

MEMORANDUM OF AGREEMENT OF AMENDMENT ENTERED INTO AT MONTREAL, QUEBEC, THIS 20TH DAY OF FEBRUARY, 2008, BY AND BETWEEN MARK RABINOVITCH, ON HIS OWN BEHALF AND IN HIS QUALITY AS PLAINTIFF AND CLASS DESIGNATED REPRESENTATIVE FOR THE CLASS ACTION AUTHORIZED IN SUPERIOR COURT, DISTRICT OF MONTREAL, RECORD NUMBER 500-06-000215-034 (HEREIN REFERRED TO AS "PLAINTIFF") AND CIBC ASSET MANAGEMENT INC. (HEREIN REFERRED TO AS "DEFENDANT").

**WHEREAS:**

- A. By agreement dated December 10<sup>th</sup>, 2007, Plaintiff and Defendant entered into a Settlement and Transaction Agreement in respect of the Class Action instituted in Superior Court, District of Montreal, record number 500-06-000215-034 (the "Action").
- B. The Settlement and Transaction Agreement provided for a method of distribution of the Net Settlement Proceeds, on a pro rata basis, to Class Members who filed valid Proofs of Claim with the Claims Administrator (the "Distribution Process").
- C. The Distribution Process provided for a direct payment by the Claims Administrator of the Pro Rata Share of the Net Settlement Proceeds to Class Members who filed valid Proofs of Claims.
- D. No contestations were filed in respect of the proposed Settlement and Transaction Agreement and the Superior Court (Mr. Justice Pierre Journet, J.S.C.) approved the Settlement and Transaction Agreement by judgment dated December 17<sup>th</sup>, 2007 (the "Superior Court Approval").
- E. A significant number of Class Members held their units in the Fund within registered plan trust accounts, including without limitation, Registered Retirement Savings Plans, Registered Retirement Income Funds, and Registered Education Savings Plans (which are collectively hereinafter referred to as "Registered Plan Accounts").
- F. Subsequent to the Superior Court Approval the Defendant was informed that (1) direct payment to Class Members of the Pro Rata Share of the Net Settlement Proceeds may have an adverse tax consequence to Class Members who held their units in the Fund within a Registered Plan Account, as the payment of same may be included in their income pursuant to the Income Tax Act (Canada) (the "Act") and applicable subsections of the Provincial taxation acts, and that withholding taxes may be applicable to said payments, and (2) that direct payment of the

Class Members' Pro Rata Share of the Net Settlement Proceeds directly to Class Members' Registered Plan Accounts would not have adverse tax implications.

- G. It is in the interests of all Class Members and an additional benefit that the Settlement and Transaction Agreement be amended as herein provided such that the Claims Administrator on behalf of Defendant shall provide an opportunity to all Class Members who held their units in the Fund in a Registered Plan Account to direct that their Pro Rata Share of the Net Settlement Proceeds be deposited directly to their current Registered Plan Account, without any withholding of taxes.
- H. All defined terms shall have the same meaning as provided for in the Settlement and Transaction Agreement unless otherwise defined or modified herein.

**NOW THEREFORE IT IS AGREED:**

1. Preamble

1.1 The Preamble is true and correct and shall form an integral part hereof.

2. Amendment of the Settlement and Transaction Agreement

2.1 Subject to the approval of the Court, the Settlement and Transaction Agreement is hereby amended by adding the following to subsection 2.1.1 of same:

In respect of each Class Member who has filed or who files a valid Proof of Claim with the Claims Administrator and whose units in the Fund were held in Registered Plan Accounts, the Claims Administrator shall advise such Class Members in writing that payment of the Pro Rata Share of the Net Settlement Proceeds may be made, without withholding of tax, directly to their current Registered Plan Accounts, provided that each such Class Member provides to the Claims Administrator the name and address of the financial institution holding their Registered Plan Accounts and the individual's account number thereat, the whole as hereinafter provided (the "Notification Letter"). A copy of the draft Notification Letter is attached as Schedule 1.

