CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO : 500-06-000435-087

SUPERIOR COURT
CLASS ACTION

SHEILA CALDER

Plaintiff

-c-

ROYAL BANK OF CANADA

-and-

RBC CAPITAL MARKETS CORPORATION

Defendant

MOTION TO INSTITUTE PROCEEDINGS
(CLASS ACTION)
(Sections 1011 ss. C.c.p)

TO THE HONOURABLE MARC DE WEVER, J.C.S., PLAINTIFF SHEILA CALDER RESPECTFULLY SUBMITS THE FOLLOWING:

Plaintiff and Class description

1. By judgment of this Court dated November 1, 2013 Plaintiff Sheila Calder was authorized to institute the present class action proceeding against Royal Bank of Canada and RBC Capital Markets Corporation, for the benefit of the following persons:

> "All Canadian retail investors who purchased one of the Olympus United Funds Corporation shares (formally First Horizon Holdings Ltd.) from June 27, 1999 to June 29, 2005 (the Class period), and who had outstanding shares in said corporations as of June 29, 2005, but to the exclusion of any person who is or was in any way related to John Xanthoudakis or any other former director, administrator, representative or employee of the Norshield Financial Group." (Hereinafter, the Class members);

2. The conclusions sought in the present class action are:

CONDEMN Royal Bank of Canada and RBC Capital Markets to pay Class members the balance in Canadian dollars attributed to their unredeemed shares of Olympus United Funds Corporation or its predecessor First Horizon Holdings Ltd. as of June 29, 2005, less any amount received by class members pursuant to the judgment rendered by this Court on July 26th 2012, in court file 500-06-000434-080[1], and subject to the judgment of July 26th 2012 in the present instance[2], plus legal interest and the special indemnity provided by Article 1619 of the Civil Code of Quebec calculated from the first date of the service of the proceedings in this file;

ORDER the collective recovery of the recovered damages;

CONDEMN Respondents to pay costs, including experts' fees.

3. The Royal Bank of Canada is a Canadian chartered Bank that has its domicile in Montreal;

4. RBC Capital Markets (RBCCM) is a trade mark brand name of Royal Bank of Canada (Royal Bank) and is its corporate and investment banking business platform; RBCCM specializes in options, hedge fund and other structured financial products; together, Royal Bank and RBCCM will be referred to as RBC in the present Motion;

5. The Norshield Financial Group (NFG) was the brand name of a Montreal based financial organization comprising a number of entities in Canada, the Caribbean Islands and the United States; during the Class period, NFG posed as a Canadian leading, established and successful hedge fund and "fund of hedge funds" managers;

6. In the present Motion, Plaintiff Sheila Calder will refer the Court to, among her 54 exhibits, a series of eight Reports that were prepared by various Monitors, Recevers and Liquidators between 2004 to 2009, and presented to different tribunals in relation to the winding down of various entities related to NFG, namely:

- **Exhibit P-01** - Globe-X Management and Globe-X Canadiana

[1] A judgement of this Court which definitely settled a class action against KPMG, by which a majority of class members received a proportion of the approved net settlement amount.
[2] A judgement of this Court which provides that Mrs. Calder and the Class members cannot claim from RBC any portion of losses or damages caused by or attributable to KPMG, if applicable.

(Globe-X) Joint Liquidator's First Report (July 2004);

- **Exhibit P-02** - Globe-X Joint Liquidator's Second Report (April 2005);
- **Exhibit P-03** - Norshield Asset Management (NAM) Monitor's Preliminary Report (June 2005);
- **Exhibit P-04** - Olympus Univest Ltd. (Univest) Single Liquidator's First Report (July 2005);
- **Exhibit P-05** - NFG Receiver's Second Report (November 2005);
- **Exhibit P-06** - NFG Receiver's Sixth Report (March 2007);
- **Exhibit P-07** - Mosaic Composite Ltd. (Mosaic) Joint Liquidators' First Report (February 2008); and
- **Exhibit P-08** - NFG Receiver's Thirteenth Report (December 2009)

* * *

7. In June 1999, Royal Bank, through its agent RBC Dominion Securities, engaged in certain financial business with NFG (namely the RBC SOHO Option) which provided NFG access to up to $ USD 350 million of highly leveraged assets, from the beginning to the end of the Class period;
8. In the same month of June of 1999, NFG created the Olympus Investment Structure (OIS)[3];
9. The OIS's financial foundation was the leveraged assets acquired by way of the RBC SOHO Option (a basket of hedge funds);
10. The OIS and NFG collapsed in June 2005, which revealed that tens of millions of dollars of Class members' money had vanished;
11. This Class action seeks to establish that:
    a) NFG, through the OIS, defrauded Sheila Calder and Class members of the value of their unredeemable shares of Olympus United Funds Corporation as of June 29th 2005;

[3] The IOS is described in paragraphs 22 ss. of this Motion.

