FORTIS SETTLEMENT DISPUTE COMMITTEE
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BINDING ADVICE

under Articles 7:900 *et seq*. of the Dutch Civil Code

in accordance with Article 4.3.5 of the Settlement Agreement

in the dispute between

VAN DE PUT & CO BANQUIERS PRIVÉS SCA/Comm.VA
Van Putlei 74-76
B-2018 Antwerp, Belgium
acting as a bulk filer

hereafter referred to as the "***Claimant***"

AND

Computershare Investor Services PLC
Fortis Settlement Claims Administrator
P.O. Box 304

B-2800 Mechelen, Belgium

hereafter referred to as "***Computershare***"

together referred to as the "***Parties***"

Dispute Committee (Council of Advisors):

M. Jean-François TOSSENS
M. Marc LOTH
M. Dirk SMETS

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31 MAY 2019

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I. OBJECT OF THE PRESENT BINDING ADVICE

1. The present Binding Advice is rendered by the Fortis Settlement Dispute Committee (hereafter the ***Dispute Committee***)on the basis of the powers that have been granted to it by Article 4.3.5 of the Second Amended and Restated Settlement Agreement between the mediated parties[1], dated 13 April 2018 (the ***Settlement Agreement***).

2. The Dispute Committee was seized, by a single request dated 5 March 2019 submitted by the Claimant, with two distinct disputes involving the Parties (disputes n° 2019/0001 and 2019/0002). These disputes followed two notices of rejection issued by Computershare on 23 January 2019.

3. Considering the substantial similarities and links between the two disputes, emphasized by the choice of the Claimant to submit both disputes by means of only one request, the Dispute Committee has decided to join these two disputes and to issue one single binding advice in that respect.

4. The present Binding Advice decides on those disputes n° 2019/0001 and 2019/0002 (hereafter the ***Dispute***).

II. INTRODUCTION

A. The Parties

5. The Claimant in the Dispute is VAN DE PUT & CO BANQUIERS PRIVÉS SCA/Comm.VA, a company incorporated under the laws of Belgium, registered with the Belgian Crossroads Bank for Enterprises (*Kruispuntbank van Ondernemingen/Banque Carrefour des Enterprises*) under number 0404.501.381 and having its registered office at Van Putlei 74-76 B-2018 Antwerp, Belgium (the ***Claimant***).

6. The Claimant describes itself as a Belgian private bank, organized as a regulated credit institution in the form of a general partnership under Belgian law, offering investment services to mostly individual Belgian clients. For the purpose of the Dispute (as defined below), the Claimant acts as bulk filer, mandated by proxy, for and on behalf of clients listed and identified in an Excel file in annex to the Claimant's submission of 5 March 2019, in connection with claims numbers also listed in such annex.

7. Computershare Investor Services PLC is a company incorporated under the laws of the United Kingdom, acting as Fortis Settlement Claims Administrator and, in that capacity, having its registered office at P.O. Box 304, B-2800 Mechelen, Belgium (***Computershare***).[2]

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[1] See hereafter, para. 14.

[2] Computershare has been appointed, pursuant to Article 4.2 of the Settlement Agreement, as an independent claims administrator to handle the claims process.

B. Composition of the Dispute Committee

8. The Dispute Committee shall, in accordance with Article 3.1 of its Regulations, be composed of a panel of three of its members[3].

9. For the purpose of this particular Dispute, the three members composing the panel are: Mr Jean-François TOSSENS, chairing the Dispute Committee, Mr Marc LOTH and Mr Dirk SMETS.

C. Historical context and procedural background of the Dispute

C.1 The Events

10. Between 2007 and 2008, Fortis N.V. (after 30 April 2010, Ageas N.V.), a company incorporated under the laws of The Netherlands and Fortis S.A./N.V. (after 30 April 2010, Ageas S.A./N.V.), a company incorporated under the laws of Belgium (the ***Fortis Group*** or ***Ageas***) engaged in certain activities which, following certain allegations, would have violated Belgian and Dutch laws and regulations (the ***Events***).

11. As a result of these allegations, a number of civil claims and legal proceedings were initiated both in The Netherlands and in Belgium, among others, by the Dutch Investors' Association (VEB)[4], SICAF[5] and FortisEffect[6] (all in The Netherlands), and by Deminor[7] and a group of investors advised and coordinated by Deminor (in Belgium).

C.2 The Mediation Process

12. On 8 October 2015, a mediation process, based on a mediation agreement, was initiated between the aforementioned plaintiffs, Ageas and Stichting FORsettlement[8] (the ***Foundation***).

