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]

Represented by M. M.G. KUIJPERS, M. S.L. BOERSEN, M. M. HAPPÉ and Ms M.C. HERWEIJER

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

AND

Computershare Investor Services PLC
Fortis Settlement Claims Administrator
P.O. Box 304
B-2800 Mechelen, Belgium

Represented by M. S. PUTTER

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

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

The Dispute Committee:

M. Jean-François TOSSENS
M. Marc LOTH
M. Harman KORTE

18 MAY 2020

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I. INTRODUCTION

A. The Parties

1. The Claimant in this dispute is [redacted], a limited liability company incorporated in [redacted] and having its registered address at [redacted] (the ***Claimant***). The Claimant is represented by its counsel M. M.G. KUIJPERS, M. S.L. BOERSEN, M. M. HAPPÉ and Ms. M.C. HERWEIJER.

   The Claimant describes itself as a licensed trust bank owning and managing assets in its own name which have been entrusted to it by its customers, including but not limited to Fortis shares.

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 P.O. Box 304, B-2800 Mechelen, Belgium (***Computershare***)[1]. Computershare is represented by its counsel M. Stan PUTTER.

B. Composition of the Dispute Committee

3. The Dispute Committee shall, in accordance with Article 3.1 of its Regulations, be composed of a panel of three of its members[2].

4. For the purpose of this particular dispute, the three members composing the panel are: M. Jean-François TOSSENS, chairing the Dispute Committee, M. Marc LOTH and M. Harman KORTE.

C. Historical context and procedural background of the Dispute

C.1 The Events

5. 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***).

6. 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

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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 "*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* […]."

(VEB)[3], SICAF[4] and FortisEffect[5] (all in The Netherlands), and by Deminor[6] and a group of investors advised and coordinated by Deminor (in Belgium).

C.2 The Mediation Process

7. On 8 October 2015, a mediation process, based on a mediation agreement, was initiated between the aforementioned plaintiffs, Ageas and Stichting FORsettlement[7] (the ***Foundation***).

8. 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.[8] 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.

C.3 The Settlement Agreement

9. 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***)[9]. 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.

10. 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.

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3 *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***).

4 *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***).

5 *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***).

6 *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***).

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

8 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.

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

C.4 The Dispute Committee

11. 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*".

12. 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).

13. The Regulations of the Dispute Committee, that rule the functioning of the Dispute Committee and the procedure before it, are publicly available[10].

II. HISTORY OF THE PROCEEDINGS

14. On 28 December 2018, the Claimant filed claims with Computershare concerning [redacted] Fortis shares.

15. Computershare acknowledged receipt of the Claimant's claims on 25 April 2019.

16. On 8 August 2019, Computershare issued a "Notice of Rejection" for these claims. Certain claims were rejected as "late" (*i.e.* the complete Claim Form, including the submission of reliable supporting documentation confirming the claimed holdings, was not filed by the 28 July 2019 deadline) and as "ineligible" (*i.e.* the claim did not list holdings in any eligible security during the period).

17. Between 13 and 26 August 2019, the Parties exchanged by e-mail on the grounds for rejection of the Claimant's claims and the Claimant expressed its disagreement on such grounds, in particular by way of an e-mail on 15 August 2019. In that context, the Claimant provided further documentation in order to support its claims and, in particular, the fact that these were not "ineligible".

18. On 24 August 2019, Computershare issued a new "Notice of Rejection" for the Claimant's claims with amended rejection codes. All claims nonetheless remained rejected as "late".

19. On 26 August 2019, the Claimant sent further documents, by FedEx, to Computershare.

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

20. On 30 August 2019, Computershare acknowledged receipt of the Claimant's FedEx courier, but still issued a "Notice of Rejection of Disagreement" rejecting the Claimant's disagreement filed on 15 August 2019 because the Claimant "*did not submit documentation to support* [its] *shareholdings by the Claims Submission Deadline nor was there a good faith attempt at providing a signed Release as* [the Claimant] *did not submit powers of attorney signed by* [its] *claimants* [for whom the Claimant filed its claims] *granting* [the Claimant] *authority to file on their behalf*".

21. On 13 September 2019, the Claimant filed another "Notice of Disagreement" with Computershare, claiming that the "Notice of Rejection of Disagreement" of 30 August 2019 was invalid.

22. On 24 September 2019, Computershare confirmed its view that the said Notice of Rejection was properly timed and valid and that any further communication should therefore be addressed by the Claimant to the Dispute Committee.

23. On 10 October 2019, the Claimant filed with the Dispute Committee its recourse against the "Notice of Rejection of Disagreement" issued on 30 August 2019 by Computershare (the ***Dispute***).

24. On 11 October 2019, the Dispute Committee acknowledged receipt of the recourse and notified Computershare of its existence and content. Computershare was also invited by the Dispute Committee to submit, by 18 October 2019, all comments, factual background, references, guidelines and any other element that it may deem relevant for the decision.

25. On 14 October 2019, M. Errol KEYNER, Deputy director of the Vereniging van Effectenbezitters (VEB) addressed an e-mail to the Dispute Committee, informing the latter of VEB's position in the Dispute.

26. On 16 October 2019, the Dispute Committee received a letter from Ms. Françoise LEFÈVRE, counsel of Ageas in relation to the Dispute, expressing Ageas' wish to file observations in that Dispute.

27. On 18 October 2019, Computershare communicated its observations.

28. On 21 October 2019, the Claimant asked the Dispute Committee to be given a possibility to comment on Computershare's communication of 18 October 2019.

29. On 22 October 2019, the Dispute Committee acknowledged receipt of Ageas' communication of 16 October 2019 and of Computershare's letter of 18 October 2019. In view of the plurality of actors and requests for submissions it received in the context of the Dispute, the Dispute Committee suggested to hold a case management conference call on 25 October 2019 having as purpose to discuss procedural aspects of the Dispute, including the setting of a procedural calendar.

30. On 23 October 2019, M. Charles DEMOULIN (DRS Belgium SCRL, hereafter ***Deminor***) sent a letter to the Dispute Committee indicating Deminor's intention to take part in the proceedings in its quality of "Active Claimant Group".

31. On 25 October 2019, the Dispute Committee held a case management conference call in the presence of:

For the Claimant:
- M. Matthijs KUIJPERS (Stibbe N.V. Nederland)
- M. Milan HAPPÉ (Stibbe N.V. Nederland)

For Computershare:
- Ms. Leonie PARKIN
- Ms. Janainna PIETRANTONIO
- Ms. Kirsten VAN ROOIJEN
- Ms. Katherine ELLIS

For Ageas:
- Ms. Pia LAVRYSEN (Ageas)
- Ms. Françoise LEFÈVRE (Linklaters)
- M. Jellen RASQUIN (Linklaters)
- Ms. Clémence VAN MUYLDER (Linklaters)

For VEB:
- ir. H.F.B. (Errol) KEYNER, Deputy director

For Deminor:
- Not present on the call

For the Dispute Committee:
- M. Jean-François TOSSENS (Chair of the conference call)
- M. Harman KORTE
- M. Marc LOTH
- M. Dirk SMETS

32. At the opening of that conference call, the Claimant objected against granting any right of participation of any kind to Ageas, VEB, Deminor and/or to any entity other than Computershare itself, in the Dispute. The Claimant consequently requested the suspension of the conference call pending a decision of the Dispute Committee on such right of participation.

33. The Dispute Committee discontinued the case management conference call and, by e-mail of the same day, invited the Claimant and Computershare to share their observations and respective positions, in writing, on the issue of the potential participation in the proceedings before the Dispute Committee, under any form or to any extent, of any entity other than the Claimant and Computershare. The Claimant was given until Monday 4 November 2019 for

presenting its observations on this particular issue and Computershare was given until Tuesday 12 November 2019 for the same.

34. By reply e-mail, the Claimant requested to be able to present its observations on Tuesday 5 November 2019, considering that 4 November 2019 is a national holiday in [redacted]. Such request was granted by the Dispute Committee and Computershare was also given an extra-day to present its observations, *i.e.* for Wednesday 13 November 2019.

