

**DISTRIBUTION PROTOCOL  
IN THE MATTER OF THE OPTICAL DISC DRIVE (ODD) CLASS ACTION  
SETTLEMENTS**

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## GENERAL PRINCIPLES OF THE ADMINISTRATION

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into in the Canadian ODD price-fixing class actions with the following defendants (the “**Settlement Agreements**”):
  - (a) TEAC Corporation, TEAC America, Inc. and TEAC Canada, Ltd.;
  - (b) NEC Corporation and NEC Canada, Inc.;
  - (c) Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., LG Electronics Inc., LG Electronics Canada, Inc., and LG Electronics USA, Inc.;
  - (d) Sony Corporation, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony Of Canada Ltd., Sony Electronics, Inc., Sony Corporation of America and Sony NEC Optiarc, Inc.;
  - (e) Philips & Lite-On Digital Solutions Corporation (incorrectly referred to as Philips & Lite-On Digital Solution Corporation in the Quebec action), Philips & Lite-On Digital Solutions USA, Inc., Koninklijke Philips N.V. (formerly known as Koninklijke Philips Electronics N.V.), Lite-On IT Corporation of Taiwan, Lite-On IT Corporation, Philips Canada Ltd., Philips Electronics North America Corporation and Philips Electronics Ltd.;
  - (f) Toshiba Corporation, Toshiba Samsung Storage Technology, Toshiba Samsung Storage Technology Korea Corporation, Toshiba of Canada Limited, Toshiba America Consumer Products, LLC, Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., and Samsung Electronics America, Inc.;

- (g) Panasonic Corporation, Panasonic Corporation of North America and Panasonic Canada, Inc.; and
  - (h) Any other settlement agreement approved by the Courts before the implementation of this Distribution Protocol.
2. The administration shall:
- (a) implement and conform to the Settlement Agreements, orders of the Courts and this Distribution Protocol;
  - (b) include the establishment and maintenance of the Settlement Website;
  - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible;
  - (d) rely on the ODD and ODD Products sales information provided by the Defendants wherever possible; and
  - (e) be bilingual in all respects.
3. This Distribution Protocol is intended to facilitate an equitable distribution of the Net Settlement Funds among Settlement Class Members.
4. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their purchases of ODDs or ODD Products, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## DEFINITIONS

5. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
6. For the purpose of this Distribution Protocol:
  - (a) ***Assessed Purchases*** means the value of the Settlement Class Member's claim for the purposes of determining the Settlement Class Member's *pro rata* share of the Net Settlement Funds, calculated by the Claims Administrator in accordance with paragraph 11 below.
  - (b) ***BC Court*** means the Supreme Court of British Columbia.
  - (c) ***Claims Administrator*** means the firm proposed by Class Counsel and appointed by the Courts to administer this Distribution Protocol and any employees of such firm.
  - (d) ***Claims Filing Deadline*** means the date by which Claim Forms (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
  - (e) ***Claim Form*** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
  - (f) ***Class Counsel*** means Camp Fiorante Matthews Mogerman LLP, Siskinds LLP and Consumer Law Group Inc.

