FORTIS SETTLEMENT DISPUTE COMMITTEE
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BINDING ADVICE

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

in accordance with Clause 4.3.5 of the Settlement Agreement

IN THE DISPUTE BETWEEN

[redacted] acting as attorney-in-fact of [redacted] ([redacted])

Represented by Mr [redacted]

Hereafter referred to as the "***Claimant***" or "[redacted]"

AND

Computershare Investor Services PLC
Fortis Settlement Claims Administrator

Represented by Mr Stan Putter

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

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

IN THE PRESENCE OF

Stichting FORsettlement

Represented by Ms Margriet de Boer

hereafter referred to as the "***FORsettlement***"

The Dispute Committee:

Mr Harman Korte
Mr Dirk Smets
Mr Jean-François Tossens

20 MAY 2021

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I. INTRODUCTION

A. The Parties

1. The Claimant in this dispute is [redacted] acting as attorney-in-fact of [redacted], with its registered address at [redacted] (USA). For the purpose of this dispute, the Claimant is represented by its counsel Mr [redacted].

2. 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 PO Box 82 The Pavilions Bridgwater Road Bristol BS99 7NH, United Kingdom (***Computershare***)[1]. For the purpose of this dispute, Computershare is represented by its counsel Mr Stan Putter.

B. Stichting FORsettlement

3. Stichting FORsettlement is a foundation under Dutch law with its registered address at Prins Bernhardplein 200, 1097 JB Amsterdam (The Netherlands) (***FORsettlement***). For the purpose of this dispute, FORsettlement is represented by its counsel Ms Margriet de Boer.

4. On 23 December 2020, FORsettlement was invited to submit observations in the dispute.

C. Composition of the Dispute Committee

5. The Dispute Committee is composed of five members[2]. In accordance with Article 3.1 of its Regulations, "*Each matter coming before the Dispute Committee shall be decided by a panel of three members*"[3].

6. For the purpose of this particular dispute, the three members composing the panel are: Mr Harman Korte, Mr Dirk Smets and Mr Jean-François Tossens (Chairman).

D. Historical context and procedural background of the Dispute

D.1 The Events

7. 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

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1 Computershare has been appointed, pursuant to Clause 4.2 of the Settlement Agreement, as an independent claims administrator to handle the claims process.

2 The Dispute Committee is composed of the following members: Ms Henriëtte Bast (as from 30 April 2021), Mr Harman Korte (as from the origin), Ms Alexandra Schluep (as from 30 April 2021), Mr Dirk Smets (as from the origin) and Mr Jean-François Tossens (as from the origin). Mr Marc Loth was also a member of the Dispute Committee as from the origin and until 18 November 2020.

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* […]."

certain activities which, following certain allegations, would have violated Belgian and Dutch laws and regulations (the ***Events***).

8. 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).

D.2 The Mediation Process

9. On 8 October 2015, a mediation process, based on a mediation agreement, was initiated between the aforementioned plaintiffs, Ageas and FORsettlement[8].

10. 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 2008 c.o.b. (the ***Eligible Shareholders***) has had, now has or may have in the future against Ageas in connection with the Events.

D.3 The Settlement Agreement[10]

11. The above agreement has since then been embedded in a formal settlement on 13 April 2018 between Ageas SA/NV, Vereniging van Effectenbezitters, DRS Belgium CVBA, Stichting Investor Claims Against FORTIS, Stichting FortisEffect and Stichting FORsettlement (the ***Settlement Agreement***)[11]. Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (part of the Settlement Amount), 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.

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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.

10 The Settlement Agreement can be consulted on FORsettlement's website at: www.forsettlement.com.

11 Unless otherwise specified in this Binding Advice, the capitalized terms shall have the same meaning as those terms defined in the Settlement Agreement.

12. 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.

D.4 The Dispute Committee

13. A Dispute Committee was also established under the Settlement Agreement (see, its Clause 4.3.5). According to that Clause, 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*".

14. 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 (the ***DCC***) 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 (Clause 10.1 of the Settlement Agreement).

15. The Regulations of the Dispute Committee, that rule the functioning of the Dispute Committee and the procedure before it, are publicly available[12].

II. HISTORY OF THE PROCEEDINGS

16. On 2 December 2020, the Claimant submitted a "*Submission of objections"* before the Dispute Committee against a Notice of Rejection issued by Computershare on 21 October 2020. The Claimant attached its exhibits 1 to 20.

17. On 4 December 2020, Computershare requested that the deadline for it to submit its observations of this dispute would not be set before 27 January 2021, notably in view of the holiday period and volume of the exhibits and submissions.

