

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

BARCLAYS BANK PLC

Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
*in its capacity as Issuer Trustee of DEVONSHIRE TRUST, THE BANK OF  
NEW YORK MELLON, as Custodian, and CIBC MELLON TRUST  
COMPANY, in its capacity as Indenture Trustee*

Defendants

**MOTION RECORD OF THE DEFENDANT  
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP., IN ITS  
CAPACITY AS ISSUER TRUSTEE OF DEVONSHIRE TRUST  
(Motion returnable July 8, 2014)**

July 3, 2014

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
2600-130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jilesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2891

Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for the defendant, Metcalfe &  
Mansfield Alternative Investments VII Corp.,  
*in its capacity as Issuer Trustee of  
Devonshire Trust*

TO: **STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON  
M5L 1B9

Peter Howard  
Tel: 416-869-5613  
Fax: 416-947-0866  
Eliot N. Kolers  
Tel: (416) 869-5637  
Ashley J. Taylor  
Tel: (416) 869-5236

Tel: (416) 869-5500  
Fax: (416) 947-0866

Lawyers for the Plaintiff

AND TO: **BENNETT JONES LLP**  
Barrister & Solicitor  
One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON  
M5X 1A4

Jeffrey S. Leon

Tel: (416) 863-1200  
Fax: (416) 863-1716

Lawyers for the Defendants, Bank of New York Mellon,  
in its capacity as Custodian and CIBC Mellon Trust Company,  
in its capacity as Indenture Trustee

# Index

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

BARCLAYS BANK PLC

Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
*in its capacity as Issuer Trustee of DEVONSHIRE TRUST, THE BANK OF  
NEW YORK MELLON, as Custodian, and CIBC MELLON TRUST  
COMPANY, in its capacity as Indenture Trustee*

Defendants

**TABLE OF CONTENTS**

<b>TAB</b>		<b>PAGE NO.</b>
1	Notice of Motion dated July 3, 2014 returnable July 8, 2014	1-7
2	Affidavit of Mathieu Lafleur-Ayotte sworn June 27, 2014	8-12
	Exhibit "A" – Order of the Court of Appeal dated July 26, 2013	13-15
	Exhibit "B" – Settlement Agreement dated June 13, 2014	16-113
	Exhibit "C" – Mitigation Agreement dated June 13, 2014	114-120
	Exhibit "D" – Consent dated June 27, 2014	121-128
3	Consent to Order	129-135
4	Draft Order	136-139

# Tab 1

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

BARCLAYS BANK PLC

Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
*in its capacity as Issuer Trustee of* DEVONSHIRE TRUST, THE BANK OF  
NEW YORK MELLON, *as Custodian,* and CIBC MELLON TRUST  
COMPANY, *in its capacity as Indenture Trustee*

Defendants

**NOTICE OF MOTION**

The defendant, Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as Issuer Trustee of Devonshire Trust ("Devonshire Trust") will make a Motion to the Honourable Mr. Justice Newbould on July 8, 2014 at 8:15 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) An Order declaring that the Mitigation Amount (as hereinafter defined) is \$240,118,309;

- (b) An Order dismissing the litigation; and
- (c) Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The action concerned the termination of a complex commercial contract by Barclays Bank PLC on January 13, 2009, and the commencement of an action by Barclays immediately thereafter;
- (b) On May 22, 2009, on the consent of the parties, the Honourable Justice Campbell issued a Bifurcation Order in the action. Pursuant to the Bifurcation Order:
  - (i) the issues for determination in the trial of the action were bifurcated;
  - (ii) the following issues were to be heard at the Second Trial:
    - (1) whether a Market Disruption Event occurred in August 2007;
    - (2) whether Devonshire's Market Disruption Notices and/or Notice of Default were valid;
    - (3) whether the Plaintiff was in default under its Agreements with Devonshire in relation to the Market Disruption Notices and Notices of Default at any time up to and including the date of the Suspension Notice; and

- (4) whether Devonshire is precluded from asserting the occurrence of a Market Disruption Event, including by reason of the Alleged Manipulation;
- (iii) for the purposes of the First Trial, it was presumed that the bifurcated issues would be determined in favour of Devonshire Trust, without prejudice to the parties;
- (c) The First Trial commenced on September 1, 2010 and concluded on June 9, 2011;
- (d) Reasons for Judgment were delivered by the Honourable Justice Newbould on September 7, 2011;
- (e) Barclays appealed the Judgment to the Court of Appeal for Ontario by Notice of Appeal dated October 5, 2011;
- (f) The appeal was heard on March 4, 5, 6, and 7, 2013;
- (g) The Court of Appeal dismissed Barclays' appeal by Order of July 26, 2013 but varied paragraph 1(h) of the First Trial Judgment to provide that Barclays' Loss (a defined term) is \$264 million less an appropriate amount to be deducted on account of mitigation, "in an amount to be agreed between the parties or to be determined by the trial judge or the judge conducting the second phase of the bifurcated trial if it takes place" (the "Mitigation Amount");
- (h) Barclays brought a motion for leave to appeal the Court of Appeal's Order to the Supreme Court of Canada by Notice of Application dated September 27, 2013;



- (i) The Supreme Court of Canada denied Barclays' motion for leave to appeal on January 16, 2014;
- (j) Following the exhaustion of Barclays' appeal rights in respect of the First Trial, an agreement has now been reached between the parties to settle the subject matter of this litigation on certain specified terms, as set out in a Settlement Letter and Mitigation Agreement signed and executed by the parties, dated June 13, 2014;
- (k) The settlement includes an agreement with respect to the Mitigation Amount, and the parties thereby request that this Honourable Court declare that the Mitigation Amount is \$240,118,309;
- (l) By virtue of the Settlement Letter, a Second Trial to determine the bifurcated issues as set out above is not necessary;
- (m) An Order of this Court is further sought dismissing the action on the condition that the terms of the settlement have been fulfilled;
- (n) Any such Order would only come into effect on the Plan Implementation Date (a defined term in the Settlement Agreement, meaning the Business Day on which the conditions precedent to implementation of the *Companies' Creditors Arrangement Act* ("CCAA") as set out in Article 14 thereof have been satisfied, fulfilled or waived, as applicable, and the Monitor has completed and filed its certificate in accordance with Section 14.3 of the CCAA Plan).

- (m) The parties, none of whom is under disability, have consented to an Order dismissing the action; and
- (o) Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Affidavit of Mathieu Lafleur-Ayotte, sworn June 27, 2014;
- (b) The consents of the parties appearing in this action,
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 3, 2014

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
2600-130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jilesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2891

Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for the defendant, Metcalfe &  
Mansfield Alternative Investments VII Corp.,  
in its capacity as Issuer Trustee of  
Devonshire Trust

TO: **STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON  
M5L 1B9

Peter Howard  
Tel: 416-869-5613  
Fax: 416-947-0866  
Eliot N. Kolers  
Tel: (416) 869-5637  
Ashley J. Taylor  
Tel: (416) 869-5236

Tel: (416) 869-5500  
Fax: (416) 947-0866

Lawyers for the Plaintiff

AND TO: **BENNETT JONES LLP**  
Barrister & Solicitor  
One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON  
M5X 1A4

Jeffrey S. Leon

Tel: (416) 863-1200  
Fax: (416) 863-1716

Lawyers for the Defendants, Bank of New York Mellon,  
in its capacity as Custodian and CIBC Mellon Trust Company,  
in its capacity as Indenture Trustee

BARCLAYS BANK PLC

Plaintiff

-and-

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS  
VII CORP. et al.  
Defendants

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jilesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2891

Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for the Defendant,  
Metcalf & Mansfield Capital Corp.,  
in its capacity as Trustee of Devonshire Trust

# Tab 2

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

BARCLAYS BANK PLC

Plaintiff

- and -

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
*in its capacity as Issuer Trustee of* DEVONSHIRE TRUST, THE BANK OF  
NEW YORK MELLON, *as Custodian*, and CIBC MELLON TRUST  
COMPANY, *in its capacity as Indenture Trustee*

Defendants

**AFFIDAVIT OF MATHIEU LAFLEUR-AYOTTE**

I, Mathieu Lafleur-Ayotte, of the City of Montreal in the Province of Quebec, MAKE OATH AND SAY:

1. I was a principal and co-founder of the Quanto Financial Group, a group of private Canadian companies. Quanto Financial Corporation (“Quanto”) was the financial services agent of the Devonshire Trust and, as such, was appointed by Devonshire’s issuer trustee, the defendant, Metcalfe & Mansfield Alternative Investments VII Corp. (the “Trustee” or “Devonshire”), to provide general analytical and financial services to assist Devonshire in carrying out its activities. As a result, I have personal knowledge of the matters to which I

hereinafter depose, except where I have indicated that I have obtained information from other sources, in which case I believe that information to be true.

### **The History of the Action**

2. The action concerned the termination of a complex commercial contract between Barclays Bank PLC (“Barclays”) and Devonshire on January 13, 2009, and the commencement of an action by Barclays immediately thereafter.

3. On May 22, 2009, on the consent of the parties, the Honourable Justice Campbell issued a Bifurcation Order in this action.

4. By virtue of that Order, the issues for determination in the trial of the action were bifurcated, and the following issues were to be heard at the Second Trial, in the event it was necessary:

- (a) whether a Market Disruption Event occurred in August 2007;
- (b) whether Devonshire’s Market Disruption Notices and/or Notice of Default were valid;
- (c) whether the Plaintiff was in default under its Agreements with Devonshire in relation to the Market Disruption Notices and Notices of Default at any time up to and including the date of the Suspension Notice; and
- (d) whether Devonshire is precluded from asserting the occurrence of a Market Disruption Event, including by reason of the Alleged Manipulation.

5. For the purposes of the First Trial, it was presumed that the bifurcated issues set out above would be determined in favour of Devonshire, without prejudice to the parties.

6. The First Trial commenced before the Honourable Mr. Justice Newbould on September 1, 2010 and concluded on June 9, 2011. Comprehensive Reasons for Judgment were delivered on September 7, 2011.

7. Barclays appealed the Judgment to the Court of Appeal by Notice of Appeal dated October 5, 2011.

8. The appeal with respect to the First Trial was heard from March 4-7, 2013. On July 26, 2013, the Court of Appeal substantially dismissed Barclays' appeal. However, the Court of Appeal varied paragraph 1(h) of the First Trial Judgment to provide that Barclays' Loss (a defined term in the governing ISDA Master Agreement) is \$264 million, less an appropriate amount to be deducted on account of mitigation, "in an amount to be agreed between the parties or to be determined by the trial judge or the judge conducting the second phase of the bifurcated trial if it takes place". I attach the Order of the Court of Appeal dated July 26, 2013 at Exhibit A.

9. Barclays brought a motion for leave to appeal the Court of Appeal's Order to the Supreme Court of Canada by Notice of Application dated September 27, 2013.

10. The Supreme Court of Canada denied Barclays' motion for leave to appeal on January 16, 2014.



### Settlement Discussions

11. I understand that counsel for the parties commenced settlement discussions following the exhaustion of Barclays' appeal rights in respect of the First Trial. I understand that the parties sought to resolve the outstanding issues such that a Second Trial would not be necessary. It is my understanding that part of these discussions included settling the mitigation amount to be deducted from Barclays' Loss, as contemplated by the Court of Appeal in its Order of July 26, 2013.

12. An agreement has now been reached between the parties to settle the subject matter of this litigation on certain specified terms, as set out in a Settlement Agreement and Mitigation Agreement signed and executed by the parties on June 13, 2014. I attach as Exhibit B the Settlement Agreement dated June 13, 2014. The Mitigation Agreement dated June 13, 2014 is attached as Exhibit C.

13. The parties agreed that the mitigation amount is \$240,118,309, as set out in the Settlement Agreement and Mitigation Agreement. I understand that on this motion, the parties request the approval of this mitigation amount of \$240,118,309 by this Honourable Court.

14. I am informed by counsel to Devonshire that the four items that were considered as forming part of the mitigation amount are as follows:

- (a) the profit realized by Barclays on the receipt of the principal amount of the notes purchased (\$194,934,050 million);

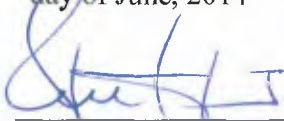
- (b) The amounts to be received by Barclays from the Bank of New York Mellon under the terms of Section 6(f) of the Settlement Agreement, as at the date hereof, such amount is estimated to be \$19,872,377;
- (c) the interest income that Barclays will receive on the \$220 million worth of notes (estimated at \$18,511,882); and
- (d) the legal costs incurred as endorsed by this Honourable Court (\$6.8 million).

15. By virtue of the Settlement Agreement and Mitigation Agreement, I understand that a Second Trial to determine the bifurcated issues is not necessary.

16. The parties, through their counsel, have signed Consents to the dismissal of this action, subject to the fulfillment of the terms as set out in the Settlement Agreement and Mitigation Agreement. I enclose copies of the Consents dated June 27, 2014 as Exhibit D.

17. I swear this affidavit in respect of Devonshire's motion dated June 27, 2014 and for no improper or other purpose.

**SWORN BEFORE ME** at the City of Montreal, in the Province of Quebec this 27<sup>th</sup> day of June, 2014



Commissioner for Taking Affidavits  
(or as may be)

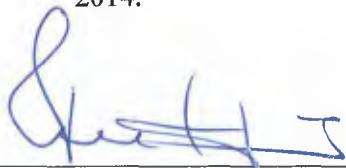
R. V. (GARRA)



**MATHIEU LAFLEUR-AYOTTE**

# Tab A

This is Exhibit "A" referred to in the affidavit of  
MATHIEU LAFLEUR-AYOTTE sworn June 27,  
2014.



---

*Commissioner for Taking Affidavits (or as may be)*

R. Y. G. RAR.

Court File No. C54400

## COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE )  
 GOUDGE )  
 THE HONOURABLE JUSTICE SHARPE )  
 THE HONOURABLE JUSTICE )  
 SIMMONS )

FRIDAY, THE 26<sup>TH</sup>

DAY OF JULY, 2013

BETWEEN:

BARCLAYS BANK PLC

Plaintiff  
 (Appellant)

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP., in its  
 capacity as Trustee of DEVONSHIRE TRUST, THE BANK OF NEW YORK, as  
 Custodian, and CIBC MELLON TRUST COMPANY, in its capacity as Indenture  
 Trustee

Defendants  
 (Respondents)

## ORDER

THIS APPEAL by the Appellant Barclays Bank PLC ("Barclays") to set aside the Judgment of the Honourable Mr. Justice Newbould dated September 7, 2011 (the "Judgment"), for judgment to be granted in favour of the Plaintiff (Appellant) and for the counterclaim in the action to be dismissed was heard on March 4, 5, 6 and 7, 2013 at Osgoode Hall at 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Appeal Book and Compendium, the Respondents' Compendium, the Factums and Briefs of Authorities of the Appellant, Barclays and the

Respondent, Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as Trustee of Devonshire Trust ("Devonshire") and on hearing the submissions of counsel for Barclays and Devonshire,

1. **THIS COURT ORDERS** that the Appeal is dismissed.
2. **THIS COURT ORDERS** that paragraph 1(h) of the Judgment be varied to provide:

"THIS COURT ORDERS AND ADJUDGES THAT Barclays' Loss is \$264 million less an appropriate amount to be deducted on account of mitigation, in an amount to be agreed between the parties or to be determined by the trial judge or the judge conducting the second phase of the bifurcated trial if it takes place."

3. **THIS COURT ORDERS** that costs of this appeal in the amount of \$200,000.00 are payable by Barclays to Devonshire.

THIS ORDER BEARS INTEREST at the rate of 3% per year commencing on July 26, 2013.

ENTERED AT / INSCRIPT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 25 2013

FILED / FICHER: *J*

*JJ* (John Zytanski)  
Registrar: Court of Appeal For Ontario

BARCLAYS BANK PLC  
Plaintiff (Appellant)

-and- METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP. et al.  
Defendants (Respondent)

Court File No. C54400

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**J. Thomas Curry (25740V)**

Tel: (416) 865-3096

Fax: (416) 865-9010

Email: [tcurry@litigatc.com](mailto:tcurry@litigatc.com)

**Monique J. Jilesen (43092W)**

Tel: (416) 865-2926

Fax: (416) 865-2851

Email: [mjilesen@litigatc.com](mailto:mjilesen@litigatc.com)

**Brendan Gray (58586B)**

Tel: (416) 865-2945

Fax: (416) 865-9010

Email: [bgray@litigatc.com](mailto:bgray@litigatc.com)

**Brian Kolenda (60153N)**

Tel: (416) 865-2897

Fax: (416) 865-9010


Email: [bkolenda@litigatc.com](mailto:bkolenda@litigatc.com)

Lawyers for the Defendant (Respondent), Metcalfe &  
Mansfield Alternative Investments VII Corp., in its  
capacity as Trustee of Devonshire Trust

# Tab B



This is Exhibit "B" referred to in the affidavit of  
MATHIEU LAFLEUR-AYOTTE sworn June 27,  
2014.



---

*Commissioner for Taking Affidavits (or as may be)*

R.Y. GIRARD

STRICTLY CONFIDENTIAL  
WITHOUT PREJUDICE  
FOR SETTLEMENT DISCUSSION PURPOSES ONLY

June 13, 2014

Metcalfe & Mansfield Alternative Investments VII Corp.,  
in its capacity as issuer trustee of Devonshire Trust  
c/o M. Robert Girard  
Tour de la Bourse  
800 Place Victoria  
Bureau 3700, C. P. 242  
Montreal, QC  
H4Z 1E9

The Bank of New York Mellon,  
(acting through its London Branch)  
One Canada Square  
London, E14 5AL  
United Kingdom

Dear Mesdames/Sirs:

The purpose of this letter is to set forth our agreement concerning the action (Court File Nos. CV-09-0370103 and CV-09-8387CL) commenced in the Ontario Superior Court on January 13, 2009 between Barclays Bank PLC ("**Barclays**"), as Plaintiff, and Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as issuer trustee of Devonshire Trust, The Bank of New York Mellon, in its capacity as custodian under the Tri-Party Custody Agreement (as defined below), and CIBC Mellon Trust Company, in its capacity as indenture trustee under the Note Indenture (as defined below), as Defendants (the "**Litigation**").

In consideration of the mutual acknowledgements and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions:** Unless otherwise defined in this Agreement, terms with initial capitals shall have the meanings specified below:
  - (a) "ABCP Indemnity Trust Agreement" has the meaning set forth in Section 6(l) herein;
  - (b) "ABCP Plan" has the meaning set forth in Section 6(g)(ii) herein;
  - (c) "Actual/365 Fixed Basis" means a day count convention for calculating interest where each month is treated as having its actual number of days but where the year is assumed to have 365 days, thus providing an additional day of interest on a leap year (366 days of interest applied to an assumed 365-day year);

- (d) "Advance Tax Ruling" means the advance tax ruling to be requested by Devonshire and Devonshire Trust from the CRA seeking to confirm that Interest Distributions to Noteholders who are Non-Residents are not subject to withholding tax;
- (e) "affiliated companies" means affiliated companies within the meaning of the Ontario Securities Act, as amended, and the instruments, rules and regulations thereunder;
- (f) "Agreement" means this letter agreement, including all schedules hereto;
- (g) "Agreement Relating to the Mitigation of Loss" means the agreement, the form of which is annexed hereto as Schedule "D", to be entered into between Barclays and Devonshire;
- (h) "Aggregate Available Cash" has the meaning set forth in Section 6(g) herein;
- (i) "Anticipated Costs" means, as at any time, expenditures described in Schedule "C" which, as at such time, have been incurred and not yet paid as well as such expenditures which are required to be subsequently incurred in order to finally settle the estate of Devonshire but only to the extent that the aggregate amount of all such expenditures exceeds the balance then outstanding in the Costs Reserve;
- (j) "Balance of the Aggregate Available Cash" means an amount equal to the difference between the Aggregate Available Cash and the sum of the aggregate face amount of all of the Notes (CAD\$678,931,389), the Costs Reserve (CAD\$1,510,000) and the Indemnity Reserve (CAD\$5,000,000);
- (k) "Barclays" means Barclays Bank PLC, including, as the context requires, any of its subsidiaries, including the Barclays Subsidiaries and, for the purposes of Section 6(i) herein, all of their respective Representatives;
- (l) "Barclays' Loss" means the "Barclays' Loss" referred to in the decision of the Court of Appeal for Ontario, rendered July 26, 2013 in Court File No. C54400;
- (m) "Barclays Other Claims" has the meaning set forth in Section 6(b) herein;
- (n) "Barclays Subsidiaries" is the collective reference to each of the following companies which Barclays represents is wholly owned by it:
  - Hollygrice Limited;
  - Strickyard Limited;
  - Winhall Limited;
  - Hentock Limited;
  - Coskwo Limited;
  - Blaytell Limited;
  - Godler Limited

Pilkbull Limited;

Harflane Limited;

and "Barclays Subsidiary" means anyone thereof;

- (o) "BNY" means The Bank of New York Mellon (previously known as Bank of New York as successor to JPMorgan Chase Bank N.A.), acting through its London Branch, in its capacity as custodian under the Tri-Party Custody Agreement;
- (p) "BOC Daily 1M BA Rate" means the daily rate for bankers' acceptances with a one-month term, as calculated and published as part of series V39068 by the Bank of Canada;
- (q) "Business Day" means a business day in the Provinces of Quebec and Ontario, Canada;
- (r) "CCAA" means the *Companies' Creditors Arrangement Act* (Canada), as amended;
- (s) "CCAA Plan" means the plan of arrangement and compromise among Devonshire and its creditors, including Barclays and its affiliated companies (as applicable), reflecting in substance the implementation terms set forth in Section 6 hereof, a current draft of which is attached hereto as Schedule "F";
- (t) "CCAA Procedure" means an application by Devonshire and subsequent procedures for the approval, sanction and implementation of the CCAA Plan;
- (u) "CCAA Release" has the meaning set forth in Section 6(i) herein;
- (v) "CIBC Mellon" means CIBC Mellon Trust Company in its capacity as indenture trustee under the Note Indenture and the Supplemental Indenture;
- (w) "Class A Notes" means the outstanding Class A Series A Notes of Devonshire issued under the Supplemental Indenture;
- (x) "Class E Notes" means the outstanding Class E Series A Notes of Devonshire issued under the Supplemental Indenture;
- (y) "Class FRN Notes" means the outstanding Class FRN Series A Notes of Devonshire issued under the Supplemental Indenture;
- (z) "Clearance Certificate" means a certificate issued to Devonshire or Devonshire Trust, as the case may be, under the terms of either subsection 159(2) of the *Income Tax Act* (Canada) or Section 14 of the *Tax Administration Act* (Québec) in each case relating to taxes that may be required to be paid or withheld by Devonshire or Devonshire Trust or the Monitor on behalf of Devonshire or Devonshire Trust on or prior to December 31, 2014 in order to receive such Clearance Certificate and "Clearance Certificates" shall be the collective reference to both such certificates;
- (aa) "Collateral Deficiency" has the meaning set forth in Section 6(c) herein;
- (bb) "Consulting Agreement" means that certain agreement entered into as of January 21, 2009 among the Consulting Firm, Quanto, MMCC and Devonshire;

- (cc) "Consulting Firm" means 9205-3701 Quebec Inc., in its capacity as consultant to Devonshire and, for the purposes of Section 6(i) herein, all of its Representatives;
- (dd) "Costs Reserve" has the meaning set forth in Section 6(g) herein;
- (ee) "CRA" means the Canada Revenue Agency;
- (ff) "Devonshire" means Metcalfe & Mansfield Alternative Investments VII Corp. in its capacity as issuer trustee of Devonshire Trust and, for the purposes of Section 6(i) herein, all of its Representatives;
- (gg) "Devonshire Trust" means Devonshire Trust, a trust constituted under the laws of the Province of Ontario;
- (hh) "First Interest Distribution" has the meaning set forth in Section 6(g)(ii) herein;
- (ii) "Funds Transfer Date" means the date on which the funds transfers contemplated in Sections 6(c), 6(d), 6(f) and 6(g) are to occur as contemplated in Sections 5.2.3 and 14.1.7 of the CCAA Plan;
- (jj) "Indemnified Party" means any person having the right to make an Indemnity Claim;
- (kk) "Indemnity Claim" means (i) any claim for indemnity which may be made by Devonshire under and in accordance with the rights of indemnity granted to it, in its favour or in favour of any of its Representatives by Devonshire Trust pursuant to the Settlement Deed, which rights of indemnity, it is hereby acknowledged for greater certainty, also serve to indemnify Devonshire against losses suffered by it or any of its Representatives as a consequence of indemnities granted by Devonshire pursuant to any Programme Agreement and whether such Indemnity Claim is asserted before or after any Programme Agreement upon which Devonshire may rely in order to make such indemnity claim has been terminated, it being expressly deemed for all purposes of this Agreement and any CCAA Procedure that the indemnity provisions of the Programme Agreements shall remain in full force and effect even following any termination thereof, (ii) any claim for indemnity by Devonshire or any Representative thereof on account of taxes payable or amounts required to have been withheld by Devonshire Trust for which it or any of its Representatives may be held liable under the provisions of either one of subsection 159(3) of the *Income Tax Act* (Canada) or Section 14 of the *Tax Administration Act* (Québec) as a consequence of a distribution made under the terms of Section 6 hereof or under the provisions of any CCAA Procedure, and (iii) any claim for indemnity in respect of the cost of defence of Devonshire or any Representative thereof against any claim by a third party that, whether or not successful, would entitle Devonshire or any such Representative to make a claim for indemnity described in (i) or (ii) above on account of any such costs of defence, as well as any reasonable costs and expenses incurred by Devonshire or any of its Representatives in enforcing their rights hereunder or under any CCAA Procedure;
- (ll) "Indemnity Reserve" has the meaning set forth in Section 6(g) herein;
- (mm) "Initial CCAA Order" means the initial order in the CCAA Procedure;