13. It stemmed out of that mediation process that, without admitting that it would have been or is engaged in any wrongdoing, that any laws, rules or regulations would have been violated or that any person who held any shares in the Fortis Group in 2007 or 2008 would have suffered any compensable damage, Ageas was willing to settle all claims which any person who held any share in the Fortis Group at any time between 28 February 2007 c.o.b.[9] and 14 October

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3 "*3.1 The Dispute Committee shall consist of three or more independent members, appointed by the Foundation. Each matter coming before the Dispute Committee shall be decided by a panel of three members. If the Dispute Committee is composed of more than three members, they shall decide which three of them sit in any particular matter* (…)."

4 *Vereniging van Effectenbezitters*, an association incorporated under the laws of The Netherlands, having its registered office in The Hague, The Netherlands and registered under number 40408053 (***VEB***).

5 *Stichting Investor Claims Against FORTIS*, a foundation incorporated under the laws of The Netherlands, having its registered office in Amsterdam, The Netherlands and registered under number 50975625 (***SICAF***).

6 *Stichting FortisEffect*, a foundation incorporated under the laws of The Netherlands, having its registered office in Utrecht, The Netherlands and registered under number 30249138 (***FortisEffect***).

7 *DRS Belgium CVBA*, a cooperative company with limited liability, incorporated under the laws of Belgium, having its registered office in Brussels, Belgium and registered with the Crossroads Bank for Enterprises under number 0452.511.928 (***Deminor***).

8 A foundation incorporated under the laws of The Netherlands, having its registered seat in Amsterdam, The Netherlands and having as registration number 65740599.

9 According to Schedule 1 to the Settlement Agreement, c.o.b. means the moment trading closed on the stock exchanges of Amsterdam or Brussels as relevant on the relevant date.

2008 c.o.b. (the ***Eligible Shareholders***) has had, now has or may have in the future against Ageas in connection with the Events.

C.3 The Settlement Agreement

14. The above agreement has since then been embedded in a formal settlement on 13 April 2018, *i.e.* the Settlement Agreement. Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (part of the Settlement Amount[10]), the allocation of which is to be supervised by a Claims Administrator and a Dispute Committee. The Settlement Agreement was declared binding on 13 July 2018 by ruling of the Amsterdam Court of Appeal.

15. Computershare has been appointed by the Foundation as Fortis Settlement Claims Administrator. It is charged with making an independent assessment of whether or not someone who files a claim form is entitled to compensation under the Settlement Agreement and to pay, on behalf of Ageas, compensation to Eligible Shareholders who filed a claim form for a valid claim.

C.4 The Dispute Committee

16. A Dispute Committee was also established under the Settlement Agreement (see, its Article 4.3.5). According to that Article, Eligible Shareholders may submit disputes to the Dispute Committee "*for final and binding resolution by way of a binding advice (bindend advies) under Dutch Law*".

17. The binding advice which the Dispute Committee shall issue in accordance with the above is a specific form of dispute resolution provided by Article 7:900 of the Dutch Civil Code by which the parties to a dispute entrust a third party to settle such dispute. In accordance with Article 4.17 of the Regulations of the Dispute Committee, such binding advice should be rendered in accordance with Dutch law, the provisions of the Settlement Agreement and the Regulations of the Dispute Committee and, if relevant, in accordance with other rules of law or any applicable trade usages which the Dispute Committee considers appropriate in view of the nature of the Dispute. The applicability of Dutch law is moreover the governing law of the Settlement Agreement (Article 10.1 of the Settlement Agreement).

18. The Regulations of the Dispute Committee, that rule the functioning of the Dispute Committee and the procedure before it, are publicly available[11].

C.5 Scope of the Binding Advice

19. It is the understanding of the Dispute Committee that it is entrusted to ensure uniform application of the Settlement Agreement and the principles contained therein, *i.e.* to resolve interpretation issues that may arise in the framework of the distribution of the Settlement Amount. However, the scope of the Dispute Committee's decisions shall not extend to a review of the particular calculations and/or of the exactitude of such calculations.

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10 As defined in Article 4.1.1 of the Settlement Agreement.

11 The Regulations of the Dispute Committee can be consulted at https://www.forsettlement.com/pdf/Regulations_Dispute_Committee_E.pdf?v=1.3.6.

III. SUMMARY OF THE DISPUTE

20. The Claimant submits two disputes to the Dispute Committee (see, paragraphs 1 and 3 above).

21. First, the Claimant submits 25 claims in which it disputes the part of the Settlement Amount[12] allocated by Computershare to its clients. According to the Claimant, Computershare calculated the Compensation add-on[13] for these claims on a person-by-person basis while the Compensation add-on for all the remaining claims had been calculated on an account-by-account basis. Those 25 claims relate to accounts the holders of which were also the (joint) holders of one or several other accounts and, therefore, such method of calculation is detrimental to those holders' interests, the Claimant contends.