b) RBC participated in the creation of the fraudulent OIS and was essential to the ongoing perpetration of the fraud;

c) RBC facilitated the diversion of assets that would have otherwise benefitted to the Class members;

d) By its actions and inactions, RBC failed in its duty to abide by rules of conduct which lied upon it, so as not to cause injury to others, and is hence jointly responsible with the defrauders for the losses caused by the fraud;

12. Mrs. Calder hence asks this Court to resolve the following issues in dispute:

a) Did RBC participate in the creation of a financial product that was used to defraud the Class members?

b) Did RBC allow this fraudulent structure to evolve, strive, and survive until $159 million were lost by Class members?

c) Did RBC know or ought to have known that the Class members were being defrauded or at serious risk of losing their investments within that structure?

d) Did RBC voluntarily blind itself because of the financial benefits it derived from the fraudulent structure?

e) Did RBC omit to refrain from continuing its collaboration with NFG?

f) Did RBC omit to inform authorities of obvious risks and irregularities they knew or should have known about within NFG and the OIS?

g) Did RBC lend their credibility to NFG and the OIS, first by providing hundreds of millions of dollars in financing, and then by offering a principal protected financial product to the Canadian public which was directly based on the fraudulent structure?

h) Did RBC authorize transfers of funds and/or assets from the Norshield investment structure that caused such assets to be diverted from assets that would have benefited the Class members?

i) Does a positive answer to one or more of the questions above equate to an extra-contractual fault on the part of RBC?

j) If so, did RBC's fault(s) cause the losses incurred by Class members?

The Norshield/Olympus Fraud

13. Between June 1999 and June 2005, NFG developed, marketed and operated the OIS[4], at the top of which was Olympus United Funds Corporation (Olympus United Funds);

14. In May 2005, the OIS failed to meet redemption requests;

15. From that incapacity to meet redemptions, the whole structure, along with what was left of NFG, quickly collapsed;

16. The first OIS/NFG entity to be placed into insolvency proceedings was Olympus Univest Ltd. (Univest) which, on May 19, 2005, was placed in voluntary liquidation, the whole as appears from the P-04 Univest Single Liquidator's First Report;

17. Univest's voluntary liquidation was followed, from June 29, 2005 to October 14, 2005, by the following entities to be placed into receivership, the whole as appears from paragraphs 1 to 3 of the P-05 NFG Receiver's Second Report[5]:

Norshield Asset Management Ltd.
Norshield Investment Partners Holdings Ltd.
Olympus United Funds Holdings Corporation
Olympus United Funds Corporation
Olympus United Bank and Trust SCC
Olympus United Group Inc.
Norshield Capital Management Corporation
Honeybee Software Technologies Inc.

18. Finally, on January 20, 2006, Mosaic Composite Ltd. (Mosaic) was placed

[4] In their different reports, NFG's Receiver and Liquidators also refer to the Olympus investment structure as the Norshield investment structure or NIS.

[5] See also: Exhibit P-03 NAM Monitor's Preliminary Report, **Exhibit P-09** AMF Restriction and Monitoring Order and **Exhibit P-10** OSC investigator Radu's Affidavit.

into receivership as appears from the P-07 Mosaic Joint Liquidators' First Report [6];

19. The Richter firm (Receiver Richter) and its partner Raymond Massi were involved in each of these insolvency processes, either as Monitor, Receiver, Custodians or Liquidators;

20. Although the entities listed in the above paragraphs 16 to 18 do not represent the totality of the NFG, they represented most of what NFG entities were left at the time;

21. The NFG entities described in paragraphs 16 to 18 were all related to the OIS;

22. The OIS was composed of the four following levels, as appears form the **Exhibit P-11** Chart drafted by Receiver Richter in November 2005:

Olympus United Funds Corporation

Olympus United Bank and Trust SCC

Olympus Univest Ltd.

Mosaic Composite Ltd.

23. In its December 2009 **Exhibit P-08** Thirteenth Report, NFG Receiver Richter described the relation from one entity to the other within the OIS, which can be summarized as follows:

- Investments in Olympus United Funds collected from the Canadian Retail Investors flowed into Olympus United Bank and Trust SCC (Olympus Bank);

[6] At paragraph 8.