- (g) ***Class Period*** means January 1, 2004 to January 1, 2010.
- (h) ***Courts*** means the Supreme Court of British Columbia and the Superior Court of Quebec.
- (i) ***Decision Notice*** shall have the meaning attributed to it in paragraph 39.
- (j) ***Defendants*** means the following entities:
  - (i) TEAC Corporation, TEAC America, Inc. and TEAC Canada, Ltd.;
  - (ii) NEC Corporation and NEC Canada, Inc.;
  - (iii) Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., LG Electronics Inc., LG Electronics Canada, Inc., and LG Electronics USA, Inc.;
  - (iv) Sony Corporation, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony Of Canada Ltd., Sony Electronics, Inc., Sony Corporation of America and Sony NEC Optiarc, Inc.;
  - (v) Philips & Lite-On Digital Solutions Corporation (incorrectly referred to as Philips & Lite-On Digital Solution Corporation in the Quebec action) and Philips & Lite-On Digital Solutions USA, Inc.;
  - (vi) Toshiba Corporation, Toshiba Samsung Storage Technology, Toshiba Samsung Storage Technology Korea Corporation, Toshiba of Canada Limited, Toshiba America Consumer Products, LLC, Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., and Samsung Electronics America, Inc.;
  - (vii) Panasonic Corporation, Panasonic Corporation of North America and Panasonic Canada, Inc.;
  - (viii) Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd., and Pioneer Electronics of Canada Inc.;
  - (ix) Quanta Storage, Inc., Quanta Storage America, Inc.; and
  - (x) BenQ Corporation, BenQ America Corporation, BenQ Canada Corp.
- (k) ***Direct Purchaser End Users*** are Settlement Class Members who purchased ODDs and/or ODD Products for their own use and not for commercial resale directly from a Defendant or an entity related to a Defendant.

- (l) ***Direct Purchaser Resellers*** are Settlement Class Member who purchased ODDs and/or ODD Products for commercial resale directly from a Defendant or an entity related to a Defendant.
- (m) ***Documented Claims*** has the meaning attributed to it in paragraph 9.
- (n) ***Excluded Persons*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (o) ***Minimum Administrative Payment*** means the amount paid to all Settlement Class Members who file accepted Undocumented Claims. This amount is subject to approval of the BC Court and will be \$20, or less in the event that the amount allocated to Documented Claims is, in the view of the BC Court, disproportionately low.
- (p) ***Net Settlement Funds*** mean the aggregate of the settlement amounts recovered pursuant to the Settlement Agreements, plus any costs awards and accrued interest after payment of Class Counsel's fees as approved by the Courts and after deduction of the Reserve Funds, administration expenses and all taxes (including interest and penalties) accruable with respect to the income earned by the settlement amounts.
- (q) ***ODD*** means a device that reads and/or writes to CD-ROM, CD-R/RW, DVDROM, DVD-R/RW, Blu-Ray, Blu-Ray R/RW, and HD DVD.

- (r) **ODD Products** means computers, video game consoles, and ODDs that are designed to be attached externally to devices such as computers.
- (s) **Online Claim Portal** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 23 to 27 of this Distribution Protocol.
- (t) **Other End Users** are Settlement Class Members who purchased ODDs and/or ODD Products for their own use and not for commercial resale, from an entity that is not a Defendant or related to a Defendant. For clarity, this category includes so-called “umbrella purchasers”, meaning persons who purchased ODDs or products containing ODDs manufactured by non-Defendants.
- (u) **Other Resellers** are Settlement Class Members who purchased ODDs and/or ODD Products for commercial resale, from an entity that is not a Defendant or related to a Defendant. For clarity, this category includes so-called “umbrella purchasers”, meaning persons who purchased ODDs or products containing ODDs manufactured by non-Defendants.
- (v) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (w) **Purchase Price** means the aggregate amount actually paid by Settlement Class Members for ODDs purchased in Canada during the Class Period, less any rebates or other form of discounts (such as off-invoice, bill-back or scan-back trade promotion payments), delivery or shipping charges, and taxes.

- (x) ***Reserve Funds*** means CAD \$1 million, reserved in a trust account for the benefit of the Settlement Class Members.
- (y) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.
- (z) ***Settlement Class Member*** means any Person in Canada who purchased an ODD or ODD Product in Canada during the Class Period, except the Excluded Persons.
- (aa) ***Settlement Website*** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreements, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.
- (bb) ***Undocumented Claims*** has the meaning attributed to it in paragraph 7.

## **DISTRIBUTION OF NET SETTLEMENT FUNDS**

### **Undocumented Claims**

7. Settlement Class Members may file a Claim Form in respect of one or more ODD or ODD Product without providing proof of purchase (“**Undocumented Claims**”).
8. Settlement Class Members who file Undocumented Claims will be eligible to receive the Minimum Administrative Payment referenced in paragraph 13. If, in the opinion of Class Counsel or the Claims Administrator, the value of Undocumented Claims will result in an unfair distribution of the Net Settlement Funds, the Claims Administrator or Class Counsel may seek direction from the BC Court.