18. On the same date, Computershare was invited by the Dispute Committee to submit its observations by 27 January 2021.

19. On 22 December 2020, the Claimant indicated that the deadline granted to Computershare to submit its observations was considerably long and urged the Dispute Committee to ensure an expedient treatment of the dispute. The Claimant also highlighted that it was informed by FORsettlement that the latter intended to file observations in this dispute.

[12] The Regulations of the Dispute Committee can be consulted on FORsettlement's website at: www.forsettlement.com.

The Claimant therefore requested the Dispute Committee to (i) set a deadline for FORsettlement's own submission before 27 January 2021 and (ii) order FORsettlement to clarify, by 27 December 2020, whether it intends to intervene in the proceedings.

20. On 23 December 2020, the Dispute Committee acknowledged receipt of the Claimant's communication of 22 December 2020 and invited FORsettlement to confirm, by 4 January 2021, its intention to intervene in the dispute and, in the affirmative, to submit its request for intervention by 8 January 2021 at the latest.

21. On 4 January 2021, FORsettlement confirmed that it intended to submit observations in this dispute.

22. On 8 January 2021, FORsettlement submitted its observations and requested the Dispute Committee to admit such observations.

23. On 27 January 2021, Computershare filed its submissions together with its exhibits 1 to 21 and legal authorities 1 to 18.

24. On 8 February 2021, the Claimant requested to be granted an opportunity to respond to FORsettlement and Computershare's submissions, at a term of four weeks.

25. On the same date, Computershare indicated having no objection to the Claimant's request, including the suggested deadline, *i.e.* four weeks as of Computershare's submissions, provided that Computershare would also be granted an equal opportunity to respond should it deem it necessary.

26. On 9 February 2021, FORsettlement also indicated having no objection to the Claimant's request, including the suggested deadline in the terms as understood by Computershare.

27. On the same date, the Claimant clarified that the four weeks deadline proposed in its e-mail of 8 February 2021 would have to be calculated as from the Dispute Committee's instruction and not as from Computershare's submission.

28. On the same date, the Dispute Committee acknowledged receipt of the Parties' communications and invited the Claimant to submit its submission by 9 March 2021. It also indicated that, upon receipt of such submission, FORsettlement and Computershare would have the opportunity to submit a rebuttal, the term of which would be determined by the Dispute Committee upon proposals to be received by the Parties.

29. On 9 March 2021, the Claimant filed its submission together with additional exhibits.

30. On 10 March 2021, the Dispute Committee acknowledged receipt of the Claimant's submission and exhibits.

31. On 12 March 2021, the Dispute Committee invited FORsettlement and Computershare to advise, by 17 March 2021, whether they wished to submit a rebuttal and, if so, by which date.

32. On 12 March 2021, Computershare indicated that it wished to submit a concise response to the Claimant's last submission by 19 March 2021. Computershare also requested the Dispute Committee to schedule an oral hearing as from 26 March 2021.

33. On the same date, the Dispute Committee acknowledged receipt of Computershare's e-mail and indicated that the Dispute Committee would be available to hold such oral hearing on Tuesday 30 March 2021 or on Wednesday 31 March 2021.

34. On 15 March 2021, FORsettlement indicated that it did not intend to file any further submissions prior to the hearing and that it was available for such hearing on both dates.

35. On the same date, the Claimant confirmed its availability on both dates for the hearing.

36. On 16 March 2021, Computershare indicated being available on 30 March 2021.

37. On the same date, the Dispute Committee confirmed that the hearing would be held on 30 March 2021, from 15:30 CET to 18:30 CET, on the Teams platform.

38. On 19 March 2021, Computershare submitted its final submission.

39. On 30 March 2021, a hearing was held in presence of:

- For the Claimant: Mr [redacted], Mr [redacted], Mr [redacted] and Mr [redacted];
- For Computershare: Mr Stan Putter, Ms Lilian Meinen, Ms Janainna Pietrantonio, Ms Leonie Parkin and Mr Kevin Botha;
- For FORsettlement: Ms Margriet de Boer and Mr Yves Herinckx;
- For the Dispute Committee: Mr Jean-François Tossens (Chairman), Mr Harman Korte and Mr Dirk Smets, assisted by Ms Anne-Marie Devrieze and Ms Lily Kengen.

40. On 8 May 2021, the Dispute Committee pronounced the closing of the proceedings and announced that a binding advice could be expected in the week of 17 May 2021.