22. Second, and notably in view of the exchanges it had with Computershare regarding its first set of claims, the Claimant files 66 other claims. These claims relate mostly to joint accounts, the joint-account holders of which were allocated a unique Compensation add-on per account by Computershare. In that respect, the Claimant sustains that, for the sake of consistency with the above and provided that Computershare was indeed right to consider that the Compensation add-ons had to be calculated on a person-by-person basis, this method of calculation should have been used for these 66 claims as well. In such a case, the Compensation add-ons would have been calculated in a more beneficial way, *i.e.* each joint-account holder benefitting from its own Compensation add-on (and cap).

23. In addition, three claims, which were included in both the 25 claims of the first dispute and the 66 claims of the second dispute, appear to have been treated simultaneously under both calculation methods, according to the Claimant. The joint-account holders concerned would apparently have been allocated together a single Compensation add-on that did not reach the EUR 950 cap because their (co-)ownership of other accounts had been taken into consideration for its calculation.

24. It stems from the above submitted claims that the Parties are essentially in dispute about Computershare's interpretation of the notion of "Eligible Shareholder" and, as a consequence, about the calculation method to be used when determining the Compensation add-on each Eligible Shareholder is entitled to pursuant to Article 3.1 of the Settlement Distribution Plan (attached as Schedule 2 of the Settlement Agreement), and the associated cap of EUR 950, especially in the situation where joint accounts are involved.

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12 Within the meaning of Article 4.1 of the Settlement Agreement.

13 As provided for by Article 3.1 of the Settlement Distribution Plan (attached as Schedule 2 to the Settlement Agreement). That Article reads as follows: "*Eligible Shareholders will be entitled to an **additional compensation** of EUR 0.50 per Fortis Share held, with a **maximum of EUR 950** per Eligible Shareholder, whereby the number of Fortis Shares held shall be the highest number held at any time by such Eligible Shareholder in the period 28 February 2007 c.o.b. through 14 October 2008 c.o.b., regardless of whether such Eligible Shareholder is entitled to other compensation* [...]".

IV. HISTORY OF THE PROCEEDINGS

25. On 14 September 2018, the Claimant, acting for and on behalf of its clients, filed a bulk file seeking obtention of parts of the Settlement Amount.

26. On 18 December 2018, Computershare notified the Claimant of its decision with respect to the claims contained in this first bulk file.

27. On 24 December 2018, the Claimant filed a first Notice of Disagreement (the ***First Notice of Disagreement***) against the treatment by Computershare of 25 claims. Indeed, the Claimant had observed that, for these claims, calculation of the Compensation add-on had been made by Computershare on a person-by-person basis. In that respect, the Claimant contended that (i) the calculation ought to have been done on an account-by-account basis[14] and that (ii) the calculation method used by Computershare was moreover not applied consistently to the other claims it submitted. Indeed, had that been the case, at least 195 of the already filed claims should have been subject to higher Compensation add-ons.

28. On 29 December 2018, Computershare replied informally to that First Notice of Disagreement. It emphasized that it had received explicit guidance from the Foundation that an Eligible Shareholder should be determined on an entity/person basis and not on an account basis. Therefore, it held, the Compensation add-on (and its EUR 950 cap) should be calculated on that same basis, regardless of the number of accounts held by the Eligible Shareholder concerned. In its reply, Computershare also underlined that this method had been applied consistently.

29. On 07 January 2019, the Claimant reiterated its view that the calculation method had not been consistent. Moreover, the Claimant issued a second Notice of Disagreement (the ***Second Notice of Disagreement***) highlighting that if a person-by-person calculation method was to be used – as claimed by Computershare – then an additional 66 treated claims (3 of which were also listed in the First Notice of Disagreement) had to be revised. The Claimant was indeed of the opinion that this calculation method would entail a higher Compensation add-on for those of its clients concerned by the claims contained in that second bulk file.

30. On 14 January 2019, Computershare clarified the informal response it gave to the First Notice of Disagreement. In particular, it restated that the Compensation add-on was to be calculated per Eligible Shareholder, regardless of the number of accounts held, and that the *per capita* calculation basis was construed on the definition of Eligible Shareholder as contained in the Settlement Agreement. Computershare furthermore elaborated on the Second Notice of Disagreement and explained with respect to the 66 claims concerned that it had been confirmed that the intention of the Settlement Agreement was to allocate only one Compensation add-on per joint account. It added that it received guidance from the Foundation that investment funds without legal personality and consisting of distinct entities from an accounting or regulatory perspective should nevertheless be considered as distinct Eligible Shareholders entitled to their own EUR 950 cap. On that basis, Computershare

[14] The Claimant highlighted that a calculation on a person-by-person basis was detrimental to its clients (holders of the accounts concerned) since they were joint holders of multiple joint accounts.

confirmed that the claims contained in both the First and Second Notices of Disagreement were not eligible for additional compensation.