35. On 5 November 2019, the Claimant presented its observations on the participation of additional parties in the Dispute.

36. On 13 November 2019, Computershare presented its observations on the same.

37. On 21 November 2019, Ageas submitted written observations to the Dispute Committee on its own initiative.

38. On 25 November 2019, and in view of such initiative, the Dispute Committee decided that (i) by 3 December 2019, Deminor and VEB would be invited to confirm their initial wish to participate in the proceedings and, in the affirmative, to justify such request including its extent and modalities and that (ii) by 13 December 2019, the Claimant and Computershare would be invited to comment on the submission received from Ageas on 21 November 2019 and on the submissions to be received, as the case may be, from Deminor and VEB.

39. On 26 November 2019, the Claimant sought an extension of its deadline to comment on the submissions until 6 January 2020.

40. Such extension was granted by the Dispute Committee by e-mail of the same day.

41. On 27 November 2019, M. Charles DEMOULIN (Deminor) also sought an extension of Deminor's deadline to submit its observations until 10 December 2019.

42. Such extension was granted, for Deminor and VEB, by the Dispute Committee by e-mail of 28 November 2019.

43. On 29 November 2019, M. Paul COENEN (VEB) submitted VEB's observations by e-mail.

44. On 10 December 2019, Deminor submitted its observations.

45. By letter of 6 January 2020, Computershare indicated to the Dispute Committee that it had no further comment and stood by its submission of 13 November 2019.

46. On 6 January 2020 as well, the Claimant sent its second submission.

47. On 8 January 2020, the Dispute Committee acknowledged receipt of Computershare's e-mail and of the Claimant's second submission.

48. On 6 February 2020, the Dispute Committee rendered its Interim Binding Advice on the procedural issue of the participation of third parties in the proceedings. Original copies of such Interim Binding Advice were also sent to the Parties by registered mail.

    By this decision, the Dispute Committee essentially ruled that it did not admit or invite, at this stage and in the circumstances, Ageas, Deminor, VEB or any other entity to participate or be heard in these proceedings and that, therefore, the proceedings in the Dispute shall resume accordingly between the Claimant and Computershare.

    The Dispute Committee also invited the Parties to participate in a conference call in order to discuss the procedural calendar for the continuation and closing of the proceedings.

49. By e-mail of 7 February 2020, the Dispute Committee proposed that a conference call be held on Wednesday 12 February 2020 and requested the Parties (i) to confirm their availability and (ii) to consult each other in the meantime with a view to make if possible a joint proposal of procedural calendar for the continuation and closing of the proceedings.

50. On the same date, Computershare indicated that it would not be able to attend the conference call on 12 February 2020 and proposed an alternative date during the week of 17 February 2020.

51. By e-mail of 10 February 2020, the Claimant indicated its availability for a conference call both on 12 February 2020 and during the week of 17 February 2020.

52. By e-mail of 11 February 2020, the Dispute Committee decided that the conference call will be held on Tuesday 18 February 2020 at 4:00pm CET.

53. On 18 February 2020, the conference call was held between the Dispute Committee, the Claimant and Computershare.

    Were present on the call:
    - For the Dispute Committee: M. Marc LOTH, M. Harman KORTE, M. Dirk SMETS and M. Jean-François TOSSENS;
    - For the Claimant: M. Simon BOERSEN;
    - For Computershare: M. Kevin BOTHA, Ms. Katherine ELLIS and Ms. Janainna PIETRANTONIO

    The following timetable was decided in agreement with the Parties for the continuation of the proceedings on the merits:

    - By 17 March 2020, submission of the Claimant;
    - By 31 March 2020, submission in reply of Computershare;
    - By 8 April 2020, notification by either Party of its potential request for a hearing; and
    - On 23 April 2020 p.m. or 28 April 2020 p.m., in Tilburg (The Netherlands), hearing (if so decided).

With respect to any formal notifications by post for the purpose of these proceedings, the Claimant has confirmed that it is satisfied with notifications made to the address of Stibbe Amsterdam only, while Computershare confirmed its previous request to have such notifications made to the following address, to the attention of Ms. Leonie PARKIN : Computershare, The Pavilions, Bridgwater Road, Bristol BS99 6ZZ.

54. On 17 March 2020, the Claimant submitted its statement of reply.

55. On 31 March 2020, Computershare submitted its statement of rejoinder with its Exhibits 1 to 5.

56. On 1 April 2020, the Dispute Committee acknowledged receipt of the Claimant's submission of 17 March 2020 and of Computershare's submission of 31 March 2020.

It also recalled that the notification by each Party of its potential request to hold a hearing on the subject-matter was expected by 8 April 2020 and that, in the affirmative, each Party should indicate its preference for the hearing date.

In this respect, the Dispute Committee also decided that, considering the current circumstances, the hearing shall in either case be held by videoconference.

57. By e-mail of 8 April 2020, Computershare notified the Dispute Committee that it did not request a hearing.

58. By e-mail of the same date, the Claimant indicated that it did not request a hearing either. The Claimant also made comments on the merits of the case (*e.g.* on its holding of the shares and on Computershare's status as a binding advisor).

59. By e-mail of 9 April 2020, Computershare claimed that leaving the last written say to the Claimant, which by its last e-mail added substantial comments on the merits, would violate the principle of due process. Computershare thus responded to the Claimant's arguments in that same e-mail.

60. By e-mail of 10 April 2020, the Dispute Committee acknowledged receipt of the communications of 8 April 2020 by the Parties and of Computershare's communication of 9 April 2020. The Dispute Committee noted that none of the Parties requested a hearing.

It also indicated that, by 20 April 2020, the Dispute Committee would notify the Parties whether it requested additional explanation or whether the debates would be closed. It clarified that, in the meantime, no further submissions from the Parties were expected.

61. By e-mail of 17 April 2020, the Dispute Committee confirmed that it had no outstanding questions for the Parties. The Dispute Committee invited the Claimant to submit, by 24 April 2020, the details of the costs of which it claims reimbursement in accordance with Article 4.22 of the Regulations of the Dispute Committee.

62. On 24 April 2020, the Claimant submitted the details of the translation costs of which it claims reimbursement in accordance with Article 4.22 of the Regulations of the Dispute Committee, for a total of [redacted] (excluding taxes).

63. On 29 April 2020, Computershare commented on the Claimant's request for costs compensation.

64. By e-mail of 30 April 2020, the Dispute Committee acknowledged receipt of the Claimant's submission of 24 April 2020 and of Computershare's response of 29 April 2020 and formally closed the debates.

III. SUMMARY OF THE DISPUTE

65. The Claimant submitted, on 28 December 2018, claims concerning [redacted] Fortis shares which it deemed eligible for compensation and qualifying for early distribution of the Fortis Settlement Amount.

    The Claimant held these shares as a trust bank. The Claimant therefore sustained that it was holding the shares on its own account and that it accordingly qualified as an Eligible Shareholder within the meaning of the Settlement Agreement.

66. Computershare, as claims administrator, indicated that the treatment of the Claimant's claims was part of a general discussion between Computershare and the Foundation, between the end of 2018 and the beginning of 2019, on the status to be given to certain incomplete claim submissions that were filed without meeting the essential requirements of the Settlement Agreement and which could reasonably be considered as to have been submitted with the intent to toll the filing period while additional information/documentation was gathered (a so-called ***Placeholder claim***).

67. Ultimately, Computershare indicated having received guidance from the Foundation that, if a claim had been submitted without supporting and appropriate documentation of holdings, such claim should be considered a Placeholder claim and therefore be rejected without any opportunity to cure the deficiency.

68. The Claimant's claims were qualified as such Placeholder claims, as according to Computershare the Claimant had not provided sufficient "reliable evidence" of its ownership of the shares nor properly executed Claim Forms for each underlying account. Computershare therefore rejected the claims without granting the Claimant any opportunity to cure the alleged deficiencies in the claims.