### **Documented Claims**

9. Settlement Class Members who wish to be eligible to receive more than the administrative minimum payment must substantiate their claim by purchase information



provided by the Settlement Class Member and/or the Defendants (“**Documented Claims**”).

10. After Undocumented Claims are paid out, the remaining Net Settlement Funds will be distributed to qualifying Settlement Class Members who filed Documented Claims. In respect of Documented Claims, a Settlement Class Member’s entitlement will be calculated *pro rata* (proportionally) based on the value of the qualifying Settlement Class Member’s Assessed Purchases as against the value of all qualifying Settlement Class Members’ Assessed Purchases.

11. For the purposes of the *pro rata* distribution, a Settlement Class Member’s Assessed Purchases will be calculated as follows:

(a) The sum of a Settlement Class Member’s ODD and ODD Products purchases during the Class Period will be calculated. The following values will apply:

- (i) ODDs will be valued at 100% of their Purchase Price;
- (ii) ODD Products will be valued at the following amounts:

Product	Value
Laptop and desktop computers	\$25
Gaming systems (other than the Sony PlayStation3)	
External DVD and CD drives	
Sony PlayStation 3	\$70
External Blu-ray drives	

(b) To account for the position of the Settlement Class Member in the distribution chain, the following percentages will be applied to the purchases outlined in paragraph 11(a):

Purchaser Type	Percentage
Direct Purchaser End Users	100%
Direct Purchaser Resellers	25%
Other End Users	80%

Other Resellers	15%
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### Sample Calculation

12. If a Settlement Class Member purchased \$100,000 worth of ODDs directly from Defendants for resale and 10 computers directly from Defendants for its own use, its Assessed Purchases would be **\$25,250**, calculated as follows:

\$100,000 (the value of ODDs purchased) x 0.25 (the  
percentage applied to Direct Purchaser Reseller)

+

10 (the number of computers) x \$25 (the assigned value of  
an ODD within a computer) x 100% (the percentage  
applied to Direct Purchaser End Users)

= Assessed Purchases of \$25,250.

Assuming the value of all qualifying Settlement Class Members' Assessed Purchases totalled \$10 million, this Settlement Class Member would be entitled to 0.2525% of the Net Settlement Funds remaining after Undocumented Claims are paid out.

### Minimum Administrative Payment

13. Subject to further directions of the BC Court, all eligible Settlement Class Members will receive the Minimum Administrative Payment, which will be \$20 or less. The Minimum Administrative Payment is subject to approval by the BC Court, and will be reduced below \$20 in the unlikely event that the amount allocated to Documented Claims is, in the BC Court's view, disproportionately low.
14. The valuation target of \$20 for the Minimum Administrative Payment is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.

### **Reserve Funds**

15. Class Counsel reserve the right to apply to the Courts to have the Reserve Funds applied against future disbursements and/or future adverse costs awards.

### **Directions from the BC Court**

16. In consultation with Class Counsel, the Claims Administrator can seek directions from the BC Court with respect to the distribution of the Net Settlement Funds to ensure an equitable and cost effective distribution of the Net Settlement Funds.

## **THE CLAIMS PROCESS**

### **Contents of the Claim Form**

17. The Claim Form shall require Settlement Class Members to provide the following:
  - (a) name and contact information;
  - (b) in respect of Undocumented Claims only, a declaration that the Settlement Class Member purchased one or more ODD or ODD Product during the Class Period;
  - (c) in respect of Documented Claims only:
    - (i) information that will allow the Claims Administrator to determine the Settlement Class Member's Assessed Purchases in accordance with paragraph 11;
    - (ii) proof of purchase consistent with paragraph 20;
  - (d) disclosure about whether the Settlement Class Member or any related entity has received compensation through other proceedings or private out-of-class settlements and/or provided a release in respect of any of the Settlement Class Member's purchases of ODDs and/or ODD Products;
  - (e) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate, for more information and/or to review the Claim Form;