31. On the same day, the Claimant confirmed its disagreement with the above analysis and stressed that (i) as joint owners of shares were not to be considered distinct entities – there was therefore no difference between the claims contained in the First and in the Second Notices of Disagreement – the inconsistency in treatment of those claims was not legally justified, and (ii) it would appreciate being granted access to the additional guidance Computershare relied on for its analysis.

32. On 23 January 2019, Computershare issued two Rejection Notices (the ***Rejection Notices***) in response to the First and Second Notices of Disagreement issued by the Claimant, as both positions could not be reconciled.

33. On 5 March 2019, the Claimant submitted two recourses to the Dispute Committee against these Rejection Notices.

34. On 13 March 2019[15], the Dispute Committee acknowledged receipt of the claims and notified Computershare of their existence and content. Computershare was also invited by the Dispute Committee to submit, by 2 April 2019, all comments, factual background, references, guidelines and any other element that it may deem relevant for the decision.

35. On 14 March 2019, the Dispute Committee sent to Computershare the documents attached to the submitted claims that it had already received from the Claimant, in accordance with Article 4.8 of the Regulations of the Dispute Committee.

36. On 2 April 2019, Computershare communicated its observations.

37. On 3 April 2019, the Claimant circulated a reply to Computershare's observations, essentially asking for additional documentary evidence to be provided and further information on the Dispute Committee's composition and on the procedural calendar.

38. By letter of 5 April 2019, the Dispute Committee fixed the following procedural calendar:

- Computershare to submit any documentation it deems appropriate in response to the Claimant's request of 3 April, by Wednesday 10 April 2019;
- The Claimant to submit any comment on Computershare's response and additional information provided, as the case may be, by Friday 26 April 2019; and
- Both Parties be invited to participate in a hearing on Friday 17 May 2019.

39. On 10 April 2019, Computershare submitted the requested documentation and, on 12 April 2019, the Claimant submitted its comments on Computershare's communication.

[15] The letters of acknowledgment of receipt and notification, sent as email attachments, are, due to a clerical error, dated 12 March 2019 instead of 13 March 2019, the day on which they were sent.

40. The hearing was held on 17 May 2019 at Prof. Cobbenhagenlaan 221, School of Law, in Tilburg, The Netherlands, in the presence of:

- The panel members composing the Dispute Committee: Mr Jean-François TOSSENS, chairing the Dispute Committee, Mr Marc LOTH and Mr Dirk SMETS;
- Mrs Katherine ELLIS and Mrs Kirsten VAN ROOIJEN on behalf of Computershare;
- Mr Nicolas VAN DE PUT and Mr Alexis VAN DE PUT on behalf of the Claimant; and
- Mrs Lily KENGEN, exercising the function of administrative secretary of the Dispute Committee with the agreement of the Parties.

41. At the hearing, the Parties were reminded of the confidential nature of these proceedings. The Parties confirmed that they would abide by such confidentiality. The Parties were also informed that the Binding Advice to be issued may be published, on an anonymized basis. The Parties also agreed with such potential publication.

42. At the end of the hearing, the Parties confirmed that they had no further request or remarks on the proceedings and that they had ample opportunity to present their case and to submit supporting documentation.

V. POSITIONS OF THE PARTIES

A. Position of the Claimant

43. The Claimant filed two bulk files of claims on two different mutually exclusive grounds.

44. For the first bulk file of 25 claims[16], the Claimant contended that "*the Claims Administrator calculated the Compensation add-on on a person-by-person basis, by reducing the fraction of the Compensation add-on for the same person present in different claims, while for most other claims the Claims Administrator calculated on an account-by-account basis, without applying reductions to Compensation add-on fractions of persons present in several claims*". The Claimant submits this contestation based on "*clear guidance discussed extensively during the FORsettlement preparatory works* […] *with financial institutions*".

45. For the second bulk file of 66 claims, the Claimant claimed that "*These claims concerned larger ordinary joint-accounts held by more than one person where a consistent calculation on a person-by-person basis would have yielded a higher Compensation add-on than 950 EUR per claim, because the Fortis Shares referenced in the Claim were clearly held by more than one person"*. The Claimant submits this contestation based on Computershare's reply "*to the Notice of Disagreement that in the end no account-by-account basis should be used and that a person-by-person basis was (to be) used consistently* […]".