69. As it stems from the above, the Parties are essentially in dispute about the concept of a "Placeholder claim", the qualification of the Claimant's claims as such, and on the consequences that such qualification would entail.

IV. POSITIONS OF THE PARTIES

A. Position of the Claimant

70. In its initial submission of 10 October 2019, the Claimant first outlined that, in its decision to accept or reject a claim, Computershare should apply the principles of reasonableness and fairness provided by Article 6:2 of the DCC. This would entail, as per the Claimant's argument, that Computershare (i) acts impartially and with due care, (ii) provides Eligible Shareholders with a reasonable and fair opportunity to submit a claim and (iii) provides clear and logical reasoning for any decision it takes.

71. The Claimant also raises a number of criticisms with respect to how Computershare handled the claim submission procedure. Firstly, it claims that contrary to what is provided by Clause 4.3.5 of the Settlement Agreement, Computershare did not advise the Claimant "*promptly*" or, in any event, within a period *"as short as practically possible*" as to whether or not its claims were accepted. Indeed, the Claimant submitted its claims on 28 December 2018 and Computershare reverted to the Claimant on 9 August 2019 only, *i.e.* after the expiry of the 28 July 2019 deadline and therefore too late for the Claimant to submit another claim.

72. Secondly, the Claimant argues that Computershare did not provide sufficient reasoning for its assessments. By merely referring to standard rejection codes (*i.e.* INEL and LATE), Computershare did not enable the Claimant to understand the deficiencies which affected its claims.

73. In addition, the Claimant underlines that Computershare did not enable it to cure its claims' deficiencies within a reasonable period, in breach of Article 4.1 of the Regulations of the Dispute Committee. Rather, it argues, such "*deficiency cure period*" was skipped entirely by Computershare and, when asked by the Claimant how the alleged deficiencies (in particular the "LATE" rejection code) could be remedied, Computershare indicated that this was not possible.

74. Another criticism raised by the Claimant relates to the lack of adequate response by Computershare to its inquiries. The Claimant rests its argument on the fact that Clause 4.3.5 of the Settlement Agreement and Article 4.5 of the Regulations of the Dispute Committee provide for a specific period during which the parties can try to resolve the dispute, failing which a dispute can be submitted to the Dispute Committee for final determination. From these provisions, the Claimant infers that Computershare has an obligation to reasonably attempt to resolve the issue raised by the claimant which would include an obligation to adequately respond to questions and requests for guidance by such claimant.

    The Claimant explains having, on several occasions, requested guidance from Computershare on the alleged missing information or documentation (*e.g.* by e-mails of 13, 20 and 22 August 2019). Computershare however only replied on 30 August 2019 and, the Claimant alleges, still did not explain precisely what the alleged deficiencies were and how these could be cured.

75. Finally, the Claimant indicates that Computershare assessed its claims incorrectly. In particular, it claims that Computershare wrongly found that its claims did not list holdings of eligible securities. Even though the Claimant corrected it at a later stage, Computershare still seemed

to find that the claim was incomplete. To date, the Claimant claims not having a clear understanding of what is lacking from its submission.

76. The Claimant also lays down in its 10 October 2019 submission a "*but-for test*", indicating what – in its opinion – should have happened, had Computershare complied with its obligations and, accordingly, accepted the Claimant's claims (or given the Claimant the opportunity to cure the alleged deficiencies in such claim).

77. The Claimant also underlines that, in its Claim Form of 28 December 2018, it had indicated that it held the Fortis shares on its own account and qualified as an Eligible Shareholder in its own name. Therefore, the Claimant argues, no power of attorney was needed. The full power of disposition it holds over the shares follows from [redacted] law (in particular, the [redacted] Trust Act which provides that the trustee owns the entrusted properties and securities). In summary, the Claimant deems that it has submitted all required documentation and that its claims are therefore valid and must be accepted.

78. In its second submission of 17 March 2020, the Claimant argues that Computershare breached its duty to be an independent binding advisor, as the Foundation appears to have been taking all the decisions. In particular, the Claimant notes that Computershare indicates in its submission of 18 October 2019 that it had engaged in discussions with the Foundation on the status of incomplete claim submissions, the so-called "*Placeholder claims*" and that it is only after the Foundation gave instructions as to how these claims should be treated that Computershare decided on the Claimant's, merely by implementing such instructions. In doing so, the Claimant alleges that Computershare would have overlooked its independent binding advisor role and was unduly influenced by the Foundation.

The Claimant refers in this respect to Clause 4.3.4 of the Settlement Agreement which provides that Computershare shall act as independent reviewer and to the wording of the Claim Form which, it argues, provides that Computershare acts as a binding advisor which would entail a duty to remain independent. The Claimant also relies on Articles 6 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ***ECHR***) which embody the principles of a right to a fair trial and to an independent and impartial adjudicating body which, it argues, also apply to binding advice procedures under Dutch law and, therefore, to the proceedings before Computershare.

The Claimant adds that the fact that the Foundation has been given a supervising, monitoring and administering role in the distribution of the Settlement Amount does not give the Foundation a right to interfere with or give instructions regarding individual decisions of Computershare.

79. It is also argued by the Claimant, in its 17 March 2020 submission, that by exchanging in a non-transparent manner with the Foundation, Computershare has breached the principles of due process including the principle of *audi alteram partem*. In particular, the Claimant sustains that the existence and/or content of these discussions should have been disclosed. The fact that its claims are assessed on the basis of instructions from the Foundation (including the *Guidance Notes*) unknown to it constitutes, according to the Claimant, *"a clear breach of the basic principles of a fair trial*".

80. Moreover, the Claimant states that such *Guidance Notes* should be ignored in the interpretation of the Settlement Agreement. To support that view, the Claimant first indicates that since the Settlement Agreement has been declared binding by the Amsterdam Court of Appeal, there is no longer any place for any "common interpretation". It must be interpreted on the basis of its actual wording, according to an objective interpretation.

The Claimant then adds that the intention of the parties to the Settlement Agreement can only be relevant to the extent (i) that such intention can be objectively established on the basis of the wording of the Settlement Agreement and (ii) that it would reflect their intention at the time they concluded such Settlement Agreement. However, the *Guidance Notes* do not relate to the intentions of the parties at the time of conclusion of the Settlement Agreement, rather – as confirmed by Computershare – the determination by the Foundation of what constitutes a Placeholder claim evolved during several months of discussion. These thus constitute a "*new mutual agreement between Ageas and Active Claimant Group*" and cannot form the basis for any decision on claims by Computershare.

81. In the same vein, the Claimant argues that the introduction, by Computershare and the Foundation, of a new concept and definition of Placeholder claim (*i.e.* claims which did not present a good faith attempt to substantiate the holding of Fortis shares and a release) whereas such concept does not exist in the Settlement Agreement, the Regulations of the Dispute Committee or in any other public communication, clearly breaches the terms of these instruments. Indeed, Article 4.1 of the Regulations of the Dispute Committee makes it clear that for "*any*" deficiency an opportunity to cure must be given to the claimant.

Moreover, the adverse consequences stemming out of the qualification of a claim as such have a major impact, the claimant being deprived of any opportunity to cure the alleged deficiencies in its claims.

82. Furthermore, the Claimant adds that the introduction of the new concept of Placeholder claim is not otherwise justified. It would, according to the Foundation, be applied in any "*case of doubt*" which is vague and unacceptable in view of the adverse consequences it entails.

The distinction made in qualifying certain claims as Placeholder claims by Computershare and the Foundation between retail claimants and other "more experienced" shareholders would also go against the principle that all Eligible Shareholders should be treated equally, according to the Claimant.

In addition, the Claimant argues that Ageas and the Active Claimant Group all have a personal interest in the introduction of this new concept (*i.e.* cost savings for Ageas and financial gain for the Active Claimant Group).

83. Finally, the Claimant underlines that the qualification of Placeholder claim would, according to Computershare's submissions, constitute a protection against bad faith claimants intending to toll the claim filing deadline by deliberately filing an incomplete claim. However, the Claimant claims that this was never its intention.