In the event that a Class Member wishes to have his/her Pro Rata Share of the Net Settlement Proceeds transferred directly to his/her current Registered Plan Account, then such Class Member shall contact the Claims Administrator directly at the telephone number provided in the Notification Letter or by writing within sixty (60) days of delivery of the Notification Letter by the Claims Administrator to such Class Member and provide the above stated information to the Claims Administrator. In such event the payment will be made directly to the said Registered Plan Account without withholding of taxes.

In the event that a Class Member does not reply to the Notification Letter sent by the Claims Administrator within the aforesaid delay, the Claims Administrator shall pay the Pro Rata Share of the Net Settlement Proceeds directly to the Class Member after deduction and remittance of applicable withholding tax under the Act and the applicable Provincial taxation act(s) on behalf of the Class Member receiving the payment.

2.2. The delay of thirty (30) days set forth in section 5.4 of the Settlement and Transaction Agreement is extended to one hundred and five (105) days and the delay of one hundred and fifty days (150) set forth in section 11.2 of the Settlement and Transaction Agreement is extended to two hundred and twenty-five (225) days.

2.3 Section 8.1.1 of the Settlement and Transaction Agreement shall read as follows:

*"8.1.1 The Plaintiff on his own behalf and in his quality as Class designated representative on behalf of the Class Members who have not opted out of the Class Action pursuant to article 1007 CCP does grant unto the Defendant, in its personal capacity as well as in its capacity as Trustee and administrator of the Fund, the Fund and their parent(s), affiliated and related persons, companies, partnerships, trusts, officers, directors, shareholders, partners, employees, representatives, attorneys, agents, consultants and advisors (all such persons being hereinafter collectively referred to as the "Defendant Released Parties"), for themselves and their predecessors, successors, trustees, Registered Plan Accounts trustees or administrators, and assigns, full and final and complete release and discharge of and from any and all claims, actions, suits, demands, cause of action, costs and expenses which they ever had, may have had, now have or that their respective predecessors, successors and assigns can have or may have individually or collectively or otherwise, against any of the Defendant Release Parties for or by reason of, or in relation to (a) any fact, matter or transaction referred to in the Class Action and the Settled Claims, (b) all amounts claimed in the Class Action or which could have been claimed in respect of the allegations made therein and (c) any conduct of Defendant and of the Defendant Released Parties in respect of the matters that were asserted in the Defense to the Class Action. "*

### 3. Court Approval

3.1 That the present amendment to the Settlement and Transaction Agreement is subject to the approval by judgment of the Superior Court of the Province of

Quebec, application for which will be made by the Defendant as expeditiously as possible.

4. Confirmation of other Terms of the Settlement and Transaction Agreement

4.1 That in all other respects the Settlement and Transaction Agreement shall remain in full force and effect, un-amended.

5. General

5.1 The Parties agree that this Agreement supersedes any and all agreements relating to or concerning the matters provided for herein.

5.2 The covenants, representations and warranties of the Parties shall survive the signing hereof.

5.3 All amounts referred to herein are Canadian currency.

5.4 The Parties agree to do all acts and agree to sign all further documents necessary to give full force and effect to all provisions to this agreement and any agreement arising therefrom.

5.5 This Agreement and any agreement arising therefrom shall be binding upon the Parties hereto and their respective heirs, successors and permitted assigns.

5.6 This Agreement shall be interpreted and construed in accordance with the laws of the Province of Quebec and those of Canada applicable therein.

5.7 Any failure by any Party at any time to insist upon the strict performance of any term, condition or covenant contained in this Agreement and any agreement arising therefrom shall not be deemed a waiver of his or its rights at any time thereafter to insist upon the strict performance thereof, or of any other term, condition or other covenant contained therein.

5.8 In the event any provision of this Agreement shall be or become illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall nevertheless be valid, binding and enforceable in accordance with their terms.

5.9 This Agreement and any agreements arising therefrom, and the Settlement and Transaction Agreement constitute the entire agreement between the Parties and there are no other agreements, oral promises, conditions, representations, understandings, interpretations or terms of any kind or condition or

inducements as to the execution hereof, or in effect between the Parties hereto, and this Agreement amends the Settlement and Transaction Agreement, only in respect of the matters set out herein, solely upon the Court approving same.