- Olympus Bank invested its funds into Univest;

- Univest then invested the monies received from Olympus Bank[7] in Mosaic;

- Mosaic's assets were divided into two main assets: hedged and non-hedged assets;

- Mosaic's hedged assets consisted of a basket of hedge funds acquired through the RBC SOHO Option;

- Mosaic's non-hedged assets consisted of the Channel entities;

24. The interrelation between those four OIS levels appear from the available Financial Statements of Olympus United Funds communicated as **Exhibits P-11 to P-15**, those of Olympus Bank as **Exhibits P-16 to P-19**, those of Univest as **Exhibits P-20 to P-22**, and those of Mosaic as **Exhibit P-23**;

25. In their February 2008 P-07 First Report, Mosaic's Joint Liquidators stated:

> « 27. In addition to its significant value, the RBC SOHO Option was important to the Norshield Investment Structure because the gross value of the basket of hedge funds was the basis upon which the net asset value of the shares of Mosaic, Olympus Univest and Olympus United Funds Corporation, as reported to their investors, was substantially calculated. »

26. The direct relation between the Mosaic basket of hedge funds' gross value and Olympus United Funds shares' value was confirmed by Xanthoudakis and Smith in a memo prepared for Univest's Single Liquidator in June 2005[8]:

> "Under its agreement with MCL [Mosaic], OUL's [Univest's] exposure to these hedge funds through 17 outside managers and two proprietary-managers was tracked on a daily basis by Norshield Staff, and the NAV [Net Asset Value] was calculated based on the returns of these exposures, net of manager fees, and then the OUL fees and admin costs were applied at the OUL level, to produce weekly NAV estimates that were the source of the NAV calculations at the Olympus United Funds Corporation level each week."

27. Xanthoudakis and Smith testified to the same effect to NFG's Receiver as

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[7] Along with monies received from other direct investors (see P-11 Chart, over the Univest level).
[8] P-04 at para. 5.6 and page 62 (exhibit 8 of P-04).

appears from the March 2007 P-06 NFG's Receiver's Sixth Report:

> "150. Both John Xanthoudakis and Dale Smith stated during their examinations by the Receiver that the NAVs which were provided on a weekly basis by Mosaic for presentation to the preference shareholders of Olympus Univest and indirectly to the Retail Investors (flowing up from Olympus Univest, through Olympus Bank and then Olympus Funds) were calculated almost entirely on the value of the hedged assets of Mosaic."

28. Hence, at all levels of the OIS, Norshield Staff was founding OIS' net worth on assets it didn't fully own[9];

29. NFG justified this fiction by pretending that Mosaic's non-hedged assets compensated for the liability owed to RBC in the basket of hedge funds;

30. Receiver Richter rightly explained in the P-06 Report:

> "153. In order for this method of calculating the NAVs of the entities within the Norshield investment structure to be supported, Mosaic's non-hedged assets would have to have had, at a minimum, a realizable value equal to or greater than the outstanding amount of the margin loans [10] which were secured by Mosaic's hedged assets. As stated above, Mosaic's non-hedged assets consisted principally of its investments in the Channel Entities."

31. That essential condition was found to be non-existent:

> "155. The Receiver has concluded that the asset values carried on the audited financial statements of the Channel Entities were overstated by at least US$200 million for fiscal 2002, increasing to at least US$300 million for fiscal 2003. As a result, the value of the Channel Entities' assets was overstated by approximately 88% on their fiscal 2003 financial statements."

32. Those overstatement corresponded essentially, year for year, to the amount owed by Mosaic to RBC as per the RBC SOHO Option;

33. Thus, the value reported to Class members for their shares of Olympus United Funds' was founded on false representations, on no value; those shares, contrary to what the account statements had said, had no value;

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[9] OIS's net equity in Mosaic's basket of hedge funds was approximately 15% of its gross value.
[10] Receiver Richter referred to the RBC SOHO option financing as a margin loan; OIS management referred to it as a bank loan (P-23, note 8).

34. Between 2001 and 2005, $ CDN 264,7 million were invested by Canadian Retail Investors in the OIS through the Olympus United Funds door, while $ CDN 132,2 million were redeemed[11];

35. In June of 2005, the outstanding shares of Class members in Olympus United Funds had no more value;

Where the Class members' money went

36. Receiver Richter's P-06 Report provided the following answer at page 44:

> 170. The Receiver has identified numerous significant payments from 2002 to 2004 made by Mosaic to entities and/or funds which appear to have or have had i) close connections to John Xanthoudakis and/or to Norshield entities, and/or ii) connections to entities over which John Xanthoudakis had influence with respect to investment decisions. The Receiver has not identified evidence that any of these third party payments have benefited either John Xanthoudakis or Dale Smith personally.
>
> 171. These payments totalling $156.6 million consisted of:

Globe-X Management Ltd, Globe-X Canadiana Ltd, Globe-X Enhanced Yield Fund, Globe-X International, Globe-X Assets International	$ 57.6 million
Comprehensive Investors Services Ltd.	$ 38.4 million
C-MAX Advantage Fund Ltd.	$ 14.0 million
Comax Management	$ 18.3 million
Univest Fixed Return for Emerald Key Management	$ 4.2 million
Bice International inc.	$ 3.2 million
Real Vest Investement Ltd.	$ 1.6 million
Silicon Isle Ltd.	$ 3.7 million
Olympus Bank (for Liberty Trust)	$ 15.6 million
Total	**$ 157 million**

> 172. The Receiver has not found a satisfactory explanation for these payments.
>
> 173. The Receiver also identified significant payments made by

[11] P-06, Exhibit 4 (last page)

Olympus Bank from January 2001 to June 2005 to entities that i) were related to or had close connections to John Xanthoudakis and/or to Norshield entities, and/or ii) connections to entities over which John Xanthoudakis had influence with respect to investment decisions. The Receiver has not identified evidence that any of these third party payments have benefited either John Xanthoudakis or Dale Smith personally.