III. SUMMARY OF THE DISPUTE

41. The dispute concerns seven claims filed by the Claimant which were rejected by Computershare, for a total amount of approximately 26 million EUR.

42. The question at hand essentially concerns the extent to which the Claimant demonstrated, as per Computershare's standards, with sufficient certainty the identity of the Eligible

Shareholders concerned, which are the ultimate beneficial holders of the claims for which compensation is sought.

IV. RESPECTIVE POSITIONS AND RELIEF SOUGHT

A. Position of the Claimant

43. The Claimant filed a dispute with the Dispute Committee on 2 December 2020 for seven claims rejected by Computershare's Notice of Rejection of 21 October 2020 which were submitted by [redacted] at the request of [redacted], for the benefit of "Eligible Shareholders" within the meaning of the Settlement Agreement. According to the Claimant, these Eligible Shareholders are seven major financial institutions, [redacted], [redacted], [redacted], [redacted], [redacted] and the London branch of [redacted]. These financial institutions are all [redacted]'s clients and users of [redacted]'s custody services.

44. Essentially, it is the Claimant's view that, contrary to what is put forward by Computershare, it provided sufficient clarity and objective evidence in the claims administration process for Computershare to grant the claims concerned and that the latter failed to comply with the Settlement Agreement and other rules and guidance in handling the Claimant's claims.

45. The Claimant recalls in its submissions the contractual and legal framework composed of the Settlement Agreement and the principles of interpretation under Dutch law.

46. It concludes that the Settlement Agreement provides for a closed set of requirements that cannot be applied differently or creatively, nor be supplemented by other not foreseen requirements, by Computershare, and that the latter lacks any power to step outside these boundaries and must strictly observe the conditions of the Settlement Agreement in the execution of its mandate as claims administrator. In particular, it is the Claimant's view that Computershare cannot, in accordance with this reasoning, apply stricter rules of evidence and apply additional criteria to reject proof.

47. The Claimant then sustains that, *in casu*, it has submitted all possible information to confirm the proprietary nature of the relevant accounts as well as the underlying beneficial owners of the accounts, including a confirmatory statement on its part as the account holders' custodian (considered "golden standard of evidence" in standard practice) and that there is therefore no reason to doubt the eligibility of the account holders or of their respective claims. In particular, the Claimant indicates that it submitted account names already in October 2018 together with the relevant shareholdings on the relevant dates, which data matched with its custodian confirmation. Moreover, the Claimant indicates having provided confirming information regarding the ultimate beneficiaries which supported the account names provided earlier to Computershare, and confirmed that there was no financial intermediary involved.

48. The Claimant also adds that it is bound by know-your-customer laws and regulations and that it should thus be considered capable of confirming such information, without any declaration emanating from the accountholder being necessary. It also indicates that it is not substantiated (nor in the Notice of Rejection nor in Computershare's submissions) why its confirmatory statement would be insufficient for the purpose of proving the proprietary nature of the claims.

49. In any event, the Claimant underlines that self-certified documents by the relevant accountholders are not feasible to produce, considering that its customers have outsourced significant parts of their tasks and responsibilities to the Claimant and that, moreover, any individual interference would result in a drastic increase in workload for the Claimant and its clients.

50. It is also brought forward by the Claimant that Computershare's stance towards the claims breached Clause 4.3.3 of the Settlement Agreement which refers to "*reliable evidence as accepted under the Claims Administrator's standard practice*" and to "*broker confirmation slips or monthly brokerage statements or custodian bank statements*", and that the latter thus overstepped its contractual mandate as claims administrator in that it invented incremental sets of rules and criteria in that respect and applied a claims submission standard which was in fact stricter than the criterion laid down in the Settlement Agreement for rejecting the claims in this case.

51. The Claimant further claims that Computershare's practice in this case contradicts FORsettlement's instructions as contained notably in guidance notes n° 8 and 11 and as applied by the Dispute Committee, as well as Computershare's own standing practice. The Claimant notably refers in that respect to its letters of 29 August 2019 and 20 September 2019 where it already raised this concern, and to the acceptance, by Computershare, of claims submitted by the Claimant for other clients, leaving out the claims concerned by this dispute without any explanation on this differentiated treatment.

52. It is therefore the Claimant's argument that, even if Computershare would be allowed to have a level of discretion when determining a standard of proof, it should at least apply its standard of evidence consistently which it has not done in this case.

53. The Claimant also sustains that, if Computershare's objective was to detect duplicate filings, it should not have passed the burden of proof in that respect to the Claimant but rather to the "suspected duplicate beneficiary".