- (nn) "Initial Seller Payments" means the aggregate payments of CAD \$600 million made by Devonshire to Barclays pursuant to the Swaps;
- (oo) "Interest Distribution" refers to any one of the First Interest Distribution, the Second Interest Distribution or any other distribution on account of interest on the Notes referred to in either one of Sections 6(g) or 6(l), and "Interest Distributions" is the collective reference to all such distributions;
- (pp) "MMCC" means Metcalfe & Mansfield Capital Corporation, as settlor of, and administrative agent to, Devonshire and, for the purposes of Section 6(i) herein, all of its Representatives;
- (qq) "Monitor" means the monitor appointed in respect of the CCAA Procedure;
- (rr) "NBCN" means NBCN Inc. in its capacity as issuing and paying agent under the Note Indenture and the Supplemental Indenture;
- (ss) "Next Litigation Steps" has the meaning set forth in Section 4 herein;
- (tt) "Non-Resident" means a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada);
- (uu) "Note Indenture" means the Trust Indenture made as of August 2, 2006 among Devonshire, CIBC Mellon and NBCN;
- (vv) "Noteholders" means the holders of Notes;
- (ww) "Notes" means collectively, the Class A Notes, the Class E Notes and the Class FRN Notes;
- (xx) "Payment Agreement" means the agreement, the form of which is annexed hereto as Schedule "E", to be entered into between Barclays, Devonshire and the Monitor;
- (yy) "Plan Implementation Date" means the Business Day on which the conditions precedent to implementation of the CCAA Plan as set out in Article 14 thereof have been satisfied, fulfilled or waived, as applicable, and the Monitor has completed and filed its certificate in accordance with Section 14.3 of the CCAA Plan;
- (zz) "Programme Agreements" has the meaning set forth in the Note Indenture and shall include the Consultation Agreement and any of the Termination Agreements, as well as all agreements, instruments and documents in which rights of indemnity have been granted by Devonshire;
- (aaa) "Quanto" means Quanto Financial Corporation in its capacity as financial agent to Devonshire and, for the purposes of Section 6(i) herein, all of its Representatives;
- (bbb) "Representative" of a party means any current or former trustee, director, officer, employee, shareholder, affiliated company, agent, representative or advisor of that party, including accountants, counsel, consultants and financial advisors;

- (ccc) "Second Interest Distribution" has the meaning set forth in Section 6(g)(iii) herein;
  - (ddd) "Settlement Deed" means the Settlement Deed made as of August 2, 2006 between MMCC and Devonshire;
  - (eee) "Settlement Deficiency" has the meaning set forth in Section 6(d) herein;
  - (fff) "Settlement Amount" has the meaning set forth in Section 6(c) herein;
  - (ggg) "Special Order" has the meaning set forth in Section 6 herein;
  - (hhh) "Supplemental Indenture" means the Series A Supplemental Indenture, made as of August 2, 2006, among Devonshire, CIBC Mellon and NBCN pursuant to the Note Indenture, as amended by the first supplement made as of December 21, 2007 among the same parties;
  - (iii) "Swaps" means the two levered super-senior credit default swaps dated as of August 16, 2006 and August 25, 2006, respectively, between Barclays and Devonshire;
  - (jjj) "Tax Indemnity Claim" means a claim for indemnity described in clause (ii) of the definition of Indemnity Claims;
  - (kkk) "Tax Reserve" has the meaning set forth in Section 6(g) herein;
  - (lll) "Termination Agreements" means any agreement to which Devonshire or Devonshire Trust is a party under the terms of which a Programme Agreement has been terminated and "Termination Agreements" is the collective reference to all of the Termination Agreements;
  - (mmm) "Threatened Litigation" has the meaning set forth in Section 6(l) herein;
  - (nnn) "Trial 2" means any second trial between Barclays and Devonshire contemplated by the Bifurcation Order of the Ontario Superior Court dated October 2, 2009 in the Litigation;
  - (ooo) "Tri-Party Custody Agreement" means the Amended and Restated Tri-Party Custody Agreement dated December 1, 2006 among Barclays, Devonshire and BNY (as successor to JPMorgan Chase Bank N.A.), as custodian; and
  - (ppp) "Withholding Tax Reserve" has the meaning set forth in Section 6(g)(ii)(A) herein.
2. **Noteholders:** Barclays and Devonshire acknowledge and agree that, at the date hereof and to the best of their knowledge, the Noteholders and their respective holdings of Notes are as set out on Schedule A hereto. Each of Barclays and Devonshire shall promptly notify the other parties if it becomes aware that any of the information in Schedule A hereto is incorrect or has changed.
  3. **Assets and Liabilities of Devonshire Trust:** Devonshire confirms to Barclays that, to the best of its knowledge, the assets and liabilities of Devonshire Trust as at June 1, 2014 are as set out in Schedule B hereto. Devonshire shall promptly notify Barclays if it becomes

aware that any of the information in Schedule B hereto is incorrect or has changed in any material manner.

4. **Effect of this Agreement:** This Agreement shall be a binding and enforceable agreement between the parties hereto and the parties hereto further undertake and agree that subject to Section 8 hereof, none of Barclays, any of its affiliated companies or Devonshire shall take any steps to advance to Trial 2, if applicable, or to take any other steps whatsoever (however characterized) in furtherance of the Litigation (the "Next Litigation Steps") other than:
  - (a) cooperation and steps to effectuate the settlement set forth herein and in accordance with the terms hereof;
  - (b) the execution by Barclays and Devonshire of the Agreement Relating to the Mitigation of Loss; and
  - (c) the filing of the Special Orders.
5. **Implementation of the Settlement:** The parties hereto agree that the settlement set forth in this Agreement will be implemented by the filing, before the Superior Court of Ontario, by Devonshire, of an application in respect of the CCAA Procedure, and Devonshire shall use all commercially reasonable efforts to file such initial application within 30 days following the date hereof, followed promptly by the liquidation of the assets of Devonshire and, after provision for the payment of all proper costs and expenses of Devonshire, including taxes and the fees, expenses and other amounts related to the CCAA Procedure, the compromise of the Notes and the winding-up of Devonshire, all as part of the CCAA Procedure contemplated by this Agreement.
6. **Implementation Terms:** The CCAA Procedure shall provide for the following (which, in the case of each of the actions referred to in Sections 6(b), 6(c), 6(d), 6(e) and 6(f) below, shall be conditional upon the concurrent performance of each of the others pursuant to the CCAA Procedure (as defined below) as approved by a court of competent jurisdiction):
  - (a) the application under the CCAA Procedure shall provide for an Administrative Charge of CAD\$400,000 and a Directors' and Officers' Charge of CAD\$250,000;
  - (b) on the Plan Implementation Date, Barclays shall subordinate its claim in the Litigation (including, without limitation, the Barclays' Loss claim in respect of the Litigation under the Agreement Relating to the Mitigation of Loss) and all other claims (contractual or otherwise), other than its claims and those of the Barclays Subsidiaries as Noteholders pro rata with all other Noteholders and, but only for the purposes of Sections 6(c) and 6(f), its claim to the CAD\$600,000,000 and accrued interest held by BNY under the Tri-Party Custody Agreement that Barclays and/or its affiliated companies may have against Devonshire Trust (and its Representatives) (such claim in the Litigation and all such other claims including claims that Barclays and its affiliated companies may have against Devonshire and Devonshire Trust or could have were Barclays to have obtained a favourable final judgment in the event Trial 2 had proceeded, including the Barclays' Loss, shall be collectively referred to herein as the "Barclays Other



**Claims**”), to the claims of all other creditors of Devonshire Trust. The Barclays Other Claims shall be extinguished on the Plan Implementation Date. Furthermore, the Barclays Other Claims shall also be released pursuant to the CCAA Release referred to in Section 6(i). Barclays and its affiliated companies shall have no right to vote the amount of the Barclays Other Claims under the CCAA Procedure and shall not constitute a separate class of creditors, its and their rights to vote being limited exclusively to the right to vote as Noteholders. For the avoidance of doubt, Barclays shall not have the right to vote its claim to the CAD\$600,000,000 and accrued interest held by BNY under the Tri-Party Custody Agreement;

- (c) pursuant to the provisions of Article 7 of the Tri-Party Custody Agreement, each of Barclays, in its capacity as “Buyer” and Devonshire, in its capacity as “Seller” under the Tri-Party Custody Agreement, hereby jointly and irrevocably instruct BNY, effective on the Funds Transfer Date, to pay to Devonshire from the monies held by BNY under the Tri-Party Custody Agreement:
- (i) the amount of CAD\$532,668,082.00;
  - (ii) the amount of CAD\$1,061,916.00;
  - (iii) the amount of CAD\$58,412,380; and
  - (iv) such additional amount in CAD\$ (being interest on the amounts in clauses (i), (ii) and (iii) above calculated from and including June 1, 2014 to but excluding the Funds Transfer Date at a rate per annum equal to the BOC Daily 1M BA Rate, reset each Business Day, plus 1%, calculated on an Actual/365 Fixed Basis and compounded daily) as shall be specified to BNY in writing by the Monitor;

provided, however, that the maximum amount that BNY shall be required to pay to Devonshire pursuant to the foregoing shall be an amount equal to the aggregate amount held by BNY under the Tri-Party Custody Agreement on the Funds Transfer Date, and, to the extent that on the Funds Transfer Date the aggregate sum of the amounts referred to in clauses (i), (ii), (iii) and (iv) above (such sum being referred to herein as the “**Settlement Amount**”) exceeds the amounts held by BNY under the Tri-Party Custody Agreement (the deficiency, if any, between the sum of the aforesaid amounts and the monies held by BNY under the Tri-Party Custody Agreement shall be referred to as the “**Collateral Deficiency**”), BNY shall not be required to pay such Collateral Deficiency to Devonshire;

BNY hereby accepts the foregoing instructions and agrees to make such payments to Devonshire on the Funds Transfer Date;

upon the “Sanction Order” (as defined in the CCAA Plan) becoming final, Devonshire and Barclays shall irrevocably instruct BNY to pay to the Monitor, on the Funds Transfer Date, all amounts that BNY would otherwise have paid

to Devonshire on such date pursuant to this Section 6(c) and BNY hereby agrees to accept such instructions and, upon receipt thereof, to make such payment to the Monitor on the Funds Transfer Date;

- (d) to the extent that on the Funds Transfer Date the amount received by Devonshire or, as the case may be, by the Monitor from BNY under clause (c) above is less than the Settlement Amount (the difference between the Settlement Amount and the amount received by Devonshire or, as the case may be, by the Monitor from BNY under clause (c) above shall be referred to as the "**Settlement Deficiency**"), whether by reason of the existence of a Collateral Deficiency or for any other reason, Barclays shall, on the Funds Transfer Date, pay to Devonshire or, as the case may be, the Monitor, an amount equal to the Settlement Deficiency such that the sum of the amount received by Devonshire or, as the case may be, by the Monitor from Barclays under this clause (d) and the amount it received from BNY under clause (c) above is equal to the Settlement Amount;

upon the "Sanction Order" (as defined in the CCAA Plan) becoming final, Devonshire shall irrevocably instruct Barclays to pay the Settlement Deficiency, if any, to the Monitor, on the Funds Transfer Date;

- (e) on the Plan Implementation Date, Devonshire shall renounce and forgo (without further action other than the concurrent consummation of the terms set forth in this Section 6) its right to payment of any and all amounts from Barclays on account of court costs, including interest thereon;
- (f) pursuant to the provisions of Article 7 of the Tri-Party Custody Agreement, each of Barclays, in its capacity as "Buyer", and Devonshire, in its capacity as "Seller", under the Tri-Party Custody Agreement, hereby jointly and irrevocably instruct BNY that, to the extent that on the Funds Transfer Date there does not exist a Collateral Deficiency, BNY shall (subject to the payments in clause (c) above having been made), from the monies held by BNY under the Tri-Party Custody Agreement, pay to Barclays CAD\$600,000,000, together with all accrued interest thereon, net of the amount paid to Devonshire or, as the case may be, the Monitor as provided in clause (c) above;

BNY hereby accepts the foregoing instruction and hereby agrees to make such payment to Barclays on the Funds Transfer Date;

- (g) upon the receipt of the payments in Sections 6(c) and 6(d) above, Devonshire shall liquidate its assets (the proceeds resulting from such liquidation plus the sums received under Sections 6(c) and 6(d) above shall be collectively referred to as the "**Aggregate Available Cash**") and, after provisions (1) in the amounts currently estimated to be approximately CAD\$1,510,000 (with any material increase of such amount to be approved by the Monitor, acting reasonably) on account of the expenditures identified in Schedule "C" (the "**Costs Reserve**"), (2) CAD\$5,000,000 on account of Indemnity Claims (the "**Indemnity Reserve**") that may arise and (3) the Balance of the Aggregate Available Cash (such amount being equal to CAD\$59,693,904 as of June 1, 2014) on account of taxes (the "**Tax**");

**Reserve**") that may be required to be paid by Devonshire or the Monitor on behalf of Devonshire in order to receive the two Clearance Certificates, shall distribute the following amounts to the Noteholders (including for greater certainty, Barclays):

- (i) a first distribution to Noteholders in an aggregate amount equal to CAD\$678,931,389 as repayment in full of the entire aggregate outstanding face amount of all of the Notes, to be distributed to each of the Noteholders in respect of such Noteholders' respective Notes in accordance with the CCAA Plan;
- (ii) provided Devonshire shall have received both Clearance Certificates (it being understood that Devonshire would have already paid out of amounts held in the Tax Reserve, any taxes assessed by each of the governmental authorities having issued such Clearance Certificates), then out of the balance of the amounts held in the Tax Reserve (either pursuant to the opening paragraph of Section 6(g) or through the operation of Section 6(l)), a first distribution to the Noteholders on account of interest payment obligations on the Notes (the "**First Interest Distribution**"), shall be made in accordance with the CCAA Plan at such time and in such amounts from the Tax Reserve as Devonshire, acting reasonably, determines from time to time will not be required to satisfy the tax liabilities, if any, of Devonshire, such First Interest Distribution to be calculated and distributed to Noteholders on the same basis as in the CCAA proceedings and other documents filed by the Pan-Canadian Investors Committee on March 17, 2008 (the "**ABCP Plan**"), provided however, that with respect to the First Interest Distribution that is to be made to such of the Noteholders who are Non-Residents:
  - (A) where the Advance Tax Ruling has not been received at the time of such First Interest Distribution, the entire amount that would otherwise have been distributed to such Non-Resident Noteholders will be transferred into a withholding tax reserve (the "**Withholding Tax Reserve**") and shall only be distributed to them upon receipt of the Advance Tax Ruling and in accordance with its provisions; provided, however, that to the extent that prior to the receipt of the Advance Tax Ruling a written confirmation has been received from the CRA authorizing a distribution on account of interest be made to the Noteholders who are Non-Residents provided that there is placed in the Withholding Tax Reserve an amount equal to the withholding tax that would otherwise be payable and confirming further that notwithstanding such distribution, the CRA will nevertheless issue the Advance Tax Ruling, then the amount of the First Interest Distribution that would otherwise be payable to the Noteholders who are Non-Residents, minus the amount on account of such withholding taxes shall be paid to the Non-

Resident Noteholders and the balance shall be transferred to the Withholding Tax Reserve and shall be paid out in accordance with the terms of the Advance Tax Ruling once it is received; and

- (B) where the Advance Tax Ruling has been received, then the amount of the First Interest Distribution that is otherwise payable to the Noteholders who are Non-Residents shall be paid in accordance with the terms of the Advance Tax Ruling;

provided that if, at any time prior to receipt of the Advance Tax Ruling and the written confirmation from the CRA contemplated in Section 6(g)(ii)(A), a Non-Resident Noteholder advises Devonshire in writing that it irrevocably elects to receive its Interest Distributions net of applicable withholding taxes, Devonshire shall deduct and remit to the CRA such withholding taxes, in an amount determined by the Monitor, and Devonshire shall pay the balance of such Interest Distribution to such Non-Resident Noteholder;

- (iii) following the First Interest Distribution, (it being understood that Devonshire would have already paid out of the amounts held in the Tax Reserve any taxes assessed by any governmental authority since the First Interest Distribution), then out of the balance of the amounts held in the Tax Reserve (either pursuant to the opening paragraph of Section 6(g) or through the operation of Section 6(l), Devonshire shall make a second distribution to the Noteholders on account of interest payment obligations on the Notes (the "**Second Interest Distribution**"), in an amount equal to the then outstanding balance in the Tax Reserve less the sum of any Anticipated Costs and Tax Indemnity Claims. The Second Interest Distribution is to be calculated and distributed to Noteholders on the same basis as in the ABCP Plan, provided however, that payments to Non-Resident Noteholders on account of such a distribution shall be subject to the same provisions regarding withholding tax as those set out in Section 6(g)(ii);
- (iv) provided Devonshire shall have received both Clearance Certificates and all Anticipated Costs have either been paid for or sufficient funds shall have been reserved for the payment thereof out of the Costs Reserve and/or the Tax Reserve, and/or the Indemnity Reserve, then any amounts then remaining in the Tax Reserve, the Costs Reserve, the Indemnity Reserve (subject to Section 6(l) below) or otherwise in the name of Devonshire, shall be distributed as a final Interest Distribution to the Noteholders, in full and final satisfaction (subject to Section 6(g)(v)) of all remaining interest payment obligations on the Notes, such Interest Distribution to be calculated on the same basis as in the ABCP Plan, provided however, that payments to Non-Resident Noteholders on account of such a distribution shall be subject to the same provisions regarding withholding tax as those set out in Section 6(g)(ii); and

- (v) following the Interest Distribution referred to in Section 6(g)(iv), to the extent that the amounts reserved to pay for the Anticipated Costs referred to therein exceeded the actual amounts required to fully satisfy such Anticipated Costs, the balance of such amounts reserved shall be distributed as an Interest Distribution to the Noteholders on account of interest payment obligations on the Notes, such Interest Distribution to be calculated on the same basis as in the ABCP Plan, provided however, that payments to Non-Resident Noteholders on account of such a distribution shall be subject to the same provisions regarding withholding tax as those set out in Section 6(g)(ii).
- (h) immediately after the distribution referred to in Section 6(g)(i) above, all of the Notes will thereupon be cancelled and terminated without further action on the part of the Noteholders, provided however that the Noteholders shall be entitled to the Interest Distributions herein provided for;
- (i) the Plan of Arrangement in the CCAA Procedure shall contain a release substantially on the same terms as the release provided under the ABCP Plan including, without limitation, in respect of all matters raised or which could have been raised in the Litigation, as if the Notes were Affected ABCP within the meaning of and under the ABCP Plan, and wherein the "Released Parties" shall be Devonshire, the Devonshire Trust, Quanto, MMCC, the Consulting Firm, BNY, CIBC Mellon, NBCN, Barclays (including the Barclays Subsidiaries), the Noteholders and the Representatives of each such party (the "CCAA Release") provided, however, that the Payment Agreement shall be excluded from such CCAA Release;
- (j) except as set forth above, each party shall be solely responsible for its own legal fees and expenses (including expert witness' fees and expenses) in connection with the Litigation and the implementation of this Agreement (including the CCAA Procedure);
- (k) the parties acknowledge and agree that any variation in the CCAA Procedure and CCAA Plan and sanction order to the implementation terms set out in Sections 6(a) to 6(j) above and 6(l) to 6(m) below which is materially adverse to a party hereto shall be subject to such party's prior written consent, it being understood that the CCAA Procedure shall seek to have compromised the claims of the Noteholders under the Notes and Barclays Other Claims, shall limit the right to vote to the Noteholders for their claims under the Notes and no claims process other than a process for Noteholders to prove their claims shall be contemplated;
- (l) the Indemnity Reserve shall be established substantially in accordance with the terms of the Trust Agreement entered into between Ernst & Young Inc. and John D. Ground, as trustee, pursuant to the ABCP Plan (the "ABCP Indemnity Trust Agreement"), provided however that the trustee for the purposes hereof shall be the Monitor to be appointed under the terms of the CCAA Procedure. Payments to any Indemnified Party shall be made following a procedure similar to that of the ABCP Indemnity Trust Agreement adjusted to reflect the terms hereof. On

the second anniversary of the Plan Implementation Date, the amount on deposit in the Indemnity Reserve in excess of CAD\$1,000,000 shall be released to and form part of the Tax Reserve (if still in existence), or to the extent not required for the Tax Reserve (if still in existence) as provided by any of Sections 6(g)(ii), (iii) or (iv), as the case may be, distributed to the Noteholders as an Interest Distribution. On the fourth anniversary of the Plan Implementation Date, any balance outstanding on deposit in the Indemnity Reserve shall be released to and form part of the Tax Reserve (if still in existence), or to the extent not required for the Tax Reserve (if still in existence) as provided by any of Sections 6(g)(ii), (iii) or (iv), as the case may be, distributed to the Noteholders as an Interest Distribution. Notwithstanding the foregoing, it is expressly agreed that to the extent that, on the second anniversary or fourth anniversary of the Plan Implementation Date, as the case may be, there is any pending litigation or litigation threatened in writing in respect of which the limitation period applicable to the subject matter of the threatened litigation has not expired and which has not resulted in pending litigation ("**Threatened Litigation**") against any Indemnified Party, then the Monitor, as trustee in respect of such Indemnity Reserve, shall be entitled to retain in the Indemnity Reserve (rather than release to the Tax Reserve or pay out as Interest Distribution, as applicable in accordance with Section 6(g)):

- (i) on the second anniversary of the Plan Implementation Date, an amount not exceeding the sum of (A) CAD\$1,000,000 and (B) if Devonshire, acting reasonably, and following consultation with the Monitor, estimates that the amount required to satisfy such pending litigation or Threatened Litigation, including the estimated amount of related defence costs, exceeds CAD\$1,000,000, such excess amount;
- (ii) between the second and fourth anniversary of the Plan Implementation Date, if a final judgment of a court of competent jurisdiction is issued, or the adverse party desists from, pending litigation or Threatened Litigation, an amount not exceeding the sum of (A) CAD\$1,000,000 and (B) if Devonshire acting reasonably, and following consultation with the Monitor, estimates that the amount required to satisfy remaining pending litigation or Threatened Litigation, including the estimated amount of related defence costs, exceeds CAD\$1,000,000, such excess amount;
- (iii) on the fourth anniversary of the Plan Implementation Date, such remaining amount as Devonshire, acting reasonably, and following consultation with the Monitor, shall determine would be sufficient to satisfy pending litigation or Threatened Litigation, including the estimated amount of related defence costs; and
- (iv) after the fourth anniversary of the Plan Implementation Date, if any amount has been retained in the Indemnity Reserve on account of any pending litigation or Threatened Litigation and a final judgment of a court of competent jurisdiction is issued, or the adverse party desists from such pending litigation or Threatened Litigation, such remaining

amount, if any, as Devonshire acting reasonably, and following consultation with the Monitor, estimates is required to satisfy remaining pending litigation or Threatened Litigation, including the estimated amount of related defence costs;

- (m) as amounts are determined by Devonshire to no longer be required for the Indemnity Reserve in accordance with Section 6(l)(i) through (iv) above, and provided an amount sufficient to cover Anticipated Costs is retained, such amounts shall be promptly released to and form part of the Tax Reserve (to the extent still in existence) and, to the extent permitted by Section 6(g), distributed to the Noteholders as an Interest Distribution. For the avoidance of doubt, once the Tax Reserve is exhausted, (i) any claim against Devonshire Trust or Devonshire on account of taxes and (ii) any claim on account of Anticipated Costs, may, in each case, be paid out of the Indemnity Reserve;
- (n) for the purposes of the distributions on account, in lieu or in satisfaction of interest to Noteholders who are Non-Residents, prior to the commencement of the CCAA Proceedings and after consultation with Barclays regarding the form and substance thereof, Devonshire shall make an application to the CRA as promptly as possible following the Initial CCAA Order, for the Advance Tax Ruling in order to confirm whether such distributions are subject to the withholding tax; and
- (o) Devonshire shall provide the Monitor on request with an accounting in reasonable detail of the fees and expenses it incurs in the preparation, submission and prosecution of the Advance Tax Ruling.

Contemporaneous with the filing of the application for the Initial CCAA Order, Devonshire shall file (i) a motion in the Litigation (to which motion Barclays shall consent), returnable at the same time as the motion for the Initial CCAA Order, seeking an order dismissing the Litigation as against all parties without costs, and (ii) a motion (to which Barclays shall consent), returnable at the same time as the motion for the Initial CCAA Order, seeking an order declaring that, on consent of Devonshire and Barclays, the mitigation amount of Barclays in respect of the "Barclays' Loss" (referred to in the decision of the Court of Appeal of Ontario rendered on July 26, 2013 in Court File No. C54400) is the amount of CAD\$240,118,309 thereby reducing the Barclays' Loss to CAD\$23,881,691 (collectively, the "Special Order") which order shall only become effective upon the Plan Implementation Date.

The parties hereto acknowledge and agree that it is an essential element of the settlement contemplated by this Agreement that Barclays and Devonshire execute concurrently with the execution hereof the Agreement Relating to the Mitigation of Loss and the Payment Agreement and each of Barclays and Devonshire hereby covenant and agree to execute such agreements. Until this Agreement and each of the Agreement Relating to the Mitigation of Loss and the Payment Agreement have been executed by Barclays and Devonshire, this Agreement shall not come into force.

Devonshire shall use all commercially reasonable efforts to promptly make, and diligently pursue, all filings and correspondence required to receive the Advance Tax Ruling

and a certificate pursuant to each of Section 159(2) of the *Income Tax Act* (Canada) and Section 14 of the *Tax Administration Act* (Québec) and otherwise close-out all open tax years with a view to distribution to the Noteholders of the Tax Reserve and, if available, the Indemnity Reserve, and the winding-up of Devonshire and Devonshire Trust as promptly as practicable.

Devonshire shall use commercially reasonable efforts with respect to such expenditures described in Schedule "C" as are under its direct control that such expenditures shall not exceed the amount of the Costs Reserve, provided that no contestation or unforeseen event occurs with respect to the CCAA Procedures, the distributions contemplated by Sections 6(g) and 6(l) and the process of acquiring the Advance Tax Ruling and the two Clearance Certificates.

The CCAA Procedures shall provide for the right of the Noteholders, from time to time, to request of the Monitor to report on the expenditures incurred and paid for out of the Costs Reserve.

7. **Cooperation:** Barclays and Devonshire shall undertake all commercially reasonable efforts to cooperate with each other to implement promptly the terms of this Agreement, including, without limitation:

- (a) assisting in the identification of all Noteholders and confirmation of amounts due on their Notes (including calculations of accrual of original issue discount);
- (b) instructing BNY and CIBC Mellon to take all actions in accordance with their agreements with Devonshire and the other parties, as applicable, which are required to implement this Agreement;
- (c) identifying all payments and provisions required by Devonshire and arranging for payment of amounts due to, and obtaining any consents of, Devonshire's service providers required to implement this Agreement;
- (d) preparing and expeditiously filing all required applications in respect of the CCAA Procedure and participating in the proceedings in respect thereof;
- (e) voting in favour of, or not objecting to, the implementation of this Agreement under the CCAA Procedure, and providing all consents and approvals which may be required in connection therewith; and
- (f) obtaining the consent of BNY and CIBC Mellon to Devonshire's motion described above seeking an order dismissing the Litigation as against all parties without costs, provided that commercially reasonable efforts to obtain such consents shall not include the payment by Barclays or Devonshire of any monies to either of BNY or CIBC Mellon as a condition of receiving such consents.

