

THE SECONDARY MARKETS CLASS ACTION

GLOSSARY

BAR ORDER – order of the court which allows the plaintiff to settle a claim and for the plaintiff to proceed against the other defendants, without the settling defendants being brought back in the litigation

CASE MANAGEMENT JUDGE – judge assigned to oversee a legal proceeding; much more common in a class action than in other types of litigation

CERTIFICATION – the process by which the court determines whether an action is appropriate to proceed as a class action

CLASS ACTION – a legal action brought by a single person on behalf of a class of persons

CLASS PERIOD – where a plaintiff class is defined by date (for example, in a secondary markets class action, the investors who purchased between the misrepresentation date and the corrective disclosure) the time period within which the purchasers fall within the plaintiff class

COMMON ISSUES – the issues in a class action which are common to, or will be decided in the same way, for all members of the class

COMMON LAW MISREPRESENTATION CLAIM – non-statutory claim which may be brought by investors claiming they purchased securities based on a misrepresentation by the company or its principals

CORRECTIVE DISCLOSURE – in a secondary markets claim, the disclosure which allegedly corrected the initial misstatement or failure to disclose

CY-PRES – term used in class action litigation to describe an order that part of the settlement funds or a judgment amount (either designated or not taken up by the plaintiff class) be paid to charitable or non-profit organizations that may be expected to benefit class members

ENFORCEMENT STAFF – securities commission staff who are responsible for conducting enforcement proceedings under securities legislation

LEAVE TO BRING SECONDARY MARKETS CLAIM – the court's permission which must be obtained by the plaintiff before a secondary markets claim can be advanced

LIABILITY LIMIT – under the secondary markets legislation, a cap on liability equal to the greater of 5% of the company's market capitalization in the 10 days prior to the class period or \$1 million

LOSER PAYS – regime under which the unsuccessful parties in a lawsuit pay some of the costs of the successful parties. Ontario is a 'loser pays' jurisdiction in respect of class proceedings

NATIONAL CLASS – a class of plaintiffs in which all Canadians falling within the class description are included, unless class members opt-out in accordance with a procedure prescribed by the court

NO COSTS – regime under which the unsuccessful parties in a lawsuit do not pay the costs of the successful parties. BC is a no costs jurisdiction in respect of class proceedings.

NOTICE OF CIVIL CLAIM – court document in British Columbia which commences a legal action – similar to a Statement of Claim

NOTICE OF HEARING – document which commences securities commission enforcement proceedings and sets out allegations against the respondents

OPT-IN – the rule in certain jurisdictions (including BC) which requires non-residents to take certain steps in order to be included within a class

OPT-OUT – a rule in certain jurisdictions (including Ontario) which provides that persons falling within the class description will be included in the class unless they take certain steps to opt-out

PANEL – decision maker in securities commission enforcement proceedings

PLAINTIFF CLASS – the persons who fall within the description of the class on whose behalf a class action claim is advanced

“PROPOSED” OR “INTENDED” CLASS ACTION - a legal action which is proposed to be a class action but has not yet been certified as a class action by the court

REPRESENTATIVE PLAINTIFF – the named plaintiff in a class action who represents members of the class

RESPONSE TO CIVIL CLAIM – court document in British Columbia which sets out the defendant’s position in answer to a legal action – similar to a Statement of Defence

SECONDARY MARKET CLAIMS – a category of lawsuits, governed by statute, involving allegations that misrepresentations have been made or material changes have not been disclosed to investors in the public market

SETTLEMENT CLASS - a class certified for the purpose of settlement

STATUTORY CAP – limit placed on the liability of issuer companies and their officers and directors with respect to a secondary markets claim

TAKE UP RATE – the rate at which members of the plaintiff class take the necessary steps to receive their share of compensation under a class action settlement

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