54. The Claimant further indicates that there was no reason for further inquiries into the ultimate beneficiaries of the claims *in casu*, as all proper clarifications were brought, with respect to the "triggering indicators" raised by Computershare, earlier in the process.

55. While Computershare now points to three new additional indicators in the proceedings before the Dispute Committee, it is the Claimant's view that such new elements (the relevance and correctness of which is contested) actually indicate that Computershare's binding decision was

deficient in that it breached its duty to state reasons (*motiveringsplicht*). The consequence to be drawn from that observation according to the Claimant is that it cannot be bound by such a decision, based on reasons unknown to it and that all considerations not explicitly described in the Notice of Rejection should be categorically disregarded before the Dispute Committee.

56. The Claimant highlights that Computershare may not change and/or further develop its argument following its own final decision which, in this case, was the Notice of Rejection of 21 October 2020.

57. With respect to the additional arguments raised by Computershare in its submissions, the Claimant argues that it was fully entitled to approach FORsettlement directly, mostly with Computershare in copy, in view of its dissatisfaction with the claims filing process and as a consequence of the unfruitful exchanges it previously had with Computershare, from which according to the Claimant it appeared that Computershare would not move further without FORsettlement's input.

58. The Claimant also recalls that it always remained approachable during the claims filing process, engaging in discussions with Computershare on a weekly basis and providing all information it could.

59. In addition, the Claimant underlines that its withdrawal of certain claims, contrary to what is sustained by Computershare and FORsettlement, actually illustrates its good faith efforts and exercised restraint in the claims administration process.

60. In its first submission of 2 December 2020, the Claimant requests the Dispute Committee to

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(a) *decide that the Claims are accepted pursuant to Clause 4.3.5 Settlement Agreement and that* [redacted] *'s clients are therefore entitled to distribution of compensation payments with immediate effect;*

(b) *order the Claims Administrator to determine the final Claim Amount for the Claims in accordance with Clause 4.3.5 Settlement Agreement and based on the acceptance of the correct identification of the relevant beneficiaries to settle the claims in accordance with the Settlement Distribution Plan in Schedule 2 of the Settlement Agreement; and/or*

(c) *any other measures deemed necessary by the Dispute Committee to effect the due execution of the orders requested under a and b and which are permitted within the limits of the Settlement Agreement*".

61. In its last submission of 9 March 2021, the Claimant requests from the Dispute Committee that it rejects the objections raised by Computershare and FORsettlement and that it accepts the Claimant's claims.

B. Position of Computershare

62. Computershare filed two submissions, on 27 January and 19 March 2021. It essentially sustains that it was right in rejecting the claims of the Claimant concerned by the dispute, as the latter failed to submit sufficient and convincing evidence with respect to the ultimate beneficial owners of the shares, and therefore to the Eligible Shareholders.

63. First, Computershare indicates that, in the claims administration process, it is crucial to determine who the Eligible Shareholder and the ultimate beneficiary are in order to avoid duplicate claims. When, as it is the case in the dispute at hand, the shares are indirectly held by [redacted]'s clients, and these clients being one or more financial intermediaries, in this case [redacted] as a broker and custodian, this determination may be more difficult, as such intermediaries may file claims on their own behalf or on behalf of a third party. The cross-checking necessary to avoid duplicate claims can only be adequately performed, according to Computershare, if sufficient evidence is provided by the financial intermediary concerned.

In such a case where a claim is submitted by a financial intermediary, it is thus customary practice that claims administrators are cautious and scrutinize filings appropriately.

64. According to Computershare, there are several "deficiency indicators" which give rise to a further investigation into the ultimate beneficial owner, notably (i) indication of the involvement of an omnibus account (*i.e.* an account used by a custodian combining sub-accounts in one account), where the ultimate beneficial owners cannot be identified, (ii) reference to a 'client' or to 'client accounts', (iii) abbreviation of account names that render it impossible to determine the beneficiary and (iv) potential reference to multiple persons in an account name.

65. It is also underlined by Computershare that, in certain circumstances and depending on the complexity of the case, exhaustive documentation may be required to evidence the complete chain of powers of attorney, contractual documentation and shareholding between the filer and the actual beneficiary. In some instances, affidavits from the last institution in line, *i.e.* in this case [redacted], may suffice, while in others this may prove insufficient. This is so especially if a number of "deficiency indicators" are identified in the claim.

Computershare argues that, as claims administrator, it has discretion to determine whether such affidavits are sufficient or not and that, if the beneficial owner cannot be identified on the basis of the provided evidence, it is common practice among claims administrators to reject the entire claim.