- (f) a declaration that the information submitted in the Claim Form is true and correct;  
and
  - (g) if the Claim Form is submitted by a related entity (i.e., a parent company claiming on behalf of a subsidiary or affiliate) or a third-party on behalf of a Settlement Class Member (i.e., a third-party claims services or a lawyer of their own choosing), the Settlement Class Member must provide a signed authorization in the form attached hereto as Schedule “A” or Schedule “B”, as applicable, at the time the Claim Form is submitted.
18. The Claim Form will contain an option for Settlement Class Members to consent to the Claims Administrator retaining the information provided in the Claim Form for the purpose of filing a future claim in other price-fixing class actions, including consent to receiving correspondence and/or notices relating to other price-fixing class actions by email or direct mail.

**Purchase Information Required as Part of a Documented Claim**

Settlement Class Members relying on Defendant sales data

19. Where the Defendants have provided sales information in respect of a Settlement Class Member:
- (a) the fields in the Claim Form relating to the Settlement Class Member’s purchases of ODDs and/or ODD Products during the Class Period shall be automatically populated with the sales information provided by the Defendants.
  - (b) The Settlement Class Member will be given the opportunity to agree with the purchase information provided by the Defendants.
  - (c) If necessary, the Settlement Class Member may be asked for additional information to assist with the interpretation of Defendant data.

Settlement Class Members claiming for purchases not substantiated by Defendant sales data

20. Where a Settlement Class Member claims for purchases not substantiated by the Defendants' data:

- (a) the Settlement Class Member will be required to complete all relevant fields in the Claim Form relating to the Settlement Class Member's purchases of ODDs and/or ODD Products during the Class Period; and
- (b) the Settlement Class Member will be required to provide documentary proof in any of the following forms:
  - (i) invoices, receipts, delivery or packing slips, purchase records, or historical accounting records; or
  - (ii) a declaration attesting to the number of ODDs and/or ODD Products<sup>1</sup> purchased (broken down by product type) during the Class Period, together with substantiating documentation that is acceptable to the Claims Administrator. For greater clarity,
    - (A) The declaration must:
      - (I) be sworn by the Settlement Class Member or an officer, director or employee of the Settlement Class Member. To the extent that the declaration contains information that is not within the declarant's personal knowledge, the declarant must identify the source of the information and their belief that the information is true;
      - (II) reflect realistic purchasing practices. Any extrapolations based on the frequency of product replacement/turnover (for example, statements such as: "The Settlement Class Member replaces employee laptops every X years...") should be supported by actual business records during or after the Class Period. If actual business records are not available, it will be assumed that the Settlement Class Member made only one round of purchases during the Class Period;

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<sup>1</sup> For the purpose of determining the Purchase Price, ODD Products will be valued in accordance with paragraph 11(a)(ii). ODDs that are CD-ROM and DVD drives will be valued at \$25 per unit, and ODDs that are Blu-Ray drives will be valued at \$70 per unit.

- (III) clearly set out any data points or metrics used to calculate the Settlement Class Member's purchases of ODDs or ODD Purchases during the Class Period; and
  - (IV) to the extent that the Settlement Class Member is extrapolating its ODD and/or ODD Product purchases based on purchase records for part of the Class Period or post-Class Period, the Settlement Class Member must provide the basis of the extrapolation and proof that the Settlement Class Member was fully operational during the period in which the Settlement Class Member is extrapolating its purchases.
- (B) The substantiating documentation must:
- (I) support each of the key data points or metrics relied upon in the declaration; and
  - (II) be claimant-specific and contemporaneous with the Class Period. If contemporaneous documents are not available, more recent documents may be submitted provided that the claimant explains their relevance to the Class Period.
- (c) With respect to Settlement Class Members who substantiate their claims with a declaration pursuant to paragraph 20(b)(ii), the Claims Administrator has discretion to approve, in full or part, any claim based on its own assessment of reasonableness. As part of this assessment, the Claims Administrator can consider the reasonableness of the Settlement Class Member's assertions, any substantiating evidence (or lack thereof) provided by the Settlement Class Member, and publicly available information. The Claims Administrator may, at its own discretion, request further information from the Settlement Class Member.