84. In any event, the Claimant notes that, as it understands, a claim cannot be qualified as a Placeholder claim if there was a good faith attempt by the claimant to provide proof of

shareholding and a release. In that respect, it recalls that – far more than merely making a good faith attempt – it asked repeatedly how its claims could be completed or further substantiated and that Computershare never made clear what was needed exactly. This should be sufficient to prevent its claims from being classified as Placeholder claims.

85. In its 17 March 2020 submission, the Claimant makes some final observations, namely (i) that the composition of the Dispute Committee is not in accordance with its Regulations as the four members participate in hearings and are copied in the correspondence, (ii) that communications have taken place between the Dispute Committee, Ageas, Computershare and the Active Claimant Group and that its request to receive copies of such communications was denied whereas the Dispute Committee based its decisions on such information, (iii) that it has not been given the opportunity to be heard, after Computershare's submission of 18 October 2019, on the concept of Placeholder claim before the Interim Binding Advice was rendered by the Dispute Committee on 6 February 2020 whereas – it argues – the Dispute Committee "*already decided* [in that Interim Binding Advice] *that the essence of the current dispute is this Placeholder claim definition*", (iv) that in the Interim Binding Advice of 6 February 2020, the Dispute Committee did not respond to essential arguments made by the Claimant and was "*plainly incorrect*" in certain statements, (v) that the Dispute Committee – in its Interim Binding Advice of 6 February 2020 – went beyond the jurisdiction granted to it by the Parties in granting itself the authority and discretion to admit or invite third parties in the proceedings and finally (vi) that it has concerns about the impartiality of the Dispute Committee.

86. In conclusion, and as it stems from its submissions, the Claimant essentially asks the Dispute Committee to decide on the acceptance of its claims and on the indemnity that should be granted to it. Alternatively, the Claimant requests the Dispute Committee to allow it to (re-)submit to Computershare, within thirty (30) calendar days after the date of the Dispute Committee's decision, a new Claim Form with supporting documentation and information, and to decide that such claim will be deemed submitted timely. Following such submission, the Claimant asks that Computershare be ordered to examine the newly submitted Claim Form within six weeks and, if any deficiencies are to be found, (i) explain precisely which deficiencies have been found and how these can be cured and (ii) allow the Claimant a reasonable period (not less than three months) to cure the deficiencies. Finally, the Claimant also requests that the Foundation shall be ordered to compensate the reasonable costs it incurred in relation to the proceedings in front of the Dispute Committee.

87. With respect to the specific issue of publication of the present Binding Advice, the Claimant objects to Computershare's request that the Binding Advice remains unpublished and asks that it be published in order (i) to protect litigants against arbitrariness, (ii) ensure the uniform application of the Settlement Agreement and (iii) inform the public about the Settlement Agreement.

88. Finally, with respect to the costs, the Claimant claims compensation for translation costs for a total of [redacted] (excluding taxes), and requests that the Dispute Committee awards its claim for such reimbursement in [redacted] or, alternatively, in Euros at the exchange rate used by the European Central Bank on the day that the final binding advice is being rendered.

B. Position of Computershare

89. In its initial submission of 18 October 2019, Computershare first states that the Claimant's claims were rejected as incomplete as no holding statements or additional documentation had been provided at the time of filing. Moreover, the Claimant did not provide individual powers of attorney for the accounts and funds for which it filed the claims.

According to Computershare, such incomplete submissions, filed without meeting the essential requirements of the Settlement Agreement, must be classified as "Placeholder claims", submitted with the intent to toll the filing period while additional information/documentation was being gathered. This classification of claims emerged from discussions between Computershare and the Foundation, at the end of the year 2018 and in early 2019. In case a claim is classified as such a Placeholder claim, the Foundation and Computershare decided that it should not be treated as deficient with an opportunity to cure, but rather rejected directly.

90. The delay in responding "promptly" to the Claimant is due to such discussions Computershare had with the Foundation. The classification (and therefore appropriate response) was not immediately known and required that issue to be first clarified. In all instances, Computershare indicates having timely notified the Claimant, nearly immediately upon receiving guidance. Indeed, it is only on 30 July 2019 that Computershare indicates having received additional direction and expanded guidance from the Foundation on that topic. It is following this information that Computershare sent, on 8 August 2019, the first notice of rejection to the Claimant.

Additional guidance was issued by the Foundation on 21 August 2019 and on 4 September 2019.

91. In addition, Computershare argues that it is bound by the Settlement Agreement and by the guidance provided by the Foundation. As a result, and in view of the fact that the Claim Form of the Claimant did not meet the requirements of Clauses 4.3.1 and 4.3.2 of the Settlement Agreement, it had no choice but to reject its claims.

92. In its second submission of 31 March 2020, Computershare further responds to the Claimant's allegations. In particular, it argues that only the Dispute Committee is specifically addressed to act as binding advisor. Computershare does not have that status. Thus, it does not have to act as an "*independent binding advisor*", but rather as an independent reviewer.

The procedure before it is therefore to be regarded as a binding party decision (*bindende partijbeslissing*) procedure in the sense of Article 7:900(2) of the DCC.

93. Because the procedure before it is based on a contract, the provisions and rules invoked by the Claimant that regularly apply in domestic court litigation (*e.g.* Article 85 of the Dutch Code of Civil Procedure) do not apply *in casu*. Contractual based proceedings, such as a binding party decision or binding advice proceedings, are more flexible by design.

94. With respect to the Claimant's arguments based on a lack of independence and transparency, Computershare recalls that it does not act as a binding advisor but as a binding party decider

and that, therefore, the standard to be applied in that regard is that of such a binding party decider which is, according to the Dutch Supreme Court, less stringent.

95. Moreover, Computershare argues that the review of the procedure and of a potential violation of the principles of due process should be operated taking into account the whole set of proceedings and recourses, not only the first-tier proceedings before Computershare.

In that regard, Computershare states that two-tiered dispute procedures are generally acceptable under the law on the resolution of mass claims in Article 7:907(3)(d) of the DCC including where the decision in first-tier is made by a party (potentially having caused the harm at stake) established to administer and review claims, as long as the dispute can ultimately be referred to an independent dispute committee. Computershare lists several case law examples, including judgments of the Amsterdam Court of Appeal. In that context, Computershare recalls that the law permits that less stringent requirements of independence may apply for the first-tier decisions of the Settlement Agreement.

96. It is also sustained that, in any event, the Foundation acts independently and impartially in accordance with its articles of association. It is tasked to act in the interest of all former Fortis shareholders, including the Claimant.

97. It follows from the above, that the Settlement Agreement's claims and dispute procedure, as applied, are acceptable, according to Computershare.

98. With respect to the role of the Foundation as regards the treatment of claims, Computershare adds that the Settlement Agreement itself provides that a certain form of communication should exist between it and the Foundation. The language of Clause 4.2.1 explicitly refers to a supervising, monitoring and assistance role for the Foundation.

Moreover, such supervision and monitoring by the Foundation does not have the broad scope suggested by the Claimant, Computershare claims. It is only, among the enormous number of claims reviewed, with respect to claims which do not easily fit within the framework or express provisions of the Settlement Agreement (*e.g.* because of their legal considerations or global reach) that Computershare prefers communication with the Foundation. In these instances, the latter either provides generic guidance not relating to particular claims or claim specific suggestions.

In any event, it is underlined by Computershare that it is not bound by the Foundation's guidance and that, *in casu*, it made its own independent determination on the Claimant's claims.

99. With respect to the use of Guidance Notes, Computershare argues that, in claims administration proceedings of a size such as that at hand, it is inevitable that policies and rules be adopted in order to administer claims appropriately, for cases where the mere text of the Settlement Agreement does not provide for a specific solution. It remains within the Dispute Committee's power to decide on the appropriate character of such policies or rules.

Moreover, Computershare takes the view that the present proceedings do not have as purpose to fully review the procedure before it, but rather to consider whether the Claimant

was eligible for compensation and, in particular, validly provided sufficient documentation to Computershare on 28 December 2018.