66. It is moreover a requirement under the Master Claim Form submitted by the Claimant to reveal the identity of the Eligible Shareholder concerned by adequate supporting documentation and reliable proof of shareholding. The burden of proof in that respect rests with the Claimant, as it notably stems from the Settlement Agreement and the Claim Form.

67. Computershare also sustains that, as a principle, a binding party decision maker is free to allocate the burden of proof as it seems fit in the prevailing circumstances, it being understood that the most probative value is generally attributed to written contemporaneous evidence.

68. During the review of the claims concerned, Computershare argues that it identified several "deficiency indicators" with respect to the Claimant.

69. First, it is raised by Computershare that the Claimant admitted certain errors in certain claims, which required it to be more cautious when assessing the remaining claims. The Claimant also withdrew several claims which, if it may well be a proof of restrain on its part, does not exclude that such withdrawals can give rise to further scrutiny by Computershare, especially if there are other deficiency indicators present.

70. Moreover, Computershare observed that no powers of attorney were submitted which emanated from the Claimant's clients. When asked to provide such documents individually for each client, the Claimant indicated that this would be extremely burdensome and virtually impossible.

71. In addition, it is also brought forward by Computershare that the claims submitted by the Claimant abbreviated the names of the beneficiaries, and did not provide the full names of the latter.

72. In such circumstances, it argues that it was entirely right to reject the filings and to refuse to rely only on an affidavit from the Claimant as custodian to accept the claims, also considering that it granted a sufficient ability to cure the identified deficiencies, which was not done by the Claimant.

73. With respect to the argument of the Claimant according to which such affidavit would be a "golden standard", Computershare raises that this is incorrect. A custodian affidavit may form the "point of departure" of evidence that may be acceptable if any or more deficiency indicators are absent, but the best person to attest of the proprietary nature of the account remains the proprietor itself, who has direct knowledge of that fact.

    This is even more the case *in casu* in view of, as Computershare argues, (i) the Claimant not providing any evidence as to how it can be verified that its statement is correct, and (ii) the Claimant has a limited documentation retention policy in place, because of which it has no evidence at its disposal with respect to the proprietary nature of the accounts concerned.

74. Computershare also indicates that, while the Claimant acted proactively with respect to most of its filed claims and brought the requested additional documentation, it shifted its position in relation to the claims concerned by this dispute after having first confirmed that it would procure the additional documentation and information requested by Computershare. Computershare therefore has doubts as to the reason why the Claimant was reluctant to procure the requested confirmations. It is Computershare's opinion that it cannot be excluded that the Claimant actually found out that the particular account holder mentioned in the initial

claim was not the actual beneficiary, or that it would not be able to bring any confirmation as to who such actual beneficiary is. It nonetheless leaves it for the Dispute Committee to interpret the unwillingness and failure of the Claimant to provide such further evidence.

75. Computershare moreover argues that, in addition, the Claimant attempted to persuade it to grant the claims and also sought that FORsettlement would instruct it to do so. For Computershare, this constituted a further "red flag". Such conduct is indeed not appropriate as not envisaged in the Settlement Agreement, individual claimants not having any right as per the latter to approach FORsettlement to circumvent Computershare if they are dissatisfied with the treatment of their claims.

76. Computershare also formally objects to the Claimant's argument that it furnished sufficient supporting documentation for the claims at hand. Third-party independent evidence was required to satisfy its assessment, which was never provided by the Claimant.

The queries it had with respect to the claims concerned were not cleared during the claims administration process and, instead of providing such clearances, the Claimant refused to provide further documentation and information reasonably requested and even circumvented Computershare through its requests to FORsettlement (and Ageas). Computershare further underlines that, even during the two rounds of written submissions before the Dispute Committee, the Claimant still did not provide the requested evidence.

77. The above, according to Computershare, gives cause for more questions than answers, too many of which being left open and making it impossible to determine, with a sufficient degree of certainty, who the beneficial owner of the shares was.

78. It is for these reasons that Computershare rejected the claims with, notably, the rejection code "UBO".

79. Computershare also highlights that, contrary to what is sustained by the Claimant, it adopted a consistent approach in applying the standard industry practice and the indications provided in the Settlement Agreement with respect to claim substantiation. In particular, it never confirmed unreservedly that custodian statements or affidavits would always apply as "golden standard" for sufficient evidence as raised *supra*, but only that such document may – depending on the circumstances – form acceptable evidence. In the case at hand, it is Computershare's opinion that the Claimant's affidavit was insufficient in view of the other indicators identified above.