### **Assistance in Filing a Claim Form**

21. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim Form.
22. For Documented Claims, Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claim Forms. If a

Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Members will be responsible for any and all expenses incurred in doing so.

**The Online Claim Portal**

23. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim Form online and shall provide the necessary administration support to enable Settlement Class Members to do so.
24. The Online Claim Portal shall be accessible from the Settlement Website.
25. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim Form, in accordance with paragraphs 17 to 18 above.
26. The Online Claim Portal shall be designed so as to minimize the possibility of deficient Claim Forms.
27. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is provided by Settlement Class Members in their Claim Forms:
  - (a) names, addresses, and purchase data of the Settlement Class Members;
  - (b) supporting documents provided by Settlement Class Members as part of the claims process; and
  - (c) any other information that might be useful in the claims administration process.

### **The Process for Filing a Claim Form**

28. Settlement Class Members will be encouraged to complete and submit a Claim Form electronically using the Online Claim Portal.
29. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal.
30. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim Form using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy Claim Form by mail. Settlement Class Members who are corporate entities must submit a Claim Form using the Online Claim Portal.
31. Subject to paragraph 37 or further order of the BC Court, all completed Claim Forms must be submitted to the Claims Administrator vis the online claim portal or postmarked no later than the Claims Filing Deadline.
32. Subject to the discretion of the Claims Administrator, claims may not be amended after the Claims Filing Deadline. For greater clarity, “placeholder claims”—meaning inaccurate and/or incomplete claims filed solely for the purpose of meeting the Claim Filing Deadline—will not be permitted.



### **Deficiencies and Review Process**

33. The Claims Administrator shall review all Claim Forms for (or implement processes to detect) deficiencies including incomplete fields, missing documentation, out-of-country claims, and duplicative or fraudulent claims.
  
34. In addition to the above, the Claims Administrator will review a subset of claims for accuracy. Among other things, this review will determine whether the Settlement Class Member provided adequate proof of purchase in accordance with paragraph 20(b). The Claims Administrator will review:
  - (a) any claims supported by a declaration pursuant to paragraph 20(b)(ii);
  - (b) the top 15% of Documented Claims (measured by Assessed Purchases) that are not substantiated by the Defendants' data; and
  - (c) at least an additional 10% of other Documented Claims that are not substantiated by the Defendants' data.
  
35. At its sole discretion, the Claims Administrator can elect to review any claim and can reject a claim, in whole or in part, where, in the Claims Administrator's view, the Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.
  
36. If a Settlement Class Member's claim is identified pursuant to paragraph 33 as deficient or identified pursuant to paragraph 34 as being supported by insufficient proof of purchase, the Claims Administrator will provide the Settlement Class Member with instructions for remedying the issue(s) and shall provide (30) days from the date of such notice to remedy the issue(s). If the issue(s) is not corrected within the thirty (30) day period, the Claims Administrator may reject the Claim Form.

### **Adjustments to Claims Process and Extension of the Claims Filing Deadline**

37. By agreement between the Claims Administrator and Class Counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust the claims process. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Funds and it is in the best interests of the Settlement Class Members to do so.

### **Claims Administrator's Decision**

38. In respect of each Settlement Class Member who has filed a Claim Form in accordance with this Distribution Protocol, the Claims Administrator shall decide whether the Settlement Class Member is eligible to receive settlement benefits in accordance with the Distribution Protocol and any orders of the Courts related to the Distribution Protocol.
39. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the claim and the determination of their Assessed Purchases (the "**Decision Notice**"). Where the Claims Administrator has rejected all or part of a claim (or recategorized any purchases into a different purchaser group), the Claims Administrator shall include in the Decision Notice its grounds for rejecting or recategorizing all or part of the claim.
40. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 41 to 49.