8. **Implementation Deadline:**

- (a) If the CCAA Procedure does not receive sufficient votes of creditors at the relevant meeting (or meetings) of creditors, or if the court of competent jurisdiction otherwise refuses to sanction the CCAA Procedure, then each of Barclays and Devonshire shall have the right, in its sole and unfettered discretion, to terminate this Agreement on 10 Business Days' prior written notice



to the other parties hereto. Following the delivery of any such notice, the provisions of this Agreement (save and except for Section 8(c), 8(d) and Sections 9 to 20 inclusive) shall become null and void and Barclays and Devonshire shall be permitted to take the Next Litigation Steps.

- (b) If the CCAA Procedure has not been approved by a court of competent jurisdiction and implemented by the latest of the date of the second anniversary of this Agreement or 60 days after the expiry of any and all appeal period in respect of the sanction order made as part of the CCAA Procedure, and, if appealed, 60 days after a final decision on appeal, then the provisions of this Agreement (save and except for Section 8(c), 8(d) and Sections 9 to 20 inclusive) shall, upon written notice from any party hereto to the other parties, become null and void and Barclays and Devonshire shall be permitted to take the Next Litigation Steps.
  - (c) The parties hereto acknowledge and agree that, for purposes of this Section 8 and the Next Litigation Steps, all applicable limitation periods, laches or other similar defenses are suspended for the term of this Agreement. For the avoidance of doubts, all such applicable limitation periods will resume running if and when this Agreement is terminated under the terms of Section 8(a) or Section 8(b).
  - (d) The parties hereto further acknowledge and agree that if this Agreement is terminated, this Agreement and any related steps or communications undertaken in furtherance of negotiating this Agreement or in furtherance of the implementation of this Agreement (including, but not limited to, the CCAA Procedure) shall not be relied upon for purposes of the Litigation, including the Next Litigation Steps, if applicable, and shall not trigger any rights on the part of Barclays or any of its affiliated companies.
9. **Announcements:** No press release, public statement, announcement or other public disclosure with respect to this Agreement or the transactions contemplated by this Agreement (a "**Public Statement**") may be made by a party hereto except (i) in connection with the procedures required for the CCAA Procedure and/or any required communications between CIBC Mellon, Devonshire and the Noteholders pursuant to the Note Indenture, the Supplemental Indenture or the related Note documentation, (ii) in connection with any communication by any Representative of Devonshire with its Noteholders, (iii) with the prior written consent of the other parties hereto, which consent will not be unreasonably withheld or delayed, (iv) if required by law or a governmental entity, or (v) on and after three Business Days following the date this Agreement, the Payment Agreement and the Agreement Relating to the Mitigation of Loss have been executed and delivered by all the parties thereto, by Barclays in its ordinary course public financial statement-related disclosure. Where a Public Statement is required by law or by a governmental entity (including the CCAA Procedure, but excluding, for avoidance of doubt, (x) any communications between Devonshire and the Noteholders as required by the Note Indenture or (y) the disclosure by Barclays contemplated in clause (v) of the immediately preceding sentence), or by a governmental entity, the party required to make the Public Statement shall use its

commercially reasonable efforts to provide a draft of such Public Statement to the other parties hereto, for reasonable review and comment, prior to disclosure of the Public Statement.

10. **Confidentiality:**

- (a) For purposes of this Agreement, "Confidential Information" means any information relating to this Agreement or the Litigation, which has been or is disclosed to or acquired by the receiving party regardless of whether such information is in oral, visual, electronic, written or other form and whether or not it is identified as "confidential" provided that Confidential Information does not include any information that:
  - (i) is or becomes generally available to the public other than as a result of disclosure directly or indirectly by the receiving party or its Representatives in breach of the terms hereof;
  - (ii) is or becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party unless the receiving party knows after reasonable inquiry that such source is prohibited from disclosing the information to the receiving party by a contractual, fiduciary or other legal obligation to the disclosing party; or
  - (iii) the receiving party can show was independently acquired or developed by the receiving party prior to the disclosure by the other party and without the use of any Confidential Information.
- (b) Each party shall keep the Confidential Information confidential, shall not disclose the Confidential Information in any manner whatsoever, in whole or in part, except as contemplated in Section 9(ii) or otherwise permitted by this Agreement, and shall use the Confidential Information solely to evaluate and implement this Agreement and not directly or indirectly for any other purpose.
- (c) The receiving party may disclose Confidential Information to its Representatives, Noteholders, BNY or CIBC Mellon but only to the extent that such Representatives, Noteholders, BNY or CIBC Mellon need to know the Confidential Information for the purposes of implementing this Agreement, the CCAA Procedure and the settlement contemplated herein, have been informed of the confidential nature of the Confidential Information, are directed by the receiving party to hold the Confidential Information in the strictest confidence and, other than the Noteholders, agree to act in accordance with the terms and conditions of this Section 10. Each party shall cause its Representatives to observe the terms of this Agreement and is responsible for any breach by its Representatives of any of the provisions of this Agreement.
- (d) The disclosure restrictions contained in this Agreement do not apply to:

- (i) disclosure that is required by law or legal process, unless the receiving party is permitted or required by law to refrain from making such disclosure for confidentiality or other reasons;
  - (ii) to disclosure that is requested or required by a regulator including, in the case of Barclays, its banking regulators; or
  - (iii) on and after three Business Days following the date this Agreement, the Payment Agreement and the Agreement Relating to the Mitigation of Loss have been executed and delivered by all the parties thereto, disclosure by Barclays in its ordinary course public financial statement-related disclosure.
- (e) Prior to making any disclosure pursuant to law under Section 10(d)(i) above, the receiving party shall, to the extent not prohibited by law:
- (i) give the disclosing party prompt notice of the requirement and the proposed content of any disclosure;
  - (ii) at the disclosing party's request and expense, co-operate with the disclosing party in limiting the extent of the disclosure and in obtaining an appropriate protective order or pursuing such legal action, remedy or assurance as the disclosing party deems necessary, acting reasonably, to preserve the confidentiality of the Confidential Information; and
  - (iii) if a protective order or other remedy is not obtained or the disclosing party fails to waive compliance with the provisions of this Agreement, disclose only that portion of the Confidential Information that it is, on the advice of its counsel, required to disclose and exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment is given to the Confidential Information disclosed.
11. **Undertaking from Barclays:** Barclays declares that neither it nor any of its affiliated companies have purchased any Notes from anyone, including each other, since December 1, 2013 and undertakes and agrees not to purchase any Notes from anyone, including each other, from the date hereof until the date the Notes are extinguished in accordance with the CCAA Plan after which time Barclays and its affiliated companies undertake and agree not to sell or purchase their respective interests in their Noteholder Claims, including any entitlement to any distribution in respect of their Noteholder Claims.
12. **Amendments:** This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the party to be bound by the amendment, supplement or modification.
13. **Waivers:** No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in

exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

14. **Execution of Agreement:** This Agreement may be executed and delivered within or outside of the Province of Quebec. This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns.
15. **Assignment:** Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties hereto which consent must not be unreasonably withheld. Any purported assignment or transfer without such written consent will be null and void and of no effect.
16. **Governing Law:** This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
17. **Attornment:** Each party irrevocably submits to the non-exclusive jurisdiction of the Ontario courts situated in the City of Toronto in respect of any action or proceeding against any of the parties relating in any way to this Agreement, Devonshire, the Litigation or the Notes, and each party waives any objection to the venue of any such action or proceeding in any such court, and agrees not to assert in any such action or proceeding that any such court provides an inconvenient forum.
18. **Acknowledgement Regarding BNY:** The parties hereto acknowledge and agree that BNY is entering into this Agreement solely for the purpose of making the payments required to be made by BNY pursuant to Sections 6(c) and 6(f) hereof.
19. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.
20. **Limitation:** Devonshire has entered into this Agreement in its capacity as issuer trustee of Devonshire Trust. Any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of Devonshire herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by Devonshire or for the purpose or with the intention of binding Devonshire in its personal capacity, but are made and intended for the purpose of binding only the assets of Devonshire Trust. No assets of Devonshire (other than the assets of Devonshire Trust), whether owned beneficially by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of Devonshire Trust or Devonshire under this Agreement or any of the other documents

accessory hereto. No recourse may be had or taken, directly or indirectly, against Devonshire in its personal capacity, any beneficiary of Devonshire Trust or any of its Representatives, with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of Devonshire Trust or Devonshire under this Agreement and the documents accessory hereto.

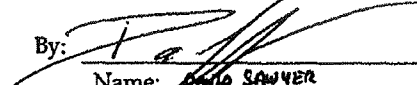
21. **Survival:** This Agreement shall terminate and be of no further force or effect as of the Plan Implementation Date unless previously terminated in accordance with Section 8; provided, however, that the provisions of Sections 6(o), 9, 10, 16 and 17 shall survive any expiration or termination of this Agreement, and the Payment Agreement shall survive any termination hereof upon the Plan Implementation Date.
22. **Language:** The parties to this Agreement have agreed that this Agreement as well as any document or instrument relating to it be drawn up in English only. *Les parties aux présentes ont convenu que la présente Convention ainsi que tous autres actes ou documents s'y rattachant soient rédigés en anglais seulement.*

If you are in agreement with the foregoing, please sign and return a copy of this letter to the undersigned.

**[Remainder of page intentionally left blank. Signature page(s) follow.]**

SETTLEMENT LETTER - SIGNATURE PAGE

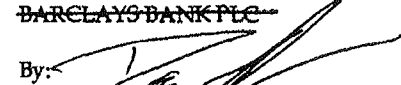
BARCLAYS BANK PLC

By:   
Name: David Sawyer  
Title: MANAGING DIRECTOR

HOLLYGRICE LIMITED  
STRICKYARD LIMITED  
WINHALL LIMITED  
HENTOCK LIMITED  
COSKWO LIMITED  
BLAYTELL LIMITED  
GODLER LIMITED  
PILKBULL LIMITED  
HARFLANE LIMITED

Each by its duly appointed Attorney,

~~BARCLAYS BANK PLC~~

By:   
Name: David Sawyer  
Title: Attorney

METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP., in its capacity as issuer trustee of  
Devonshire Trust

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:


BARCLAYS BANK PLC


By: \_\_\_\_\_  
Name:  
Title:

HOLLYGRICE LIMITED  
STRICKYARD LIMITED  
WINHALL LIMITED  
HENTOCK LIMITED  
COSKWO LIMITED  
BLAYTELL LIMITED  
GODLER LIMITED  
PILKBULL LIMITED  
HARFLANE LIMITED  
Each by its duly appointed Attorney,  
BARCLAYS BANK PLC

By: \_\_\_\_\_  
Name:  
Title:

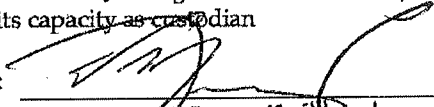
METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP., in its capacity as issuer trustee of  
Devonshire Trust

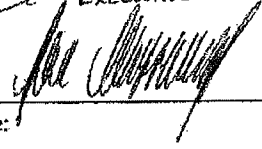
By:   
Name: C. D'AARHOND  
Title: PRESIDENT

By:   
Name: B. DESCHAMPS  
Title: DIRECTOR

SETTLEMENT LETTER - SIGNATURE PAGE

THE BANK OF NEW YORK MELLON  
(previously known as Bank of New York as  
successor to JPMorgan Chase Bank N.A.),  
in its capacity as custodian

By:   
Name: James Mastrand  
Title: Executive Vice President

By:   
Name: Jo B. Murray  
Title: Managing Director





**SCHEDULE A**  
**DEVONSHIRE TRUST**  
**LIST OF BENEFICIAL HOLDERS OF NOTES**

**BARCLAYS - ECP NOTES**

<b>CERTIFICATE NUMBER</b>	<b>ISIN</b>	<b>TYPE</b>	<b>QUANTITY</b>
207	CA251918FM50	ECP	\$60,000,000
208	CA251918FF00	ECP	\$110,247
209	CA251918FF00	ECP	\$117,000
210	CA251918E954	ECP	\$12,728
211	CA251918E954	ECP	\$27,000,000
212	CA251918FD51	ECP	\$2,000
213	CA251918FA13	ECP	\$241,123
214	CA251918E798	ECP	\$104,285
215	IB PHYSICAL1	ECP	\$25,104,565
216	CA251918FV59	ECP	\$165,881
217	CA251918FC78	ECP	\$85,044
218	CA251918FC78	ECP	\$222,832
219	CA251918E533	ECP	\$58,074
220	CA251918E384	ECP	\$830
<b>Sub-Total</b>	—	ECP	<b>\$113,224,609</b>

## CDP - ECP NOTES

CERTIFICATE NUMBER	ISIN	TYPE	QUANTITY
177	CA251918FA13	ECP	\$22,500,000
178	CA251918E384	ECP	\$10,800,000
179	CA251918FB95	ECP	\$30,000,000
180	CA251918FC78	ECP	\$21,602,000
186	CA251918FF00	ECP	\$15,000,000
191	CA251918FJ22	ECP	\$41,000,000
199	CA251918FD51	ECP	\$1,398,000
200	CA251918FS21	ECP	\$8,800,000
<b>Sub-Total</b>	—	ECP	<b>\$151,100,000</b>

## OTHERS HOLDERS OF ECP NOTES

CERTIFICATE NUMBER	ISIN	TYPE	NAME	QUANTITY
195	CA251918E798	ECP	Dadrex Holdings Inc.	\$7,900,000
197	CA251918E954	ECP	HEC Montréal	\$300,000
201	CA251918FQ64	ECP	ICICI Bank Canada	\$15,000,000
202	CA251918E384	ECP	Groupe Promutuel Fédération de Sociétés Mutuelles d'Assurance Générale	\$178,000
203	CA251918E533	ECP	University of Alberta	\$3,000,000
204	CA251918FN34	ECP	NAV Canada	\$10,000,000
205	CA251918FG82	ECP	University of British Columbia - Investment Management Trust	\$3,000,000
406	IB PHYSICAL1	ECP	National Bank Trust for the account of Natcan Investment Management Inc.	\$512,338 <sup>1</sup>
<b>Sub-total</b>	—	ECP	—	<b>\$39,890,338</b>

TOTAL ECP:

\$304,214,947

<sup>1</sup> NBT is the registered holder. Underlying NBT's position, they are 3 holders, Mimajjique Inc. (\$22,996), Mr. Jacques Chartrand (\$23,452) and Fiera Arbitrage Bond Fund (\$465,890).

## FRN NOTES

CERTIFICATE NUMBER	ISIN	TYPE	NAME	QUANTITY
Global Note Certificate-CDS	CA25188PAA36	FRN-2	CDP	\$100,000,000
Global Note Certificate-CDS	CA25188PAB19	FRN-2	Barclays <sup>2</sup> (\$25 M) and Domtar Pension Plans (\$15 M)	\$40,000,000
Global Note Certificate-CDS	CA25188PAD74	FRN-1	Barclays <sup>3</sup>	\$25,000,000
<b>Total</b>	—	—	—	<b>\$165,000,000</b>

## A NOTES

CERTIFICATE NUMBER	ISIN	TYPE	NAME	QUANTITY
Global Note Certificate-CDS	CA251930JU84	A	Barclays <sup>4</sup>	\$13,000,000
	CA251930HE60	A	CDP	\$7,600,000
	CA251930HF36	A	CDP	\$41,500,000
	CA251930HG19	A	Barclays <sup>5</sup>	\$10,000,000
	CA251930HU03	A	CDP	\$10,300,000
	CA251930HU03	A	CDP	\$31,500,000
	CA251930HV85	A	CDP	\$20,000,000
	CA251930HX42	A	CDP	\$20,000,000
	CA251930HX42	A	Blaytell Limited (Barclays)	\$8,000,000

<sup>2</sup> Barclays' position in certificate No 3 is held through the following subsidiaries: Hollygrice Limited \$3,753,079.83, Strickyard Limited \$1,354,957.74, Winhall Limited \$10,477,095.95, Hentock Limited \$1,692,979.92, Coskwo Limited \$371,119.75, Blaytell Limited \$3,123,308.16 and Golder Limited \$4,227,458.65.

<sup>3</sup> Certificate No 1 is held through the following subsidiaries: Hollygrice Limited \$3,753,079.83, Strickyard Limited \$1,354,957.74, Winhall Limited \$10,477,095.95, Hentock Limited \$1,692,979.92, Coskwo Limited \$371,119.75, Blaytell Limited \$3,123,308.16 and Golder Limited \$4,227,458.65.

<sup>4</sup> Barclays' position is held through the following subsidiaries: Pilkbull Limited \$9,410,000.00 and Harflane Limited \$3,590,000.00.

<sup>5</sup> Barclays' position is held through the following subsidiaries: Hollygrice Limited \$2,502,053.16, Strickyard Limited \$903,305.14, Winhall Limited \$318,063.95, Hentock Limited \$1,128,653.25, Coskwo Limited \$247,413.15, Blaytell Limited \$2,082,205.64 and Golder Limited \$2,818,305.71.

CERTIFICATE NUMBER	ISIN	TYPE	NAME	QUANTITY
	CA251930HY25	A	Blaytell Limited (Barclays)	\$3,400,000
	CA251930J461	A	Barclays <sup>6</sup>	\$6,000,000
	CA251930J537	A	Barclays <sup>7</sup>	\$10,000,000
	CA251930L764	A	CDP	\$3,000,000
	CA251930HJ57	A	Ally Credit Canada Limited	\$7,400,000
	CA251930HE60	A	Barclays	\$80,379
	CA251930HF36	A	Barclays	\$54,286
	CA251930HJ57	A	Barclays	\$857,984
	CA251930JT12	A	Barclays	\$461,529
	CA251930JU84	A	Barclays	\$152,264
	CA251930K444	A	Barclays	\$4,000,000
	CA251930HF36	A	Barclays	\$410,000
	CA251930JT12	A	Genus Capital Management Inc.	\$2,000,000
	CA251930JT12	A	City of Hamilton	\$10,000,000
<b>Total</b>	—	—	—	<b>\$209,716,442</b>

<sup>6</sup> Barclays' position is held through the following subsidiaries: Hollygrice Limited \$250,205.33, Strickyard Limited \$90,330.52, Winhall Limited \$5,031,806.59, Hentock Limited \$112,865.33, Coskwo Limited \$24,741.32, Blaytell Limited \$208,220.55 and Golder Limited \$281,830.36.

<sup>7</sup> Barclays' position is held through the following subsidiaries: Hollygrice Limited \$2,502,053.19, Strickyard Limited \$903,305.15, Winhall Limited \$318,063.97, Hentock Limited \$1,128,653.26, Coskwo Limited \$247,413.16, Blaytell Limited \$2,082,205.41 and Golder Limited \$2,818,305.86.

## SUMMARY

<b>CDP holdings</b>	Class A:	\$133,900,000	
	Class E:	\$151,100,000	
	Class FRN:	<u>\$100,000,000</u>	
		<b><u>\$385,000,000</u></b>	
<b>Barclays holdings</b>	Class A:	\$56,416,442	
	Class E:	\$113,224,609	
	Class FRN:	<u>\$50,000,000</u>	
		<b><u>\$219,641,051</u></b>	
<b>Other Holders</b>	Class A:	\$19,400,000	(CDS as registered holder, but 3 underlying holders other than CDP and Barclays)
	Class E:	\$39,890,338	(8 registered holders other than CDP and Barclays)
	Class FRN:	<u>\$15,000,000</u>	(CDS as registered holder, but 1 underlying holder other than CDP and Barclays)
		<b><u>\$74,290,338</u></b>	
		<b><u>\$678,931,389</u></b>	



## SCHEDULE B

**ASSETS AND LIABILITIES OF DEVONSHIRE TRUST**  
**as at June 1, 2014 (giving effect to this Agreement other than the Costs Reserve)**  
*(Unaudited)*

	<u>As at June 1, 2014</u>
<b>Assets</b>	
Current assets	
Cash	\$2,390,364
Short-term investments	\$150,732,000
Settlement payment under swaps to be received from Barclays	\$532,668,082
Unpaid amount under swaps to be received from Barclays <sup>1</sup>	\$1,061,916
Interest owed by Barclays under swaps	\$58,412,380
 Total assets	 \$745,264,742
<b>Liabilities</b>	
Current liabilities	
Accounts payable and accrued liabilities	\$129,449
Brokers' commissions payables	\$41,083
Commercial paper <sup>2</sup>	\$513,931,389
Floating-rate notes (FRN)	\$165,000,000
Total accrued interest on face amounts (and capitalized defaulted coupons on FRN notes)	\$87,801,093
	\$766,903,014
 Deficit <sup>3</sup>	 (\$21,638,272)
 Units outstanding	 \$10
 Net deficit	 (\$21,638,262)

---

<sup>1</sup> Owed by Barclays as per Court of Appeal decision.

<sup>2</sup> Class A, Series A Notes at face value - \$209,716,442 and Class A, Series E Notes at face value - \$304,214,947.

<sup>3</sup> Excluding the CCAA costs and liquidation reserves.





**SCHEDULE C**  
**COSTS RESERVE**

<b>FMD</b>		
	CCAA procedures	\$225,000
	Tax issues	\$50,000
	Current administration	\$75,000
	Liquidation of the trust	\$50,000
		<u>\$400,000</u>
<b>PwC</b>		
	Financial Statements and income tax return	\$17,000
<b>RCGT</b>		
	Current administration audit	\$20,000
	Lenczner	\$25,000
	Lavery De Billy	\$10,000
	9205-3701 Québec inc.	\$207,690
	Trustee fees	\$245,850
	BNY Mellon	\$17,244
	Computershare	\$9,210
	Monitor	\$225,000
	Legal counsel to monitor	\$100,000
		<u>\$1,276,994</u>
	<b>Total before taxes</b>	<b>\$1,276,994</b>
	<b>Taxes (QST)</b>	<b>\$63,850</b>
	<b>(GST)</b>	<b>\$127,380</b>
		<u>\$1,468,224</u>
	<b>Dealers' fees</b>	<b>\$41,083</b>
		<u>\$41,083</u>
	<b>TOTAL:</b>	<b>\$1,509,307</b>
		<u><u>\$1,509,307</u></u>



**SCHEDULE D**  
**AGREEMENT RELATING TO THE MITIGATION OF LOSS**

See attached.

**AGREEMENT RELATING TO THE MITIGATION OF LOSS**

This agreement dated as of the Thirteenth (13<sup>th</sup>) day of June, 2014

**BETWEEN:** BARCLAYS BANK PLC ("**Barclays**")

**AND:** METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP., in its capacity as issuer trustee of Devonshire Trust, a trust constituted under the laws of the Province of Ontario ("**Devonshire**")

**WHEREAS** concurrently herewith the parties hereto together with The Bank of New York Mellon, as Custodian shall be entering into a Settlement Agreement for the purpose of settling all matters relating to the Litigation;

**WHEREAS** the execution by the parties hereto of this Agreement is an essential element of the Settlement Agreement;

**WHEREAS** under the terms of the Court of Appeal Decision it was noted that it was not strictly necessary to determine the amount of Barclays' Loss as Barclays was assumed not to be a "Non-Defaulting Party" under the Swaps for the purposes of the first part of the bifurcated trial of the Litigation but the Court proceeded nevertheless to make such determination as it would become relevant were there to be a second part to the bifurcated trial at first instance and were Barclays to be found to be a "Non-Defaulting Party" under the Swaps in such trial;

**WHEREAS** under the terms of the Court of Appeal Decision the Court agreed with the trial judge that Barclays' Loss should be reduced by the value of any recovery Barclays receives on the CAD\$219,641,051 face value of Notes it purchased;

**WHEREAS** under the terms of the Court of Appeal Decision the Court found that there existed a duty to further mitigate the Barclays' Loss and contemplated that the parties would reach an agreement with respect to such further mitigation failing which, the issue would be referred back to the trial judge for determination; and

**WHEREAS** the parties hereto wish to give effect to such finding in the Court of Appeal Decision and come to an agreement as to what the full amount of mitigation to be applied against the Barclays' Loss would be, should the issue become relevant;

**NOW THEREFORE**, in consideration of the mutual acknowledgements and promises set forth herein, in the Settlement Agreement and in the Payment Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have agreed as follows:

## 1. Settlement Agreement Definitions

Capitalized terms used in this Agreement and not otherwise defined shall have the meaning ascribed thereto in the Settlement Agreement notwithstanding the termination of the Settlement Agreement on the Initial Payout Date.

## 2. Definitions

In this Agreement,

- (a) "Agreement" means this Agreement relating to the Mitigation of Loss;
- (b) "Court of Appeal Decision" means the decision of the Court of Appeal for Ontario, rendered July 26, 2013 in Court File No. C54400;
- (c) "Mitigation Order" means the second of the Special Orders defined in the Settlement Agreement; and
- (d) "Settlement Agreement" means the letter agreement dated June 13, 2014 entered into among Barclays (on its own behalf and as representative of the Barclays' Subsidiaries), Devonshire and BNY evidencing the settlement of the Litigation.

## 3. The Agreement as to the Amount of Mitigation

The parties hereto agree that from the CAD\$264,000,000 Barclays' Loss established by the Court of Appeal Decision there shall be deducted the following amounts on account of mitigation:

- (a) The recovery to be received by Barclays and the Barclays Subsidiaries on account of principal on the Initial Payout Date with respect to the Notes they hold beneficially less the amount paid by Barclays and the Barclays Subsidiaries for the purchase of such notes under the terms of the Settlement Agreement, such amount being CAD\$194,934,050;
- (b) The amounts to be received by Barclays on account of interest from BNY under the terms of Section 6(f) of the Settlement Agreement. As at the date hereof, such amount is estimated to be CAD\$19,872,377;
- (c) The aggregate amount to be received by Barclays and the Barclays Subsidiaries on account of Interest Distributions, it being understood that for the purposes hereof, no account shall be taken of any withholding tax that may be required to be withheld from such Interest Distributions and paid to any governmental authority. As at the date hereof, the aggregate amount to be received by Barclays and the Barclays Subsidiaries on account of Interest Distributions is estimated to be CAD\$18,511,882; and

- (d) The amount of court costs and interest thereon payable by Barclays which under the terms of Section 6(e) of the Settlement Agreement Devonshire shall renounce and forego. The amount of such costs and interest thereon is acknowledged by the parties hereto as being equal to CAD\$6,800,000.