174. These payments by Olympus Bank totalled $60.7 million and included:

Comprehensive Investors Services Ltd.	$ 40.9 million
Cardinal International Corp. Limited	$ 9.6 million
Bice International inc.	$ 5.1 million
Norshield Investment Partners inc.	$ 2.0 million
Univest Global Funds Ltd.	$ 1.4 million
Balance Return Fund Limited	$ 1.0 million
Sterling Leaf Income Trust	$ 0.7 million
Total	**$ 61 million**

175. The Receiver has not found a satisfactory explanation for these payments."

37. The total unexplained payment was $ USD 217.3 million;

38. Hence, while the Class members shares in Olympus United Funds was based on assets that were borrowed, the real money invested by Class members got diverted by the hundreds of millions to entities to directly or indirectly connected to John Xanthoudakis;

39. In a March 2010 **Exhibit P-24** OSC decision concerning Xanthoudakis et al., the Ontario securities commission wrote:

> "235. We note that the Respondents were generally unable to account for investors' funds. We heard evidence that the Receiver put forth considerable efforts to trace the movement of investor funds through the Norshield Investment Structure, but was not able to determine exactly where the funds went. (...)"

40. The dire truth was, by being shown investment values that were based on air, Class members were lured by NFG to invest and leave their money in the OIS, all the while their money was quietly spirited away;

41. That money vacuum was created in the Bahamas in 1999;

The Bahamas, 1999

42. On June 8th, 1999, NFG signed with RBC Dominion Securities[12] (acting for Royal Bank of Canada) the **Exhibit P-25** Letter Agreement with respect to a structured cash-settled call option transaction[13]; said Letter Agreement contained the following passages:

> "This letter confirms our understanding that an entity of Norshield Financial Group (to be determined) ("Norshield") has agreed with us, as agent for Royal Bank of Canada ("RBC") to execute a structured cash-settled call option, the value of which will be based upon an index comprised of third party asset managers (the "Transaction"). (...) We mutually agree that final determination of the initial portfolio is subject to change and is contingent upon due diligence reviews by both firms.
>
> (...)
>
> Norshield agrees: (...) (ii) to pay the US$ 15,000,000 Premium of the Transaction in USD cash after completion of such negotiations and prior to the Trade Date.
>
> (...)
>
> We will be forwarding shortly to you draft versions of the: (...) (iv) Investment Advisory Agreements between each hedge fund manager and RBC. (...) the following outstanding issues require resolution : (i) form of premium payment by Norshield; (ii) whether the interest rate is fixed or floating; and (iii) the Norshield entity that will be the option counterparty. In addition, following both of our due diligence reviews, we will finalize the portfolio composition and establish the necessary prime brokerage accounts as well as advisory agreements between each manager and RBC. We will keep you appraised of our discussions with the managers and negotiations of the advisory agreements.
>
> (...)

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[12] RBC Dominion Securities (RBC-DS) is a wholly owned sudsidiary of RBC.
[13] The first RBC SOHO Option, also called NY-1874 or NOR1.

Index:	USD 100mm of RBC assets invested with various money managers (each a "Hedge Fund") as advised by Norshield Asset Management, Ltd. ("NAM") in accordance with an investment Advisory Agreement between NAM and RBC. Indicative initial portfolio is as follows: (...)
(...)	
Investment Adviser ("NAM")	Norshield Asset Managenaent, Ltd
Assets :	USD 100mm deposited in various accounts with third party broker-dealers (each a "Prime Broker") or investment vehilces (each, an "Account") as recommended by Investment Adviser."

43. The RBC SOHO Option product is a powerful financial vehicle; $ USD 100 million is not a small sum to raise; such a sum creates a critical mass of assets;

44. The RBC SOHO Option financing created the Mosaic basket of hedge funds[14];

45. In order to gain access to the $ USD 100 million financing, NFG had to pay a initial premium of $ USD 15 million;

46. That $ USD 15 million initial came from another NFG related group of entities: Globe-X Management and Globe-X Canadiana[15];

47. That fact was known to RBC, as is explained in the July 2004 P-01 Globe-X Joint Liquidators' First Report, at paragraph 6.17:

> "6.17 (...) On 28 July 1999, GXC [Globe-X Canadiana] instructed Royal Bank of Canada, Bahamas to debit its US$ account and transfer US$15 million to Royal Bank of Scotland (Nassau) Limited for the account of Norshield Mosaic

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[14] P-25, p.3, under the title"Index".