### **Appeal of the Claims Administrator's Decision**

41. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.

42. The following grounds shall not be grounds for appeal:
  - (a) the Claims Administrator's refusal to accept a Claim Form postmarked or electronically submitted after the Claims Filing Deadline;
  - (b) the Claim Administrator's decisions on Undocumented Claims;
  - (c) the Claim Administrator's decision to reject a Claim Form pursuant to paragraph 36 for the failure to respond to a request for additional information; or
  - (d) the structure of the Distribution Protocol, as approved by the Courts.
43. Appeals will be determined by the BC Court or a third-party designated by the BC Court.
44. A \$150 filing fee is payable by a Settlement Class Member upon submission of a notice of appeal to the Claims Administrator. If a Settlement Class Member's claim was partially approved, the filing fee shall be deducted from the Settlement Class Member's settlement benefits. If a Settlement Class Member's claim was rejected, the Settlement Class Member will be required to pay the filing fee to the Claims Administrator by e-transfer or cheque within ten (10) days after delivering a written appeal. If a Settlement Class Member does not pay the filing fee within ten (10) days after delivering a written appeal, their appeal shall be dismissed.
45. The filing fee shall be refunded if the BC Court or a third-party designated by the BC Court finds in favour of the Settlement Class Member.
46. Appeals will be on the basis of written submissions, supported by the documentation provided by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any

new documentation provided as part of the appeal will not be provided to the BC Court or its designee for consideration.

47. The Claims Administrator must provide to the BC Court or its designee a copy of the documentation provided by the Settlement Class Member as a part of the claims process, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal. The Claims Administrator and Class Counsel may make written submissions to the BC Court or its designee as is reasonably necessary.
48. Notwithstanding the foregoing, the BC Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the BC Court or its designee) from the Settlement Class Member, Claims Administrator and/or Class Counsel.
49. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **Adjustments to Appeal Process and Extension of the Appeal Deadline**

50. Subject to the approval of the BC Court or its designee, Class Counsel may extend the appeal deadline and/or adjust the appeal process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Funds and it is in the best interests of the Settlement Class Members to do so.

#### **Payment of Settlement Benefits**

51. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member.

52. Class Counsel will report to the BC Court the particulars of the proposed distribution to each eligible Settlement Class Member in order to allow the BC Court to consider whether the amount allocated to Documented Claims is, in the Court's view, disproportionately low, in which case the Minimum Administrative Payment will be reduced.
53. The Claims Administrator shall make arrangements to pay approved claims as expeditiously as possible. Undocumented Claims may be paid out before Documented Claims.
54. For individual claimants, payments will be made by e-transfer or cheque. Where an individual Settlement Class Member elects to receive payment by cheque, \$2 will be deducted from that Settlement Class Member's payment to reflect the cost of issuing a cheque. The online claims portal shall provide individual Settlement Class Members an opportunity to elect between payment by e-transfer or cheque, and shall advise that individual Settlement Class Members who elect to receive payment by cheque will have \$2 deducted from their payment to reflect the cost of issuing a cheque. For commercial claimants, payments will be issued by cheque or, at the discretion of the Claims Administrator, wire transfer.

## **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **Supervisory Powers of the BC Court**

55. The Claims Administrator shall administer this Distribution Protocol under the ongoing authority and supervision of the BC Court.

### **Investment of Settlement Funds**

56. The settlement amounts shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a

Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

### **Communication, Languages and Translation**

57. Where a Claim Form is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
58. The Claims Administrator shall establish a toll-free number for calls from Canada.
59. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.
60. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.
61. In the event of any dispute as to the interpretation or application of this Distribution Protocol, only the English version shall be considered.

### **Undeliverable Mail**

62. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
63. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Subject to the sole discretion of the Claims Administrator, payments for the Minimum Administrative Payment will not be reissued. Subject to the Claims Administrator's discretion, where a Settlement

Class Member who is entitled to payment of greater than the Minimum Administrative Payment requests that payment be reissued, the cost of repayment (\$10 for e-transfers and \$15 for cheques) will be deducted from that Settlement Class Member's settlement benefits.