80. With respect to the reasoning contained in its binding party decision, Computershare disagrees with the Claimant that binding party decision makers should specify in their decisions every element of the determining factor for a particular decision. Whether Computershare properly set out its reasoning should be assessed taking into account the Determination of Rejection, the Notice of Rejection and all communications it had with the Claimant, together. In addition, it indicates that in accordance with Dutch Supreme Court case law, a first-tier decision such as its Notice of Rejection may only contain minimal reasoning, considering that it is far from

resembling a domestic court decision making process and that it is followed by a second-tier decision making process by the Dispute Committee.

Computershare also sustains that the Claimant gives an incorrect impression that its decision may in some form be subjected to a judicial review test through a setting-aside procedure under Article 7:904 of the DCC. This is incorrect, according to Computershare, as in the case at hand its decision is not the final decision and only such final decision can in theory be subject to further scrutiny, although in accordance with Article 7:909(I) of the DCC and not 7:904.

81. In any event, it is argued by Computershare that the Claimant knew very well the reasons why its claims were considered deficient and then rejected, *i.e.* for predominantly a lack of identification of the Eligible Shareholder. In itself, that reason was sufficient. Even if there were further elements justifying the rejection, Computershare had no obligation to specify them in its decision.

82. It is even more so, according to Computershare, as the Claimant was aware of all the relevant elements that led to the binding party decision (incl. the elements that it now calls "novel indicators"). All these elements relate to the same reason for rejection, that is that the Eligible Shareholder for the claims concerned cannot be adequately identified.

83. Computershare finally claims that, in any case and even if there was a lack of sufficient reasoning, which there is not, it is allowed to supplement its reasoning by providing sufficient insight *a posteriori* which it clearly did by clarifying all "novel indicators" during the proceedings before the Dispute Committee.

84. As a consequence, and in view of the above, Computershare requests the Dispute Committee to reject the Claimant's recourse.

C. <u>Position of FORsettlement</u>

85. FORsettlement submitted observations in this dispute on 8 January 2021.

In such submission, FORsettlement first respectfully requests that the Dispute Committee allows it to submit its observations considering these regard the importance to identify the Eligible Shareholders when a claim is submitted by a financial intermediary, and that such issue is centrally related to FORsettlement's supervisory function under Clause 4.2.1 of the Settlement Agreement.

86. On the substance, FORsettlement first underlines that the claims concerned with the dispute amount to 26 million EUR approximately. These are part of a larger set of claims filed by the Claimant for 232 million EUR, among which claims for 101 million EUR have been accepted, claims for 103 million EUR have been withdrawn, and claims for 2 million EUR are still pending. The fact that 44% of the Claimant's claims have been withdrawn or rejected shows, according to FORsettlement, that its filings must be carefully scrutinized and cannot be taken on trust.

87. FORsettlement then indicates that the seven clients in whose names the Claimant submitted the claims concerned are financial intermediaries, whose business is to act as such, and that the issue at hand is that no convincing evidence has been brought forward by the Claimant showing that these shares were indeed owned and held by such intermediaries in their own names, rather than for the account of third-party clients.

88. In that respect, FORsettlement refers to Computershare's general practice as understood by FORsettlement to accept as satisfactory evidence an affidavit from the intermediary certifying the proprietary nature of the shares.

    FORsettlement indicates that it has no objection to such practice and that, accordingly, it would have been sufficient for the Claimant as a financial intermediary and for its seven clients (which are themselves also financial intermediaries) to all submit affidavits to validate the disputed claims. However, FORsettlement observes that such affidavits were not provided by the seven clients, and that the indirect certification by the Claimant was insufficient which is why the claims were rejected.

89. FORsettlement also highlighted that only the seven clients are in a position to know whether they held the relevant shares as proprietary positions or for the account of clients. However, it does not stem from the documentation provided by the Claimant that its affidavit was based on such information obtained by its clients.

90. According to FORsettlement, the proper identification of Eligible Shareholders is an essential requirement for the good administration of the Settlement Agreement. First, in order to avoid duplicate claims, and second because only the beneficial owners of the shares actually suffered losses in connection to the Events, and these are the only parties entitled to release Ageas following the execution of such Settlement Agreement.

91. As a consequence, and in view of the above, FORsettlement requests the Dispute Committee to admit its observations and to dismiss the objections submitted by the Claimant.