- 5.10 Unless there be something in the context inconsistent therewith, words imparting the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine, and words importing persons shall include firms, associations and corporations and vice versa.
- 5.11 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same agreement. In the event that no one counterpart shall be executed by each of the Parties hereto, this Agreement shall nevertheless be properly executed if each of such Parties shall have executed at least one counterpart, no one counterpart need bear the execution of each of them.
- 5.12 The Parties hereto acknowledge having had this Agreement and its effects fully explained to them by legal counsel of their choice and confirm that they have understood such explanation.
- 5.13 Any notice, demand, consent, approval, information or other communication (herein referred to as a "Notice of Counsel") to be given or in connection with this Agreement, shall be in writing and shall be given by personal delivery or by telecopier or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be notified to the other parties:

If to Plaintiff or Class Counsel

c/o Stein & Stein Inc.  
4101, Sherbrooke Street West  
Montreal (Quebec) H3Z 1A7  
Attention: Me Neil H. Stein

E-mail: nstein@steinandstein.com  
Telecopy : 514-875-8218  
Telephone: 514-866-9806

AND

Kugler Kandestin LLP  
1, Place Ville Marie, suite 2101

Montreal (Quebec) H3B 2C6  
Attention : Me Robert Kugler

E-mail : rkugler@kugler-kandestin.com  
Telecopy : 514-875-8424  
Telephone : 514-878-2861

If to Defendant or Defendant's Counsel

c/o Stikeman Elliott LLP  
1155, René Levesque Blvd. West, suite 4000  
Montreal (Quebec) H3B 3V2  
Attention : Me Mortimer Freiheit and Me Marc-André Coulombe

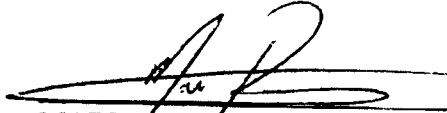
E-mail : mfreiheit@stikeman.com / macoulombe@stikeman.com  
Telecopy : 514-397-3495  
Telephone : 514-397-3000

Any notice to counsel if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the business day next following the day it was received.

- 5.14 The Court shall retain exclusive and continuing jurisdiction over the Class Action and the present Agreement and the Settlement and Transaction Agreement. The Parties hereto, and their counsel, the Arbitrator, Referee and Claims Administrator may apply to the Court for directions on Notice to all Parties to this Agreement;
- 5.15 The Parties hereto, Class Counsel, Defendant's Counsel, the Claims Administrator, the Referee, the Arbitrator, RCGT, LBC, the Plaintiff Released Parties, the Defendant Released Parties, do not make any representations, warranties or stipulations in respect of the tax consequences or liabilities accruing to any Class Member as a result of the Settlement and Transaction Agreement as modified herein.
- 5.16 The Parties hereto acknowledge that they have required that this Agreement and Schedules thereto be drafted in the English language. / Les parties reconnaissent avoir exigé la rédaction dans la langue anglaise seulement de la présente convention ainsi que les annexes.

The present amendment should not be construed to be legal, business or tax advice to any Class Member. These amendments do not take into account a Class Member's particular circumstances and do not address consequences that may be particular to each Class Member. Accordingly, each Class Member should consult his/her own tax advisor regarding the particular consequences as to how his/her payment of the Pro Rata Share of the Net Settlement Proceeds is to be made.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO ON THE DATE AND AT THE PLACE FIRST HEREINABOVE WRITTEN.

  
\_\_\_\_\_  
MARK RABINOVITCH, Plaintiff on his own behalf and in his quality as Class designated representative.

CIBC ASSET MANAGEMENT INC.

Per: \_\_\_\_\_  
Duly authorized

Per: \_\_\_\_\_  
Duly authorized

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MARK RABINOVITCH, Plaintiff on his own behalf and in his quality as Class designated representative.

CIBC ASSET MANAGEMENT INC.

Per: \_\_\_\_\_  
Duly authorized

Per: \_\_\_\_\_  
Duly authorized