46. The Claimant indicated that it has always been its position that a person-by-person calculation basis was the only adequate solution and that "*any inclusion of the 'account' -dimension of shareholding in the calculation is not warranted by the Settlement Agreement*"[17]. The Claimant even explained during the hearing of 17 May 2019 that, would the Dispute Committee accept

16 Claims concerned by the First Notice of Disagreement.

17 See, the Claimant's communication of 12 April 2019, p. 2.

its second recourse, it should reject its first recourse, as a person-by-person basis is, in its view, the correct calculation method for the Compensation add-on and the associated cap of EUR 950.

47. With respect to Computershare's allegation that its application of the Settlement Agreement for claims related to joint accounts (see, para. 56 *infra*) actually corrected the inequitable consequences of a person-by-person calculation, the Claimant contended that such application by Computershare created, in itself, an inequitable and illogical situation.

In particular, the Claimant referred to the following example: if two people each own 1.000 shares, held on separate accounts, each of these persons would be entitled to a Compensation add-on of EUR 500 (1.000 x 0.5). The total Compensation add-on for these two persons would therefore equal to EUR 1.000. However, if those persons would have decided to gather all their shares together on one joint account (with a total of 2.000 shares), Computershare's calculation would result in a lesser total capped Compensation add-on of EUR 950 for both shareholders.

48. The Claimant also argued that Computershare's practice was in fact not driven by equity considerations, but rather by "*easiness of treatment*" considerations. Notably, the Claimant explained that the application of the account-by-account calculation basis for joint accounts by Computershare was mainly to accommodate the standardized (and broad) character of the forms the latter used for the filing of claims which are meant to facilitate an integrated processing of such claims.

49. The Claimant also contended that, contrary to what was argued by Computershare, the purpose/*rationale* of the Compensation add-on was to compensate the smaller shareholders for filing claims despite not holding a large number of shares. Such purpose fits with a person-by-person calculation.

50. Finally, the Claimant indicated that the content of the Settlement Agreement could only be interpreted, provided that this would be necessary, in light of its wording as embedded by the Amsterdam Court of Appeal and not in light of the settling parties' intention as argued by Computershare. Indeed, because the Settlement Agreement had been subject to judicial review and approval, the intention of the settling parties had to bow down before such court's interpretation. On that basis, the Claimant claimed that the only solution reconcilable with such wording was that of a person-by-person calculation basis for the Compensation add-on.

In that respect, the Claimant also argued that the fact that Guidance note n°9 had been vetoed by the VEB (see, para. 74 *infra*) was irrelevant and could not be interpreted as an assumption of a hypothetical common will of the settling parties that would support Computershare's account based interpretation.

B. <u>Position of Computershare</u>

51. Computershare's position with respect to the first bulk file of claims is that calculation of the Compensation add-on on a person-by-person basis was the correct treatment and that, therefore, Computershare properly calculated the EUR 950 Compensation cap across the Claimant's claims.

52. With respect to the second bulk file of claims, Computershare claimed that "*each Eligible Shareholder in a two person joint-account is only entitled 50% of the jointly held shares and therefore 50% of the EUR 950 cap*". Computershare moreover holds that it was correct in applying "*the full EUR 950 cap across both joint-account holders combined*".

53. Computershare indicated that the calculation method it used for the second bulk file of claims and with respect to joint accounts in general constituted an interpretation of the principles contained in the Settlement Agreement which was determined by overarching equity and fairness considerations. Such an interpretation aimed at guaranteeing fairness, equity and an equitable treatment of all claims. These values, according to Computershare, were clearly reflected as important guidelines by the Amsterdam Court of Appeal's rulings.

54. Computershare also expressed its view that this interpretation was consistent with the purpose served by the Compensation add-on, *i.e.* to compensate for specific events not covered by the initial compensation. Such compensation should thus be proportionate to the harm suffered by the shareholders and, therefore, to the number of shares held.

    Computershare brought forward the example of two people jointly holding 3.000 shares, bought for a price of EUR 5.000. According to Computershare, the damage suffered by both shareholders is identical to the damage suffered by one single shareholder also holding 3.000 shares worth the same amount. Both the joint account holders, on the one hand, and the single shareholder, on the other hand, lost the equivalent of EUR 5.000. Therefore, awarding a larger portion of the Settlement Amount to the joint account holders than to the single shareholders, where the harm is identical, would be unfair and would, according to Computershare, constitute a misapplication of the Settlement Agreement.