100. Regarding the concept of Placeholder claim, Computershare recalls that there is a requirement under the Settlement Agreement for any shareholder to provide reliable evidence of shareholding. In addition, if a party acts in any representative capacity, evidence to that effect should also be submitted in accordance with what is provided in the Claim Form. For the particular case of financial institutions or institutional investors such as the Claimant, an electronic filing template form was agreed and required. If such evidence and an appropriate power of attorney is missing, the concept of Placeholder claim enables Computershare to reject the claim without providing the possibility for deficiencies to be cured.

Such practice, *i.e.* having to satisfy basic minimum requirements to qualify for participation in a distribution of indemnity, is standard in the administration of mass claims according to Computershare.

101. Computershare moreover sustains that the provisions of the Settlement Agreement do not specifically require that each shareholder be granted the opportunity to cure deficiencies, especially with respect to institutional shareholders or financial institutions such as the Claimant. To the contrary, the Claim Form itself highlights that claims may be rejected if the submitted file does not meet certain requirements. The Claimant was therefore fully aware of that risk.

102. With respect to the substance and, in particular the Notice of Rejection issued on 8 August 2019, Computershare indicates that the 28 December 2018 filing of the Claimant did not comply with such minimum standards, as the Claimant failed to provide (i) proof of acting in a representative manner, (ii) the required power of attorney for each Eligible Shareholders and (iii) proof of shareholding through holding statements.

The capacity in which the Claimant filed its 28 December 2018 claim was also unclear to Computershare. On the one hand, it was indicated in the list of accounts that the Claimant was filing its claims on behalf of underlying beneficial holders, but on the other hand the Claim Form document was signed by the Senior Manager of the Claimant who purported to act on behalf of the Claimant alone.

103. Computershare also notes that the simple statement made by the Claimant in its two letters entitled “Affidavit and POA” constituted insufficient evidence. Actual powers of attorney emanating from the account holders permitting the Claimant to file claims on their behalf would have been necessary.

Similarly, Computershare states that the Claimant made no attempt to submit proof of shareholding and that it is only on 30 August 2019, after the expiry of the final claims deadline, that the Claimant made its first attempt. Computershare argues that it was therefore right in rejecting the Claimant’s claims as it did not file evidence of its holding along with the Claim Form.

104. Finally, in reply to the Claimant's final observations, Computershare notes that it acted as diligently as it could and determined the Claimant's claims promptly in light of all the circumstances.

The reasons for rejection of the Claimant's claims were also fully understandable to the Claimant, especially since it is a professional party. Computershare therefore disagrees with the Claimant that it would not have provided sufficient reasons for its decision. Although its reasoning was not extensive, it did not equate to a failure to provide any reasoning at all.

Computershare also highlights that it cannot be expected from it to proactively approach the claimants which claims do not satisfy the minimum requirements and to guide them to make an adequate filing. It deems to have acted, in all instances, diligently and professionally.

105. In conclusion, and as it stems from its submissions, Computershare essentially asks the Dispute Committee to decide whether it considers that the omissions which the Claimant made with its filing should form the basis of an outright rejection of the claims and therefore whether the Placeholder claim definition applied should stand and, consequently, whether the Claimant should be given the opportunity to correct any defect.

106. In particular and in reply to the relief sought by the Claimant, Computershare underlines that it does not believe that the Settlement Agreement or the Regulations of the Dispute Committee provide a contractual basis for a claim to be referred back to it after a decision by the Dispute Committee. Nonetheless, and in any event, it stresses that it remains content to make a further assessment of the claim taking into account the guidance received by the Dispute Committee, as the case may be.

107. With respect to the specific issue of publication of the present Binding Advice, Computershare requested in its first submission of 18 October 2019 that the Dispute Committee does not publish a binding advice in this case, given the sensitive nature of the dispute.

In reply to the Claimant's arguments in that regard, Computershare underlines that, by not opting-out of the Settlement Agreement, the Claimant waived its right to a public hearing and to a public decision and agreed to an alternative private dispute resolution mechanism based on a contract.

Computershare also notes that, in principle and except where otherwise agreed between the parties, binding advice proceedings and decisions are not public. In the case at hand, Computershare argues that the parties to the Settlement Agreement have not agreed on public hearings or decisions. It relies in that respect on Article 4.21 of the Regulations of the Dispute Committee which provides that the proceedings before the Dispute Committee are in principle confidential. To the contrary, there are no provisions in the Settlement Agreement that grant the right to individual shareholders to have proceedings conducted publicly and, similarly, they also do not obtain any interest in proceedings that relate to other shareholders. It follows, according to Computershare, that the Dispute Committee should consider, on a case-by-case basis, together with the Foundation, whether extraordinary circumstances justify to depart from confidentiality and to publish the decision. *In casu*, Computershare argues that this is not the case.

108. Finally, with respect to the costs compensation request formulated by the Claimant, Computershare notes that the claimed translation costs amount to approximately EUR 133 per page, which it claims is a high rate. It argues that, while the costs for the translation of evidence in [redacted] which was to be presented to the Dispute Committee in English may be deemed reasonable, it considers that it is not the case for costs of translation of the English submissions into [redacted].

In that regard, it claims that the Claimant may be expected to be able to conduct business in English and that the Claimant's counsel is an international law firm most probably communicating with the Claimant in English. In those circumstances, Computershare deems that it is not necessary to translate every document into [redacted] for the purposes of the proceedings. As a consequence, it considers those costs unreasonable and not capable of being compensated under Article 4.22 of the Regulations of the Dispute Committee.

V. RELIEF SOUGHT BY THE PARTIES

109. In its 10 October 2019 submission, the Claimant sought from the Dispute Committee, as reiterated in its 17 March 2020 submission, that it:

"Principally

*i. decides that all of the claims submitted by [redacted], as listed in the Electronic Filing Sheets (**Exhibit 11 and 12**), (a) are accepted as referred to in Article 4.3.5 of the Settlement Agreement; and (b) are entitled to an early distribution in accordance with Article 4.3.6 of the Settlement Agreement and Paragraph 6 of Schedule 2 to the Settlement Agreement; and*

ii. orders the Claims Administrator to determine the Provisional Claim Amount for these claims in accordance with Clause 4.3.5 of the Settlement Agreement and to settle the claims in accordance with the Settlement Distribution Plan in Schedule 2 of the Settlement Agreement;

Alternatively

iii. allows [redacted] to (re-)submit to the Claims Administrator, within 30 calendar days after the date of the decision in this matter, a new Claim Form, together with supporting information and documentation, limited to the shares that already were included in [redacted]'s claims submitted on 28 December 2018, and decides that such (re-)submitted claims will be declared as having been submitted before the Claim Submission Deadline and the Exclusion Date as referred to in the Settlement Agreement and will be assessed and settled in accordance with Clause 4.3 of that Settlement Agreement; and

iv. orders the Claims Administrator:

a. to promptly – and in any event within six weeks after the submission of the new Claim Form – assess [redacted]'s claims and inform [redacted] in accordance with Article 4.1 of the Regulations of the Dispute Committee whether it has found any deficiencies in [redacted]'s claims; and

b. if it finds any deficiencies in [redacted]'s claims:

- *to explain to* [redacted] *precisely which deficiencies it has found and how these can be cured; and*

- *allow* [redacted] *a reasonable period during which it can cure such deficiencies, which period shall in any event not be shorter than three calendar months; and*

c. *to otherwise follow the Rules of Procedure as set out in Article 4 of the Regulations of the Dispute Committee, including but not limited to Clause 4.2 and 4.3 of these Regulations, when assessing the claims (re-)submitted by* [redacted].

Generally

v. *in all situations: decide that the Stichting FORsettlement must compensate the reasonable costs incurred by* [redacted] *in relation to these proceedings*".