V. DISCUSSION AND FINDINGS

A. Admissibility of the Claimant's objections

92. By filing its submission to the Dispute Committee on 2 December 2020, the Claimant has submitted the dispute within thirty (30) Business days after the Notice of Rejection of Computershare sent on 21 October 2020. The Claimant's recourse before the Dispute Committee was consequently timely filed and is admissible as per Clause 4.3.5 of the Settlement Agreement and Article 4.6 of the Regulations of the Dispute Committee.

B. As to the merits of Computershare's evidentiary assessment

B.1. Principles

93. According to Clause 4.3.3 b) of the Settlement Agreement, the Claims Administrator shall assess the reliability of the evidence provided by each Eligible Shareholder, according to "*standard practice in class action claims administration"*.

94. When the Dispute Committee is seized of a recourse by an Eligible Shareholder against the decision of the Claims Administrator, Clause 4.3.5 simply states that the Dispute Committee shall issue a binding advice under Dutch law. In a somehow more detailed way, Article 4.17 of the Dispute Committee's Regulations provides that "*The Dispute Committee shall decide in accordance with Dutch law, the provisions of the Settlement Agreement and these regulations and, if relevant, in accordance with other rules of law or any applicable trade usages which it considers appropriate in view of the nature of the dispute*".

95. Dutch statutory law does not contain evidentiary rules in binding advice proceedings. Under Dutch law, binding advisors are free to adopt the evidentiary rules that they consider the most appropriate.

96. Neither the Settlement Agreement nor the Regulations of the Dispute Committee contain more detailed evidentiary rules.

97. It results from the foregoing that both the Claims Administrator and the Dispute Committee, the latter as binding advisor, enjoy a wide discretion when rendering a decision on issues entrusted to them for their determination. As a second line decision maker, the Dispute Committee may substitute its own discretionary assessment of the evidence provided by the Eligible Shareholder to the initial assessment of the same evidence made by the Claims Administrator. This said, the Dispute Committee shall only overrule a rejection of the Claimant's claim by the Claims Administrator if it is convinced with a sufficient degree of certainty, based on the facts and on all relevant evidentiary elements of the case, that the evidentiary threshold has actually been met by the Eligible Shareholder in the circumstances.

B.2. The circumstances of the case

98. It is the Claims Administrator's task to verify that claims have been filed by or on behalf of the Ultimate Beneficial Owner (UBO) or beneficiary of the shares, and that such UBO or beneficiary authorized the filer to file the claim. The proper identification of the Eligible Shareholders is an essential requirement for the good administration of the Settlement Agreement.

99. In the presence of proprietary claims filed by institutional filers, the proprietary nature of such claims must be the subject of a particular attention and scrutiny by the Claims Administrator since such institutional filers may also file third party claims. This is necessary to avoid duplicate claims.

100. It is even more so in this case where [redacted] acting as custodian has filed the proprietary claims (the Claims) on behalf of its clients, being the alleged institutional owners of such Claims.

101. The disputed evidence of those proprietary claims consists in the present case in affidavits signed by [redacted] confirming the proprietary nature of its clients' Claims[13].

The Claims Administrator was and remains unsatisfied with that evidence. It finds that under the circumstances, especially since only the abbreviated names of the beneficiaries have been provided, the submitted documentary evidence together with an affidavit from a custodian does not suffice. Having unsuccessfully granted [redacted] an opportunity to cure these alleged deficiencies, the Claims Administrator has rejected the Claims.

102. The question then arises whether the Claims Administrator has rightfully determined that the evidence submitted by the Claimant as custodian was insufficient, in the circumstances, to prove the proprietary nature of its clients' Claims.

103. In the Dispute Committee's opinion, the Claimant has not convincingly demonstrated that the Claims Administrator's determination would have been incorrect, inappropriate or contrary to the rules set forth by the Settlement Agreement.

104. The Dispute Committee's finding is in particular based on the following reasons:

- as such, the Claims Administrator's request to receive supporting evidence of the proprietary nature of the Claims emanating from the owners of the accounts rather than an affidavit from their custodian seems reasonable;

- the Dispute Committee is not convinced that obtaining the requested additional information would have been impossible for the Claimant. The terms "*extremely burdensome and virtually impossible"* used by Mr [redacted] in his affidavit of 23 October 2019[14] do not indicate a real impossibility. Such "*impossibility*" seems moreover contradicted by the Claimant's email of 27 May 2020[15] in which it is stated that "[redacted] *is currently in the process of reaching out to their clients to obtain the confirmations you requested* […]". Finally, the Dispute Committee is not convinced that it would have been extremely burdensome for seven major financial institutions to provide documentation evidencing the proprietary nature of the accounts. The Claims had a total value of approximately 26 million euros. The required administrative tasks did not seem disproportionate to the amounts at stake;