55. Finally, Computershare underlined that its interpretation was also in line with the intent of the settling parties. In that respect, Computershare pointed out that the VEB had expressly vetoed Guidance note n°9 because it had "*always assumed that the EUR 950 is paid only once per joint account*". This veto, combined with the absence of reaction of the other settling parties, would, according to Computershare, support its interpretation insofar as it constitutes the only reliable indication of the settling parties' intention with respect to calculation of the Compensation add-on.

56. As a consequence, Computershare held, it generally applied the person-by-person calculation basis, except with respect to situations of joint accounts where it found that it was entitled to interpret the Settlement Agreement beyond its wording in light of the above and to apply a single EUR 950 cap to all joint-account holders combined.

VI. DISCUSSION AND FINDINGS

A. The question submitted

57. The question submitted by the Claimant to the Dispute Committee concerns in essence the method that should be used by Computershare to treat claims based on joint accounts and, in particular, the method that should be used by Computershare to calculate the Compensation add-on and the associated cap provided by Article 3.1 of the Settlement Distribution Plan (attached as Schedule 2 to the Settlement Agreement) with respect to such joint accounts.

58. The Dispute Committee understands that the answer to the latter question will resolve the Dispute in its entirety and provide Computershare with all information necessary for it to treat claims such as those at issue.

B. The reasoning of the Dispute Committee and the principles of Dutch law

59. The Dispute Committee will follow the following steps in its reasoning:

It will first examine the wording of the Settlement Agreement and determine whether its terms provide for an answer to the issue to be decided (hereafter C).

It will then address the fairness and equity considerations raised by the Parties and determine what influence, if any, such considerations should have on the issue to be decided (hereafter D).

Finally, it will examine what considerations should be drawn from a further analysis of the intent of the Parties and of the reasons for the Compensation add-on and the associated cap, to the extent that such intent and such reasons can be identified (hereafter E).

Such reasoning and the conclusions that will be drawn from the Dispute Committee's findings are in conformity with the principles of Dutch law regulating interpretation of contracts.

60. These principles can be summarized as follows. According to established case law of the Hoge Raad, the regulation of the legal relationship between contracting parties to a written contract is not just dependent on a literal interpretation of the words used. Rather, it is dependent on the meaning the parties mutually could reasonably have attributed to the words used, and the expectations they could have reasonably based upon that understanding[18]. However, in case of collective agreements such as collective labor contracts – which are negotiated between representatives of the parties, and which have important legal consequences for many individuals not involved in the negotiations – the words of the contract – interpreted in the light of the whole agreement – are in principle decisive[19]. This is not an opposition, but a fluent scale. In any case, the interpretation of a written contract is dependent on all circumstances of the case, to be evaluated according to standards of equity and reasonableness[20].
Within this framework, the meaning of the words used the Settlement Agreement – as understood in the context of the whole agreement – carries special weight as a starting point

18 HR 13 March 1981, NJ 1981/635 (*Haviltex)*.
19 HR 17 and 24 September 1993, NJ 1993/173, 174 (*Gerritse/Has*).
20 HR 20 December 2004, ECLI:NL:HR:AO:1427 (*DSM/FOX*).

in the interpretation of such Settlement Agreement. This is not only because the Settlement Agreement has important legal consequences for many shareholders not individually involved in its negotiation, but also because it is the text of the Settlement Agreement that has been approved by the Amsterdam Court of Appeal. However, this does not exclude that, ultimately, the interpretation of the Settlement Agreement in specific cases would depend on all the circumstances of the case, to be evaluated according to principles of equity and reasonableness.

C. The terms of the Settlement Agreement

61. The answer to the disputed question should thus first and foremost be based on the provisions of the Settlement Agreement. The Settlement Agreement is the primary source of rules governing the allocation of the Settlement Amount to the Eligible Shareholders, including calculation of the Compensation add-on at issue.

In that respect, Article 3.1 of the Settlement Distribution Plan (attached as Schedule 2 to the Settlement Agreement) provides that: "*Eligible Shareholders will be entitled to an additional compensation of EUR 0.50 per Fortis Share held, with a maximum of EUR 950 per Eligible Shareholder, whereby the number of Fortis Shares held shall be the highest number held at any time by such Eligible Shareholder in the period 28 February 2007 c.o.b. through 14 October 2008 c.o.b., regardless of whether such Eligible Shareholder is entitled to other compensation* [...]".

62. Entitlement to the Compensation add-on provided by Article 3.1 of the Settlement Agreement is therefore explicitly recognized for each Eligible Shareholder.