110. Computershare does not seek from the Dispute Committee a formal decision or ruling. It seeks that, after careful consideration of the foundational legal principles of the Settlement Agreement, the Claimant's criticisms are found without merit. Computershare also emphasizes that the Claims Administrator acted "*in all instances, diligently and in a manner that may be expected from a professional claims administrator. It will therefore defer to the decision of the Dispute Committee on the merits of the Claim Form as submitted and take any decision of the Dispute Committee that differs (or otherwise) from its own determination into account moving forward*"[11].

VI. DISCUSSION AND FINDINGS

A. The deficiency cure period

111. The question arises whether Computershare rightfully rejected the Claimant's claims by its successive Notices of Rejection of 8 August 2019, 24 August 2019 and 30 August 2019. To answer this question, the first issue to be determined is whether, and in the affirmative to what extent and by when, Computershare should have granted the Claimant the opportunity to cure the deficiencies of its claims, if any.

112. The faculty to cure deficiencies is provided in the Settlement Agreement (Clause 4.3.5) and in the Regulations of the Dispute Committee (Article 4.1).

Clause 4.3.5 of the Settlement Agreement provides as follows : "*The Claims Administrator shall promptly, but at least within a period after receipt of a Claim Form to be agreed between the Foundation and the Claims Administrator, which period shall be as short as practicably possible, advise the Eligible Shareholder in writing if it accepts or rejects a claim and whether such Eligible Shareholder qualifies as Active Claimant (if applicable), including a period for Eligible Shareholders to cure deficiencies* […]".

113. Article 4.1 of the Regulations of the Dispute Committee confirms the existence of such deficiency cure period in these terms : "*If the Claims Administrator finds any deficiency in a*

[11] Computershare's submission of 31 March 2020, p. 26.

claim, it shall give the person who submitted the Claim Form concerned the opportunity to cure such deficiency within a period set by the Claims Administrator".

114. The FORsettlement website[12], which aims at giving more practical information to the Eligible Shareholders as to the filing process of their claims, also refers to the deficiency cure period as follows: "*If on the other hand Computershare needs additional information on documents to process your claim, you (or the person who filed a Claim Form on your behalf) will receive a written communication from Computershare giving you the opportunity to provide the missing information on documents before Computershare decides whether to accept or reject your claim*".

115. In the instant case, Computershare did not grant the Claimant any possibility to cure alleged deficiencies in its claims, filed on 28 December 2018. Computershare did not mention any such deficiencies upon acknowledging receipt of the claims on 25 April 2019. In its next communication to the Claimant, on 8 August 2019, Computershare rejected the claims for being "*late*" and "*ineligible*". Finally, such rejection was confirmed on 24 and 30 August 2019, for the reason that the Claimant's claims were "*late*" only.

It is a fact that between the date of the filing of the claims, on 28 December 2018, and the dates by which such claims had to be filed as per the terms of the Settlement Agreement, *i.e.* by 31 December 2018 for benefiting of a 70% Early Distribution Amount, and by 28 July 2019 for being eligible at all, Computershare did not give any warning to the Claimant as to potential deficiencies in its claims filed on 28 December 2018.

116. None of the abovementioned provisions of the Settlement Agreement or of the Regulations provide for exceptions to the granting of such deficiency cure period. Nor do these provisions confer Computershare the authority to derogate from such deficiency cure period.

The Dispute Committee does not follow Computershare when it argues that "*the provisions of the Settlement Agreement do not specifically require that the Claims Administrator grants each Shareholder the ability to cure deficiencies"*[13]. Such statement is simply incorrect.

117. The Dispute Committee *prima facie* concludes that Computershare, by ignoring the Claimant's right to be granted the possibility to cure potential deficiencies in its Claim From, has not acted in accordance with the Settlement Agreement. Such *prima facie* conclusion must now be assessed in the context of a more general analysis of Computershare's mission as Claims Administrator.

B. <u>The authority of the Claims Administrator in reviewing the claims</u>

118. Computershare does not discuss as such the provisions of the Settlement Agreement and of the Regulations that provide for a deficiency cure period. It rather insists on its authority – as per the terms of the Settlement Agreement and as per the delegation that it received from the Foundation – to review the Claims Forms and to make decisions as to their eligibility. Computershare claims in that respect that it has a certain degree of discretion in allowing or

12 As it stands on the date of this Binding Advice.

13 Computershare's submission of 31 March 2020, p. 18, para. 68.

denying shareholders part of the Settlement Amount, especially when it comes to assessing the evidence supporting the claims.

Clause 4.3.3(b) of the Settlement Agreement states in this regard that: "*the Claim Form will require each Eligible Shareholders to do the following:*

(a) […]
(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)*";

119. Computershare justifies the principle of its actions in this case as follows: "*The Settlement Agreement also provides that the Claims Administrator has a certain discretion to allow or deny shareholders to participate in the distribution of the Settlement Amount. The manner in which the Claims Administrator would exercise this discretion is set out in more detail in the Claim Form and the Electronic Filing Template that required, in any event, some sort of acceptable minimum evidence of a party acting in a representative manner and a minimum proof of shareholding. If powers of attorney and supporting documentation of proof of shareholding are missing, the Claims Administrator is permitted to reject the claims made, even without providing the possibility for deficiencies to be cured*"[14].

120. Then, Computershare advances a number of criteria and circumstances that would govern, "*in line with*" particular Clauses of the Settlement Agreement, its discretionary power to decide whether a deficient claim should be granted or not the possibility to be cured of its deficiencies, more in particular:

- "*Only if a good faith attempt is made to comply with all the minimum requirements listed in the Settlement Agreement, the Claim Form as well as the Electronic Filing Template, would the party submitting the claims be granted the possibility to have deficiencies in the claim cured*"[15]; and

- a stricter standard would be applied to institutional shareholders or financial institutions from which *"it may reasonably be expected that these appreciate and understand what it means to submit a form of evidence of their representative capacity (per individual shareholder) that is clear and compliant*"[16]*.*

121. In this case, Computershare submits that the Claimant made no good faith attempt to comply with the requirements so that it could rightfully determine that its claims were not capable of being cured and should consequently be rejected. The guidance letter received from the Foundation would have confirmed that the Claimant's claims could be treated as "Placeholder claims", with no possibility to cure the deficiencies, as opposed to "*bona fide claims*", that should to the contrary be granted such possibility[17].

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14 Computershare's submission of 31 March 2020, p. 18, para. 65.
15 Computershare's submission of 31 March 2020, p. 18, para. 67.
16 Computershare's submission of 31 March 2020, p. 18, para. 68.
17 On the concept of "Placeholder claim", see *infra*, section D.

122. The Settlement Agreement indeed recognizes to the Claims Administrator a degree of discretion in exercising its mission. This results explicitly from the terms of Clause 4.3.4: "*The validity of each claim made on a Claim Form and the amount allocated to each Eligible Shareholder who complies with the requirements for compensation of this agreement, will be initially determined by the Claims Administrator, acting as independent reviewer within the meaning of Article 7:907(3)(d) DCC, in accordance with the terms of this agreement and the Settlement Distribution Plan".* The Claims Administrator will especially assess the evidence provided by each Eligible Shareholder in function of standard practice requirements in class action claims administration (Clause 4.3.3 a) of the Settlement Agreement).

123. Yet, the discretion left to the Claims Administrator is subject to certain limits. A first limit arises out of the terms of the Settlement Agreement itself. The Claims Administrator must act as an independent reviewer "*in accordance with the terms of this agreement and the Settlement Distribution Plan"* as explicitly stipulated in Clause 4.3.4. This sets the limits of the Claims Administrator's authority. The Claims Administrator cannot amend the terms of the Settlement Agreement nor derogate from them.

124. The terms of the Settlement Agreement are clear with respect to the deficiency cure period. Such faculty must be offered to each Eligible Shareholder and with respect to all allegedly deficient claims. A claim exists from the simple fact that a Claim Form has been submitted to the Claims Administrator. From thereon the Claims Administrator must deliver an assessment of the claim. Even if the claim does not meet the minimum standards of reliable evidence, in the Claims Administrator's opinion, a claimant has the right to be informed of such deficiencies and consequently to correct such deficiencies, however gross or blatant they can be. While the Claims Administrator enjoys a degree of discretion in defining what constitutes reliable evidence, it does not however enjoy such discretion with respect to its procedural obligation to grant each claimant a deficiency cure period.