[15] Globe-X entities' monthly statements of accounts were issued by Norshield International (P-01, para. 8.4); International Asset Management Limited (IAM) was issued 60% of Globe-X Management shares; Lino Matteo and John Xanthoudakis were respectively President/Secretary and Vice-president/Treasurer of IAM (P-01, paras. 3.4 et 3.7). Matteo was also, in July 2004, President and CEO of Honeybee Software Technologies (P-01 para 11.5.2).

Fund Limited ("Norshield Mosaic")[16]. It is our understanding, based on a memo dated 22 July 1999 from Steve Davis of Cardinal International to Robert Daviault of Norshield International and copied to Terri Engelman-Rhoads of Norshield Asset Management International Ltd. Chicago, and Stephen Hancock of Cardinal International, that Norshield Mosaic made an internal transfer to make the funds available to Norshield Composite."

48. This fact that the Globe-X transfer was used to pay the initial $ USD 15 million premium is correlated by the **Exhibit P-26** February 26th 2001 letter from Norshield Composite, irrevocably instructing RBC to forward all cash proceeds from re-leveraging of the RBC SOHO Option to Globe-X Management;

49. The context of this $ USD 15 million transfer request is explained in detail in the P-01 Report;

50. Between November 1998 and June 1999, Globe-X Canadiana and Globe-X Management opened 11 accounts with RBC Dominion Securities Bahamas, the whole as appears from paragraphs 6.6 to 6.10, and 7.6 to 7.29 of said P-01 Report; some of those accounts were anonymous RBC numbered accounts (see paragraphs 6.6 and 7.6);

51. During that 7 months period, those Globe-X accounts at RBC-DS were used to purchase, on margin, fixed income securities that yielded less than the interests paid for the margins (see paragraph 7.8);

52. RBC, as banker for both parties had a unique perspective on the $ USD 15 million transfer; but by being a direct financial beneficiary of these activities, RBC had a conflicting interest in raising questions;

* * *

53. The day after the $ USD 15 million transfer, on June 29, 1999, the **Exhibit P-27** RBC Dominion Securities Confidential client questionnaire was signed by which Norshield Composite Ltd. (later Mosaic Composite Ltd) was identified as the NFG entity to be RBC's counterparty to the SOHO Option financing;

54. The RBC SOHO Option transaction was finalized on July 30, 1999 between RBC and Norshield Composite Ltd., as appears from the **Exhibit P-28** Norshield Composite board of directors resolution, the **Exhibit P-29** ISDA

[16] Norshield Composite became Mosaic Composite in May 2001 (P-07, paras. 6 and 7)

Master Agreement and the **Exhibit P-30** Confirmation Letter Agreement[17];

55. The P-30 Confirmation Letter Agreement provided that RBC kept authority over:

- the modification of the index of the basket of hedge funds (par. 9);

- the calculation of the value of the index (par. 13 (2));

- any assignment of the option (par. 13 (4));

56. Althought Norshield Asset Management was the Investment Advisor to the hedge funds, the transaction provided that RBC would negotiate and sign Investment Advisory Agreements with each of the managers of each of the hedge funds[18];

57. Examples of RBC's ongoing prerogatives are the **Exhibit P-31** August 7, 1999 Investment Management Agreement concluded by RBC with one of the hedge funds managers, and the **Exhibit P-32** August 29, 2000 RBC to Norshield Asset Management letter informing NAM of a change in composition of the Index;

* * *

58. On June 27th 1999, in the midst of the conclusion of the first RBC SOHO Option and the creation of the Mosaic basket of hedge fund, the Canadian retail investors were offered for the first time the Horizon Group of Investment Funds (later the Olympus United Funds), as appears from the **Exhibits P-33 to P-38** First Horizon/Olympus United Funds Offering Memorandums;

59. The concomitance of the conclusion of the first RBC SOHO Option, the acquisition by Mosaic of a $ USD 100 million basket of hedge funds and the first P-33 Offering Memorandum is not a coincidence; those events were the foundation of a financial structure designed by NFG to lure Canadian retail investors to entrust the OIS with hundreds of millions of real dollars;

60. First Horizon/Olympus United Funds could not have been the effective spearhead of that scheme without the illusion of value given by the Mosaic basket of hedge funds;

61. Without the meeting of NFG and RBC minds in the first part of 1999, and

[17] This first RBC SOHO Option agreement was eventually followed by a second in June 2002. This first RBC SOHO Option is also reffered to by RBC as NY-1874 or NOR1;
[18] P-25, para. 3.

without the combined help, knowledge and capacity of the Royal Bank of Canada, NFG would not have been able to create the OIS structure used to defraud the Class members;

The "Growth" of the OIS

62. A spur in Olympus United Funds shares subscriptions occurred in 2001, peaked in 2002 with over $ CDN 90 million raised, and ended in 2004[19];