### **Fraudulent Claim Forms**

64. The Claims Administrator shall develop and implement processes to detect possible fraudulent conduct, including monitoring Claim Forms for unusual activity and multiple Claim Forms being filed from the same address and/or IP address.

### **Taxes**

65. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds and shall pay any taxes imposed on such monies out of the Net Settlement Funds.

### **Currency Conversion**

66. If necessary, the Claims Administrator may convert purchases made in foreign currency to CAD, using the average Bank of Canada rate during the Class Period.

### **Reporting**

67. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
68. The Claims Administrator shall provide any reports requested by the Courts.

### **Assistance to the Claims Administrator**

69. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol, provided

that related expenses are paid out of the Claims Administrator's fees or approved by the BC Court in advance.

### **Preservation and Disposition of Claim Submissions**

70. Subject to paragraph 72, the Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, Claim Forms, documents relating to the Claim Forms, and documents relating to the claims administration, including customer and sales information provided by the Defendants, until three (3) years after this action is finally resolved and all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy such documents by shredding, deleting, or such other means as will render the materials permanently illegible.

### **Confidentiality**

71. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Distribution Protocol, including evaluating the Settlement Class Member's eligibility status under the Distribution Protocol. The information provided by the Settlement Class Member is strictly private and confidential and will not be disclosed without the express written consent of the Settlement Class Member, except in accordance with the Distribution Protocol and/or orders of the Courts.
72. If a Settlement Class Member consents, information respecting a Claim Form filed by that Settlement Class Member may be preserved and used by the Claims Administrator the purpose of filing a claim in other price-fixing class actions, including consent to receiving correspondence and/or notices relating to other price-fixing class actions by



email or direct mail.. The information shall continue to be treated as strictly private and confidential and subject to the protections of the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5.

**Subsequent Distributions**

73. Information provided by Settlement Class Members as part of the claims process will be preserved and used by the Claims Administrator in the future administration of further settlement agreements in this action.
  
74. Settlement Class Members who did not claim pursuant to the within Distribution Protocol will be ineligible to participate in any subsequent distributions.

**SCHEDULE “A” – RELATED ENTITY AUTHORIZATION**

This Schedule is to be completed only if the Claim is being submitted by a parent company on behalf of a subsidiary or affiliate.

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I \_\_\_\_\_ [*name of Settlement Class Member*]  
authorize \_\_\_\_\_ [*name of representative*] to file  
a Claim in the Canadian ODD Price-Fixing Class Action Distribution on my behalf.

I understand that all communications relating to the Claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at \_\_\_\_\_ [*city*], in the Province of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

I have the authority to bind the corporation

**SCHEDULE “B” – THIRD-PARTY AUTHORIZATION**

This Schedule is to be completed only if the Claim is being submitted on behalf of a Settlement Class Member by a representative (including a third-party claims service or lawyer of their own choosing).

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I, \_\_\_\_\_ [*name of Settlement Class Member*] authorize \_\_\_\_\_ [*name of representative*] to file a Claim in the Canadian ODD Price-Fixing Class Action Distribution on my behalf.

I understand that the claims filing process was designed to enable Settlement Class Members to file Claims without the assistance of an agent and that the Settlement Class Member can contact the Claims Administrator at no charge to ask questions about the claims filing process.

I have reviewed the information to be submitted by my representative as part of the Claim Form, including the quantum of my ODD and ODD Product purchases. I understand that my representative will be claiming for purchases of ODDs totalling \$\_\_\_\_\_ and purchases of ODD Products totalling \$\_\_\_\_\_. I can attest based on personal knowledge that the information to be submitted by the representative, including the total purchases claimed, accurately reflects the my business records.

I understand that all communications relating to the Claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at \_\_\_\_\_ [*city*], in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

I have the authority to bind the corporation