125. The Settlement Agreement also imposes on the Claims Administrator to advise Eligible Shareholders of any deficiency "*promptly, within a period after receipt of a Claim Form to be agreed between the Foundation and the Claims Administrator, which period shall be as short as practically possible* […]*"* (Clause 4.3.5). The Claims Administrator, which has been entrusted an independent[18] authority to determine the validity of each claim and to assess the reliability of the evidence submitted, must in any event revert to the Eligible Shareholder within a reasonably short delay. *In casu*, advising an Eligible Shareholder of alleged deficiencies in its claims more than 8 months after receipt of the Claim Form, moreover just a few days after the Claim Submission Deadline has expired, exceeds what can be considered as a reasonably prompt period of time.

The circumstances of the communications between the Foundation and the Claims Administrator, which may have caused such a delay, cannot release the Claims Administrator from its own independent duty to give a prompt response to the Eligible Shareholder. More importantly, it could not deprive such Eligible Shareholder of its right to be granted a reasonable deficiency cure period, especially in due time in advance of the Claims Submission deadline of 28 July 2019.

[18] Clauses 4.3.3(a) and 4.3.4 of the Settlement Agreement.

126. As a conclusion, it is the Dispute Committee's finding that, notwithstanding the discretion enjoyed by Computershare in implementing its task, it should have granted the Claimant such a deficiency cure period promptly after the filing of its claims on 28 December 2018. The Dispute Committee will now examine to which other procedural limits and constraints the actions of the Claims Administrator may be subject.

C. The independence of Computershare and due process norms

C.1 Independence

127. The Dispute Committee accepts Computershare's view that it is acting as a binding party decider rather than as a binding advisor[19]. In such situation, less stringent independence standards are indeed applicable, as convincingly explained by Computershare by reference to abundant Dutch case law.

128. It follows from such approach that communications – and to some extent instructions – between the Foundation and the first-tier decision-maker are not prohibited nor inappropriate.

The language of the Settlement Agreement itself confirms that a form of communication and interaction may exist and should even exist between the Foundation and the Claims Administrator, *e.g.* when it stipulates that the Foundation shall "*supervise, monitor and administer the distribution of the Settlement Amount*" (Clause 4.2.1). Such supervisory role cannot exist without an exchange of information, views and instructions between the two entities. The supervisory role of the Foundation on the actions of the Claims Administrator is not inconsistent with the discretion left (under certain limits) to the Claims Administrator in the implementation of its tasks.

The Claims Administrator may indeed be confronted to "*a wide range of atypical challenges*" arising out of complex claims involving multijurisdictional legal considerations, in particular a wide variety of legal concepts and evidentiary requirements pertaining to the ownership of the shares. The Settlement Agreement itself does not and could not specify in detail all legal and factual scenarios and all issues likely to arise in the determination of the claims. The guidance of the Foundation aims to help the Claims Administrator dealing with these complex situations in a more systemized and informed way, in the best common interest of the Eligible Shareholders and of a consistent implementation of the Settlement Agreement.

129. The so-called Guidance Notes are the materialization of such supervisory role of the Foundation on the Claims Administrator's tasks. As such, the practice of the Guidance Notes is in conformity with the terms of the Settlement Agreement (see, *infra* section F).

130. A certain level of guidance by the Foundation is not conflicting with the independence that must characterize the Claims Administrator's determination. As Computershare rightly puts it, after liaising with the Foundation where the terms of the Settlement Agreement are unclear or lacking in specificity, "*the Claims Administrator is free and also considers itself free to deviate*

[19] Computershare's submission of 31 March 2020, pp. 8 and *seq*., paras. 26 and *seq*.

from any guidance obtained […]"[20]. The guidance of the Foundation does not prevent the Claims Administrator from making decisions with an independent mind, when it comes to the implementation of its tasks.

131. This is precisely why the Dispute Committee has ruled in the present case that, as an independent reviewer, Computershare was not released of its duty to give a prompt answer to the Claimant's claims, in circumstances where guidance from the Foundation, for whatever reason, could not be obtained in due time[21].

C.2 Other due process norms

132. The Dispute Committee concurs with Computershare when it sustains that the Settlement Agreement's claims and dispute procedure may involve less stringent due process norms at the level of the first-tier decision-maker, *i.e.* at the level of the determination of the claims by the Claims Administrator. As Computershare convincingly puts it, at that level already, the Settlement Agreement's system offers a number of improvements compared to cases where first-tier decision making processes were approved by the Dutch courts even when the party that caused the damages was tasked to make such first-tier decision[22].

133. As Computershare rightly puts it: "*various procedures can and may be adopted in settlement agreements for the resolution of mass claims. The key to analyzing the integrity of these claim and dispute procedures is not whether the first-tier within the process reviewed in isolation conforms to all fundamental due process norms, but that these norms are reviewed in light of the entirety of the claims and dispute procedure*"[23]. This is the reason why the parties to the Settlement Agreement have put in place a second-tier decision maker in Clause 4.3.5, *i.e.* the Dispute Committee, which shall abide by all due process norms applicable to binding advisors[24].

134. However, Computershare may not implement its tasks by ignoring all aspects of due process norms. By the nature of its mission, *i.e.* adjudicating claims, Computershare is bound by minimum standards of fairness and natural justice. These basic procedural standards include the right to be heard and the right for the Eligible Shareholder to be informed in a comprehensive way of all requirements to be met and of the reasons for which the Claims Administrator would decide that such requirements are not actually met.

In that respect, the Dispute Committee is in agreement with the comment of P.E. ERNSTE cited by the Claimant in its submission of 17 March 2020, about the binding advisor's duty: "*Bindend adviseurs dienen over alle aan hen voorgelegde geschilpunten te oordelen, maar zich ook daartoe – en tot hetgeen wordt "gevorderd" – te beperken. Hun beslissing dient op een deugdelijk onderzoek te zijn gebaseerd. Bovendien moeten fundamentele beginselen van*

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20 Computershare's submission of 31 March 2020, p. 14, para. 47.

21 *Supra*, para. 125.

22 Computershare's submission of 31 March 2020, pp. 9-12, and case law cited, in particular in para. 32.

23 Computershare's submission of 31 March 2020, p. 12, para. 37.

24 In so far as necessary, in view of the concern expressed by the Claimant in footnote 16 of its submission of 17 March 2020 (p. 14), the Dispute Committee hereby confirms that its decision making process for rendering the present Binding Advice has been based exclusively on documents or information that have been brought to the Dispute by the Parties and shared with both Parties.

procesrecht, zoals het motiveringsbeginsel en dat van haar en wederhoor, in acht worden genomen. Hoewel aan het motiveringsbeginsel geen strenge eisen worden gesteld, moet worden aangenomen dat een bindend advies in ieder geval de gronden moet bevatten waarop het is gebaseerd, waaronder de gronden die hebben geleid tot het al dan niet honoreren van de (voor het geschil van belang zijnde) stellingen van partijen. De bindend adviseurs moeten tenminste hun gedachtegang inzichtelijk en controleerbaar maken"[25].

To that extent, these considerations are also valid for a binding party decider. Even as a first-tier decision-maker only rather than as a binding advisor, Computershare is bound by basic due process norms, as it is explicitly confirmed by the Settlement Agreement with respect to the deficiency cure period that must be granted to each Eligible Shareholder (Clause 4.3.5).

135. A comprehensive and verifiable motivation of the decision made in first instance by the Claims Administrator also appears necessary to enable the Dispute Committee to exercise an effective control on such decision, as provided for in Clause 4.3.5 of the Settlement Agreement, especially considering the absence of details in the Settlement Agreement as to the evidentiary requirements for proof of eligibility.