On the basis of the foregoing, the aggregate amount on account of mitigation to be applied in reduction of the CAD\$264,000,000 Barclays Loss is CAD\$240,118,309. As a consequence, the parties hereto agree that the Barclays Loss following the application of the aggregate amount on account of mitigation is CAD\$23,881,691.

#### **4. The Mitigation Order**

The parties hereto agree that they shall proceed with the Mitigation Order as contemplated in Section 6 of the Settlement Agreement and for the purposes of the Mitigation Order the agreed upon amount on account of mitigation to be applied in reduction of the Barclays' Loss shall be the aggregate of the amounts set out in Sections 3(a) to (d) inclusively above.

#### **5. Coming into force of this Agreement**

This Agreement shall come into force on the "Plan Implementation Date" as such expression shall be defined in the Plan of Compromise and Arrangement that shall form part of the CCAA Procedure.

#### **6. Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the party to be bound by the amendment, supplement or modification.

#### **7. Waivers**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

#### **8. Execution of Agreement**

This Agreement may be executed and delivered within or outside of the Province of Ontario. This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns.

#### **9. Assignment**

Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties hereto which consent must not be unreasonably

withheld. Any purported assignment or transfer without such written consent will be null and void and of no effect.

#### **10. Governing Law**

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

#### **11. Attornment**

Each party irrevocably submits to the non-exclusive jurisdiction of the Ontario courts situated in the City of Toronto in respect of any action or proceeding against any of the parties relating in any way to this Agreement, Devonshire, the Litigation or the Notes, and each party waives any objection to the venue of any such action or proceeding in any such court, and agrees not to assert in any such action or proceeding that any such court provides an inconvenient forum.

#### **12. Counterparts**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

#### **13. Limitation**

Devonshire has entered into this Agreement in its capacity as issuer trustee of Devonshire Trust. Any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of Devonshire herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by Devonshire or for the purpose or with the intention of binding Devonshire in its personal capacity, but are made and intended for the purpose of binding only the assets of Devonshire Trust. No assets of Devonshire (other than the assets of Devonshire Trust), whether owned beneficially by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of Devonshire Trust or Devonshire under this Agreement or any of the other documents accessory hereto. No recourse may be had or taken, directly or indirectly, against Devonshire in its personal capacity, any beneficiary of Devonshire Trust or any of its Representatives, with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of Devonshire Trust or Devonshire under this Agreement and the documents accessory hereto.

#### **14. Language**

The parties to this Agreement have agreed that this Agreement as well as any document or instrument relating to it be drawn up in English only. *Les parties aux présentes ont convenu que la présente Convention ainsi que tous autres actes ou documents s'y rattachant soient rédigés en anglais seulement.*



If you are in agreement with the foregoing, please sign and return a copy of this letter to the undersigned.

**[Remainder of page intentionally left blank. Signature page(s) follow.]**

MITIGATION AGREEMENT - SIGNATURE PAGE

BARCLAYS BANK PLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten Signature]*  
*David L. Sanger*  
*Managing Director*

METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP., in its capacity as issuer trustee of  
Devonshire Trust

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

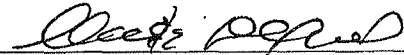
BARCLAYS BANK PLC

By: \_\_\_\_\_

Name:

Title:

METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP., in its capacity as issuer trustee of  
Devonshire Trust

By: 

Name: E. D. ALKOND

Title: PRESIDENT

By: 

Name: B. DESCHAMPS

Title: DIRECTOR

**SCHEDULE E**  
**PAYMENT AGREEMENT**

See attached.

**PAYMENT AGREEMENT**

This agreement dated as of the Thirteenth (13<sup>th</sup>) day of June, 2014

**AMONG:** BARCLAYS BANK PLC ("**Barclays**")

**AND:** METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP., in its capacity as issuer trustee of Devonshire Trust, a trust constituted under the laws of the Province of Ontario (the "**Applicant**")

**AND** DELOITTE RESTRUCTURING INC., in its capacity as monitor of the CCAA Parties to be appointed pursuant to the Initial CCAA Order (the "**Monitor**")

**WHEREAS** the execution by the parties hereto of this Agreement is an essential element of the Settlement Agreement;

**WHEREAS** the parties wish to execute this Agreement prior to the Initial CCAA Order being issued and in anticipation of the Monitor being appointed thereunder;

**WHEREAS** Barclays is required to pay the Settlement Amount to the Applicant and in order to accommodate Barclays, the Custodian will be directed by Barclays and the Applicant to pay the Settlement Amount to the Applicant from the CDS Collateral on the Plan Implementation Date;

**WHEREAS** as contemplated in the Plan, on the Funds Transfer Date, to the extent the Applicant receives from the Custodian less than the Settlement Amount, Barclays has agreed to pay to the Applicant any Settlement Deficiency that may exist on such date;

**WHEREAS** none of the Payment Parties is to incur any liabilities, losses, costs or expenses of any kind in connection with any withholding taxes that may be required to be withheld and paid to any Governmental Authority having the power to tax in respect of any amount paid to the Applicant by the Custodian from the CDS Collateral or in respect of any amount paid to the Applicant for the Settlement Deficiency, and any penalties, fines and interest on such withholding taxes (the "**Relevant Withholding Taxes**");

**WHEREAS** Barclays has agreed to pay all Relevant Withholding Taxes and all liabilities, losses, costs and expenses that the Payment Parties may incur or suffer at any time or that may be awarded against them or any one of them in connection with the Relevant Withholding Taxes and any Claim taken or made against any of the Payment Parties by any Governmental Authority in connection with the Relevant Withholding Taxes including, without limitation, the costs for the defence of the Payment Parties in any such Claim including all legal fees on a full indemnity basis (collectively, the "**Covered Payments**");

**NOW THEREFORE**, in consideration of the mutual acknowledgements and promises set forth herein and in the Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have agreed as follows:

## 1. Definitions

Capitalized terms used in this Agreement and not otherwise defined shall have the meaning ascribed thereto in the Plan. In addition, in this Agreement:

- (a) "**Agreement**" means this Payment Agreement;
- (b) "**Claim**" means any claim, demand, action, litigation, suit or proceeding;
- (c) "**Covered Payments**" has the meaning ascribed to it in the sixth (6<sup>th</sup>) recital paragraph hereof;
- (d) "**defence**" in respect of a Claim shall include the settlement, compromise or consent to a judgment in respect of such Claim and "**defend**" shall be construed accordingly;
- (e) "**Payment Parties**" means the Applicant, the Conduit, the Monitor and their respective Representatives and "**Payment Party**" means any one of such Persons;
- (f) "**Plan**" means the final plan of compromise and arrangement pursuant to the CCAA regarding the Applicant, to be approved and sanctioned in the CCAA Proceedings, a current draft of which is attached as Schedule "A"; and
- (g) "**Relevant Withholding Taxes**" has the meaning ascribed to it in the fifth (5<sup>th</sup>) recital paragraph hereof.

## 2. Covenants of the Parties

- (a) Barclays hereby covenants and agrees that, upon its receipt of any request from a Payment Party to pay Relevant Withholding Taxes, accompanied by the notice, assessment, statement or other document received from the relevant Governmental Authority with respect to such Relevant Withholding Taxes, Barclays shall promptly pay such Relevant Withholding Taxes to the relevant Governmental Authority and/or Payment Party (or to any Person the Payment Party directs). Furthermore, Barclays shall promptly pay upon request any other Covered Payments payable to a Payment Party under this Agreement to the Payment Party (or to any Person the Payment Party directs).
- (b) Barclays hereby covenants and agrees that upon its receipt of any request for it to defend a Payment Party in any Claim relating to Relevant Withholding Taxes, Barclays shall fully assume the defence, on behalf of such Payment Party, of any such Claim.
- (c) In the event that Barclays assumes the defence of any Claim further to a request made by a Payment Party, the defence shall be through legal counsel retained by Barclays with the prior written consent of the relevant Payment Party, acting reasonably, and in such defence, no admission of liability shall be made by Barclays without the prior written consent of the relevant Payment Party (such consent not to be unreasonably withheld or delayed). Furthermore, a Payment Party shall have the right to employ separate counsel in any such Claim and participate in the defence thereof but the fees and expenses of such

counsel shall be at the expense of such Payment Party unless: (i) the employment of such counsel has been authorized by Barclays; (ii) Barclays has not within a reasonable time after receiving a request employed counsel to have charge of the defence of such Claim; or (iii) the named parties to any such Claim include a Payment Party and Barclays and the Payment Party shall have been advised by counsel that there may be one or more legal defences available to the Payment Party which are adverse to Barclays such that separate representation is required, in which cases Barclays shall not have the right to assume the defence of such Claim on behalf of the Payment Party but Barclays shall be liable to pay and shall pay the reasonable fees and expenses of counsel for the Payment Party. No admission of liability shall be made by the Payment Party without the prior written consent of Barclays (such consent not to be unreasonably withheld or delayed).

- (d) If any Claim is instituted against Barclays in respect of any Relevant Withholding Taxes or if any payment is made by Barclays pursuant to this Section 2, Barclays shall not make any claim for, and hereby irrevocably waives any right by statute, at common law, in equity or otherwise to contribution against any of the Payment Parties except to the extent that such claim is based upon the gross negligence or wilful misconduct of such Payment Party.
- (e) Barclays hereby constitutes each of the Applicant and the Monitor as trustee of the covenants of Barclays under this Section 2 with respect to the Representatives of the Applicant and the Representatives of the Monitor, respectively, and the Applicant and the Monitor agree to accept such trusts and to hold the benefit of and enforce performance of such covenants on behalf of any and all such Persons.
- (f) Each of the Applicant and the Monitor agrees, on its own behalf and on behalf of its Representatives, that it shall promptly notify Barclays of any Claim provided, that the failure to notify Barclays shall not relieve, lessen or affect in any way Barclays' obligations under this Agreement in the absence of gross negligence or wilful misconduct on the part of the Payment Party.
- (g) The Payment Party shall provide Barclays with such information and documentation as the Payment Party may have relating to the Claim and shall, at Barclays expense, provide such assistance in the defence of the Claim as Barclays may reasonably request from time to time

### **3. Coming into force of the Agreement**

This Agreement shall come into force on the "**Plan Implementation Date**" as such expression shall be defined in the Plan.

### **4. Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the party to be bound by the amendment, supplement or modification

## 5. Waivers

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

## 6. Notices

Any notice or communication to be delivered hereunder shall be in writing and may, subject as hereinafter provided, be made or given by personal delivery, by electronic mail or by fax addressed to the respective parties as follows:

i) if to Barclays:

Barclays Bank PLC  
745 Seventh Avenue  
New York, NY 10019

Attention: David Sawyer, Managing Director  
Fax: 212-520-0315  
E-mail: [david.sawyer@barclays.com](mailto:david.sawyer@barclays.com)

with copy to:

Barclays Bank PLC  
745 Seventh Avenue  
New York, NY 10019

Attention: Allan Borkow, Director, Legal  
Fax: 212-412-7519  
E-mail: [allan.borkow@barclays.com](mailto:allan.borkow@barclays.com)

with copy to:

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9  
Canada

Attention: William A. Scott  
Fax: 416 947-0866  
E-mail: [wscott@stikeman.com](mailto:wscott@stikeman.com)



ii) if to the Monitor:

Deloitte Restructuring Inc.  
1 Place Ville-Marie

Suite 3000  
Montréal, Québec H3B 4T9

Attention: Pierre Laporte  
Fax: 514 390-4103  
E-mail: pilaporte@deloitte.ca

with a copy to:

Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 4600, P.O. Box 50  
Toronto Ontario M5X 1B8

-and-

1000 De La Gauchetière Street West  
Suite 2100  
Montréal Québec H3B 4W5

Attention: Sandra Abitan and Mary Paterson  
Fax: 514 904-8100; 416 862-6666  
E-mail: sabitan@osler.com; mpaterson@osler.com

iii) if to the Applicant:

Metcalfé & Mansfield Alternative Investments VII Corp.  
in its capacity as Issuer Trustee of Devonshire Trust  
c/o Robert Girard  
Stock Exchange Tower  
Suite 3700, P.O. Box 242  
800 Place Victoria  
Montréal, Québec H4Z 1E9

Attention: Mr. Claude Dalphond  
Fax: 514 982-0170  
E-mail: claude.dalphond@ivanhoecambridge.com

with a copy to:

Fasken Martineau DuMoulin LLP  
Suite 3700  
800 Place Victoria  
Montréal, Québec, H4Z 1E9

Attention: Robert Y. Girard  
Fax: 514 397-7600  
E-mail: [rgirard@fasken.com](mailto:rgirard@fasken.com)

or to such other address as any party may from time to time notify the others in accordance with this Section 6. All such notices and communications that are delivered shall be deemed to have been received on the date they are sent. Any such notices and communications that are sent by electronic mail or faxed shall be deemed to be received on the date sent or faxed if sent before 5:00 p.m. Eastern Time on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such electronic mail or fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

#### **7. Execution of Agreement**

This Agreement may be executed and delivered within or outside of the Province of Ontario. This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns.

#### **8. Assignment**

Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties hereto which consent must not be unreasonably withheld. Any purported assignment or transfer without such written consent will be null and void and of no effect.

#### **9. Governing Law**

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

#### **10. Attornment**

Each party irrevocably submits to the non-exclusive jurisdiction of the Ontario courts situated in the City of Toronto in respect of any action or proceeding against any of the parties relating in any way to this Agreement, the Relevant Withholding Taxes or the Covered Payments, and each party waives any objection to the venue of any such action or proceeding in any such court, and

agrees not to assert in any such action or proceeding that any such court provides an inconvenient forum.

### **11. Counterparts**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

### **12. Limitation**

The Applicant has entered into this Agreement in its capacity as issuer trustee of the Conduit. Any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Applicant herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Applicant or for the purpose or with the intention of binding the Applicant in its personal capacity, but are made and intended for the purpose of binding only the assets of the Conduit. No assets of the Applicant (other than the assets of the Conduit), whether owned beneficially by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Conduit or the Applicant under this Agreement or any of the other documents accessory hereto. No recourse may be had or taken, directly or indirectly, against the Applicant in its personal capacity, any beneficiary of the Conduit or any of its Representatives, with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Conduit or the Applicant under this Agreement and the documents accessory hereto.

### **13. Language**

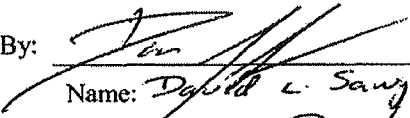
The parties to this Agreement have agreed that this Agreement as well as any document or instrument relating to it be drawn up in English only. *Les parties aux présentes ont convenu que la présente Convention ainsi que tous autres actes ou documents s'y rattachant soient rédigés en anglais seulement.*

If you are in agreement with the foregoing, please sign and return a copy of this letter to the undersigned.

**[INTENTIONALLY LEFT BLANK]**

PAYMENT AGREEMENT – SIGNATURE PAGE

**BARCLAYS BANK PLC**

By:   
Name: *David L. Sawyer*  
Title: *Managing Director*

**METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP.**, in its capacity as issuer trustee of  
the Conduit, for itself and its  
Representatives

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**DELOITTE RESTRUCTURING INC.**,  
in its capacity as Monitor, for itself and its  
Representatives

By: \_\_\_\_\_  
Name:  
Title:

**BARCLAYS BANK PLC**

By: \_\_\_\_\_

Name:

Title:

**METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP.**, in its capacity as issuer trustee of  
the Conduit, for itself and its  
Representatives

By: 

Name: C. DAPHONA

Title: PRESIDENT

By: 

Name: B. DESCHAMPS

Title: DIRECTOR

**DELOITTE RESTRUCTURING INC.**,  
in its capacity as Monitor, for itself and its  
Representatives

By: \_\_\_\_\_

Name:

Title:

**BARCLAYS BANK PLC**

By: \_\_\_\_\_

Name:

Title:

**METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP.**, in its capacity as issuer trustee of  
the Conduit, for itself and its  
Representatives

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**DELOITTE RESTRUCTURING INC.**,  
in its capacity as Monitor, for itself and its  
Representatives

By:  \_\_\_\_\_

Name: *PIERRE Laporte*

Title: *PRESIDENT*

SCHEDULE "A"

PLAN

---

**PLAN OF COMPROMISE AND ARRANGEMENT**

---

**PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)***

**REGARDING**

**METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
IN ITS CAPACITY AS ISSUER TRUSTEE OF DEVONSHIRE TRUST**

---

<@>, 2014

---



## TABLE OF CONTENTS

<b>ARTICLE 1 INTERPRETATION.....</b>	<b>1</b>
1.1    Definitions .....	1
1.2    Certain Rules of Interpretation .....	12
<b>ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN .....</b>	<b>13</b>
2.1    Purpose .....	13
2.2    Affected Persons.....	13
<b>ARTICLE 3 CLASSIFICATION OF CREDITORS .....</b>	<b>13</b>
3.1    Class of Creditors .....	13
3.2    Noteholder Identification Procedure .....	13
3.3    Unaffected Claims .....	13
<b>ARTICLE 4 TREATMENT OF CREDITORS .....</b>	<b>14</b>
4.1    Treatment of Claims .....	14
4.2    Treatment of Notes .....	14
4.3    Voting Right of Noteholders .....	14
4.4    Unaffected Creditors.....	14
4.5    Barclays' Other Claims .....	14
<b>ARTICLE 5 STEPS FOR DISTRIBUTIONS.....</b>	<b>15</b>
5.1    Plan Implementation.....	15
5.2    Pre-Closing Steps .....	15
5.3    Closing Steps .....	16
5.4    Post-Implementation Matters .....	19
<b>ARTICLE 6 COSTS RESERVE .....</b>	<b>19</b>
6.1    Establishment of Costs Reserve .....	19
6.2    Waterfall for Costs Reserve.....	19
6.3    Conditions to Payment of Costs Out of Costs Reserve .....	19
6.4    Transfer to Tax Reserve Account.....	19
6.5    Termination of Costs Reserve .....	20
<b>ARTICLE 7 TAX RESERVE.....</b>	<b>20</b>
7.1    Establishment of Tax Reserve .....	20
7.2    Waterfall for Tax Reserve .....	20
7.3    Conditions to Payment of Anticipated Costs Out of Tax Reserve .....	21
7.4    Conditions to Payment of Taxes and Tax Indemnity Claims Out of Tax Reserve .....	21
7.5    Payment of Interest Distributions .....	21
7.6    Termination of Tax Reserve .....	21
<b>ARTICLE 8 INDEMNITY RESERVE .....</b>	<b>22</b>
8.1    Establishment of Indemnity Reserve .....	22
8.2    Waterfall for Indemnity Reserve .....	22

8.3	Conditions to Payment of Anticipated Costs Out of Indemnity Reserve .....	22
8.4	Conditions to Payment of Taxes and Tax Indemnity Claims Out of Indemnity Reserve .....	23
8.5	Conditions to Payment of Other Indemnity Claims .....	23
8.6	Reductions in Indemnity Reserve.....	24
8.7	Termination of Indemnity Reserve.....	25
<b>ARTICLE 9 WITHHOLDING TAX RESERVE .....</b>		<b>26</b>
9.1	Establishment of Withholding Tax Reserve.....	26
9.2	Waterfall for Withholding Tax Reserve.....	26
9.3	Conditions to Payment Out of Withholding Tax Reserve.....	26
9.4	Transfer to Tax Reserve Account.....	27
9.5	Termination of Withholding Tax Reserve.....	27
<b>ARTICLE 10 PLAN RESERVES RECORDS &amp; INVESTMENTS .....</b>		<b>27</b>
10.1	Financial Matters.....	27
10.2	Notice of Amounts in the Plan Reserve Accounts .....	27
10.3	Investment of Plan Reserves.....	27
10.4	Plan Reserves Income.....	28
<b>ARTICLE 11 DISTRIBUTIONS .....</b>		<b>28</b>
11.1	Distributions to Noteholders.....	28
11.2	Initial Distribution to Noteholders.....	28
11.3	Interest on Notes.....	28
11.4	Interest Calculations .....	28
11.5	Pro Rata Share Calculation.....	30
11.6	First Interest Distribution.....	30
11.7	Subsequent Interest Distributions.....	31
11.8	Final Interest Distributions .....	32
11.9	Failure to Claim .....	32
<b>ARTICLE 12 PLAN COMPLETION .....</b>		<b>32</b>
12.1	Plan Completion .....	32
<b>ARTICLE 13 SANCTION ORDER.....</b>		<b>32</b>
13.1	Application for Sanction Order .....	32
13.2	Effect of Sanction Order .....	33
13.3	Monitor .....	35
<b>ARTICLE 14 CONDITIONS PRECEDENT.....</b>		<b>35</b>
14.1	Conditions Precedent to Implementation of Plan .....	35
14.2	Waiver .....	36
14.3	Monitor's Certificate .....	36
14.4	Termination of Plan for Failure to Become Effective .....	37
<b>ARTICLE 15 EFFECT OF PLAN.....</b>		<b>37</b>
15.1	Effect of Plan Generally .....	37

15.2	Consents, Waivers and Agreements .....	37
15.3	Exculpation .....	37
15.4	Crown Claims .....	38
<b>ARTICLE 16 RELEASES AND INJUNCTIONS .....</b>		<b>38</b>
16.1	Release of the Released Parties .....	38
16.2	Injunction .....	39
16.3	Exclusions .....	39
<b>ARTICLE 17 GENERAL PROVISIONS .....</b>		<b>39</b>
17.1	Plan Amendment .....	39
17.2	Severability .....	40
17.3	Termination .....	40
17.4	Covenant of the Plan Participants .....	41
17.5	Covenant of Applicant Regarding Tax Clearance Certificates .....	41
17.6	Covenant of Applicant Regarding Costs .....	41
17.7	Covenant of Applicant Regarding Withholding Taxes .....	41
17.8	Paramountcy .....	41
17.9	Responsibilities of the Monitor .....	41
17.10	Plan and Certain Laws .....	42
17.11	Deeming Provisions .....	42
17.12	Notices .....	42
17.13	Successors and Assigns .....	43
17.14	Further Assurances .....	43
17.15	Governing Law .....	44

# PLAN OF COMPROMISE AND ARRANGEMENT

## PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)*

### ARTICLE 1

#### INTERPRETATION

##### 1.1 Definitions

In this Plan:

"**Actual/365 Fixed Basis**" means a day count convention for calculating interest where each month is treated as having its actual number of days but where the year is assumed to have 365 days, thus providing an additional day of interest on a leap year (366 days of interest applied to an assumed 365-day year);

"**Administrative Agent**" means Metcalfe & Mansfield Capital Corporation, in its capacity as administrative agent under the Administration Agreement, and its successors and permitted assigns in such capacity;

"**Administration Agreement**" means the administration agreement made as of August 2, 2006 between the Applicant and the Administrative Agent providing for certain administrative, management and audit services, as amended, supplemented, modified, restated or replaced from time to time;

"**Advance Tax Ruling**" has the meaning ascribed to it in Section 17.7;

"**Affiliated Companies**" means affiliated companies within the meaning of the *Ontario Securities Act*, as amended, and the instruments, rules and regulations thereunder;

"**Aggregate Available Cash**" has the meaning ascribed to it in Section 5.3.7;

"**Agreement Relating to the Mitigation of Loss**" means the agreement relating to the mitigation of loss dated as of June 13, 2014, entered into between the Applicant and Barclays, as amended, supplemented, modified, restated or replaced from time to time;

"**Anticipated Costs**" means, as at any time, fees, expenses, disbursements or other costs, including any unpaid fee or expense incurred in the provision of goods and services in the administration and management of the Conduit, which are required to be incurred or paid in order to finally settle the estate of the Applicant and includes all Costs in excess of the initial amount of the Costs Reserve on the Plan Implementation Date;

"**Anticipated Costs Invoice**" means has the meaning ascribed to it in Section 7.3;

"**Applicant**" means Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as issuer trustee of the Conduit;

"**Balance of the Aggregate Available Cash**" means an amount equal to the difference between (i) the Aggregate Available Cash and (ii) the sum of the Costs Reserve, the Indemnity Reserve and all Noteholder Claims, in each case as at the Plan Implementation Date;

"**Barclays**" means Barclays Bank PLC;

"**Barclays' Loss**" means the "Barclays' Loss" referred to in the decision of the Court of Appeal for Ontario, rendered July 26, 2013 in Court File No. C54400;

"**Barclays' Other Claims**" means Barclays' claim in the Litigation and all other claims (contractual or otherwise) that Barclays and its Affiliated Companies may have against the CCAA Parties or could have had against the CCAA Parties in the event that Trial 2 was necessary and had proceeded, including the Barclays' Loss claim in respect of the Litigation under the Agreement Relating to the Mitigation Loss, save and except for (i) the Noteholder Claims of Barclays and the Barclays' Subsidiaries and the claims of Barclays and the Barclays' Subsidiaries to Interest Distributions, in each case rateably with the other Noteholders as provided herein and (ii) only for the purposes of Sections 5.3.3 and 5.3.5, Barclays' claims to the CDS Collateral;

"**Barclays' Subsidiaries**" is the collective reference to each of the following companies that Barclays has represented is wholly-owned by it: Hollygrice Limited, Strickyard Limited, Winhall Limited, Hentock Limited, Coskwo Limited, Blaytell Limited, Godler Limited, Pilkbull Limited, Harflane Limited and "**Barclays' Subsidiary**" means any one thereof;

"**BOC Average 1M BA Rate**" means the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504);

"**BOC Daily 1M BA Rate**" means the daily rate for bankers' acceptances with a one-month term, as calculated and published as part of series V39068 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V39068);

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario and Montreal, Québec;

"**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

"**CCAA Court**" means the Superior Court of Justice (Ontario);

"**CCAA Charge**" means a Charge created by the Initial CCAA Order;

"**CCAA Parties**" means, collectively, the Applicant and the Conduit;

"**CCAA Proceedings**" means the within proceedings under the CCAA commenced by the Applicant;

"**CDN\$**" means the lawful currency of Canada;

"**CDPQ**" means Caisse de dépôt et placement du Québec;

"**CDS Clearing**" means CDS Clearing and Depository Services Inc.;