63. According to Recital H of the Settlement Agreement, an Eligible Shareholder is "*any person* [21] *who held Fortis Shares at any time between 28 February 2007 c.o.b. and 14 October 2008 c.o.b.*".

64. As a consequence, it results from the terms of the Settlement Agreement that any person who held Fortis Shares at any time between 28 February 2007 c.o.b. and 14 October 2008 c.o.b. is entitled to its Compensation add-on. The fact that such a person would hold different, including joint, accounts is irrelevant on the basis of the above definition.

Based on the terms of the Settlement Agreement, the calculation of the Compensation add-on, including the associated EUR 950 cap, should therefore be based on a person-by-person approach, on the basis of the shares held by the said person, regardless of the account(s) on which those shares are held.

D. Fairness and equity considerations

65. It was brought forward by Computershare that the above calculation method, applied to joint accounts, while consistent with a literal interpretation of the Settlement Agreement, could not be reconciled with fairness and equity principles [22].

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21 Underlined by the Dispute Committee

22 See above, para. 53.

Computershare is of the view that, should the amount of the compensation not be directly proportionate to the damage suffered, such compensation would inevitably give rise to inequitable treatment between the different shareholders.

That is why, according to Computershare, in the presence of joint accounts, the Settlement Agreement should be reasonably interpreted in such a way that the Compensation add-on and the cap should be calculated on an account-by-account basis, irrespectively of the number of holders of the shares held on such account.

66. The Dispute Committee does not share the view of Computershare in that respect. It is to be noted that the Settlement Agreement entitles each Eligible Shareholder to receive an additional compensation (i) on the basis of the number of shares he/she holds, be it on a joint-account or on an individual account (ii) until reaching a certain cap, fixed at EUR 950 per person. The compensation is thus, to a certain extent, linked to the number of shares held and, therefore, to the damage suffered, subject only to the application of a cap.

67. This cap does not have the effect in itself of rendering the compensation unfair or inequitable. By definition, a cap sets a limit to the compensation. If the compensation is calculated by reference to the number of shares held by the relevant shareholders, which is the case of the Compensation add-on at stake, the cap to such add-on generates in itself a derogation to a compensation strictly proportionate to the number of shares. This shows, whatever the reasons for such cap may be, that the parties to the Settlement Agreement have accepted, to some extent, a derogation from the strict proportionality of compensation to the number of shares. For individual accounts, it is indeed not disputed that the same cap of EUR 950 applies to an Eligible Shareholder holding 5.000 shares on his individual account as well as to another Eligible Shareholder who holds 7.000 shares on his individual account.

This means that, through the application of a cap to the Compensation add-on, the parties to the Settlement Agreement pursued equitable considerations under another form than through the proportionality of compensation to the number of shares.

In other words, the mere assessment that the application of the provisions of the Settlement Agreement results in a compensation that is not always strictly proportionate to the number of shares held does not make these provisions and their application inequitable.

68. This finding is reinforced by the circumstance that the Settlement Agreement has been approved by the Amsterdam Court of Appeal which ruled that it did not contain any provision that should be rejected on the basis of considerations of equity.

69. Moreover, the Dispute Committee believes that, in the absence of such explicit powers, Computershare has not been recognized a discretionary authority to make diverging applications of the same terms of the Settlement Agreement on a case-by-case basis, depending on its own subjective appreciation of the concept of equity.

The various examples of calculation put forward by the Parties have evidenced that it is sometimes hard to define unequivocal views on what should be in practice an equitable

treatment of parties in all circumstances. This reinforces the caution with which any attempt to depart from the clear wording of the Settlement Agreement should be taken.

70. As a conclusion, it is the Dispute Committee's opinion that no convincing considerations of equity support Computershare's application of one single cap per account in presence of joint accounts.

E. The intent of the Parties

71. Computershare brought forward that its suggested interpretation was more consistent with the initial purpose served by the Compensation add-on, *i.e.* to compensate for specific events not covered by the initial compensation, which should reinforce, in its view, the need for an interpretation of the Settlement Agreement that is always consistent with the principle of strict proportionality of the compensation to the number of shares.

72. Clearly, the purpose of the Compensation add-on is debated among the Parties and cannot be ascertained from the evidence submitted. The Dispute Committee can only refer to its previous assessment that it must be presumed that the settling parties had valid reasons to enter into the Settlement Agreement in its terms, as approved by the Amsterdam Court of Appeal.