63. During 2003 and 2004, while subscriptions were in the $ CDN 40 and 50 million, redemptions were almost as high;

64. From June 2002 to march 2004, the collaboration between RBC and Norshield intensified: the RBC SOHO Option financing went from $ USD 100 million to $ USD 353,1 million;

65. The first refinancing occurred in June 2002, where a second Option agreement extended an extra $33,33 million financing to Mosaic as appears from the **Exhibit P-39** June 28, 2002 Cash-Settled Call Option Letter Agreement[20];

66. Then, during the thirteen months between September 2002 and October 2003, the P-39 agreement was amended and augmented eight times by RBC to end up totaling $245,33 million as appears from the **Exhibit P-40** September 30, 2002 to October 31, 2003 Confirmation Letters;

67. In March 2004, the P-30 and P-39 RBC SOHO Options were merged by the **Exhibit P-41** March 31, 2004 Amendment Letter Merging First and Second RBC SOHO Options, the total RBC SOHO Option financing then representing $353,1 million;

68. These massive financing augmentations were the direct and almost sole contributions to the augmentation of assets in the Mosaic basket of hedge funds, the whole as appears form the combined **Exhibit P-42** RBCCM NOR1 and NOR2 SOHO Option Valuation Reports;

69. As discussed in paragraphs 28 to 35 of this Motion, these leveraged asset augmentations were used to artificially augment the value of the OIS, and of the *Olympus United Funds* shares;

70. This illusion of growth and value would not have been possible had it not been for the exclusive and massive financial help provided by RBC;

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[19] P-06 (exhibit 4) and P-12 to P-15.

[20] The second RBC SOHO Option agreement, also referred to as NY-3551 or NOR2;

71. Hence, not only did RBC directly participated in the creation of the fraudulent investment structure by providing its foundation but, by ever extending OIS access to leveraged capital, RBC also participated in the ongoing illusion that the Class members' money was there, and was growing;

* * *

72. RBC did not only help NFG create and maintain an illusion of value in the OIS by providing massive leveraged assets; RBC also publicly lent its credibility to NFG end the OIS;

73. On January 19th 2004, RBC presented to the Canadian public and investment professionals the *RBC Olympus United Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1* (the RBC/Olympus PPN), as appears from the **Exhibit P-43** RBC/*Norshield Financial Group* Press release;

74. The P-43 press release mentioned that RBC and Norshield Financial Group "are proud to bring (investors) the Univest Principal Protected Hedge Funds Linked Deposit Notes, Series 1"

75. The P-43 press release also praised Norshield Financial Group as "Canada's most successful and established Fund of Hedge Funds manager ";

76. That press release came at a time when most of the new money entering the OIS was never invested and was almost entirely needed to pay redemption requests[21];

77. The RBC/Olympus PPN was offered through the **Exhibit P-44** Information Statement;

78. The first page of the P-44 Information Statement displays the RBC, NFG and Olympus logos on its front page, and designates Olympus United Group inc. as placement agent for the product;

* * *

79. In January 2004, had RBC done a diligent assessment of NFG and the OIS, it would have discovered that:

- Canadian retail investor's money was not making its way down the

[21] P-06, exhibit 4;

OIS;

- the subscriptions were then almost entirely used to pay redemptions;

- NFG was over-evaluating the OIS by as much as the amount due to RBC on the Mosaic basket of hedge funds;

80. Instead, RBC partnered with NFG in a product that duplicated the OIS, thereby bolstering both NFG and the OIS;

Due diligence, Know-your-client and anti-money laundering obligations

81. The banking and finance industry, in Canada and overseas, is required to self-regulate in order to provide the public with a safe financial environment; over the years, financial frauds have been gravely affecting retails investors;

82. Those who know the trade, who are in the trade, are required to be vigilant, to be the public's watch dogs;

83. The first hint that should have raised RBC management's eyebrows was the provenance of the original $ USD 15 million premium necessary to initiate the RBC SOHO Option financing;

84. Second hint: the gross overstatements of its assets by Mosaic, RBC's direct client in the case at bar;

85. Mosaic was RBC's direct client from June 1999 to November 2004, with whom it had repeatedly concluded financial agreements worth hundreds of millions of dollars;

86. Plaintiff Calder submits that basic due diligence on the part of RBC of the Mosaic Financial Statements on or before every SOHO Option re-financings would have revealed the gaping discrepancy between the valuation of about half of reported assets and the reality: the Channel Entities had no value;

87. Mosaic's P-20 2003 Financial Statements show that, in 2002, Mosaic reported $ USD 212 Million worth of assets in Channel Fixed Income Fund Ltd; in 2003 that value was increased to $ USD 333 Million;

88. Those values correspond almost exactly with the liability linked to the RBC SOHO Option financings for those two years;

89. A basic but diligent study of Mosaic's statement of accounts, at least for those two years, should have brought RBC to look into the Channel entities;