"**CDS Collateral**" means all cash and other assets held by the Custodian pursuant to the Tri-Party Custody Agreement;

"**Charge**" means a valid and enforceable security interest, lien, charge, pledge, encumbrance, mortgage, hypothec, adverse claim, title retention agreement or trust agreement of any nature or kind (but excluding any statutory deemed trust or lien for any taxes or levies), on the property of the Conduit;

"**Claims Procedure and Meeting Order**" means the Order of the CCAA Court dated <@>, 2014 establishing the Noteholder identification and verification procedure to establish Proven Claims and directing the calling and holding of the Meeting;

"**Class**" means with reference to a Series, a class of Notes within such Series;

"**Class A Notes**" means the outstanding Class A Series A Senior Short Term Notes of the Conduit issued under the Supplemental Indenture;

"**Class E Notes**" means the outstanding Class E Series A Senior Short Term Notes of the Conduit issued under the Supplemental Indenture;

"**Class FRN Notes**" means the outstanding Class FRN-1 Series A Senior Medium Term Notes and the Class FRN-2 Series A Senior Medium Term Notes of the Conduit issued under the Supplemental Indenture;

"**Collateral Deficiency**" has the meaning ascribed to it in Section 5.3.3;

"**Conduit**" means Devonshire Trust, a trust constituted under the laws of the Province of Ontario pursuant to the Settlement Deed;

"**Consultant**" means 9205-3701 Québec Inc., in its capacity as consultant under the Consultation Agreement, and its successors and permitted assigns in such capacity;

"**Consultation Agreement**" means the consultation agreement in connection with the Litigation made as of January 21, 2009 between the Financial Services Agent, the Consultant, the Administrative Agent and the Applicant, as amended, supplemented, modified, restated or replaced from time to time;

"**Costs**" means the costs for the services and disbursements of:

- (i) counsel to the Applicant, Fasken, Martineau, DuMoulin LLP;
- (ii) the accountants to the Applicant, Pricewaterhouse Coopers;
- (iii) counsel to the directors of the Applicant, Lavery DeBilly LLP;
- (iv) litigation counsel to the Applicant, Lenczner, Slaght Royce Smith Griffin LLP;
- (v) the Consultant to the Applicant;
- (vi) the Indenture Trustee;
- (vii) the Custodian;
- (viii) the directors of the Applicant in an amount not to exceed \$250,000 on condition that no out of the ordinary circumstances or unforeseen difficulties arise in the implementation of this Plan, where such circumstances or difficulties would be evidenced by costs in excess of costs anticipated for the Monitor, counsel to the Monitor, Osler Hoskin & Harcourt LLP, and/or counsel to the Applicant, Fasken Martineau DuMoulin LLP;
- (ix) the Monitor;
- (x) counsel to the Monitor, Osler, Hoskin & Harcourt, LLP;
- (xi) other Persons relating to the administration of the estate of the Applicant;
- (xii) all applicable taxes relating to each of the foregoing costs; and
- (xiii) [~~@~~Dealers' fees~~@~~];

"**Costs Invoice**" has the meaning ascribed to it in Section 6.3;

"**Costs Reserve**" has the meaning ascribed to it in Section 6.1;

"**Costs Reserve Account**" means the account established by the Monitor with respect to the Costs Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 6.2;

"**Covered Third Party Claim**" means a claim by a third party against an Indemnified Party that, whether or not successful, would entitle such Indemnified Party to indemnity pursuant to an Indemnity Claim;

"**CRA**" means the Canada Revenue Agency;

"**CRA Confirmation**" means a written confirmation from the CRA that Interest Distributions can be made to Non-Resident Noteholders subject to the applicable Withholding Taxes being retained in the Withholding Tax Reserve Account and that the CRA will nonetheless issue the Advance Tax Ruling;

**"Custodian"** means The Bank of New York Mellon (previously known as Bank of New York, as successor to JPMorgan Chase Bank N.A.), acting through its London Branch, in its capacity as custodian under the Tri-Party Custody Agreement, and its successors and permitted assigns in such capacity;

[<@>**"Dealers"** means any dealer, broker, financial institution or intermediary that sold, directly or indirectly, any of the Notes to one or more Noteholders or that rendered advice with respect to the purchase and sale of the Notes or that purchased any of the Notes on behalf of its clients;<@>]

**"Defence Costs"** means the costs for the defence of the Indemnified Parties or any of them against any Covered Third Party Claims;

**"Effective Time"** means the first moment in time on the Plan Implementation Date;

**"Financial Services Agent"** means Quanto Financial Corporation, in its capacity as financial services agent under the Financial Services Agreement, and its successors and permitted assigns in such capacity;

**"Financial Services Agreement"** means the financial services agreement made as of August 2, 2006 between the Applicant and the Financial Services Agent, providing for certain structuring, arranging, analytical, credit assessment, originating and negotiation services, as amended, supplemented, modified, restated or replaced from time to time;

**"First Interest Distribution"** means a distribution made on account of, in lieu of or in satisfaction of interest on the Notes pursuant to Section 11.6;

**"First Interest Distribution Amount"** means an amount equal to the difference between (a) the amount then standing to the credit of the Tax Reserve Account and (b) the amount of the estimate referred to in clause (ii) of Section 11.6;

**"First Supplement"** means the First Supplement to Series A Supplemental Indenture made as of December 21, 2007 among the Applicant, the Indenture Trustee and the Issuing and Paying Agent;

**"Funds Transfer Date"** means the date on which the funds transfers contemplated in Sections 5.3.3, 5.3.4, 5.3.5 and 5.3.7 are to occur as contemplated in Sections 5.2.3 and 14.1.7;

**"Governmental Authority"** means any governmental, regulatory or administrative authority, department, agency, commission, bureau, official minister, board, panel, tribunal, Crown corporation, Crown ministry, court or dispute settlement panel or other law, rule or regulation-making or enforcing entity having or purporting to have jurisdiction on behalf of any nation, or province, territory or state or other subdivision thereof or any municipality, district or other subdivision thereof or other geographic or political subdivision of any of them or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;



**"Indemnified Party"** means any Person having the right to make an Indemnity Claim;

**"Indemnity Claim"** means (i) any claim for indemnity which may be made by the Applicant under and in accordance with the rights of indemnity granted to it, in its favour or in favour of any of its Representatives by the Conduit pursuant to the Settlement Deed, which rights of indemnity, it is hereby acknowledged for greater certainty, also serve to indemnify the Applicant against losses suffered by it or any of its Representatives as a consequence of indemnities granted by the Applicant pursuant to any Programme Agreement and whether such Indemnity Claim is asserted before or after any Programme Agreement upon which the Applicant may rely in order to make such indemnity claim has been terminated, it being expressly deemed for all purposes of this Plan that the indemnity provisions of the Programme Agreements shall remain in full force and effect even following any termination of such Programme Agreements, (ii) any claim for indemnity by the Applicant or any Representative thereof on account of Taxes Payable by the Conduit for which it or any of its Representatives may be held liable under the provisions of either one of Subsection 159(3) of the Tax Act or Section 14 of the *Tax Administration Act* (Quebec) as a consequence of a distribution made under the terms of Article 11, and (iii) any claim for indemnity in respect of Defence Costs of the Applicant or any Representative thereof, as well as any reasonable costs and expenses incurred by the Applicant or any of its Representatives in enforcing their rights under the Plan;

**"Indemnity Payments"** means the payment of any amounts due to the Indemnified Parties pursuant to Other Indemnity Claims;

**"Indemnity Reserve"** has the meaning ascribed to it in Section 8.1;

**"Indemnity Reserve Account"** means the account established by the Monitor with respect to the Indemnity Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 8.2;

**"Indenture Trustee"** means CIBC Mellon Trust Company, in its capacity as indenture trustee under the Trust Indenture, and its successors and permitted assigns in such capacity;

**"Initial CCAA Order"** means the initial order of the CCAA Court dated <@>, pursuant to which, among other things, the CCAA Court granted a stay of proceedings with respect to, among others, the CCAA Parties, as same may be further amended from time to time;

**"Initial Distribution"** has the meaning ascribed to it in Section 11.2;

**"Interest Distribution"** refers to any one of the First Interest Distribution or any other distribution on account of, in lieu of or in satisfaction of interest on the Notes, referred to in Article 11 and **"Interest Distributions"** is the collective reference to all such distributions;

**"Interest Period"** means the first day of a calendar month up to and including the last day of such calendar month;

**"Issuing and Paying Agent"** means NBCN Inc., in its capacity as issuing and paying agent under the Trust Indenture, and its successors and permitted assigns in such capacity;

**"Litigation"** means the action (Court File Nos. CV-09-0370103 and CV-09-8387CL) commenced in the Ontario Superior Court on January 13, 2009 between Barclays, as plaintiff, and the Applicant, the Custodian and the Indenture Trustee, as defendants;

**"Meeting"** means a meeting of the Noteholders with Proven Claims to consider and vote on the Plan held pursuant to the Claims Procedure and Meeting Order and includes any meeting or meetings resulting from the adjournment thereof;

**"Monitor"** means Deloitte Restructuring Inc., in its capacity as monitor of the CCAA Parties appointed pursuant to the Initial CCAA Order;

**"Non-Resident Noteholder"** means any Noteholder with a Proven Claim that, as at the Record Date, was a "non-resident" of Canada within the meaning of the Tax Act;

**"Noteholder"** means a holder of one or more Notes on the Record Date, including any holder of a beneficial interest in a Note;

**"Noteholder Claim"** means, with respect to any Noteholder, the aggregate face amount of the Notes held by such Noteholder on the Record Date;

**"Notes"** means collectively, the Class A Notes, the Class E Notes and the Class FRN Notes;

**"Notice of Claim"** has the meaning set out in Section 8.5.1;

**"Order"** means an order of the CCAA Court in the CCAA Proceedings;

**"Other Indemnity Claim"** means an Indemnity Claim other than a Tax Indemnity Claim;

**"Payment Agreement"** means the payment agreement dated as of June 13, 2014, entered into among the Applicant, the Monitor and Barclays, as amended, supplemented, modified, restated or replaced from time to time;

**"Permitted Investments"** means negotiable instruments or securities represented by instruments in registered or bearer form which evidence bankers' acceptances or guaranteed investment certificates (GIC) issued or fully guaranteed as to both credit and timeliness by a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada), the tenor of which instruments or securities shall be determined by the Monitor in consultation with the Applicant to ensure sufficient liquidity in the Plan Reserves to permit the Monitor to make the payments and Interest Distributions as and when contemplated in this Plan, all as permitted by applicable law;

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, trust, trustee, corporation, unincorporated organization, government, agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, or any other entity howsoever designated or constituted;

**"Plan"** means this plan of compromise or arrangement and the Schedules hereto, as same may be amended hereafter in accordance with Section 17.1 herein;

**"Plan Completion Date"** has the meaning ascribed to it in Section 12.1;

**"Plan Implementation Date"** means the Business Day on which the conditions precedent to implementation of this Plan as set out in Article 14 hereof have been satisfied, fulfilled or waived, as applicable, and the Monitor has completed and filed its certificate in accordance with Section 14.3 of this Plan;

**"Plan Participants"** means, the Applicant, the Conduit, the Noteholders, the Financial Services Agent, the Consultant, the Indenture Trustee, the Issuing and Paying Agent, the Custodian and the Administrative Agent;

**"Plan Reserve Accounts"** refers collectively to the Costs Reserve Account, the Indemnity Reserve Account, the Tax Reserve Account and the Withholding Tax Reserve Account;

**"Plan Reserves"** refers collectively to the Costs Reserve, the Indemnity Reserve, the Tax Reserve and the Withholding Tax Reserve;

**"Post Plan Implementation Date Duties"** has the meaning ascribed to it in Section 13.2.10;

**"Post-Maturity Period"** means, with respect to any Note, the period commencing on the date of its maturity up to but excluding the Plan Implementation Date;

**"Primary Plan Reserves"** refers collectively to the Costs Reserve, the Indemnity Reserve and the Tax Reserve;

**"Programme Agreements"** has the meaning set forth in the Trust Indenture and includes, for the purposes of this Plan, the Consultation Agreement, the Termination Agreements and all agreements, instruments and documents in which rights of indemnity have been granted by the Applicant;

**"Pro Rata Share"** means, with respect to any Noteholder, the ratio of:

- (i) the aggregate amount of interest due to such Noteholder as of the Plan Implementation Date on account of all Notes then held by it; to
- (ii) the aggregate amount of interest due to all Noteholders as of the Plan Implementation Date on account of all the Notes;

in each case calculated in accordance with the provisions of Sections 11.3 and 11.4 and rounded up to the second decimal point;

**"Proven Claim"** means a Noteholder Claim in respect of which all Required Documentation has been properly submitted and (a) not objected to by the Monitor or (b) objected to by the Monitor and the validity and quantum of which is subsequently (i) finally determined or (ii) accepted for voting or distribution purposes, as the case may be, in accordance with the provisions of this Plan and the Claims Procedure and Meeting Order;

**"QRA"** means Quebec Revenue Agency;

**"Record Date"** means <@>, 2014; [NOTE TO DRAFT: Refer to the day immediately preceding the date of the Initial Order.]

**"Released Claims"** has the meaning ascribed to it in Section 16.1;

**"Released Parties"** means, collectively, the Applicant, the Financial Services Agent, the Administrative Agent, the Consultant, the Issuing and Paying Agent, the Conduit, the Indenture Trustee, the Custodian, the Noteholders, Barclays, the Barclays' Subsidiaries, the Monitor and the respective Representatives of each such Person;

**"Representative"** means, with respect to any Person, its present and former trustees, officers, directors, employees, shareholders, Affiliated Companies, agents, associated individuals, representatives, auditors, financial advisors, legal counsel, and other professionals and advisors, indemnitees, dependents, heirs and assigns;

**"Required Documentation"** means the physical certificates, if any, representing the Notes held by a Noteholder, a Voter Identification Form and such tender and transmittal documentation as the Monitor may request as provided in the Claims Procedure and Meeting Order;

**"Resident Noteholder"** means any Noteholder with a Proven Claim that is not a Non-Resident Noteholder;

**"Sanction Order"** means the Order dated <@>, sanctioning and implementing this Plan;

**"Settlement Agreement"** means the letter agreement dated June 13, 2014 entered into among Barclays (on its own behalf and as representative of the Barclays' Subsidiaries), the Applicant and the Custodian evidencing the settlement of the Litigation;

**"Settlement Amount"** has the meaning ascribed to it in Section 5.3.3;

**"Settlement Deed"** means the Settlement Deed made as of August 2, 2006 providing for the establishment of the Conduit as a trust under the laws of the Province of Ontario, as amended, supplemented, modified, restated or replaced from time to time;

**"Settlement Deficiency"** has the meaning ascribed to it in Section 5.3.4;

**"Settlement Parties"** refers collectively to the Applicant, Barclays and CDPQ;

**"Special Order"** has the meaning ascribed to it in Section 5.2.2;

**"Standstill"** means the standstill period observed pursuant to the agreement reached on August 16, 2007 with respect to the asset backed commercial paper market in Canada (commonly known as the Montreal Accord and more fully described in the affidavit of Mathieu Lafleur-Ayotte referred to in the Initial CCAA Order), to which the Applicant became a party on October 15, 2007, as such period was extended to April 16, 2008 pursuant to a number of extension agreements and as such period was further extended to January 12, 2009 by daily

standstill extensions pursuant to correspondence from Barclays to the Applicant on each Business Day;

**"Supplemental Indenture"** means the Series A Supplemental Indenture, made as of August 2, 2006, among the Applicant, the Indenture Trustee and the Issuing and Paying Agent pursuant to the Trust Indenture, as amended by the First Supplement;

**"Tax Act"** means the *Income Tax Act* (Canada), as amended;

**"Tax Clearance Certificates"** means a certificate issued by the CRA to the Applicant or the Conduit, pursuant to Section 159(2) of the Tax Act and a certificate issued by the QRA to the Applicant or the Conduit pursuant to Section 14 of the *Tax Administration Act* (Québec), in each case relating to Taxes Payable on or prior to December 31, 2014 and **"Tax Clearance Certificate"** refers to either one thereof;

**"Tax Indemnity Claim"** means a claim for indemnity described in clause (ii) of the definition of **"Indemnity Claims"**;

**"Tax Reserve"** has the meaning ascribed to it in Section 7.1;

**"Tax Reserve Account"** means the account established by the Monitor with respect to the Tax Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 7.2;

**"Taxes"** means all taxes of any kind or nature whatsoever including income taxes, sales taxes, levies, stamp taxes, royalties, duties, and all fees, deductions, compulsory loans, withholdings (including payroll withholdings) and Withholding Taxes imposed, levied, collected, withheld or assessed at any time, by any Governmental Authority having power to tax, together with penalties, fines, additions to tax and interest thereon, and **"Tax"** shall have a correlative meaning;

**"Taxes Payable"** has the meaning ascribed to it in Section 7.1;

**"Termination Agreement"** means any agreement to which the Applicant or the Conduit is a party under the terms of which a Programme Agreement has been terminated and **"Termination Agreements"** is the collective reference to all of the Termination Agreements;

**"Threatened Litigation"** means, as at any time, any pending litigation at such time and any litigation threatened in writing as at such time in respect of which the limitation period applicable to the subject matter of such threatened litigation has not expired and which has not yet resulted in pending litigation, in each case, against an Indemnified Party;

**"Trial 2"** means the second trial between Barclays and the Applicant contemplated by the Bifurcation Order of the Ontario Superior Court dated October 2, 2009 in the Litigation;

**"Tri-Party Custody Agreement"** means the amended and restated tri-party custody agreement dated December 1, 2006 among Barclays, the Applicant and the Custodian (as successor to JPMorgan Chase Bank N.A.);

**"Trust Indenture"** means the trust indenture made as of August 2, 2006 among the Applicant, the Indenture Trustee and the Issuing and Paying Agent, as amended by the Supplemental Indenture and the First Supplement;

**"Unaffected Claims"** has the meaning ascribed to it in Section 3.3 herein;

**"Unaffected Creditors"** means all Persons holding Unaffected Claims, to the extent of their Unaffected Claims and **"Unaffected Creditor"** means any one of them;

**"Voter Identification Form"** means the form that Noteholders must properly complete and deliver to comply with the Claims Procedure and Meeting Order;

**"Website"** means the website established by the Monitor for purposes of the Plan and having the following web address:

(for English): <http://www.deloitte.com/ca/devonshire>

(for French) : <http://www.deloitte.com/ca/devonshire/fr/>

**"Withholding Tax Amount"** means, with respect to Interest Distributions to be made to each Non-Resident Noteholder:

- (i) at all times prior to the receipt of the Advance Tax Ruling and the CRA Confirmation, the amount of the Interest Distributions to be paid to such Non-Resident Noteholder; and
- (ii) prior to the receipt of the Advance Tax Ruling but following receipt of the CRA Confirmation, the aggregate amount of Withholding Taxes payable with respect to the Interest Distributions to be paid to such Non-Resident Noteholder, as determined by the Monitor at the maximum rate applicable under the Tax Act or, subject to receipt from the Non-Resident Noteholder of evidence concerning its residency and beneficial ownership of the Notes satisfactory to the Monitor and the Applicant, such lower rate as may be permitted by treaty;

**"Withholding Taxes"** means the Taxes required to be withheld and paid to the CRA pursuant to the Tax Act with respect to amounts payable on account of, in lieu of or in satisfaction of interest on the Notes, as determined by the Monitor at the maximum rate applicable under the Tax Act or, subject to receipt from the Non-Resident Noteholder of evidence concerning its residency and beneficial ownership of the Notes satisfactory to the Monitor and the Applicant, such lower rate as may be permitted by treaty;

**"Withholding Tax Reserve"** has the meaning ascribed to it in Section 9.1;

**"Withholding Tax Reserve Account"** means the account established by the Monitor with respect to the Withholding Tax Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 9.2.

## 1.2 Certain Rules of Interpretation

In this Plan and the Schedules hereto:

- 1.2.1 the division of this Plan into articles, sections, subsections and clauses and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Plan. The terms "this Plan", "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection or clause and include any plan supplemental hereto. Unless otherwise indicated, any reference in this Plan to an article, section, subsection, clause or schedule refers to the specified article, section, subsection, clause or schedule of or to this Plan;
- 1.2.2 the use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- 1.2.3 the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes without limitation" and "including without limitation", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- 1.2.4 unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day. Unless otherwise specified, the time period within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day. Whenever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day; and
- 1.2.5 unless otherwise provided, any reference to a statute, or other enactment of parliament or a legislature includes all regulations made thereunder, all enactments to or re-enactments of such statute or regulations in force from time to time, and if applicable, any statute or regulation that supplements or supersedes such statute or regulation.

## ARTICLE 2

### PURPOSE AND EFFECT OF THE PLAN

#### 2.1 Purpose

The purpose of this Plan is to implement the settlement set forth in the Settlement Agreement including the liquidation of all assets of the Applicant, the establishment of the Plan Reserves to be held by the Monitor as set forth herein, the compromise of the Notes, the making of distributions to the Noteholders, the extinguishing of Barclays' Other Claims and the winding-up of the Conduit.

#### 2.2 Affected Persons

This Plan will be implemented under the CCAA and be binding on all Noteholders and other Persons in accordance with its terms, on the Plan Implementation Date.

## ARTICLE 3

### CLASSIFICATION OF CREDITORS

#### 3.1 Class of Creditors

The sole class for the purpose of considering and voting on this Plan shall be the class consisting of Noteholders.

#### 3.2 Noteholder Identification Procedure

Noteholders shall identify their respective Noteholder Claims for voting purposes, vote in respect of the Plan, and receive the distributions provided for under and pursuant to this Plan in accordance with the Claims Procedure and Meeting Order, the Sanction Order and this Plan.

#### 3.3 Unaffected Claims

This Plan does not compromise, release or otherwise affect any rights or claims:

- 3.3.1 for fees and expenses incurred in the provision of goods and services in the administration and management of the Conduit or relating to the CCAA Proceedings and authorized pursuant to paragraph <@> of the Initial CCAA Order;
- 3.3.2 of the Monitor and its counsel, counsel to the CCAA Parties or that otherwise are secured by the CCAA Charges; or
- 3.3.3 that are owed to Her Majesty in Right of Canada or the Province of Quebec pursuant to the Tax Act or the *Taxation Act* (Quebec) or that fall within Sections 6(3) and 6(4) of the CCAA.



All of the foregoing rights and claims set out in this Section 3.3 are collectively referred to as the "**Unaffected Claims**" and any one of them is an "**Unaffected Claim**".

## ARTICLE 4

### **TREATMENT OF CREDITORS**

#### **4.1 Treatment of Claims**

On the Plan Implementation Date the claims affected by this Plan, including the Noteholder Claims, Barclays' Other Claims and the Released Claims, will be compromised, released and otherwise affected in accordance with the terms of this Plan.

#### **4.2 Treatment of Notes**

For purposes of distributions pursuant to this Plan, except as otherwise provided in Article 11 with respect to Non-Resident Noteholders, all Notes shall be treated equally and rateably, without any preference, priority or distinction among them for any reason.

#### **4.3 Voting Right of Noteholders**

Subject to this Plan and the Claims Procedure and Meeting Order, each Noteholder having a Proven Claim shall be entitled to one vote in an amount equal to such Noteholder's Proven Claim. The procedure for determining the validity and quantum of the Noteholder Claims for voting purposes shall be governed by the Claims Procedure and Meeting Order. For the sake of clarity, where the registered holder of the Note differs from the beneficial holder of the Note, only the beneficial holder of the Note shall be entitled to vote.

#### **4.4 Unaffected Creditors**

Notwithstanding anything to the contrary herein, each Unaffected Creditor shall not be entitled to vote or to receive any distribution under this Plan in respect of its Unaffected Claim. All Unaffected Claims shall be unaffected by the CCAA Proceedings and principal and interest shall continue to accrue notwithstanding the CCAA Proceedings.

#### **4.5 Barclays' Other Claims**

Barclays' and the Barclays' Subsidiaries shall only exercise the right to vote and receive any distribution under this Plan in their capacity as Noteholders and strictly in respect of their Noteholder Claims. With respect to the Barclays' Other Claims and Barclays' claim to the CDS Collateral held by the Custodian, neither Barclays nor any of its Affiliated Companies (including the Barclays' Subsidiaries) shall constitute a separate class of creditors nor have any right to vote or receive distributions under this Plan, save and except the right to receive the payment from the Custodian contemplated in Section 5.3.5.

## ARTICLE 5

### STEPS FOR DISTRIBUTIONS

#### **5.1 Plan Implementation**

Further to the Monitor's receipt in trust as provided in this Plan of (i) the Settlement Amount from the Custodian pursuant to the instruction referred to in Section 5.2.4.1, (ii) the Settlement Deficiency, if any, from Barclays pursuant to the instruction referred to in Section 5.2.4.2, and (iii) all other assets in the Applicant's estate, the Monitor shall, on behalf of the Applicant:

- 5.1.1 create and fund the Primary Plan Reserves;
- 5.1.2 pay to the Noteholders with Proven Claims the entire face amount outstanding under their Notes on the Record Date as provided in this Plan; and
- 5.1.3 when and as contemplated in Article 9 and Article 11 and subject to the provisions thereof, make Interest Distributions to the Noteholders with Proven Claims from amounts then available under the Plan Reserves for such purposes.

