees that the present class action was authorized as described in paragraph 1 of the *Requête introductive d'instance en recours collectif ré-amendée et re-précisée* dated September 15, 2015 (the "Action"). AIC pleads that the terms of the said authorization were inappropriate in some aspects, particularly as regards the description of the group, which fails to exclude members who are not alleged innocent investors and victims, but on the contrary, are the traders whose market timing caused the alleged harm;

2. AIC has no knowledge of the facts alleged in paragraphs 1.1 and 1.2 of the Action;
3. Paragraphs 2 to 114 are denied, except where expressly admitted by AIC below;

AND FOR SPECIFIC PLEA, DEFENDANT AIC ADDS:

4. At all relevant time in respect of the period in litigation herein, AIC's corporate predecessor was a company incorporated under the laws of Ontario, with its head office located in Burlington, Ontario;
5. AIC then acted as manager of a number of mutual funds including the six (6) AIC funds listed in paragraph 1 of the Action. Among those, the World Advantage Fund was merged with the Global Advantage Fund, and likewise for their RSP namesakes, on December 13, 2002;
6. Each of the funds were open-ended investment funds constituted as a trust settled pursuant to a Declaration of Trust, as amended from time to time, governed by Ontario law. AIC acted as trustee for each. AIC admits that Exhibits P-1.1 to 1.8 inclusive communicated in support of paragraph 35 of the Action are correct reproductions of such Declarations of Trusts and/or amendments thereto;
7. AIC was also responsible as manager for the management and investments of each of the relevant funds, under various agreements and amendments thereto entered into separately for each of funds. AIC admits that Exhibits P-4.1 to 4.12 communicated in support of paragraph 46 of the Action are correct reproductions of such agreements and/or amendments thereto;
8. AIC agrees that each of the relevant funds is a form of investment fund designated in French as *Organisme de placement collectif* by the *Securities Act* of Quebec;

9. As such, AIC distributes units of each of the funds by way of continuous offer to the public at large for the primary issue of such units at a price per unit corresponding to the total net asset value (“NAV”) of the relevant fund divided by the number of units in circulation. Such an offer to the public for the distribution by way of primary issuance of fund units is subject to the filing of a prospectus in accordance with the *Securities Act*. The prospectus is delivered to investors upon their first purchase of units of an AIC fund in accordance with applicable requirements of securities legislation;
10. As provided by securities legislation, the prospectus is an information document containing the disclosure of matters that are material to the public’s investment decision. AIC admits that the prospectus communicated by Plaintiff as Exhibit P-7 is a correct reproduction of the AIC prospectus filed with in accordance with Quebec securities legislation in 2000;
11. There is no secondary market for mutual fund units. Instead, and as required by law, the purchaser of units acquires the right to cause them to be redeemed on demand at any time, at a price corresponding to the NAV per unit at the time of the redemption;
12. In accordance with industry practices, AIC as a mutual fund company does not deal directly with the investing public. Purchases and redemptions of units of AIC Funds are done by investment dealers acting as agents and advisors for their clients. Typically, for instance, the Plaintiff herein purchased his units of a CI fund through a securities account he maintained at the time with the *Financière Banque nationale*, a full-service broker, and a member of the *Investment Industry Regulatory Organization of Canada* (“IIROC”);

13. Contrary to Plaintiff's assertion in paragraph 72 of the action, AIC does not act as administrator of property of any class member herein, by reason of the following facts:
 - a. The contract between AIC and the investor through the latter's broker is one whereby the investor acquires a security, namely, units of an AIC mutual fund, for a price. The said units are the property of the investor and are usually kept by the investor's broker as custodian. The investor himself has the right to cause them to be redeemed at his leisure;
 - b. The fund assets being managed by AIC as portfolio manager are trust funds. They are not owned by the investor. Moreover the said trusts are governed by the laws of Ontario;
 - c. The facts complained of in the Action do not relate to the administration of any property of the class members, but rather to the management of the business of dealing with purchases and redemptions of mutual fund units by alleged market timers;
14. The obligations of AIC are set out in the constating documents of each AIC fund. The rights of unitholders of each AIC fund are expressly limited to those ascribed to them under the said constating documents;
15. As appears from Regulation 81-102 cited in paragraph 70 of the Action, and the constating documents regarding each of the AIC funds (Exhibits P-1 and P-4), the obligations and duties of AIC as manager are stipulated in favour of the AIC funds only.

Market Timing Trading

16. Market timing as defined in paragraph 3 of the Action is alleged to *contain* certain characteristics, namely (i) the purchase of units for an amount of \$10,000.00 or more and their redemption within five (5) days; (ii) the purchase is made at a price lesser than the fair value due time zone differences ("stale prices"); and (iii) there is no fee, or a fee lesser than 2 percent, to the investor upon redemption of the units. AIC adds that it is also an essential characteristic of market timing that

it be made with the *intent* to profit from stale prices that may be used in the calculation of the net asset value of certain mutual funds;

17. Market timing by investors was neither illegal nor prohibited at the material time. Such trading was consistent with the liquid nature of mutual fund investments in general and more specifically with the liquid nature of the AIC Funds. Indeed, mutual funds are by law distributed by way of a binding offer to the public at large and, by law, the holder of mutual fund units has the right to have his units redeemed at any time in order to insure that mutual funds are liquid investments;
18. Moreover, at the material time, none of the relevant securities regulatory organizations had issued or promulgated any guidance or standard upon which mutual fund companies like AIC could rely as it relates to market timing activities that may have been taking place in their funds;

