

## Schedule A to the Settlement Agreement – Distribution Protocol

### DISTRIBUTION PROTOCOL – FANTL v ivari

#### SECTION 1 - DEFINITIONS

1. For the purposes of this Distribution Protocol all defined terms have the same meaning as in the Settlement Agreement, unless specified otherwise.
  - a. ***“First Stage of the Distribution”*** means the initial distribution to Qualifying Class Members of their Relative Share of the Net Settlement Fund as set out in this Settlement Agreement.
  - b. ***“Relative Share”*** means the proportion of the Net Settlement Fund to which a Qualifying Class Member is entitled in the First Stage of the Distribution.
  - c. ***“Residue”*** means the funds remaining in the Net Settlement Fund following the First Stage of the Distribution as set out in paragraphs 10 through 14 of this Distribution Protocol.
  - d. ***“Distribution Calculation Period”*** means June 1, 2000 through July 31, 2019.
  - e. ***“Second Stage of the Distribution”*** means, if necessary, the proposed distribution of the Residue to those Qualifying Class Members who cashed cheques in the First Stage of the Distribution.
  - f. ***“Qualifying Class Member”*** or ***“QCM”*** means each Class Member whose Initial Settlement Allocation (as defined below) is calculated to be \$50 or greater.

#### SECTION 2 – GENERAL PRINCIPLES OF THE DISTRIBUTION AND ADMINISTRATION

2. This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Fund.
3. This Distribution Protocol is intended to distribute the Net Settlement Fund in a fair and efficient manner. To that end, no Class Member shall be required to make a claim or otherwise to furnish evidence probative of their individual entitlement. Instead, each Relative Share payable to a Qualifying Class Member shall be calculated on the basis of that Class Member’s CAF transaction data, as described in further detail herein.

4. In general, this Distribution Protocol is based on a determination of individual Class Member entitlement based on comparing the returns of the CAF to the S&P 500 Total Return Index during the Distribution Calculation Period. The delta between a Class Member's CAF returns and the S&P 500 Total Return Index within the Distribution Calculation Period is used to generate a value specific to that Class Member. Pre-judgment interest of 3.3% is then applied to that value for each Class Member from the time of their divestment from the CAF or July 31, 2019 (whichever is earlier) to May 3, 2023 to calculate their individual distribution weighting ("IDW"). The IDW for each Class Member that is only a Misrepresentation Class Member (i.e. not also a Contract Class Member) is then divided in half (reduced by 50%) to account for the greater risks and lower likelihood of recovery on the misrepresentation claims as opposed to the breach of contract claims. The IDW for each Class Member will then be calculated as a percentage of the total IDW of all Class Members to give each Class Member their "**Individual Settlement Entitlement**".

### **SECTION 3 – DUTIES AND RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR**

5. The Settlement Administrator shall administer this Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement and the ongoing authority and supervision of the Court.
6. In addition to all duties imposed on the Settlement Administrator pursuant to the Settlement Agreement and otherwise as are reasonably required, requested or directed, the Settlement Administrator's duties and responsibilities shall include the following:
  - a. providing notice(s) to the Class Members as may be required;
  - b. receiving information from the Defendant, including the calculated Relative Share, for each individual QCM;
  - c. developing, implementing and operating the administration process including a bilingual administration website;
  - d. arranging payment to QCMs in a timely fashion;
  - e. reporting the results of the administration process to Class Counsel on a periodic basis or on such other basis as the Court may request or require;

- f. maintaining all information relating to the administration process so as to permit Class Counsel to review the administration at the discretion of Class Counsel or if and as ordered by the Court;
- g. dedicating sufficient personnel to respond to Class Member inquiries in English or French;
- h. remitting the CPF Levy to the CPF; and
- i. arranging, if necessary, payment of Class Counsel Fees and Administration Expenses or other amounts, as ordered or approved by the Court.

#### **SECTION 4 – RELATIVE SHARE CALCULATION**

- 7. The Defendant shall instruct NERA Economic Consulting (“NERA”) to calculate the Relative Share of each QCM as described below, and communicate same to the Settlement Administrator.
  