#### **5.2 Pre-Closing Steps**

- 5.2.1 By no later than the fifth Business Day prior to the proposed date of the Meeting, each Noteholder shall provide to the Monitor all Required Documentation.
- 5.2.2 With the filing of the application for the Initial Order, the Applicant shall bring a motion in the Litigation proceedings, to be heard contemporaneously with the application for the Initial CCAA Order, for an order (i) declaring that on the Plan Implementation Date, the amount of the Barclays' Loss shall be mitigated by an amount equal to CDN\$240,118,309, thereby reducing the Barclays' Loss to CDN\$23,881,691, and (ii) conditional on the Plan Implementation Date occurring, dismissing the Litigation as against all parties without costs (the "**Special Order**").
- 5.2.3 Upon the conditions precedent to implementation of the Plan contemplated in Sections 14.1.1, 14.1.2, 14.1.3, 14.1.4, 14.1.5 and 14.1.6 being met, the Monitor shall send a written notice to the Custodian (the receipt of such notice by the Custodian being a condition precedent to the Custodian's obligations under Sections 5.3.3 and 5.3.5) and the Settlement Parties:
  - 5.2.3.1 confirming that such conditions precedent have been met;
  - 5.2.3.2 containing a statement setting forth the aggregate amount that the Custodian must transfer to the Applicant from the CDS Collateral (the "**Settlement Amount**") and each component part thereof, which aggregate amount shall correspond to the sum of (a) CDN\$532,668,082.00, (b) CDN\$1,061,916.00, (c) CDN\$58,412,380.00, and (d) an amount in CDN\$ (being interest on the amount in clauses (a), (b) and (c) above) calculated from and including

June 1, 2014 to but excluding the Funds Transfer Date at a rate per annum equal to the BOC Daily 1M BA Rate, reset each Business Day, plus 1.00%, calculated on an Actual/365 Fixed Basis and compounded daily; and

- 5.2.3.3 requesting that the Custodian initiate the transfer of funds contemplated in Section 5.3.3 on the date specified in such notice, and that following such transfer, Barclays, the Custodian and the Applicant then successively make the funds transfers contemplated in Sections 5.3.4, 5.3.5 and 5.3.7.
- 5.2.4 Upon the conditions precedent to implementation of the Plan contemplated in Sections 14.1.2 and 14.1.3 being met:
- 5.2.4.1 the Applicant and Barclays shall deliver a written instruction to the Custodian, directing it to transfer the funds contemplated in Section 5.3.3 directly to the Monitor; and
- 5.2.4.2 the Applicant shall deliver a written direction to Barclays instructing it to pay the Settlement Deficiency, if any, directly to the Monitor.

### **5.3 Closing Steps**

The following steps or transactions shall occur and shall be deemed to occur on the Plan Implementation Date in the order they appear below, save and except for Steps 1 to Step 6 below (set forth in Sections 5.3.1 to 5.3.6 below) that, subject to their consummation, shall be deemed to occur concurrently with each other.

#### ***STEP 1***

- 5.3.1 By virtue of this Plan and without any further action by any Person, the Barclays' Other Claims shall be subordinated to the claims of all other creditors of the Applicant including all Noteholder Claims.

#### ***STEP 2***

- 5.3.2 By virtue of this Plan and without any further action by any Person, the Barclays' Other Claims shall be extinguished.

#### ***STEP 3***

- 5.3.3 The Custodian shall then transfer to the Monitor in trust for the Applicant pursuant to the instruction referred to in Section 5.2.4.1, an amount equal to the lesser of:
- 5.3.3.1 the aggregate amount of the CDS Collateral; and
- 5.3.3.2 the Settlement Amount.

To the extent that on the Funds Transfer Date, the Settlement Amount exceeds the amount of the CDS Collateral (the deficiency, if any, between the Settlement Amount

and the CDS Collateral shall be referred to as the "**Collateral Deficiency**"), the Custodian shall not be required to pay such Collateral Deficiency to the Applicant or the Monitor.

**STEP 4**

- 5.3.4 To the extent that on the Funds Transfer Date, the amount received by the Monitor from the Custodian is less than the Settlement Amount, whether as a result of the existence of a Collateral Deficiency or for any other reason (the deficiency, if any, between the amount received by the Monitor from the Custodian and the Settlement Amount shall be referred to as the "**Settlement Deficiency**"), Barclays shall pay to the Monitor in trust for the Applicant pursuant to the instruction referred to in Section 5.2.4.2 on such date an amount equal to the Settlement Deficiency such that the sum of the amount received by the Monitor from Barclays under this Section 5.3.4 and the amount received from the Custodian under Section 5.3.3 is equal to the Settlement Amount.

**STEP 5**

- 5.3.5 To the extent that on the Funds Transfer Date there does not exist a Settlement Deficiency and subject to the payments in Sections 5.3.3 and 5.3.4, if any, having been made, the Custodian shall pay to Barclays, from the CDS Collateral, CDN\$600,000,000, together with all accrued interest thereon, net of the amount paid by the Custodian to the Monitor as provided in Section 5.3.3.

**STEP 6**

- 5.3.6 By virtue of this Plan and without any further action by any Person, the Applicant shall renounce and forgo its right to payment of any and all amounts from Barclays on account of court costs relating to the Litigation, including interest thereon.

**STEP 7**

- 5.3.7 The Applicant shall transfer to the Monitor, on the Funds Transfer Date, in accordance with the Monitor's written instructions, all cash it then holds including the amounts, if any, received by it from the Custodian and Barclays pursuant to Steps 3 and 4 above and all fixed term guaranteed investment certificates it holds (such cash and guaranteed investment certificates are collectively referred to herein as the "**Aggregate Available Cash**"), all of which the Monitor shall hold in trust and distribute in accordance with the provisions of Articles 6, 7, 8, 9 and 10.

**STEP 8**

- 5.3.8 From the Aggregate Available Cash received by it, the Monitor shall establish and fund the Primary Plan Reserves as contemplated in Article 6, Article 7 and Article 8.

**STEP 9**

- 5.3.9 From the Aggregate Available Cash received by it, less the Primary Plan Reserves, the Monitor shall make the Initial Distribution to the Noteholders.

**STEP 10**

- 5.3.10 Immediately following the Initial Distribution, all of the Notes will thereupon be cancelled and terminated without any further action on the part of the Noteholders provided, however, that notwithstanding such cancellation and termination, the Noteholders shall be entitled to Interest Distributions as and when contemplated in Article 9 and Article 11 and subject to the provisions thereof. Save and except for the right of Noteholders to receive Interest Distributions in accordance with the Plan, the rights and obligations of the Noteholders and the Applicant in respect of the Notes will cease. Interest will cease accruing on the Notes as of the day immediately preceding the Plan Implementation Date.

**STEP 11**

- 5.3.11 To the extent not yet terminated, by virtue of this Plan and without any further action by any Person:
- 5.3.11.1 the Settlement Agreement and all rights and obligations of the parties thereto (save for those contemplated in Sections 6(o), 9, 10, 16 and 17 thereof) shall cease and terminate with no additional payments being made by or on behalf of the parties thereto (save for the payments contemplated expressly in the Plan); and
  - 5.3.11.2 all other Programme Agreements, save and except for the Settlement Deed, and all rights and obligations of the parties thereto shall cease and terminate with no additional payments being made by on behalf of the parties thereto (save for the payments contemplated expressly in this Plan) provided, however, that for the purposes of this Plan, the indemnity provisions of the Programme Agreements shall be deemed to remain in full force and effect even following the termination of the Programme Agreements.

**STEP 12**

- 5.3.12 By virtue of this Plan and without any further action by any Person, the Special Orders, the Agreement Relating to the Mitigation of Loss and the Payment Agreement shall become effective, continue in full force and effect and not be terminated by virtue of this Plan.

#### **5.4 Post-Implementation Matters**

As soon as is practicable and in consultation with the Monitor, the Conduit will be terminated and wound-up in accordance with the Settlement Deed as contemplated in Section 17.5 and the Settlement Deed shall thereupon terminate and be cancelled.

### **ARTICLE 6**

#### **COSTS RESERVE**

##### **6.1 Establishment of Costs Reserve**

Upon receipt of the Aggregate Available Cash, the Monitor shall fund therefrom a reserve in the amount of \$1,510,000, on account of Costs (the "**Costs Reserve**"), which reserve shall be established in its own dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments.

The Monitor shall hold, administer and apply the Costs Reserve only in accordance with the provisions of this Article 6.

##### **6.2 Waterfall for Costs Reserve**

The Monitor shall hold the Costs Reserve in trust for the following Persons and purposes and shall apply the Costs Reserve in the following order of priority:

6.2.1 first, for the benefit of the CCAA Parties for the purpose of paying Costs incurred; and

6.2.2 then, for the benefit of the Noteholders on account of Interest Distributions.

##### **6.3 Conditions to Payment of Costs Out of Costs Reserve**

Promptly following its receipt from the Applicant of any invoice relating to Costs incurred (a "**Costs Invoice**"), the Monitor, with the Applicant's consent, shall pay from the Costs Reserve the amount owing on such Costs Invoice to the Person(s) entitled to payment of such Costs. If the Applicant does not consent to payment of a Costs Invoice, the Monitor may apply to the CCAA Court for further directions.

##### **6.4 Transfer to Tax Reserve Account**

On the date that the Indemnity Reserve is exhausted further to the last transfer from the Indemnity Reserve Account to the Tax Reserve Account pursuant to Section 8.6.3 or 8.6.4, as the case may be, the Monitor shall transfer to the Tax Reserve Account the balance then outstanding in the Costs Reserve Account.

## **6.5 Termination of Costs Reserve**

The Costs Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan.

## **ARTICLE 7**

### **TAX RESERVE**

#### **7.1 Establishment of Tax Reserve**

Upon receipt of the Aggregate Available Cash, the Monitor shall fund therefrom a reserve in an amount equal to the Balance of the Aggregate Available Cash (which, as at June 1, 2014 is estimated to be CDN\$59,693,904) on account of (i) Taxes that may be required to be paid or to be withheld by the CCAA Parties in order to receive the Tax Clearance Certificates (the "**Taxes Payable**"), (ii) Tax Indemnity Claims, and (iii) Anticipated Costs (the "**Tax Reserve**"), which reserve shall be established in its own dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments.

The Monitor shall hold, administer and apply the Tax Reserve only in accordance with the provisions of this Article 7.

#### **7.2 Waterfall for Tax Reserve**

The Monitor shall hold the Tax Reserve in trust for the following Persons and purposes and shall apply the Tax Reserve in the following order of priority:

7.2.1 prior to the time that the Costs Reserve is exhausted:

7.2.1.1 first, for the benefit of the CCAA Parties for the purpose of paying Anticipated Costs incurred or to be incurred in excess of the amount of the Costs Reserve;

7.2.1.2 second, for the benefit of the CCAA Parties for the purpose of paying Taxes Payable and satisfying Tax Indemnity Claims; and

7.2.1.3 then, for the benefit of the Noteholders on account of Interest Distributions; and

7.2.2 as of and from the time that the Costs Reserve is exhausted:

7.2.2.1 first, for the benefit of the CCAA Parties for the purpose of paying Anticipated Costs incurred or to be incurred;

7.2.2.2 second, for the benefit of the CCAA Parties for the purpose of paying Taxes Payable and satisfying Tax Indemnity Claims; and

7.2.2.3 then, for the benefit of the Noteholders on account of Interest Distributions.

### **7.3 Conditions to Payment of Anticipated Costs Out of Tax Reserve**

Promptly following its receipt of any invoice relating to Anticipated Costs from the Applicant (an "**Anticipated Costs Invoice**"), the Monitor shall pay from the Tax Reserve the amount owing on such Anticipated Costs Invoice to the Person(s) entitled to payment of such Anticipated Costs if the Monitor has approved such Anticipated Costs and the amount thereof and the Applicant consents. If there is any dispute with respect to the Anticipated Costs Invoice, the Monitor may apply to the CCAA Court for further directions.

### **7.4 Conditions to Payment of Taxes and Tax Indemnity Claims Out of Tax Reserve**

7.4.1 Promptly following its receipt of any tax assessment, statement or other document attesting that any Taxes Payable are owed by the CCAA Parties to a Governmental Authority, the Monitor, following consultation with the Applicant, shall pay such Taxes Payable to such Governmental Authority from the Tax Reserve.

7.4.2 Promptly following its receipt from an Indemnified Party of a Tax Indemnity Claim, the Monitor shall pay from the Tax Reserve to such Indemnified Party the amount claimed by such Indemnified Party provided that the Monitor has also received:

7.4.2.1 evidence that such Indemnified Party has paid Taxes Payable to a Governmental Authority;

7.4.2.2 the tax assessment, statement or other document relating to the Taxes Payable by the CCAA Parties that such Indemnified Party paid; and

7.4.2.3 a reasonably detailed summary describing the circumstances for the payment by the Indemnified Party, if the Indemnified Party is a Person other than the Applicant.

### **7.5 Payment of Interest Distributions**

The Monitor shall make Interest Distributions to the Noteholders from the Tax Reserve Account as and when contemplated in Article 11.

### **7.6 Termination of Tax Reserve**

The Tax Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan and no further amounts then stand to the credit of any of the other Plan Reserve Accounts.



## ARTICLE 8

### INDEMNITY RESERVE

#### **8.1 Establishment of Indemnity Reserve**

Upon receipt of the Aggregate Available Cash, the Monitor shall fund therefrom a reserve in the amount of CDN\$5,000,000 on account of Other Indemnity Claims as well as Anticipated Costs, Taxes Payable and Tax Indemnity Claims to the extent the Costs Reserve and the Tax Reserve are insufficient to pay such Anticipated Costs, Taxes Payable and Tax Indemnity Claims (the "**Indemnity Reserve**"), which reserve shall be established in its own dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments.

The Monitor shall hold, administer and apply the Indemnity Reserve only in accordance with the provisions of this Article 8.

#### **8.2 Waterfall for Indemnity Reserve**

The Monitor shall hold the Indemnity Reserve in trust for the following Persons and purposes and shall apply the Indemnity Reserve in the following order of priority:

8.2.1 prior to the time the Costs Reserve and the Tax Reserve are exhausted:

8.2.1.1 first, for the benefit of the CCAA Parties for the purpose of satisfying Other Indemnity Claims; and

8.2.1.2 then, subject to Section 8.6, for the benefit of the Noteholders on account of Interest Distributions; and

8.2.2 as of and from the time that the Costs Reserve and the Tax Reserve are exhausted:

8.2.2.1 first, for the benefit of the CCAA Parties for the purpose of paying Anticipated Costs incurred or to be incurred;

8.2.2.2 second, for the benefit of the CCAA Parties for the purpose of paying Taxes Payable and satisfying Tax Indemnity Claims;

8.2.2.3 third, for the benefit of the CCAA Parties for the purpose of satisfying Other Indemnity Claims; and

8.2.2.4 then, subject to Section 8.6, for the benefit of the Noteholders on account of Interest Distributions.

#### **8.3 Conditions to Payment of Anticipated Costs Out of Indemnity Reserve**

Promptly following its receipt of an Anticipated Costs Invoice from the Applicant, the Monitor shall pay from the Indemnity Reserve the amount owing on such Anticipated Costs Invoice to

the Person(s) entitled to payment of such Anticipated Costs if the Monitor has approved such Anticipated Costs and the amount thereof and the Applicant consents. If there is any dispute with respect to the Anticipated Costs Invoice, the Monitor may apply to the CCAA Court for further directions.

#### **8.4 Conditions to Payment of Taxes and Tax Indemnity Claims Out of Indemnity Reserve**

- 8.4.1 To the extent that the Tax Reserve is then exhausted or insufficient to permit the Monitor to pay Taxes Payable, promptly following its receipt of any tax assessment, statement or other document attesting that any Taxes Payable are owed by the CCAA Parties to a Governmental Authority, the Monitor, following consultation with the Applicant, shall pay such Taxes Payable to such Governmental Authority from the Indemnity Reserve.
- 8.4.2 To the extent that the Tax Reserve is then exhausted or insufficient to permit the Monitor to pay a Tax Indemnity Claim, promptly following its receipt from an Indemnified Party of a Tax Indemnity Claim, the Monitor shall pay from the Indemnity Reserve to such Indemnified Party the amount claimed by such Indemnified Party provided, that the Monitor has also received:
- 8.4.2.1 evidence that such Indemnified Party has paid Taxes Payable to a Governmental Authority; and
- 8.4.2.2 the tax assessment, statement or other document relating to the Taxes Payable by the CCAA Parties that such Indemnified Party paid.

#### **8.5 Conditions to Payment of Other Indemnity Claims**

- 8.5.1 The Monitor may receive a claim in writing for payment of Indemnity Payments from any Indemnified Party (a "**Notice of Claim**") and any such Notices of Claim received by the Monitor shall be addressed, subject to Section 8.5.6, in the order that they are received.
- 8.5.2 The Monitor shall be under no obligation, however, to make payment of an Indemnity Payment relating to:
- 8.5.2.1 Defence Costs and other costs of the type referred to in clause (iii) of the definition of "**Indemnity Claims**", unless it receives concurrently with the Notice of Claim relating thereto, an invoice relating to such Defence Costs and other costs; and
- 8.5.2.2 an Other Indemnity Claim (other than one referred to in Section 8.5.2.1), or Covered Third Party Claim, unless it receives concurrently with the Notice of Claim relating thereto, a copy of a final non-appealable judgment of a court of competent jurisdiction condemning an Indemnified Party to pay a sum of money and the Monitor determines that the payment of such amount constitutes an Other Indemnity Claim or Covered Third Party Claim.

- 8.5.3 The Monitor may require, in fulfilling its duties hereunder, any supporting information deemed to be reasonably necessary. In addition, in respect of any Other Indemnity Claim, the Monitor shall request any further supporting documentation in respect thereof that may be reasonably requested by Barclays or CDPQ and the applicable Indemnified Party shall provide such further supporting documentation as is reasonably accessible to it to the Monitor as promptly as possible. Any request for supporting information shall take into account whether a determination referred to in Section 8.5.2 has been made and shall be made by the Monitor promptly following its receipt of a Notice of Claim.
- 8.5.4 Receipt by the Monitor of a Notice of Claim and information in support thereof in accordance with this Section does not commit the Monitor to pay any amounts from the Indemnity Reserve prior to the Monitor obtaining from such advisors as it may reasonably require such additional advice and analysis as the Monitor considers to be reasonably desirable in making a determination as to any of the matters set out above including, without limitation, any additional information, advice or analysis concerning the Notice of Claim. If any dispute arises with respect to the amount of any Notice of Claim, the Monitor may apply to the CCAA Court for further directions. All reasonable expenses of the Monitor and its legal counsel in this regard shall constitute Costs or Anticipated Costs, as the case may be, and be paid subject to the same payment conditions as any other Costs or Anticipated Costs as contemplated in Sections 6.3, 7.3 and 8.3, as the case may be.
- 8.5.5 Where the Monitor has determined that a request for payment of an Indemnity Payment is appropriate, the Monitor shall, within three (3) Business Days of such determination, pay to or to the order of the Indemnified Party making the request (or any other Person designated by that Indemnified Party in writing to the Monitor), an amount equal to the lesser of:
- 8.5.5.1 the amount of the request for Indemnity Payment; and
  - 8.5.5.2 the amount then standing to the credit of the Indemnity Reserve Account.
- 8.5.6 Where more than one Notice of Claim is received by the Monitor, then the payment thereof contemplated hereunder shall be made in the order, following the receipt of such Notices of Claim, that the conditions set out in this Section 8.5 are satisfied with respect to each such Notice of Claim.

## **8.6 Reductions in Indemnity Reserve**

- 8.6.1 On the second anniversary of the Plan Implementation Date, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance outstanding in the Indemnity Reserve Account less an amount equal to the sum of:
- 8.6.1.1 CDN\$1,000,000; and
  - 8.6.1.2 the amount in excess of CDN\$1,000,000 that the Applicant, acting reasonably and following consultation with the Monitor, estimates is required

to satisfy any Threatened Litigation and anticipated Defence Costs related thereto.

8.6.2 From time to time between the second and fourth anniversary of the Plan Implementation Date, whenever a final non-appealable judgment of a court of competent jurisdiction is rendered with respect to any Threatened Litigation or all parties adverse to an Indemnified Party desist therefrom, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance outstanding in the Indemnity Reserve Account less an amount equal to the sum of:

8.6.2.1 CDN\$1,000,000; and

8.6.2.2 the amount, if any, exceeding CDN\$1,000,000 that the Applicant, acting reasonably and following consultation with the Monitor, estimates is required to satisfy Threatened Litigation and anticipated Defence Costs related thereto.

8.6.3 On the fourth anniversary of the Plan Implementation Date, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance outstanding in the Indemnity Reserve Account less an amount equal to the amount that the Applicant, acting reasonably and after consultation with the Monitor, determines is required to satisfy Threatened Litigation and anticipated Defence Costs related thereto.

8.6.4 Following the fourth anniversary of the Plan Implementation Date, whenever a final non-appealable judgment of a court of competent jurisdiction is rendered with respect to any Threatened Litigation or all parties adverse to an Indemnified Party desist therefrom, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance in the Indemnity Reserve Account less an amount equal to the amount that the Applicant, acting reasonably and following consultation with the Monitor, estimates is required to satisfy remaining Threatened Litigation and anticipated Defence Costs related thereto.

8.6.5 When the Monitor, in consultation with the Applicant, determines that no amounts are required to satisfy Threatened Litigation and the anticipated Defence Costs related thereto, the Monitor shall transfer to the Tax Reserve Account the balance in the Indemnity Reserve Account.

## **8.7 Termination of Indemnity Reserve**

The Indemnity Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan.

## ARTICLE 9

### WITHHOLDING TAX RESERVE

#### **9.1 Establishment of Withholding Tax Reserve**

If the Advance Tax Ruling in a form satisfactory to the Monitor has not been obtained by the [<@>] Business Day prior to the date on which the First Interest Distribution is to be made, then the Monitor shall establish by no later than the date of the making of the First Interest Distribution, a reserve (the "**Withholding Tax Reserve**") in a dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments. The Monitor shall transfer the Withholding Tax Amount to the Withholding Tax Reserve Account from time to time as contemplated in Sections 11.6 and 11.7.

The Monitor shall hold, administer and apply the Withholding Tax Reserve only in accordance with the provisions of this Article 9.

The Monitor shall not establish the Withholding Tax Reserve and shall make the First Interest Distribution in accordance with the provisions of Section 11.6 if (i) the Advance Tax Ruling in a form satisfactory to the Monitor is obtained by the [<@>] Business Day prior to the date on which the First Interest Distribution is to be made or (ii) prior to the receipt of the Advance Tax Ruling and the CRA Confirmation, Barclays has issued a written notice to the Monitor and the Applicant waiving the benefit of, and right to obtain, the Advance Tax Ruling and CRA Confirmation and requesting that all Interest Distributions hereunder be made to it in the manner contemplated in Section 11.6.6.

#### **9.2 Waterfall for Withholding Tax Reserve**

The Monitor shall hold the Withholding Tax Reserve in trust for the following Persons and purposes and shall apply the Withholding Tax Reserve in the following order of priority:

- 9.2.1 first, for the purpose of paying any Withholding Taxes to the CRA;
- 9.2.2 second, other than with respect to interest earned on, or investment returns arising from, the Withholding Tax Reserve, for the benefit of the Non-Resident Noteholders only, on account of Interest Distributions made to them; and
- 9.2.3 third, with respect to interest earned on, or investment returns arising from, the Withholding Tax Reserve, for the benefit of the Noteholders, on account of Interest Distributions made to them.

#### **9.3 Conditions to Payment Out of Withholding Tax Reserve**

Promptly following the receipt from the Applicant of the Advance Tax Ruling in a form satisfactory to the Monitor and in consultation with the Applicant, the Monitor shall pay from the Withholding Tax Reserve, in accordance with the provisions of such Advance Tax Ruling:

- 9.3.1 to the CRA, the amount required to be paid on account of Withholding Taxes; and
- 9.3.2 if any amounts other than Withholding Taxes have been deposited in the Withholding Tax Reserve Account, then, to each Non-Resident Noteholder, an amount equal to the aggregate amount such Non-Resident Noteholder would have received on account of the Interest Distributions made had no Withholding Taxes been applicable less the amount of the applicable Withholding Taxes paid to the CRA pursuant to Section 9.3.1 with respect to such Non-Resident Noteholder's Interest Distributions.

#### **9.4 Transfer to Tax Reserve Account**

On the first Business Day following the date on which all the payments contemplated in Section 9.3 have been made, the Monitor shall transfer to the Tax Reserve Account the balance then outstanding in the Withholding Tax Reserve Account.

#### **9.5 Termination of Withholding Tax Reserve**

The Withholding Tax Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan.

### **ARTICLE 10**

#### **PLAN RESERVES RECORDS & INVESTMENTS**

##### **10.1 Financial Matters**

The Monitor shall keep such books, records and accounts as are necessary and appropriate to document the assets in the Plan Reserves and all transactions related thereto.

##### **10.2 Notice of Amounts in the Plan Reserve Accounts**

The Monitor shall, not less frequently than monthly, provide notice to the Applicant and the Noteholders of the balance of the Plan Reserve Accounts and the details of any deposits to, and payments made from, the Plan Reserve Accounts during the period since the last notice delivered by the Monitor or since the Plan Implementation Date, as the case may be. Furthermore, any Noteholder may request that the Monitor provide it with such information as it may reasonably request with respect to the Plan Reserve Accounts.

##### **10.3 Investment of Plan Reserves**

Following consultation with the Applicant, the Monitor shall invest the proceeds in the Plan Reserve Accounts. Notwithstanding the foregoing and the provisions of Sections 6.1, 7.1, 8.1 and 9.1, on the second anniversary of the Plan Implementation Date, the Monitor shall transfer each Plan Reserve into a dedicated non-interest in trust account and not invest any proceeds in the Plan Reserve Accounts.

#### **10.4 Plan Reserves Income**

The Applicant shall direct the Monitor to pay from the Tax Reserve Account all Taxes Payable with respect to the Applicant's net income resulting from interest earned on, or investment returns arising from, the Plan Reserves.

### **ARTICLE 11**

#### **DISTRIBUTIONS**

##### **11.1 Distributions to Noteholders**

Each Noteholder with a Proven Claim shall be entitled to the following distributions:

- 11.1.1 an initial distribution on the Plan Implementation Date, in an amount equal to the aggregate face amount of the Notes held by such Noteholder, as provided in this Plan, in full and final satisfaction of its Proven Claim; and
- 11.1.2 its Pro Rata Share of all Interest Distributions made from time to time in accordance with the provisions of this Article 11.

##### **11.2 Initial Distribution to Noteholders**

Within three (3) Business Days of the Plan Implementation Date, in full and final satisfaction of all Proven Claims, from the Aggregate Available Cash received by it, the Monitor shall make a first distribution to the Noteholders with Proven Claims, in full satisfaction of principal owing on their Notes, in an amount equal to the face amount of the Notes held by such Noteholders (the "**Initial Distribution**"). If all Noteholders have Proven Claims, then the aggregate amount of the Initial Distribution shall be equal to CDN\$678,931,389, which corresponds to the aggregate outstanding face amount of all the Notes.

##### **11.3 Interest on Notes**

For the purpose of Interest Distributions to be made to the Noteholders pursuant to this Plan, each Class of Notes shall bear interest as provided herein notwithstanding any provision of the Trust Indenture or the Notes to the contrary. Interest shall accrue on the Notes only up to but excluding the Plan Implementation Date, even if a Noteholder fails to present the Required Documentation as required herein and thereby is not paid its Noteholder Claim on the Plan Implementation Date.