73. Moreover, the calculation method based on a person-by-person basis, including in the presence of joint accounts, is consistent with Guidance note n°8 which provides that "*as a general rule also, Computershare may consider that claimants who bear different names are different persons and are each entitled to a separate cap of EUR 950*" and that "*an Eligible Shareholder is defined as a 'person' (recital H) and one person therefore constitutes one Eligible Shareholder. Section 3.1 of the Settlement Distribution Plan expressly provides for 'a maximum of EUR 950 per Eligible Shareholder"*.

74. The person-by-person calculation method with respect to joint accounts is also provided by Guidance note n°9.

The fact that such Guidance note has been vetoed by one settling party, the VEB *in casu*, has as consequence that its content cannot be considered as reflecting *ipso facto* the common interpretation of the Settlement Agreement by the settling parties and is thus not binding on Computershare. It does not mean however that the veto of one settling party to that Guidance note is a valid indication of the common will of the parties that should prevail on the silence of the other settling parties about the same Guidance note. Even if the Dispute Committee does not find itself bound by the Guidance notes and enjoys by the terms of the Settlement Agreement an autonomous power of deciding on the meaning of its terms, this does not prevent the Dispute Committee from ruling that any Guidance note provides in fact a rightful application and interpretation of the principles contained in the Settlement Agreement. It is in this case the Dispute Committee's decision that Guidance note n°9 should be endorsed.

75. It is therefore the Dispute Committee's opinion that there is no convincing indication of a common intent of the settling parties that would depart from the clear meaning of the Settlement Agreement, as identified from its terms by the Dispute Committee (see, para. 61 to 64 *supra*). Such opinion is reinforced by the consideration that the terms of the Settlement Agreement have been approved by the ruling of the Amsterdam Court of Appeal.

F. Conclusion

76. Consequently to the above, the Dispute Committee rules that Computershare rightly calculated the Compensation add-on, for the first bulk file of claims, on a person-by-person basis since that calculation method is in line with the provisions of the Settlement Agreement.

77. For the specific case of joint accounts, the same approach should be followed. This means that joint-account holders should each be considered entitled to their own Compensation add-on and to their separate cap of EUR 950, since these joint-account holders are different persons and consequently different Eligible Shareholders within the meaning of Recital H.

This Compensation add-on should be calculated on the basis of the number of shares owned by each of these Eligible Shareholders holders of a joint account, typically 50 % of the joint-account shares if the account is held by two joint-holders, and any other number of shares owned solely by the Eligible Shareholder.

Computershare was consequently incorrect in applying "*the full EUR 950 cap across both joint-account holders combined*" for the second bulk file of claims.

VII. BINDING ADVICE IN LIGHT OF THE ARGUMENTS PRESENTED BY THE PARTIES AND FOR THE ABOVE-MENTIONED REASONS, THE DISPUTE COMMITTEE DECIDES AS FOLLOWS:

- The Compensation add-on, as provided for by Article 3.1 of the Settlement Distribution Plan (attached as Schedule 2 to the Settlement Agreement), shall be **granted to each Eligible Shareholder**, in proportion of the shares he/she holds, and not on an account-by-account basis;

- An Eligible Shareholder – within the meaning of the Settlement Agreement – shall be **any natural or legal person** who held any share in the Fortis Group at any time between 28 February 2007 c.o.b. and 14 October 2008 c.o.b., regardless of whether or not the account on which those shares were held is an individual or joint account;

- The Compensation add-on should be capped, in accordance with Article 3.1 of the Settlement Distribution Plan (attached as Schedule 2 to the Settlement Agreement), at EUR 950 per Eligible Shareholder, meaning that **each Eligible Shareholder** as defined above – whether he/she is the holder of an individual or joint account, or both – is entitled to calculation of **his/her own cap** taking into account the shares he/she holds;

- The **number of shares** to be taken into account for calculation of the Compensation add-on shall be the sum of all shares (regardless of whether or not those shares are held on one or several accounts) of which the Eligible Shareholder concerned is the **holder**, i.e. all shares held on an individual account and/or, for joint accounts, the proportion of the shares held on such account that can be considered property of the Eligible Shareholder concerned in light of the ownership regime applicable to those jointly held shares.

Consequently, Computershare is invited to recalculate the distributed amounts in accordance with the present Binding Advice and to re-allocate to each Eligible Shareholder represented by the Claimant, as the case may be, any outstanding part of the Settlement Amount that it would be entitled to on the basis of the above and to claim back any excess of the Settlement Amount that would have been unduly allocated on that same basis.

This Binding Advice is issued in 7 original copies, one for each of the Parties, one for the Foundation and one for each of the members of the Dispute Committee.

Done in Tilburg, on 31 May 2019

The Dispute Committee (Council of Advisors):

Mr Marc Loth

Mr Dirk Smets

Mr Jean-François Tossens