- 8. The Relative Shares of QCMs shall be calculated as follows:
  - a. NERA shall use the CAF transaction data for each Class Member that has been provided to it by the Defendant, and the returns of the S&P 500 Total Return Index, to calculate the IDW for each Class Member and the total IDW for the Class during the Distribution Calculation Period.
  - b. Those Class Members who divested from the CAF prior to the start of the Distribution Calculation Period (i.e. June 1, 2000) or who only invested in the CAF after the conclusion of the Distribution Calculation Period (i.e. July 31, 2019) will not be eligible to receive a Relative Share and will have an IDW of \$0.
  - c. For each Class Member who held units of the CAF during the Distribution Calculation Period, NERA shall calculate their IDW by calculating the difference between the returns that each Class Member received from their investment in the CAF during the Distribution Calculation Period and the returns that each Class Member would have received if their investment performed exactly in line with the S&P 500 Total Return Index, and applying pre-judgment interest at the rate of 3.3% to that value from the time the Class Member divested from the CAF or July 31, 2019 (whichever is earlier) to May 3, 2023.

- d. Each IDW shall then be converted to an Individual Settlement Entitlement as follows:
- i. Every IDW attributable to a Contract Class Member shall be weighted at 100%, whereas every IDW attributable a Class Member who is only a Misrepresentation Class Member shall be weighted at 50%. For example, and solely for illustration purposes: if Contract Class Member "X" has an IDW of \$100 and Misrepresentation Class Member "Y" (who is not also a Contract Class Member) has an IDW of \$100, then X's IDW will be remain \$100 and Y's IDW will be reduced to \$50; and
  - ii. The weighted IDW for each Class Member will then be calculated as a percentage of the total IDW of all Class Members to give each Class Member their Individual Settlement Entitlement.
- e. The Net Settlement Fund will then be allocated to Class Members based on their Individual Settlement Entitlement to give each Class Member their "**Initial Settlement Allocation**".
- f. Those Class Members whose Initial Settlement Allocation is \$50 or greater are QCMs.
- g. Those Class Members whose Initial Settlement Allocation is less than \$50 ("**de minimus Class Members**") shall not receive any Relative Share from the Net Settlement Fund and shall be excluded from further distribution calculations for the Net Settlement Fund.
- h. The Initial Settlement Allocation amounts for all *de minimus* Class Members shall then be distributed among the QCMs in accordance with their Individual Settlement Entitlement.
- i. The Relative Share of each QCM shall be equal to their Initial Settlement Allocation plus their proportionate share of the total Initial Settlement Allocations for all *de minimus* Class Members.

## **SECTION 5 - THE ADMINISTRATION PROCESS**

9. Generally, the claims administration will be as follows:

***First Stage of the Distribution***

10. Within 90 days from the Effective Date, the Settlement Administrator shall prepare and deliver notification letters (“**First Stage Notification Letters**”) to each Class Member. For each Class Member with a Relative Share below \$50, the First Stage Notification Letter will advise that their calculated Relative Share falls below the court-approved threshold value for receiving funds under the settlement. For each Class Member with a Relative Share above \$50, the First Stage Notification Letter to a will set out the QCM’s calculated Relative Share and be accompanied by a cheque payable to them in the same amount. The First Stage Notification Letters to QCMs will also advise that they may be entitled to an additional payment from the Residue (if any) and that they should advise the Settlement Administrator of any change of their mailing and contact addresses in the next 18 months.
11. The Settlement Administrator shall deliver the First Stage Payment Notification Letters and cheques via regular mail to Class Members’ last known mailing address based on the list that was compiled and updated for the purpose of providing Class Members with Notice of this Action being certified as a class proceeding, as may be updated.
12. There are no appeals available from the calculation of the Relative Shares, if any, as set out in the First Stage Payment Notification Letters as part of the First Stage of the Distribution.
13. Any First Stage Payment Notification Letters and cheques returned to the Settlement Administrator will, out of an abundance of caution, be subject to a further reasonable and proportionate “bad address resolution process” to be recommended by the Settlement Administrator and agreed upon by Class Counsel (acting reasonably and cost effectively). If such a further bad address resolution process does not result in the QCM in question being located, the Relative Share that would otherwise have been payable to that QCM will remain in trust and form part of the Residue. If such QCM is subsequently located and requests their Relative Share at any point not longer than 11 months following the earliest date of the first mailing of a First Stage Payment Notification Letter to any QCM, then such Relative Share may be paid by replacement cheque to the QCM to be delivered by ordinary mail to the QCM at the updated address that they provide and any such replacement cheque must be cashed by the Class Member within 30 days.