##### **11.4 Interest Calculations**

- 11.4.1 By virtue of this Plan and without any further action by any Person, the terms of the Class A Notes and the Supplemental Indenture are hereby amended so that interest on the Class A Notes for each Interest Period included in a particular year during the Post-Maturity Period shall accrue and be computed daily on the face amount of each Class A

Note, on an Actual/365 Fixed Basis but, without any compounding of interest, at the BOC Average 1M BA Rate applicable on each day during such Interest Period. The BOC Average 1M BA Rate applicable during each Interest Period shall be the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504).

11.4.2 The face amount of each Class FRN Note shall bear interest:

11.4.2.1 for the period commencing on August 13, 2007 up to but excluding the date of its maturity, at the rate and calculated and compounded as provided in such Note and the Supplemental Indenture; and

11.4.2.2 for each Interest Period included in a particular year during the Post-Maturity Period, computed daily on the face amount of each Class FRN Note plus the capitalized interest thereon up to but excluding the maturity date of each Class FRN Note, on an Actual/365 Fixed Basis but without any compounding of interest, at the BOC Average 1M BA Rate applicable on each day during such Interest Period and, by virtue of this Plan and without any further action by any Person, the terms of the Class FRN Notes and the Supplemental Indenture are hereby amended accordingly. As is the case for the Class A Notes, the BOC Average 1M BA Rate applicable to the Class FRN Notes during each Interest Period shall be the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504).

11.4.3 The face amount of each Class E Note shall bear interest:

11.4.3.1 for the period commencing on the initial maturity date of such Class E Note up to but excluding the extended maturity date thereof (which for all purposes of this Plan shall be deemed to be its maturity date), at the rate and calculated as provided in such Note and the Supplemental Indenture; and

11.4.3.2 for each Interest Period included in a particular year during the Post-Maturity Period, computed daily on an Actual/365 Fixed Basis but without any compounding of interest, at the BOC Average 1M BA Rate + 1.00% applicable on each day during such Interest Period. As is the case for the Class A Notes and Class FRN Notes, the BOC Average 1M BA Rate applicable to the Class E Notes during each Interest Period shall be the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504).



- 11.4.4 The aggregate amount of interest accrued on each Note and calculated as aforesaid up to but excluding the Record Date is available for consultation on the Website.
- 11.4.5 Nothing contained in this Section 11.4 including the amendments contemplated in Sections 11.4.1 or 11.4.2.2 is intended to amend the provisions regarding the supplemental interest payable on the Notes contemplated in the First Supplement.

### **11.5 Pro Rata Share Calculation**

On the Plan Implementation Date, the Monitor shall calculate the Pro Rata Share of each Noteholder and send a notice to each Noteholder setting forth only its Pro Rata Share, rounded to two decimal points, for the purpose of all Interest Distributions to be made under this Plan, subject to the provisions of Sections 11.6, 11.7 and 11.8 with respect to Withholding Taxes.

### **11.6 First Interest Distribution**

The Applicant shall provide to the Monitor **(i)** a copy of each Tax Clearance Certificate within five (5) Business Days of its receipt thereof, and **(ii)** within five (5) Business Days of its receipt of the second Tax Clearance Certificate, an estimate of the amount the Applicant determines, acting reasonably and with the Monitor's consent, will be required to satisfy any remaining or future tax liabilities (including any outstanding Tax Indemnity Claims and Taxes on income to be earned in the Plan Reserves) of the CCAA Parties and any Anticipated Costs. On receipt of both items described in clauses (i) and (ii) of this Section:

- 11.6.1 the Monitor shall distribute from the Tax Reserve Account to each Resident Noteholder, its Pro Rata Share of the First Interest Distribution Amount on account of, in lieu of or in satisfaction of interest on such Resident Noteholder's Notes;
- 11.6.2 if the Advance Tax Ruling and the CRA Confirmation have not been obtained and Barclays has not issued the notice contemplated in Section 9.1, then each Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount shall be transferred by the Monitor to the Withholding Tax Reserve Account;
- 11.6.3 if the Advance Tax Ruling has not been obtained but the CRA Confirmation has been obtained, then each Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount, less the amount of applicable Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, shall be distributed by the Monitor to each Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes and the Monitor shall transfer the amount of such Withholding Taxes to the Withholding Tax Reserve Account;
- 11.6.4 if the Advance Tax Ruling has been obtained and in accordance with its terms Withholding Taxes are payable in respect of Interest Distributions to a Non-Resident Noteholder, then such Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount, less the amount of applicable Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, shall be distributed by the Monitor to such Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such

Non-Resident Noteholder's Notes and the Monitor shall pay the amount of such Withholding Taxes to the CRA;

- 11.6.5 if the Advance Tax Ruling in a form satisfactory to the Monitor has been obtained and in accordance with its terms no Withholding Taxes are payable in respect of Interest Distributions to a Non-Resident Noteholder, such Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount shall be distributed by the Monitor to such Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes; and
- 11.6.6 if the Advance Tax Ruling and the CRA Confirmation have not been obtained but Barclays has issued the notice contemplated in Section 9.1, then each Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount, less the amount of Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, shall be distributed to such Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes and the Monitor shall pay the amount of such Withholding Taxes to the CRA.

#### **11.7 Subsequent Interest Distributions**

Following a First Interest Distribution made pursuant to Section 11.6, each time that funds are transferred to the Tax Reserve Account from the Costs Reserve Account or the Indemnity Reserve Account pursuant to Sections 6.4, 8.6.1, 8.6.2 or 8.6.3 or funds are otherwise deposited in the Tax Reserve Account, the Monitor may make a distribution from the Tax Reserve Account in an amount equal to the difference between the funds so transferred to the Tax Reserve Account and Anticipated Costs, by paying:

- 11.7.1 to each Resident Noteholder, its Pro Rata Share of such amount, on account of, in lieu of or in satisfaction of interest on such Resident Noteholder's Notes; and
- 11.7.2 with respect to each Non-Resident Noteholder, its Pro Rata Share of such amount, on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes, in accordance with the provisions of Sections 11.6.2 to 11.6.6, as the case may be, *mutatis mutandis*.

Without limiting the foregoing, if the Advance Tax Ruling has not been obtained by the second anniversary of the Plan Implementation Date, as of and from such anniversary date the Monitor shall make all Interest Distributions under this Plan by paying (i) to each Resident Noteholder, its Pro Rata Share of such Interest Distributions, (ii) to each Non-Resident Noteholder, its Pro Rata Share of such Interest Distributions less the amount of applicable Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, and (iii) to the CRA, the applicable Withholding Taxes relating to each Non-Resident Noteholder's Pro Rata Share of such Interest Distributions.

**11.8 Final Interest Distributions**

Following the final transfer of funds to the Tax Reserve Account from the Costs Reserve Account pursuant to Section 6.4 and the Indemnity Reserve Account pursuant to Section 8.6.5, the Monitor shall make a final distribution on account of, in lieu of or in satisfaction of interest on the Notes and pay to each Noteholder its Pro Rata Share of all amounts standing to the credit of the Tax Reserve Account less an amount reserved for Anticipated Costs in accordance with the provisions of the last paragraph of Section 11.7, *mutatis mutandis*. Following the final payment of all outstanding Anticipated Costs, the Monitor shall pay to each Noteholder, on account of, in lieu of or in satisfaction of interest on the Notes, its Pro Rata Share of the balance outstanding in the Tax Reserve Account in accordance with the provisions of the last paragraph of Section 11.7, *mutatis mutandis*. Notwithstanding any other provision of this Article 11, no Noteholder is entitled to or shall receive any amount on account of, in lieu of or in satisfaction of interest on its Notes that exceeds the aggregate amount of interest that it would otherwise be entitled to receive on its Notes as calculated in accordance with the provisions of Section 11.4.

**11.9 Failure to Claim**

Noteholders who fail to establish Proven Claims within two (2) years of the Plan Implementation Date will be barred from receiving all distributions under this Plan and any amounts that such Noteholders would otherwise have received will be distributed to the other Noteholders who have established Proven Claims on a Pro Rata Share basis in accordance with the provisions of the last paragraph of Section 11.7, *mutatis mutandis*.

**ARTICLE 12****PLAN COMPLETION****12.1 Plan Completion**

This Plan shall be fully completed upon the later of (i) the date upon which all the Plan Reserves are exhausted and (ii) the date upon which the final distribution is made by the Monitor to the Noteholders pursuant to Section 11.8 (such later date, the "**Plan Completion Date**"). The Monitor shall be fully and finally released from all its duties and obligations under this Plan and the Sanction Order upon the filing with the CCAA Court of a certificate of the Monitor certifying that the Plan Completion Date has occurred.

**ARTICLE 13****SANCTION ORDER****13.1 Application for Sanction Order**

The application for the Sanction Order shall be brought by the Applicant as soon as reasonably practicable following the approval of this Plan by the requisite majorities of Noteholders voting

at the Meeting. On the Plan Implementation Date, subject to the satisfaction of the conditions contained in Article 8 herein, this Plan will be binding upon all Noteholders and all other Persons in accordance with its terms.

### **13.2 Effect of Sanction Order**

In addition to sanctioning this Plan, and subject to the discretion of the CCAA Court, the Sanction Order shall, among other things and without limitation:

- 13.2.1 direct and authorize the Plan Reserves and distributions contemplated under this Plan;
- 13.2.2 declare that all distributions or payments by or at the direction of the Monitor, in each case on behalf of the Applicant under the Plan, are for the account of the CCAA Parties and the fulfillment of their obligations under the Plan;
- 13.2.3 declare that the compromises, releases and injunctions effected hereby are approved, binding and effective as of the Plan Implementation Date upon all Noteholders, the Monitor and all other Persons affected by this Plan and shall enure to the benefit of all such Persons;
- 13.2.4 provide that no Person who is a party to any obligation or agreement with the CCAA Parties shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason:
  - 13.2.4.1 of any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the CCAA Parties);
  - 13.2.4.2 of the fact that relief under the CCAA has been sought or obtained in respect of the CCAA Parties, that the CCAA Proceedings have been commenced or completed, or that the within restructuring has been implemented in respect of the CCAA Parties; or
  - 13.2.4.3 of any compromises or arrangements effected pursuant to this Plan;
- 13.2.5 confirm the effect of the Claims Procedure and Meeting Order;
- 13.2.6 provide for a release of the Released Parties in a form consistent with Section 16.1;
- 13.2.7 provide that, as of the Plan Implementation Date, the Settlement Agreement (save and except for the provisions of Sections 6(o), 9, 10, 16 and 17 thereof) and all Programme Agreements (save and except the Settlement Deed) are terminated and all Charges thereunder are discharged, provided, however, that for the purposes of the Plan, (i) the indemnity provisions of the Programme Agreements shall be deemed to remain in full

force and effect even following such termination and (ii) the Noteholders shall continue to constitute secured creditors of the Applicant for purposes of the Programme Agreements;

- 13.2.8 provide that the Monitor shall be authorized, in connection with the making of any payment or distribution under this Plan, to apply in its sole discretion to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith in order to obtain confirmation that it will not be liable for any Taxes Payable provided, that, in so doing, the Monitor may not alter the agreement of the Plan Participants set forth in Article 7 and Article 9;
- 13.2.9 declare that the Monitor shall not incur any liability under the Tax Act or any similar provincial or territorial tax legislation as a result of the completion of the steps contemplated by the Plan, including in respect of its making any payments ordered or permitted under the Plan or the Sanction Order, and is released, remised and discharged from any claims against it under or pursuant to the Tax Act, any similar provincial or territorial tax legislation or otherwise at law, arising in respect of the completion of the steps contemplated by the Plan, including in respect of its making any payments ordered or permitted under the Plan or the Sanction Order and that any claims of such a nature are forever barred and extinguished;
- 13.2.10 provide that the Monitor shall be discharged and released on the Plan Implementation Date, save and except with respect to any remaining duties or powers required to implement and give effect to the terms of this Plan and the Sanction Order (the "**Post Plan Implementation Date Duties**");

- 13.2.11 declare that the Monitor shall incur no liability or obligation as a result of carrying out the provisions of the Sanction Order and/or the Plan except in respect of any gross negligence or wilful misconduct and declare that the Monitor shall be entitled to rely on the books and records of the CCAA Parties and any information provided by the CCAA Parties without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and
- 13.2.12 declare that the Monitor shall continue to hold the benefit of a CCAA Charge as against the funds held in the Plan Reserves from time to time, and the benefit of all protections of the Monitor provided for in the Initial CCAA Order, Claims Procedure and Meeting Order, Sanction Order, any other Order in the CCAA Proceedings, the CCAA and at law, including the stay of proceedings in its favour, as provided in the Initial CCAA Order as against the funds held in the Plan Reserves from time to time, and the benefit of all protections of the Monitor provided for in the Initial CCAA Order, Claims Procedure and Meeting Order, Sanction Order, the CCAA and at law, until the Monitor has completed its duties under this Plan and the fees and disbursements of the Monitor and its counsel have been fully paid.

### **13.3 Monitor**

On the Plan Implementation Date, and subject to the Sanction Order and any other Orders, the Monitor shall be discharged and released and shall have no further obligations or responsibilities, except only with respect to any remaining duties or power required to implement and give effect to the terms of this Plan, including the Post Plan Implementation Date Duties. In carrying out the Post Plan Implementation Date Duties, the Monitor shall incur no liability or obligation as a result thereof save and except for any gross negligence or wilful misconduct on its part.

## **ARTICLE 14**

### **CONDITIONS PRECEDENT**

#### **14.1 Conditions Precedent to Implementation of Plan**

The implementation of this Plan shall be conditional upon the fulfillment or waiver of the following conditions on or before the Plan Implementation Date:

##### *APPROVAL BY NOTEHOLDERS*

- 14.1.1 the Plan shall have been approved pursuant to the CCAA by the Noteholders with Proven Claims;

##### *GRANTING OF SANCTION ORDER*

- 14.1.2 the Sanction Order shall have been granted by the CCAA Court in a form acceptable to the Settlement Parties;

***EXPIRY OF APPEAL PERIODS***

- 14.1.3 the appeal periods and any periods for leave to appeal with respect to the Sanction Order shall have expired without an appeal or application for leave to appeal of such Order having been commenced or, in the event of an appeal or application for leave to appeal, a final determination denying leave to appeal or dismissing such appeal and affirming the sanctioning of this Plan and recognizing the sanctioning of this Plan, as the case may be, shall have been made by the applicable appellate court, with no further right of appeal;

***COMPLETION OF NECESSARY DOCUMENTATION***

- 14.1.4 the execution and delivery by all relevant Persons of all agreements, settlements, resolutions, releases, documents and other instruments that are necessary to be executed and delivered to implement and give effect to all material terms and provisions of this Plan;

***DIRECTIONS OF PAYMENT***

- 14.1.5 Barclays and the Applicant shall have executed and delivered to all relevant Persons the directions of payment referred to in Section 5.2.4;

***SPECIAL ORDER***

- 14.1.6 the Special Order shall have been issued by the relevant court in a form acceptable to Barclays and the Applicant; and

***FUNDS TRANSFERS***

- 14.1.7 the funds transfers contemplated in Sections 5.3.3, 5.3.4, 5.3.5 and 5.3.7 shall have been completed.

Any waiver in whole or in part, of conditions in this Section 14.1 must be in accordance with Section 14.2.

**14.2 Waiver**

Any waiver of conditions in Section 14.1 shall be in writing. The Applicant, with the prior written consent of the Monitor and the other Settlement Parties, shall have the right to waive one or more of the above conditions precedent in whole or in part, except the conditions set out in Sections 14.1.1, 14.1.2, 14.1.6 and 14.1.7.

**14.3 Monitor's Certificate**

Upon the satisfaction or waiver of the conditions set out in Section 14.1 hereof, the Monitor shall file with the CCAA Court in the CCAA Proceedings a certificate that states that all conditions precedent set out in Section 14.1 of this Plan have been satisfied or waived and that the Plan Implementation Date has occurred. The Monitor shall serve such certificate on the service list maintained in the CCAA Proceedings.

#### **14.4 Termination of Plan for Failure to Become Effective**

If the Plan Implementation Date shall not have occurred on or before 60 days following the date of the Sanction Order, or such later date as the Monitor and the Settlement Parties may agree in writing, then, subject to further Order of the CCAA Court, this Plan shall automatically terminate and be of no further force or effect; provided, that this Plan shall not automatically terminate pursuant to this Section if the sole basis for the non-occurrence of the Plan Implementation Date is the pendency of any appeal or application for leave to appeal with respect to the Sanction Order.

### **ARTICLE 15**

#### **EFFECT OF PLAN**

##### **15.1 Effect of Plan Generally**

The Plan (including, without limitation, the releases and injunctions contained in the Plan), upon being sanctioned and approved by the CCAA Court pursuant to the Sanction Order, shall be binding on the Plan Implementation Date on the Noteholders and all other Persons (and each of their respective Representatives, heirs, executors, administrators, guardians, legal personal representatives, successors and assigns) irrespective of the jurisdiction in which such Noteholders and other Persons reside, or in which the claims arose.

##### **15.2 Consents, Waivers and Agreements**

On the Plan Implementation Date, each Noteholder shall be deemed to have consented and agreed to all of the provisions of this Plan in its entirety. In particular, each Noteholder shall be deemed:

- 15.2.1 to have executed and delivered to the Monitor and to the Plan Participants all consents, releases or agreements required to implement and carry out this Plan in its entirety; and
- 15.2.2 to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Noteholder and the Plan Participants at the Plan Implementation Date (other than those entered into by the Plan Participants in writing on or after the date hereof) and the provisions of this Plan, the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

##### **15.3 Exculpation**

The Applicant, the Monitor, the Conduit, Barclays, Barclays' Subsidiaries, CDPQ, the Consultant, the Custodian and the Indenture Trustee (including in each case, their respective Representatives) shall have no liability or obligation to any Person for their role, or any act or omission, in connection with the Litigation, the Settlement Agreement, the CCAA Proceedings, activities undertaken in preparation for or anticipation of the CCAA Proceedings, the Plan, the



pursuit of sanctioning of the Plan, the consummation and implementation of the Plan or the administration of the Plan or the property to be distributed under the Plan provided, however, that this Section 15.3 shall not limit the obligations of any Person under the Plan.

#### **15.4 Crown Claims**

Any claims of the federal and provincial Crowns of a kind that could be subject to a demand under subsection 224(1.2) of the Tax Act or any substantially similar provision in Canada of provincial legislation or in respect of which the federal or provincial Crown has a Charge in the property of the CCAA Parties or recourse for non-payment against directors or officers of the CCAA Parties, outstanding under the provisions of said subsection 224(1.2) or substantially similar provincial legislation, or any other such claims of the federal or provincial Crown shall be paid on or before the Plan Implementation Date.

### **ARTICLE 16**

#### **RELEASES AND INJUNCTIONS**

##### **16.1 Release of the Released Parties**

For good and valuable consideration, every Person (regardless of whether or not such Person is a Noteholder), including each of the Released Parties, on the Person's own behalf and on behalf of the Person's respective present and future Representatives, dependents, heirs, and assigns, as applicable, hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Released Parties of and from any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including attorneys' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: any act, inaction or omission existing or taking place on or prior to the Plan Implementation Date relating to or otherwise in connection with the creation, issuance, rating, sale and marketing of the Notes in Canada, the Conduit, the Notes, the Litigation, all matters raised or which could have been raised in the Litigation, purchases and sales of the Notes and agreements relating thereto, the Settlement Agreement, the business and affairs of any of the Released Parties relating to or otherwise in connection with the Notes, the Programme Agreements, the CCAA Proceedings, the activities undertaken or not undertaken as a result of the Standstill, in anticipation of or preparation for the compromise of the Notes and/or the CCAA Proceedings, the Meeting or the Plan (collectively, the "**Released Claims**"); and each Person shall not make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in

common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. Notwithstanding the foregoing, nothing herein shall release or discharge a Released Party from its obligations, if any, under the Plan or the Payment Agreement. This Section 16.1 does not apply to Unaffected Claims and does not operate to release the obligations of Barclays under the Payment Agreement.

## **16.2 Injunction**

All Persons (regardless of whether or not such Persons are Noteholders), along with their respective present and future Representatives, dependents, heirs and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to Released Claims, from **(i)** commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties, **(ii)** enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property, **(iii)** commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties, **(iv)** creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Charge of any kind, or **(v)** taking any actions to interfere with the implementation or consummation of this Plan. This Section 16.2 does not apply to Unaffected Claims or to the enforcement of any obligations under the Plan or under the Payment Agreement.

## **16.3 Exclusions**

Notwithstanding Sections 16.1 and 16.2, nothing in this Plan shall release, enjoin or compromise claims against directors of the Applicant that are described in Section 5.1(2) of the CCAA.

# ARTICLE 17

## **GENERAL PROVISIONS**

### **17.1 Plan Amendment**

The Applicant reserves the exclusive right to amend this Plan, subject to the Monitor's consent, in a written document filed with the CCAA Court, at any time prior to the Plan Implementation Date, with the prior written consent of the other Settlement Parties, provided, however, that:

- 17.1.1 prior to or during the Meeting, any such amendment must be communicated to the Noteholders in such manner as may be agreed by the Monitor, or as may be ordered by the CCAA Court;
- 17.1.2 after the Meeting, an amendment may be made if it concerns a matter which, in the opinion of the Monitor, or as declared by the CCAA Court, is of an administrative nature required to better give effect to the implementation of this Plan and/or to the Sanction Order and is not materially prejudicial to the interests of the Noteholders or the Plan Participants;
- 17.1.3 after the Meeting, any other amendment may only be made if approved by the CCAA Court;
- 17.1.4 any amendment that materially alters the effect of Section 16.1 or Section 16.2 of this Plan must be approved by any Plan Participants affected by the proposed amendment, modification or supplement; and
- 17.1.5 any supplementary plan or plans of compromise or arrangement filed by the Applicant with the CCAA Court and, if required by this Section 17.1, approved by the CCAA Court, shall, for all purposes be a part of and incorporated in this Plan.

## **17.2 Severability**

In the event that any provision in this Plan is held by the CCAA Court to be invalid, void or unenforceable, this Plan shall be null and void in all respects, with effect in accordance with Section 17.3 hereof.

## **17.3 Termination**

At any time prior to the Plan Implementation Date, the Applicant may, with the prior consent of the other Settlement Parties, and subject to further order of the CCAA Court, determine not to proceed with this Plan notwithstanding any prior approvals given at the Meeting or the obtaining of the Sanction Order. If the conditions precedent to implementation of this Plan are not satisfied or waived, if the Applicant determines not to proceed with this Plan, if the CCAA Court holds any provision of this Plan to be invalid, void or unenforceable or if the Sanction Order is not issued by the CCAA Court: (a) this Plan shall be null and void in all respects; (b) any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (c) nothing contained in this Plan, and no act taken in preparation of the consummation of this Plan, shall: (i) constitute or be deemed to constitute a waiver or release of any Noteholder Claims, Barclays' Other Claims or any defences thereto by or against any of the CCAA Parties or any other Person; (ii) prejudice in any manner the rights of any of the Noteholders, the CCAA Parties or any other Person in any further proceedings involving one or more of the CCAA Parties including any further proceedings relating to the Barclays' Other Claims; or (iii) constitute an admission of any sort by any of the Noteholders, the CCAA Parties or any other Person.

#### **17.4 Covenant of the Plan Participants**

Each Plan Participant hereby covenants and agrees, and is deemed to covenant and agree to execute and deliver, on or after the Effective Time, all such agreements, instruments and documents and to take all such further actions as any of the other Plan Participants may reasonably deem necessary from time to time (at the requesting Plan Participant's expense) to carry out the intent and purposes of this Plan and to consummate the transactions contemplated hereby.

#### **17.5 Covenant of Applicant Regarding Tax Clearance Certificates**

The Applicant shall use all commercially reasonable efforts to promptly make, and diligently pursue, all filings and correspondence required to receive the Tax Clearance Certificates and otherwise close-out all open tax years with a view to distribution to the Noteholders of the Tax Reserve and, if available, the Indemnity Reserve, and the winding up of the Applicant and the Conduit as promptly as practicable.

#### **17.6 Covenant of Applicant Regarding Costs**

The Applicant shall use commercially reasonable efforts with respect to Costs as are under its direct control so that such Costs do not exceed the amount of the Costs Reserve, provided that no contestation or unforeseen event occurs with respect to the Plan, the CCAA Proceedings, the distributions contemplated by Article 11 and the process of acquiring the two Tax Clearance Certificates.

#### **17.7 Covenant of Applicant Regarding Withholding Taxes**

The Applicant and the Conduit shall request, in a form satisfactory to the Monitor, an advance tax ruling from the CRA, as promptly as practicable following the Initial CCAA Order, seeking to confirm that Interest Distributions in this Plan to Non-Resident Noteholders are not subject to Withholding Taxes (the "**Advance Tax Ruling**").

#### **17.8 Paramountcy**

From and after the Plan Implementation Date, any conflict between: (a) this Plan; and (b) any information statement or summary in respect of this Plan, or the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between any of the CCAA Parties and any Noteholder or other Person as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

#### **17.9 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings, and the Monitor will not be responsible or liable for any obligations of the CCAA Parties hereunder. The Monitor will

have only those powers granted to it, and shall be subject to the duties provided for, by this Plan, by the CCAA and by any Order of the CCAA Court in the CCAA Proceedings, including the Initial CCAA Order.

#### **17.10 Plan and Certain Laws**

Section 36.1 of the CCAA, Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* (Canada) and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to this Plan or to any payments, distributions, transfers, allocations or transactions made or completed in connection with this Plan, whether before or after the date of the Initial CCAA Order, including, without limitation, to any and all of the payments, distributions, transfers, allocations or transactions contemplated by and to be implemented pursuant to this Plan.

#### **17.11 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

#### **17.12 Notices**

Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan and may, subject as hereinafter provided, be made or given by personal delivery, by electronic mail or by fax addressed to the respective parties as follows:

17.12.1if to a Noteholder:

to the known address (including fax number or email address) for such Noteholder or, if a Noteholder has filed a Voter Identification Form in accordance with the Claims Procedure and Meeting Order, the address for such Noteholder specified therein;

17.12.2if to the Monitor:

Deloitte Restructuring Inc.