- the Claims are part of a much larger set of claims filed by the Claimant, for 232 million euros. Out of that larger set, claims for 101 million euros have been accepted and others have been withdrawn or rejected for 103 million euros. The high proportion of withdrawn

13 Exhibits 9, 15 and 21 of the Claimant.
14 Exhibit 9 of the Claimant.
15 Exhibit 14 of the Claimant.

or rejected claims makes the Claims Administrator's caution to avoid duplication of claims by seeking robust evidence of the proprietary nature of the Claims especially appropriate;

- [redacted]'s affidavits do not contain convincing explanations as to how [redacted] is in a position to correctly assess the proprietary nature of its clients' accounts. These affidavits are generally uncorroborated by supporting evidence.

B.3. The Claimant's further objections

105. The Claimant contends that the Claims Administrator would have exceeded its mandate by adding sets of rules and criteria for the purpose of the identification of an Eligible Shareholder's underlying beneficiary.

According to the Claimant, Computershare applied a claims submission standard which was stricter than the criterion laid down in the Settlement Agreement.

106. Clause 4.3.3 (b) of the Settlement Agreement requires each Eligible Shareholder to "*b) provide reliable evidence as accepted under the Claims Administrator's standard practice in class action claims administration, including but not limited to broker confirmation slips or monthly brokerage statements or custodian bank statements confirming the particulars of the information provided under Clause 4.3.3(a)*".

107. The Dispute Committee finds that Computershare has not exceeded the limits set forth by Clause 4.3.3 (b) of the Settlement Agreement.

If reliable evidence can include custodian bank statements, it does not mean that in the presence of such a custodian bank statement the Claims Administrator is deprived of its authority to assess the reliability of the evidence provided by the filer, on a case-by-case basis. There is no evidence that custodian statements should always be accepted as satisfactory standard evidence as per sound claims administration standard practice.

108. As it has been convincingly explained by the Claims Administrator, custodian statements or affidavits shall not always apply as self-supporting sufficient evidence. The Claims Administrator may request supporting evidence in addition to a custodian affidavit if the circumstances so require. For the reasons above, the Dispute Committee finds that the circumstances of the case could justify the request of the Claims Administrator, which always keeps a level of discretion when determining the Eligible Shareholders' identity.

109. The Dispute Committee has found no inconsistency in the Claims Administrator's request with regard to its standing practice.

The fact that Computershare itself has referred to custodian statements and affidavits as reliable evidence in another claims administration[16] does not prevent the Claims Administrator

[16] Exhibit 22 of the Claimant.

from requesting additional supporting information in administering this Settlement Agreement in the particular circumstances of the Claims. Such principle is explicitly confirmed in the RFP Claims Administration which has been drafted by Computershare and to which the Claimant refers (Exhibit 22), in the following terms: "*In all instances, the filer, regardless of nature, must meet the basic documentation requirements and provide additional information as required by the claims administrator*" (page 8). Moreover, Computershare's practice to accept custodian statements as valid and standalone evidence seems limited in the principle to statements established by a custodian bank "*belonging to the same group as the claimant"*[17]*,* which is not the case for [redacted], whose clients concerned by this dispute do not belong to its group. On the contrary, it appears from the same document that Computershare usually refuses "*sworn statements, affidavits, self-generated reports and hand-written reports drafted by the claimants themselves*"[18].

110. Finally, the Claims Administrator has convincingly explained and sufficiently supported by Dutch legal authorities that the decision cannot be invalidated for an alleged lack of reasoning.

The standards for a binding party decision maker such as the Claims Administrator are not those of a court decision, especially in the context of the Settlement Agreement, where the Claims Administrator is not the final decision maker. In this case, it is the Dispute Committee that is tasked to perform a full *de novo* review of the claims brought to its jurisdiction.

B.4. Conclusion

111. The Claims Administrator's decision to reject the Claims is upheld by the Dispute Committee and the Claims shall be rejected.

VI. DECISION

For the above reasons, the Dispute Committee:

- rejects all the Claims;

- decides that the present Binding Advice shall be published in an anonymized form (with respect to the Claimant) on www.FORsettlement.com.

This Binding Advice is issued in 4 original copies, one for each of the Parties, one for FORsettlement and one for the Dispute Committee.

[17] Exhibit 22 of the Claimant, p. 15.
[18] Exhibit 22 of the Claimant, p. 16.

Done on 20 May 2021

The Dispute Committee:

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Harman Korte Dirk Smets

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Jean-François Tossens