90. The **Exhibits P-45 and P-46** Channel Entities Financial Statement for the years 2002 and 2003 would have then instructed RBC that:

a) the majority of the Channel entities' assets were acquired and disposed of by way of non-monetary transactions such as exchanges in shares or for accounts receivables;

b) the majority of those acquisitions and dispositions were done with related entities like First Horizon Holdings Ltd, Globe-X, iForum, Olympus United Holdings, Mount Real, Cardinal International, Bice International and even Mosaic Composite, its owner;

c) the Channel entities assets were not liquid because not quoted in active markets;

d) several recorded assets were subject to option agreements for which the options had not been exercised;

91. By questioning further from those clues, RBC should have noticed that valuations of the Channel entities' assets were done by Mount Real Innovation Center, itself an investee in the Channel entities, and closely related to Xanthoudakis;

92. During those crucial years, not only did RBC had Know your clients obligations, but it also had anti-laundering and anti-terrorist monitoring obligations that should have prompted it to question Mosaic's financial foundation, its business model and its relation with and role within NFG and the IOS;

93. Third, by lending more than $ USD 350 million to NFG and by the nature of RBC's ongoing implication in the monthly management of the fruit of that business, RBC acted not only as NFG's banker, but more or less a business partner of NFG;

94. That business partnership grew one step deeper in January 2004 with the structuring and marketing of the P-44 RBC/Olympus PPN, a product closely related to the OIS and its founding structure;

95. As a long term banker and business partner of NFG, RBC had a unique opportunity to understand what was really going on, link the dots, and blow the whistle;

96. Instead, RBC turned a blind eye, all the way to the end;

ASSIGNEMENT OF the RBC SOHO OPTION TO UNIVEST MULTI-STRATEGY FUND II LTD. (MS-II)

97. On November 10, 2004, Mosaic assigned its interest in the RBC SOHO Option to Univest Multi-Strategy Fund II Ltd. (MS-II) as appears from the **Exhibit P-47** Assignment Agreement;

98. As per the RBC SOHO Option agreements, RBC had to grant consent to any assignment, and hence was a party to P-47;

99. When the P-47 Assignment occurred, Mosaic's interest in the RBC SOHO Option was its main asset[22] which had, if liquidated, a net value $ USD 52.4 million[23];

100. The P-47 Assignment was made "for good and valuable consideration" received, which appear to have been Class A and B shares of MS-II[24];

101. The P-47 Assignment was made in a manner that Mosaic could maintain an economical interest in the SOHO Option basket of hedge funds, in order to continue to base the OIS value on the said basket of hedge funds[25];

102. The P-47 Assignment was made retro-active to October 29, 2004;

103. On October 25, 2004, the **Exhibit P-48** RBC Due Diligence Questionnaire had been signed by Terri-Engleman Rhodes, for MS-II;

104. From November 1, 2004 to November 30, 2004, NFG's interest in the RBC SOHO Option was almost entirely liquidated, in three consecutive transactions of $ USD 15 million each;

105. On November 1, 2004, Mosaic sold 16 667 Class A shares of MS-II to two related Univest funds[26] for the price of $ USD 15 million, as appears from the **Exhibit P-49** Letter Agreement;

106. Following the P-49 sale, wire transfers of $ USD 4.5 million and $ USD 10.5 million were requested from the accounts of the Univest Purchasers to the in trust account of a certain Hart St-Pierre, the whole as appears from the **Exhibit P-50** Norshield Investment Partners inc. letter of November 11, 2004;

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[22] P-07, para. 66.
[23] P-42 Valuation Reports.
[24] P-07, para 68.
[25] P-07, para. 67.
[26] Univest Convertible Arbitrage Fund Ltd. and Univest High Yield Fund Ltd.

107. On November 19, 2004, MS-II requested the partial termination of the RBC SOHO Option, from which MS-II would receive USD $ 15 million, the whole as appears from the **Exhibit P-51** Partial Termination Agreement;

108. At page 2 of P-51, MS-II requested that the proceeds be wired to the JP Morgan Chase bank account of a Daiwa Securities Trust & Banking (Europe), London;

109. On November 30, 2004, Mosaic requested to MS-II the redemption of its MS-II class B shares, as appears from the **Exhibit P-52** Redemption Request;

110. As appears from P-52, Mosaic asked that the $ USD 15 million proceeds be transferred to the Royal Trust Corp of Canada (London) account of Cardinal International;

111. These transactions and the paying of their proceeds to third parties caused OIS assets to be irremediably lost to the Class members;

112. Those transactions would not have occurred without the complicit help of RBC, in circumstances as described hereafter that demonstrate RBC's complicity;

113. Before the occurrence of the P-47 Assignment, the Globe-X Joint Liquidators had indicated to Mosaic and RBC-DS that they questioned the legitimate ownership of the interest in the RBC SOHO Option[27];