14. Any cheques accompanying the First Stage Payment Notification Letters that are not returned to the Settlement Administrator and are not cashed by a Class Member within 6 months of their issuance may be subject to a "reminder program" (whereby some reasonable step may be taken to re-contact the QCM in writing, by email or otherwise to remind them that a cheque was available and could be re-issued and, if re-issued, must be cashed within 30 days) to be recommended by the Settlement Administrator and agreed upon by Class Counsel (acting reasonably and cost effectively). If such reminder program does not result in the re-issuance of a cheque representing the Relative Share to the QCM in question within 9 months following the earliest date of the first mailing of a First Stage Payment Notification Letter to a Class Member, then such Relative Share shall remain in trust and form part of the Residue.

*Second Stage of the Distribution*

15. The Residue may be used or reserved to pay any reasonable additional or reasonably anticipated additional Administration Expenses.
16. The process to distribute the Residue (after the payment or reserve for the aforesaid additional Administration Expenses) will commence thirteen (13) months following the earliest date of the first mailing of a First Stage Payment Notification Letter to any Class Member.
17. The Administrator shall distribute a percentage share of the Residue to each QCM who cashed their cheque from the First Stage of the Distribution. The Administrator shall calculate each such percentage share by dividing the value of the QCM's cashed cheque from the initial distribution by the sum total value of all cashed cheques from the initial distribution. The distribution of the Residue to individual QCMs may, subject to the discretion of Class Counsel with input and advice from the Settlement Administrator, be subject to a reasonable and economically efficient minimum payment amount or threshold.
18. The Residue will be paid by cheques mailed to the most up to date address of the QCMs who cashed cheques representing their Relative Share as part of the First Stage of the Distribution. Cheques from the Second Stage of the Distribution are to be cashed within 60-days after which they shall be cancelled by the Settlement Administrator and QCMs shall be notified of this condition in the covering letter accompanying said cheques.

19. There is no appeal, correction, or challenge relating to this Second Stage of the Distribution.
20. Subject to reasonable discretion of Class Counsel with input from the Settlement Administrator and while considering any additional costs, etc., it is not expected that this Second Stage of Distribution will be subject to any bad address resolution or reminder program.
21. If there are any funds remaining in trust following the foregoing and payment of all Administration Expenses, the Plaintiff will request that the Court approve the payment of that remaining balance to a charity approved by the Parties acting reasonably.
22. Following the completion of the First Stage of the Distribution process and the completion of the Second Stage of the Distribution process (as described above), and otherwise at other times at the reasonable request of either Party or the Court, the Settlement Administrator will provide a report on the results of the distribution of the Net Settlement Fund to Class Counsel, who in turn will update the Defendant.

#### **SECTION 6 - CLASS COUNSEL**

23. Class Counsel shall generally oversee the distribution of the Net Settlement Fund and provide reasonable assistance and directions to the Settlement Administrator regarding this Distribution Protocol.
24. Class Counsel shall have no role in the calculation of Relative Shares.

#### **SECTION 7 - RESIDUAL DISCRETION**

25. Notwithstanding the foregoing, if, during the administration, Class Counsel have reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Distribution Protocol or for further directions with respect to the distribution of the Net Settlement Fund.
26. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class

Counsel shall seek comments or input from the Defendant and the Settlement Administrator if and as needed.

#### **SECTION 8 – CONFIDENTIALITY**

27. All information received from the Defendant is collected, used, and retained by the Settlement Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and any analogous provincial legislation as may be applicable, for the purposes of administering this Distribution Protocol, and shall be kept confidential.