Monitoring Accounts and Program Agreements

19. At all time material, AIC as manager monitored transactions in the AIC funds in a manner consistent with its obligations to the AIC funds and with applicable industry rules and standards;
20. At some time prior to 2001, AIC became aware that certain investors were carrying out high-volume, short-term trading in AIC funds. At the time, AIC was of the reasonable belief that the large investments made by investors carrying out short-term trading were not harmful to the AIC funds and could, in certain circumstances, be beneficial to unitholders in the AIC Funds;
21. Given the administrative challenges that a high volume of short-term trading could pose for AIC in efficiently managing the portfolios of the AIC Funds from an operational perspective, AIC entered into formal asset switching program agreements (the "program agreements") with three institutional investors (the "program investors") to restrict and regulate their short-term trading. Asset switching consists of redeeming units of a monetary mutual fund using the

proceeds to buy units on an equity fund, and vice-versa, which was the mode of operations of the program investors for their short-term transactions;

22. Under the program agreements, AIC expressly limited:
 - a. the funds in which switch transactions could be carried out;
 - b. as of April 26, 2002, the number of monthly switch transactions that could be carried out per fund;
 - c. the maximum amount that the program investors could redeem without incurring further fees; and
 - d. the maximum funds that the program investors could invest;
23. In each case, AIC imposed an additional fee of two basis points on switch transactions pursuant to the applicable program agreement, which was paid to the AIC funds to the benefit of all unitholders. In contrast, no fees were imposed by AIC on switch transactions in the normal course by other unitholders of the AIC funds;
24. In entering into the program agreements, AIC properly considered the interests of the AIC funds and all of the unitholders. AIC judged that the restrictions put into place would properly protect the interests of all unitholders and, in putting in place such restrictions, acted with reasonable care, diligence and competence in accordance with any obligation it may have had to the AIC funds and all the unitholders;
25. While the program agreements were in place, AIC closely monitored and enforced the restrictions put in place in respect of the program investors;

The OSC Settlement Agreement

26. In or about November 2003, the Ontario Securities Commission (the "OSC") began an inquiry into certain practices in the mutual fund industry. AIC fully cooperated with that inquiry;
27. Following the OSC inquiry, the Staff of the OSC communicated to AIC that it faced potential regulatory proceedings concerning the alleged market timing carried out by the program investors, who were identified by the OSC Staff as "market timing traders";
28. For the purpose of resolving any potential regulatory proceedings, the Staff of the OSC and AIC negotiated a settlement pursuant to which, among other things, AIC agreed voluntary to compensate unitholders allegedly affected by the impugned trading of the program investors;
29. On December 14, 2004, AIC entered into a settlement agreement with the Staff of the OSC (the "OSC Settlement Agreement"), which included an agreed statement of facts. The OSC Settlement Agreement expressly provided that AIC's agreement with the agreed statement of facts was only for the purposes of the OSC Settlement Agreement and was without prejudice to AIC in any subsequent proceeding. In that regard, AIC does not admit the facts contained therein for the purposes of these proceedings, save and except as they are expressly admitted herein. AIC denies that it is open to Plaintiff and the class members to rely upon any of the facts contained in the statement of facts unless so expressly admitted herein;
30. The OSC approved the OSC Settlement Agreement pursuant to its public interest jurisdiction by order dated December 16, 2004. In so doing, the OSC did not find that AIC had breached Ontario or any other jurisdiction's securities law;
31. Under the OSC Settlement Agreement, AIC agreed to pay \$58.8 million (the "OSC settlement payment") to unitholders allegedly affected by the alleged

market timing trading. AIC paid this amount, which was distributed to such unitholders under the supervision of the OSC and at no cost to those unitholders;

32. As well, the securities dealers through which certain alleged market timers placed their trades entered into settlement agreements with the Investment Dealers Association (now IIROC) and/or the Mutual Fund Dealers Association of Canada (the "SRO Settlement Agreements"). Pursuant to the SRO Settlement Agreements, an additional amount of \$9.6 million was distributed to unitholders of mutual funds including the AIC-related class members;

The alleged faults

33. AIC did not breach any obligation and did not commit any fault as alleged in support of the Action. AIC had no duty to act corresponding to any of the faults of omission alleged in the Action. On the contrary:
- a. The method of calculating the net asset value of the AIC funds daily at 4 o'clock in the afternoon was consistent with industry practices and with representations made in the AIC prospectus;
 - b. Short-term transactions as they may have taken place in the AIC funds were lawful transactions, which AIC reasonably believed were not harmful to unitholders. There were no representations by AIC in the prospectus or elsewhere that AIC undertook to block short-term trading. On the contrary, it was made clear that short-term trading could be permitted and that the decision to charge any fee for it was entirely within the discretion of AIC;
 - c. There was no industry or regulatory guideline or standard on which AIC could rely to interfere with the lawful trading of the alleged market timers;

The Damages

34. In any event and without prejudice, the class members did not suffer any damages resulting from the alleged market timing, or such damages were indirect and/or unforeseeable;

35. In any event and without prejudice, the AIC-related class members were more than fully compensated for whatever damages they may have suffered by the amounts paid to them pursuant to the OSC Settlement Agreement and the SRO Settlement Agreements;
36. The Action herein is unfounded in fact and in law as regards AIC.

WHEREFORE DEFENDANT AIC PRAYS THAT

- A)** the Defence of Defendant AIC be MAINTAINED, and
- B)** the Plaintiff's action as against AIC be DISMISSED,
- C)** the WHOLE with costs.

Montreal, January 15, 2016

Borden Ladner Gervais

Borden Ladner Gervais LLP
Attorneys for AIC Global Holdings Inc.

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DISTRICT OF MONTREAL

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DEFENDANT AIC GLOBAL HOLDINGS INC.'S
STATEMENT OF DEFENCE

ORIGINAL

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