114. As early as July 2004, the Globe-X Liquidators had expressed those doubts in writing to Mosaic and RBC-DS[28]; Neither Mosaic nor RBC provided answers or comments to requested documents and informations;

115. In August 2004, the Globe-X Liquidators petitioned the courts to obtain discovery of Mosaic and RBC-DS about the ownership of the interest in the RBC SOHO Option; these proceedings were served to RBC-DS before a hearing that took place on August 12, 2004;

116. Adjournments and delays were sought and obtained by Mosaic on August 12, 2004, September 16, 2004, September 23, 2004;

117. On November 26, 2004 Mosaic finally provided partial and unsatisfactory documents;

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[27] The initial $ USD 15 million premium paid to obtain the original RBC SOHO Option financing had come from a Globe-X account (see parass 45 to 48 of the present Motion)
[28] P-02, paras. 3.23 to 3.25.

118. On December 2, 2004, the Joint Liquidators instructed their counsel to proceed with the August 2004 court application requesting discovery of RBC;

119. RBC obtained more adjournments, and the matter was finally heard on February 28, 2005, and RBC was ordered to give full and complete discovery in regards to the RBC SOHO Option, within 14 days;

120. On April 12, 2005[29], RBC had still not complied with the Order;

121. But by then anyway, NFG, with the accord of RBC had long assigned its direct interest in the SOHO Option, and then had proceeded to liquidate almost 90% of its value;

122. RBC again proved to be loyal ally to NFG, helpfully allowing the ultimate NFG manipulations made to spirit away of any real value within the OIS;

* * *

123. Montreal paper La Presse published an article on January 26, 2007 in which reporter Francis Vaille reports, *inter alia,* on the business relation between RBC, Norshield International and other entities in the Bahamas, and reproduces answers provided by RBC's spokesperson to certain questions, the whole as appears from the **Exhibit P-53** La Presse article;

124. RBC's spokesperson Raymond Chouinard is cited saying:

> « Nous avons des normes de contrôle très strictes. Si nous détectons quoi que ce soit d'irrégulier, nous intervenons immédiatement, faisons enquête et allons nous-mêmes transmettre l'information à la police ou aux autorités réglementaires.
>
> (...) une chose est très claire: avant d'accueillir un nouveau client, nous faisons un examen rigoureux de l'identité du client et nous tentons de découvrir ses intentions. Par exemple, on va exiger d'un déposant qu'il nous fasse une déclaration de provenance des fonds.
>
> (...) Cette déclaration existe depuis une douzaine d'année dans la réglementation canadienne, mais nous le faisions avant. S'il se pose un doute, on a pas d'autres choix que de refuser d'exécuter la transaction. On examine même la planification fiscale du client afin de s'assurer que la législation fiscale du pays s'applique. »

[29] Date of the P-02 Report.

125. Plaintiff Sheila Calder respectfully submits that, had RBC done a fraction of what it purports to do from the words of Mr. Chouinard cited above, a lot of harm could have been avoided and, in the huge OIS catastrophe, some small recoveries could even have been saved in the last days;

126. At the level of intensity and complexity of the type off shore, leveraging, hedging and optioning transactions that occurred between NFG and RBC during the Class period, where the financial mechanisms are so complex and the vocabulary are so specialized as to being virtually opaque to the retail investors and even to some seasoned practitioners, RBC had no only regular but enhanced due diligence and self-regulatory obligations, which it did not meet;

127. RBC had the obligation to set aside its own financial interest and adopt reasonable and diligent rules of conduct; Plaintiff submits that RBC failed to do so, and by so failing it participated to NFG's perpetration of a fraud that caused harm to the Class members;

WHEREFORE, PETITIONER PRAYS THIS HONOURABLE COURT TO:

GRANT the present class action;

CONDEMN Respondents to pay to the Class members the balance in Canadian dollars attributed to their unredeemed shares of Olympus United Funds Corporation or its predecessor First Horizon Holdings Ltd. as of June 29, 2005, less any amount received by class members pursuant to the judgment rendered by this Court on July 26th 2012, in court file 500-06-000434-080, and subject to the judgment of July 26th 2012 in the present instance, plus legal interest and the special indemnity provided by Article 1619 of the Civil Code of Quebec calculated from the first date of the service of the proceedings;

ORDER the collective recovery of the damages;

THE WHOLE with costs, including experts' fees.

MONTREAL, MARCH 18, 2014.

Sylvestre Fafard Painchaud

SYLVESTRE FAFARD PAINCHAUD s.e.n.c.r.l.
Attorneys for Plaintiff

SUPERIOR COURT
(Class action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000435-087

SHEILA CALDER

Plaintiff

-c-

ROYAL BANK OF CANADA

-and-

RBC CAPITAL MARKETS CORPORATION

Defendant

MOTION TO INSTITUTE PROCEEDINGS
(CLASS ACTION)
(Sections 1011 ss. C.c.p)

ORIGINAL

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