

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

SUPERIOR COURT  
(Class Action Division)

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SHEILA CALDER

Plaintiff

v.

ROYAL BANK OF CANADA

-and-

RBC CAPITAL MARKETS CORPORATION

Defendants

-and-

TD WATERHOUSE CANADA INC., a corporation established under the *Business Corporations Act* (R.S.O., c. B.16), having its head office at 15 Flr-66 Wellington Street West, Toronto, Ontario, M5K 1A2

-and-

LE FONDS D'AIDE AUX ACTIONS  
COLLECTIVES

Mis en cause

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MOTION TO DECLARE TD WATERHOUSE CANADA INC.  
HOLDER OF CERTAIN INVESTORS' RIGHTS  
(Articles 49 C.C.P.)

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TO THE HONOURABLE THOMAS M. DAVIS OF THE SUPERIOR COURT OF QUEBEC, SITTING AS CASE MANAGEMENT JUDGE, THE PLAINTIFF RESPECTFULLY STATES AS FOLLOWS:

1. TD Waterhouse Canada Inc. ("TD") is described at the *Registre des entreprises du Québec* as a broker or investment dealer, as it appears from the *État des renseignements* of TD Waterhouse, **exhibit E-1**.
2. In 2006 and 2007, TD made reimbursements in 76 of its clients' accounts in which Olympus United Funds Corporation ("OUFC") shares (formerly First Horizon Holdings Ltd.) had been purchased.

3. In 2010, TD filed a proof of the claim with Richter Advisory Group Inc. (formerly RSM Richter Inc.) in its capacity as a receiver of OUFC, for the positions for which they “*purchased or made restitution*” for ; a copy of said proof of claim and attached spreadsheet is filed as **exhibit E-2**.
4. In support of the E-2 proof of claim, TD provided Richter with supporting documentation in the form of investors’ statements of accounts and signed Settlement and Release, which documents were grouped by class of shares and by investors, as appears from the sworn declaration of Nathalie Jacques, dated November 12, 2020, **exhibit E-3**, par. 4-5, and from **Exhibits E-4 to E-11**.
5. According to the undersigned attorneys’ verification, TD fully reimbursed at least 81 investments out of the 83 made by the concerned investors, as appears from the Mrs. Jacques’ declaration, E-3, par. 8-9.
6. One investment appears to have been fully reimbursed from the E-2 proof of claim and spreadsheet, but no supporting documentation was found by the undersigned attorneys regarding said reimbursement, as appears from Mrs. Jacques’ declaration, E-3, par. 11.
7. One investment was only partially reimbursed, as appears from Mrs. Jacques’ declaration, E-3, par. 10.
8. Account holders holding the accounts mentioned in E-2 proof of claim all signed a Settlement and release containing an assignment of rights in favor of TD, except for those identified below, as appears from Exhibit E-4 to E-11 and from Mrs. Jacques’ declaration, E-3, par. 12.
9. The assignment of rights reads as follows:

*The undersigned hereby irrevocably assigns, transfers and quits claims to TD Waterhouse Canada Inc., absolutely, his or her investment in [Olympus Momentum] including all claims, demands and causes of action that he or she may have against any person, relating to his or her acquisition of his or her investment in Olympus Momentum (including, without limitation, relating to his or her acquisition of his or her investment in [Olympus Momentum]), and TD Waterhouse Canada Inc. is entitled, at its own risk and expense, to bring any suit, action or other proceeding and take any other steps based on the undersigned's investment in Olympus Momentum or any part thereof or any such claim, demand of cause of action in TD Waterhouse Canada's own name, as circumstances may require...*
10. The investors holding account numbers 7U7388, 7Z8883, 8H9387, 8Y5523, 7Z8672 and 8F0855 did not sign such an assignment of rights, as appears from Mrs. Jacques’ declaration, E-3, par. 10.


11. On October 8, 2020, TD Waterhouse received through counsel a copy of the Notice to Members and a particularized letter explaining that on December 2, 2020, the Superior Court of Québec would be asked to determine whether the investors who were reimbursed by TD were nevertheless entitled to a share of the settlement or whether, considering the reimbursement made and/or the signed assignments, their share should instead be paid to TD ; a copy of said letter is filed as **Exhibit E-12**;
12. On the same date, the administrator sent the same by mail.
13. Still on October 8, 2020, it was sent to the investors concerned by the proof of Claim, Exhibit E-2, a Notice to Members and a letter from Plaintiff's Counsel, attached as **Exhibit E-13**, explaining that at the approval hearing, the Superior Court will also determine whether the investors reimbursed by TD are entitled to a share of the settlement or whether, considering the reimbursement made and/or the signed documents, this share should be paid to TD;

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**DECLARE** that, except for investors holding account numbers 7U7388, 7Z8883, 8H9387, 8Y5523, 7Z8672 and 8F0855, TD Waterhouse Canada Inc. is the holder of the rights of the investors identified in the E-2 proof of claim relative to the settlement agreement entered into between the plaintiff and the defendants on August 6, 2020.

**THE WHOLE**, without costs.

MONTREAL, this 18 of November 2020

  
SYLVESTRE PAINCHAUD ET ASSOCIÉS  
S.E.N.C.R.L.  
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**NOTICE OF PRESENTATION**

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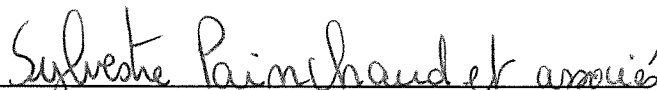
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Attorneys for Fonds d'aide aux actions collectives

**TAKE NOTICE** that the *Motion to declare TD Waterhouse Canada Inc. holder of certain investor's rights means* shall be presented to the Honourable Thomas M. Davis of the Superior Court, of the Province of Quebec, of the District of Montreal, at the Court House of Montreal located at 1 Notre-Dame ST. East, Montreal, Québec H2Y 1B6 on **December 2, 2020 at 9:30 a.m.** or as soon thereafter as Counsel may be heard. The room number will be posted on the door of room No. 2.08 prior to 9 a.m.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, this 18 November 2020



SYLVESTRE PAINCHAUD ET ASSOCIÉS

S.E.N.C.R.L.

Attorneys for the Plaintiff

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CANADA INC.  
HOLDER OF CERTAIN INVESTORS' RIGHTS  
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**ORIGINAL**

Our file: 17310/13

BS0962

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