Attention: Pierre Laporte

Fax: 514 390-4103

E-mail: [pilaporte@deloitte.ca](mailto:pilaporte@deloitte.ca)

with a copy to:

Osler, Hoskin & Harcourt LLP

Attention: Sandra Abitan and Mary Paterson

Fax: 514 904-8100; 416 862-6666

E-mail: [sabitan@osler.com](mailto:sabitan@osler.com); [mpaterson@osler.com](mailto:mpaterson@osler.com)

17.12.3if to the Applicant:

Metcalfe & Mansfield Alternative Investments VII Corp.

Attention: Mr. Claude Dalphond

Fax: 514 982-0170

E-mail: [claude.dalphond@ivanhoecambridge.com](mailto:claude.dalphond@ivanhoecambridge.com)

with a copy to:

Fasken Martineau DuMoulin LLP

Attention: Robert Y. Girard

Fax: 514 397-7600

E-mail: [rgirard@fasken.com](mailto:rgirard@fasken.com)

or to such other address as any party may from time to time notify the others in accordance with this Section 17.12. All such notices and communications that are delivered shall be deemed to have been received on the date they are sent. Any such notices and communications that are sent by electronic mail or faxed shall be deemed to be received on the date sent or faxed if sent before 5:00 p.m. Eastern Time on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such electronic mail or fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

### **17.13 Acknowledgement Regarding Custodian**

The Plan Participants acknowledge and agree that the Custodian is subject to this Plan solely for the purposes of making the payments required to be made by the Custodian pursuant to Sections 5.3.3 and 5.3.5 of this Plan.

### **17.14 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, successor or assign of such Person.

### **17.15 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by the Monitor in order to implement and give effect to this Plan.

**17.16 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of this Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the CCAA Court.

Dated at Toronto, Ontario, as of this <@> day of <@>, 2014.

# Tab C



This is Exhibit "C" referred to in the affidavit of  
MATHIEU LAFLEUR-AYOTTE sworn June 27,  
2014.



---

*Commissioner for Taking Affidavits (or as may be)*

*R. Y. Gerard*

**AGREEMENT RELATING TO THE MITIGATION OF LOSS**

This agreement dated as of the Thirteenth (13<sup>th</sup>) day of June, 2014

**BETWEEN:** BARCLAYS BANK PLC ("**Barclays**")

**AND:** METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP., in its capacity as issuer trustee of Devonshire Trust, a trust constituted under the laws of the Province of Ontario ("**Devonshire**")

**WHEREAS** concurrently herewith the parties hereto together with The Bank of New York Mellon, as Custodian shall be entering into a Settlement Agreement for the purpose of settling all matters relating to the Litigation;

**WHEREAS** the execution by the parties hereto of this Agreement is an essential element of the Settlement Agreement;

**WHEREAS** under the terms of the Court of Appeal Decision it was noted that it was not strictly necessary to determine the amount of Barclays' Loss as Barclays was assumed not to be a "Non-Defaulting Party" under the Swaps for the purposes of the first part of the bifurcated trial of the Litigation but the Court proceeded nevertheless to make such determination as it would become relevant were there to be a second part to the bifurcated trial at first instance and were Barclays to be found to be a "Non-Defaulting Party" under the Swaps in such trial;

**WHEREAS** under the terms of the Court of Appeal Decision the Court agreed with the trial judge that Barclays' Loss should be reduced by the value of any recovery Barclays receives on the CAD\$219,641,051 face value of Notes it purchased;

**WHEREAS** under the terms of the Court of Appeal Decision the Court found that there existed a duty to further mitigate the Barclays' Loss and contemplated that the parties would reach an agreement with respect to such further mitigation failing which, the issue would be referred back to the trial judge for determination; and

**WHEREAS** the parties hereto wish to give effect to such finding in the Court of Appeal Decision and come to an agreement as to what the full amount of mitigation to be applied against the Barclays' Loss would be, should the issue become relevant;

**NOW THEREFORE**, in consideration of the mutual acknowledgements and promises set forth herein, in the Settlement Agreement and in the Payment Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have agreed as follows:

## 1. Settlement Agreement Definitions

Capitalized terms used in this Agreement and not otherwise defined shall have the meaning ascribed thereto in the Settlement Agreement notwithstanding the termination of the Settlement Agreement on the Initial Payout Date.

## 2. Definitions

In this Agreement,

- (a) "Agreement" means this Agreement relating to the Mitigation of Loss;
- (b) "Court of Appeal Decision" means the decision of the Court of Appeal for Ontario, rendered July 26, 2013 in Court File No. C54400;
- (c) "Mitigation Order" means the second of the Special Orders defined in the Settlement Agreement; and
- (d) "Settlement Agreement" means the letter agreement dated June 13, 2014 entered into among Barclays (on its own behalf and as representative of the Barclays' Subsidiaries), Devonshire and BNY evidencing the settlement of the Litigation.

## 3. The Agreement as to the Amount of Mitigation

The parties hereto agree that from the CAD\$264,000,000 Barclays' Loss established by the Court of Appeal Decision there shall be deducted the following amounts on account of mitigation:

- (a) The recovery to be received by Barclays and the Barclays Subsidiaries on account of principal on the Initial Payout Date with respect to the Notes they hold beneficially less the amount paid by Barclays and the Barclays Subsidiaries for the purchase of such notes under the terms of the Settlement Agreement, such amount being CAD\$194,934,050;
- (b) The amounts to be received by Barclays on account of interest from BNY under the terms of Section 6(f) of the Settlement Agreement. As at the date hereof, such amount is estimated to be CAD\$19,872,377;
- (c) The aggregate amount to be received by Barclays and the Barclays Subsidiaries on account of Interest Distributions, it being understood that for the purposes hereof, no account shall be taken of any withholding tax that may be required to be withheld from such Interest Distributions and paid to any governmental authority. As at the date hereof, the aggregate amount to be received by Barclays and the Barclays Subsidiaries on account of Interest Distributions is estimated to be CAD\$18,511,882; and

- (d) The amount of court costs and interest thereon payable by Barclays which under the terms of Section 6(e) of the Settlement Agreement Devonshire shall renounce and forego. The amount of such costs and interest thereon is acknowledged by the parties hereto as being equal to CAD\$6,800,000.

On the basis of the foregoing, the aggregate amount on account of mitigation to be applied in reduction of the CAD\$264,000,000 Barclays Loss is CAD\$240,118,309. As a consequence, the parties hereto agree that the Barclays Loss following the application of the aggregate amount on account of mitigation is CAD\$23,881,691.

#### **4. The Mitigation Order**

The parties hereto agree that they shall proceed with the Mitigation Order as contemplated in Section 6 of the Settlement Agreement and for the purposes of the Mitigation Order the agreed upon amount on account of mitigation to be applied in reduction of the Barclays' Loss shall be the aggregate of the amounts set out in Sections 3(a) to (d) inclusively above.

#### **5. Coming into force of this Agreement**

This Agreement shall come into force on the "Plan Implementation Date" as such expression shall be defined in the Plan of Compromise and Arrangement that shall form part of the CCAA Procedure.

#### **6. Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the party to be bound by the amendment, supplement or modification.

#### **7. Waivers**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

#### **8. Execution of Agreement**

This Agreement may be executed and delivered within or outside of the Province of Ontario. This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns.

#### **9. Assignment**

Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties hereto which consent must not be unreasonably

withheld. Any purported assignment or transfer without such written consent will be null and void and of no effect.

#### **10. Governing Law**

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

#### **11. Attornment**

Each party irrevocably submits to the non-exclusive jurisdiction of the Ontario courts situated in the City of Toronto in respect of any action or proceeding against any of the parties relating in any way to this Agreement, Devonshire, the Litigation or the Notes, and each party waives any objection to the venue of any such action or proceeding in any such court, and agrees not to assert in any such action or proceeding that any such court provides an inconvenient forum.

#### **12. Counterparts**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

#### **13. Limitation**

Devonshire has entered into this Agreement in its capacity as issuer trustee of Devonshire Trust. Any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of Devonshire herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by Devonshire or for the purpose or with the intention of binding Devonshire in its personal capacity, but are made and intended for the purpose of binding only the assets of Devonshire Trust. No assets of Devonshire (other than the assets of Devonshire Trust), whether owned beneficially by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of Devonshire Trust or Devonshire under this Agreement or any of the other documents accessory hereto. No recourse may be had or taken, directly or indirectly, against Devonshire in its personal capacity, any beneficiary of Devonshire Trust or any of its Representatives, with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of Devonshire Trust or Devonshire under this Agreement and the documents accessory hereto.

#### **14. Language**

The parties to this Agreement have agreed that this Agreement as well as any document or instrument relating to it be drawn up in English only. *Les parties aux présentes ont convenu que la présente Convention ainsi que tous autres actes ou documents s'y rattachant soient rédigés en anglais seulement.*

- 5 -

If you are in agreement with the foregoing, please sign and return a copy of this letter to the undersigned.

**[Remainder of page intentionally left blank. Signature page(s) follow.]**

MITIGATION AGREEMENT – SIGNATURE PAGE

BARCLAYS BANK PLC

By: 

Name: *David L. Sawyer*

Title: *Managing Director*

METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP., in its capacity as issuer trustee of  
Devonshire Trust

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

BARCLAYS BANK PLC

By: \_\_\_\_\_

Name:

Title:

METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII  
CORP., in its capacity as issuer trustee of  
Devonshire Trust

By: 

Name: E. D. ALDFORD

Title: PRESIDENT

By: 

Name: B. DESCHAMPS

Title: DIRECTOR



# Tab D

This is Exhibit "D" referred to in the affidavit of  
MATHIEU LAFLEUR-AYOTTE sworn June 27,  
2014.



---

*Commissioner for Taking Affidavits (or as may be)*

R. Y. GIRARI

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

*(Court Seal)*

BARCLAYS BANK PLC

Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
*in its capacity as Issuer Trustee of DEVONSHIRE TRUST, THE BANK OF NEW  
YORK MELLON, as Custodian, and CIBC MELLON TRUST COMPANY, in its  
capacity as Indenture Trustee*

Defendants

**CONSENT**

By their respective lawyers, the parties, none of whom are under disability, consent to the Order declaring the Mitigation Amount to be \$240,118,309 on the Plan Implementation Date in the CCAA Proceeding, and dismissing the action, attached as Schedule "A" hereto.

DATED AT TORONTO, ONTARIO this 27<sup>th</sup> day of June, 2014**STIKEMAN ELLIOTT LLP**

Per:

---

Ashley Taylor

Lawyers for the Plaintiff, Barclays Bank PLC

**LENCZNER SLAGHT LLP**

Per:

---

J. Thomas Curry

Lawyers for the Defendants, Metcalfe & Mansfield  
Alternative Investments VII Corp., in its capacity as  
Issuer Trustee of Devonshire Trust

**BENNETT JONES LLP**

Per:

---

Jeffrey S. Leon

Lawyers for the Defendants, The Bank of New York  
Mellon, as Custodian

**BENNETT JONES LLP**

Per:

---

Jeffrey S. Leon

Lawyers for the Defendants, CIBC Mellon Trust  
Company, in its capacity as Indenture Trustee

BARCLAYS BANK PLC  
Plaintiff

-and-

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS  
VII CORP. et al.  
Defendants

Court File No. CV-09-8387 00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
*(COMMERCIAL LIST)*

PROCEEDING COMMENCED AT TORONTO

**CONSENT**

**LENCZNER SLAGHT ROYCE**  
**SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jilesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2861

Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for the Defendant (Respondent), Metcalfe &  
Mansfield Investments VII Corp., in its capacity as  
Trustee of Devonshire Trust

## SCHEDULE A

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) TUESDAY, THE 8th  
MR. JUSTICE NEWBOULD ) DAY OF JULY, 2014

BETWEEN:

**BARCLAYS BANK PLC**

Plaintiff

- and -

**METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
in its capacity as Issuer Trustee of DEVONSHIRE TRUST, THE BANK OF NEW  
YORK MELLON, as Custodian, and CIBC MELLON TRUST COMPANY, in its  
capacity  
as Indenture Trustee**

Defendants

**ORDER**

**THIS MOTION** for an Order brought by Metcalfe & Mansfield Alternative Investments VII Corp. in its capacity as Issuer Trustee of Devonshire Trust (“Devonshire Trust”) was heard on this day at the Court House, 330 University Avenue, Toronto, Ontario, in the presence of counsel for Barclays Bank PLC (“Barclays”), Devonshire Trust, CIBC Mellon Trust Company (“CIBC Mellon”), in its capacity as Indenture Trustee (the “Indenture Trustee”), and Bank of New York Mellon as Custodian (“BNY Mellon”).

**ON READING** the Affidavit of Mathieu Lafleur-Ayotte, sworn June 27, 2014 (the “Lafleur-Ayotte Affidavit”), the Consent of the parties appearing in this action, by their respective lawyers, none of whom are under disability, the submissions of the lawyers for the parties appearing in this action, and having regard to the bifurcation order made by Campbell J. on May 22, 2009 (the “Bifurcation Order”), the Judgment of this Court dated September 11,

2011 (the “Trial One Judgment”) and the Order of the Court of Appeal for Ontario dated July 26, 2013 (the “Court of Appeal Order”);

**AND WHEREAS** the Court of Appeal for Ontario dismissed in part Barclays’ appeal of the Trial One Judgment but varied it in the Court of Appeal Order;

**AND WHEREAS** the Supreme Court of Canada denied Barclays’ motion for leave to appeal the Court of Appeal Order to that Court on January 16, 2014;

**AND WHEREAS** the Trial One Judgment, as varied by paragraph 2 of the Court of Appeal Order, determined that “Barclays’ Loss is \$264 million less an appropriate amount to be deducted on account or mitigation, in an amount to be agreed between the parties or to be determined by the trial judge or the judge conducting the second phase of the bifurcated trial if it takes place”;

**AND WHEREAS** Devonshire Trust has brought an Application in the Ontario Superior Court of Justice (the “CCAA Proceeding”) seeking to restructure the affairs of Devonshire Trust in accordance a Plan of Compromise and Arrangement (the “Plan”, which term shall include amendments thereto in the CCAA Proceeding);

**AND WHEREAS** the capitalized terms in this Order shall have the meanings ascribed to them in this Order, the Bifurcation Order, the Trial One Judgment, the Court of Appeal Order and the Plan and such terms not otherwise defined shall have the meanings as ascribed to them in the Agreements, the Custody Agreement, the Intercreditor Agreement or the Series A Supplemental Indenture;

**AND WHEREAS** Barclays and Devonshire Trust have agreed to consent to this Order and agreed that on the Plan Implementation Date, the appropriate amount to be deducted from Barclays’ Loss on account of mitigation is \$240,118,309, reducing Barclays’ Loss to \$23,881,691;

1. **THIS COURT:**

- (a) **DECLARES THAT**, on the Plan Implementation Date in the CCAA Proceeding, the Mitigation Amount is \$240,118,309;

- (b) **DECLARES THAT**, on the Plan Implementation Date in the CCAA Proceeding, Barclays' Loss will be \$23,881,691;
  - (c) **ORDERS AND ADJUDGES THAT**, conditional upon the occurrence of the Plan Implementation Date in the CCAA Proceeding, except as otherwise provided for in this Order, the Action and the Counterclaim are hereby dismissed, without costs;
  - (d) **ORDERS AND ADJUDGES THAT**, should a Plan Implementation Date not occur, this Order shall be void.
-



BARCLAYS BANK PLC  
Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP. et al.

Defendants

Court File No: CV-09-8387 00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers

Suite 2600

130 Adelaide Street West

Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096

Monique J. Jilesen (43092W) (416) 865-2926

Brian Kolenda (60153N) (416) 865-2897

Katie Pentney (63813A) (416) 865-2861

Tel: (416) 865-9500

Fax: (416) 865-9010

Lawyers for the Defendant,  
Metcalfe & Mansfield Capital Corp., in its  
capacity as Trustee of Devonshire Trust

BARCLAYS BANK PLC

Plaintiff

-and- METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII  
CORP. et al.  
Defendants

Court File No. CV-09-8387 00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF MATHIEU LAFLEUR-AYOTTE**

**LENCZNER SLAGHT ROYCE**  
**SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jilesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2891

Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for the defendant, Metcalfe & Mansfield  
Alternative Investments VII Corp., in its capacity as  
Issuer Trustee of Devonshire Trust

# Tab 3

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

*(Court Seal)*

BARCLAYS BANK PLC

Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
*in its capacity as Issuer Trustee of DEVONSHIRE TRUST, THE BANK OF NEW  
YORK MELLON, as Custodian, and CIBC MELLON TRUST COMPANY, in its  
capacity as Indenture Trustee*

Defendants

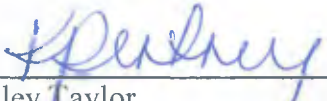
**CONSENT**

By their respective lawyers, the parties, none of whom are under disability, consent to the Order declaring the Mitigation Amount to be \$240,118,309 on the Plan Implementation Date in the CCAA Proceeding, and dismissing the action, attached as Schedule "A" hereto.

DATED AT TORONTO, ONTARIO this 3rd day of July, 2014

STIKEMAN ELLIOTT LLP

Per:

*per:*   
\_\_\_\_\_  
Ashley Taylor

Lawyers for the Plaintiff, Barclays Bank PLC

**LENCZNER SLAGHT LLP**

Per: *J. Pentney*

*per* J Thomas Curry

Lawyers for the Defendants, Metcalfe & Mansfield  
Alternative Investments VII Corp., in its capacity as  
Issuer Trustee of Devonshire Trust

**BENNETT JONES LLP**

Per: *J. Pentney*

*per* Jeffrey S. Leon

Lawyers for the Defendants, The Bank of New York  
Mellon, as Custodian

**BENNETT JONES LLP**

Per: *J. Pentney*

*per* Jeffrey S. Leon

Lawyers for the Defendants, CIBC Mellon Trust  
Company, in its capacity as Indenture Trustee



2011 (the “Trial One Judgment”) and the Order of the Court of Appeal for Ontario dated July 26, 2013 (the “Court of Appeal Order”);

**AND WHEREAS** the Court of Appeal for Ontario dismissed in part Barclays’ appeal of the Trial One Judgment but varied it in the Court of Appeal Order;

**AND WHEREAS** the Supreme Court of Canada denied Barclays’ motion for leave to appeal the Court of Appeal Order to that Court on January 16, 2014;

**AND WHEREAS** the Trial One Judgment, as varied by paragraph 2 of the Court of Appeal Order, determined that “Barclays’ Loss is \$264 million less an appropriate amount to be deducted on account or mitigation, in an amount to be agreed between the parties or to be determined by the trial judge or the judge conducting the second phase of the bifurcated trial if it takes place”;

**AND WHEREAS** Devonshire Trust has brought an Application in the Ontario Superior Court of Justice (the “CCAA Proceeding”) seeking to restructure the affairs of Devonshire Trust in accordance a Plan of Compromise and Arrangement (the “Plan”, which term shall include amendments thereto in the CCAA Proceeding);

**AND WHEREAS** the capitalized terms in this Order shall have the meanings ascribed to them in this Order, the Bifurcation Order, the Trial One Judgment, the Court of Appeal Order and the Plan and such terms not otherwise defined shall have the meanings as ascribed to them in the Agreements, the Custody Agreement, the Intercreditor Agreement or the Series A Supplemental Indenture;

**AND WHEREAS** Barclays and Devonshire Trust have agreed to consent to this Order and agreed that on the Plan Implementation Date, the appropriate amount to be deducted from Barclays’ Loss on account of mitigation is \$240,118,309, reducing Barclays’ Loss to \$23,881,691;

1. **THIS COURT:**

- (a) **DECLARES THAT**, on the Plan Implementation Date in the CCAA Proceeding, the Mitigation Amount is \$240,118,309;

- (b) **DECLARES THAT**, on the Plan Implementation Date in the CCAA Proceeding, Barclays' Loss will be \$23,881,691;
  - (c) **ORDERS AND ADJUDGES THAT**, conditional upon the occurrence of the Plan Implementation Date in the CCAA Proceeding, except as otherwise provided for in this Order, the Action and the Counterclaim are hereby dismissed, without costs;
  - (d) **ORDERS AND ADJUDGES THAT**, should a Plan Implementation Date not occur, this Order shall be void.
-



BARCLAYS BANK PLC  
Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP. et al.

Defendants

Court File No: CV-09-8387 00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers

Suite 2600

130 Adelaide Street West

Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096

Monique J. Jilesen (43092W) (416) 865-2926

Brian Kolenda (60153N) (416) 865-2897

Katie Pentney (63813A) (416) 865-2861

Tel: (416) 865-9500

Fax: (416) 865-9010

Lawyers for the Defendant,  
Metcalf & Mansfield Capital Corp., in its  
capacity as Trustee of Devonshire Trust

BARCLAYS BANK PLC

Plaintiff

-and-

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS  
VII CORP. et al.  
Defendants

Court File No. CV-09-8387 00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
*(COMMERCIAL LIST)*

PROCEEDING COMMENCED AT TORONTO

**CONSENT**

**LENCZNER SLAGHT ROYCE**  
**SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jlesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2861

Tel: (416) 865-9500

Fax: (416) 865-9010

Lawyers for the Defendant (Respondent), Metcalfe &  
Mansfield Investments VII Corp., in its capacity as  
Trustee of Devonshire Trust

# Tab 4

Court File No. CV-09-8387 00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) TUESDAY, THE 8th  
MR. JUSTICE NEWBOULD ) DAY OF JULY, 2014

BETWEEN:

**BARCLAYS BANK PLC**

Plaintiff

- and -

**METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
in its capacity as Issuer Trustee of DEVONSHIRE TRUST, THE BANK OF NEW  
YORK MELLON, as Custodian, and CIBC MELLON TRUST COMPANY, in its  
capacity  
as Indenture Trustee**

Defendants

**ORDER**

**THIS MOTION** for an Order brought by Metcalfe & Mansfield Alternative Investments VII Corp. in its capacity as Issuer Trustee of Devonshire Trust (“Devonshire Trust”) was heard on this day at the Court House, 330 University Avenue, Toronto, Ontario, in the presence of counsel for Barclays Bank PLC (“Barclays”), Devonshire Trust, CIBC Mellon Trust Company (“CIBC Mellon”), in its capacity as Indenture Trustee (the “Indenture Trustee”), and Bank of New York Mellon as Custodian (“BNY Mellon”).

**ON READING** the Affidavit of Mathieu Lafleur-Ayotte, sworn June 27, 2014 (the “Lafleur-Ayotte Affidavit”), the Consent of the parties appearing in this action, by their respective lawyers, none of whom are under disability, the submissions of the lawyers for the parties appearing in this action, and having regard to the bifurcation order made by Campbell J. on May 22, 2009 (the “Bifurcation Order”), the Judgment of this Court dated September 11, 2011 (the “Trial One Judgment”) and the Order of the Court of Appeal for Ontario dated July 26, 2013 (the “Court of Appeal Order”);

**AND WHEREAS** the Court of Appeal for Ontario dismissed in part Barclays' appeal of the Trial One Judgment but varied it in the Court of Appeal Order;

**AND WHEREAS** the Supreme Court of Canada denied Barclays' motion for leave to appeal the Court of Appeal Order to that Court on January 16, 2014;

**AND WHEREAS** the Trial One Judgment, as varied by paragraph 2 of the Court of Appeal Order, determined that "Barclays' Loss is \$264 million less an appropriate amount to be deducted on account of mitigation, in an amount to be agreed between the parties or to be determined by the trial judge or the judge conducting the second phase of the bifurcated trial if it takes place";

**AND WHEREAS** Devonshire Trust has brought an Application in the Ontario Superior Court of Justice (the "CCAA Proceeding") seeking to restructure the affairs of Devonshire Trust in accordance a Plan of Compromise and Arrangement (the "Plan", which term shall include amendments thereto in the CCAA Proceeding);

**AND WHEREAS** the capitalized terms in this Order shall have the meanings ascribed to them in this Order, the Bifurcation Order, the Trial One Judgment, the Court of Appeal Order and the Plan and such terms not otherwise defined shall have the meanings as ascribed to them in the Agreements, the Custody Agreement, the Intercreditor Agreement or the Series A Supplemental Indenture;

**AND WHEREAS** Barclays and Devonshire Trust have agreed to consent to this Order and agreed that on the Plan Implementation Date, the appropriate amount to be deducted from Barclays' Loss on account of mitigation is \$240,118,309, reducing Barclays' Loss to \$23,881,691;

1. **THIS COURT:**

- (a) **DECLARES THAT**, on the Plan Implementation Date in the CCAA Proceeding, the Mitigation Amount is \$240,118,309;
- (b) **DECLARES THAT**, on the Plan Implementation Date in the CCAA Proceeding, Barclays' Loss will be \$23,881,691;

- (c) **ORDERS AND ADJUDGES THAT**, conditional upon the occurrence of the Plan Implementation Date in the CCAA Proceeding, except as otherwise provided for in this Order, the Action and the Counterclaim are hereby dismissed, without costs;
- (d) **ORDERS AND ADJUDGES THAT**, should a Plan Implementation Date not occur, this Order shall be void.
-

BARCLAYS BANK PLC  
Plaintiff

and

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP. et al.

Defendants

Court File No: CV-09-8387 00CL

ONTARIO

SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers

Suite 2600

130 Adelaide Street West

Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096

Monique J. Jilesen (43092W) (416) 865-2926

Brian Kolenda (60153N) (416) 865-2897

Katie Pentney (63813A) (416) 865-2861

Tel: (416) 865-9500

Fax: (416) 865-9010

Lawyers for the Defendant,

Metcalfe & Mansfield Capital Corp., in its

capacity as Trustee of Devonshire Trust

BARCLAYS BANK PLC

Plaintiff

-and-

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS  
VII CORP. et al.  
Defendants

Court File No. CV-09-8387 00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE DEFENDANT**  
**METCALFE & MANSFIELD ALTERNATIVE**  
**INVESTMENTS VII CORP., IN ITS CAPACITY AS**  
**ISSUER TRUSTEE OF DEVONSHIRE TRUST**  
**(Motion returnable July 8, 2014)**

**LENCZNER SLAGHT ROYCE**  
**SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

J. Thomas Curry (25740V) (416) 865-3096  
Monique J. Jilesen (43092W) (416) 865-2926  
Brian Kolenda (60153N) (416) 865-2897  
Katie Pentney (63813A) (416) 865-2891  
Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for the Defendant, Metcalfe & Mansfield  
Alternative Investments VII Corp., in its capacity as  
Issuer Trustee of Devonshire Trust