136. The duty to motivate its decision and to inform the Eligible Shareholder as to the expected requirements does not involve in the Dispute Committee's view an obligation for Computershare to disclose the full content of its communications with the Foundation. It is sufficient that the Eligible Shareholder receives a fair opportunity to present and defend its claim and receives an intelligible and reliable information as to the evidentiary requirements and as to potential deficiencies to be cured. In the context of a first-tier decision making process, there is no reason for imposing higher standards of transparency in absence of a full-fledged contradictory process at this stage. In that particular respect, the due process requirements may be more stringent at the level of a binding advisor[26].

D. <u>The "Placeholder claims"</u>

137. In this particular case, Computershare's decision to reject the Claimant's claims was made on the basis of guidance received from the Foundation on the concept of so-called "Placeholder claims", through successive communications of 30 July 2019, 4 September 2019 and 28 November 2019.

138. According to this guidance, in situations where Computershare was of the opinion that the evidence submitted by the Eligible Shareholder was insufficient, so-called "*bona fide claims*"

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[25] The Claimant's submission of 17 March 2020, pp. 11-12, para. 31, informal English translation: "*Binding advisers must decide all points of dispute submitted to them, but they also need to restrict themselves to that – and to the applications made. Their decisions need to be based on a due examination of the issues. Furthermore, fundamental principles of procedural law need to be complied with, including the duty to substantiate and the right of all parties to be heard. Even though standards should not be too high to substantiate, it must be assumed that a binding advice in any event must contain the grounds on which it is based, including the grounds that resulted in the acceptance or rejection of the relevant arguments of the parties. The binding advisers at least need to ensure that their line of reasoning is readily comprehensible and is verifiable*".

[26] See in this respect the comment cited by the Claimant in para. 30 of its 17 March 2020 submission: according to B.C. PUNT, a binding advisor must be fully transparent towards the parties about any advices that he might want to seek from a third party. This should not be the case for a binding party decider.

were to be distinguished from "*Placeholder claims*". For "*bona fide claims*" Computershare would allow deficiencies to be cured, and not for "*Placeholder claims*".

139. It stems from that guidance that the key factor for avoiding characterization as a Placeholder claim is "*a good faith attempt to include proof of shareholding and a release*"[27]. In addition, on 28 November 2019, the Foundation emphasized that only those claims filed in the last two weeks preceding the relevant deadline (*i.e.* the 31 December 2018 or 28 July 2019) would be treated as Placeholder claims, provided that these would also meet the criteria set forth in the Foundation's communication of 4 September 2019.

It stems from the above that a so-called insufficient claim filed on 14 December 2018 could be later perfected while the same claim filed on 28 December 2018 would be rejected as not curable.

140. Such policy is found by the Dispute Committee to be incompatible with the terms of the Settlement Agreement and with the basic standards of procedural fairness that must apply even at the level of the first-tier decision maker, *i.e.* Computershare's:

- the Claims Administrator may not make distinctions or create exceptions where such distinctions or exceptions are not allowed by the Settlement Agreement, in particular it has been decided by the Dispute Committee that a cure deficiency period must be granted in all cases as per Clause 4.3.5 of the Settlement Agreement: the guidance published on the FORsettlement website reinforces such conclusion as it enhances the legitimate expectations of each Eligible Shareholder to be given "*the opportunity to provide the missing information or documents before Computershare decides whether to accept or reject your claim*"[28];

- the Placeholder claim concept is based on a subjective criterion ("*a good faith attempt*") and on an arbitrary time limit of 15 days in advance of the contractual deadline; such criteria do not fit, in the Dispute Committee's opinion, with a common understanding of what the terms "*standard practice in class action claims administration*" can mean (Clause 4.3.3 of the Settlement Agreement); and

- the concept of Placeholder claim determines the eligibility of the claims on the basis of criteria that have not been disclosed in due time to the Eligible Shareholders, *i.e.* in advance of the applicable deadlines for submitting a valid claim.

141. Finally, Computershare has not convincingly established that the Claimant would have failed to make "*a good faith attempt to include proof of shareholding and a release*". To the contrary, as soon as it was informed of a rejection of its claims on 8 August 2019, the Claimant reiterated its requests and offers to substantiate its claims in so far as necessary.

142. For the above reasons, the Dispute Committee finds that Computershare – that is "*free to consider applying the Settlement Agreement in another manner than as proposed by*

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27 E-mail of the Foundation to the Claims Administrator of 4 September 2019, Exhibit 2 in Computershare's submission of 31 March 2020.

28 See also *supra* para. 114.

FORsettlement if [it] *consider*[s] *that another interpretation applies, or the facts require it to do so*"[29] – should not have given effect to the guidance of the Foundation in this case.

143. It is even more so in respect of the Claimant's claims. Indeed, due to such policy, the Claimant was not only deprived from the benefit of an early distribution pursuant to the Settlement Distribution Plan but also of any eligibility to any portion of the Settlement Amount.

E. Conclusion on the integrity of the Claimant's claims assessment by Computershare

144. The Dispute Committee broadly concurs with Computershare's general analysis of the legal nature of its mission as a first-tier decision-maker. The Dispute Committee accepts that the Claims Administrator as organized by the Settlement Agreement should be viewed as a "*binding party decider*" rather than as a "*binding advisor*". In such quality, Computershare may be subject to less stringent procedural standards than a binding advisor, in terms of independence and in terms of due process requirements.

145. Yet, the Dispute Committee, that is to some extent adjudicating claims, cannot exercise its powers without respecting and ensuring compliance with certain basic procedural standards, among which the respect due to the Eligible Shareholders' legitimate expectations in the treatment of their claims. By informing the Claimant, months later, that its claims were ineligible and late, while the contractual deadline for submitting such claims had in the meantime expired, Computershare has not acted in accordance with the minimum requirements of procedural equity in assessing a claim.

146. As a conclusion, the Dispute Committee finds that Computershare should have given the Claimant the possibility to cure any potential deficiencies in its claims and should have advised the Claimant of any such deficiencies promptly after 28 December 2018.

Such conclusion rests both on the terms of the Settlement Agreement and on the principles of natural justice in a first-tier decision making process.

Hence, the Notices of Rejection issued by Computershare against the Claimant's claims for being allegedly late shall be invalidated.

F. Guidance Notes and interpretation of the Settlement Agreement

147. The Claimant also challenges the value of any Guidance Notes from the Foundation for the reason that such practice would be in contradiction with an objective interpretation of the Settlement Agreement, as such interpretation must prevail with respect to settlement agreements that have been declared binding under the Dutch Collective Settlement Act (the ***WCAM***)[30].

148. The Claimant refers in that respect to case law of the Dutch Supreme Court according to which the injured parties, who have not been involved in the negotiation or conclusion of the settlement agreement, "*need to be able to rely on the wording of the settlement agreement*

[29] Computershare's submission of 31 March 2020, p. 16, para. 60.

[30] The Claimant's submission of 17 March 2020, pp. 12-16.

to determine their rights and obligations under that agreement". Consequently, the Dutch Supreme Court ruled that WCAM settlement agreements "*must*" be interpreted on the basis of the actual wording used in such settlement agreements ("*objective contract interpretation*")[31], referring to a previous decision it rendered on 9 December 2016.

149. In accordance with such case law, the Dispute Committee also finds that the overarching values of a correct interpretation of the Settlement Agreement are its wording and the legitimate expectations of all Eligible Shareholders that may have reasonably arisen out of such wording[32].

150. Yet, as repeatedly observed in this Dispute, the Settlement Agreement does not regulate in details the conditions and parameters that may have a bearing on the eligibility of claims and on the actual allocation of the Settlement Amount. A mere reading of the terms of the Settlement Agreement does not always offer a solution, otherwise there would never be a need for interpretation at all. An objective interpretation does not necessarily mean a blind interpretation. In such circumstances, other relevant elements can be taken into account, in order to fill the gaps in the wording of the Settlement Agreement, provided that such other elements shall not conflict with the actual terms of the Settlement Agreement nor with the reliance that the Shareholders may have placed in such terms.

151. Within these limits, the guidance of the Foundation, as materialized in Guidance Notes as the case may be, can provide the Claims Administrator, as well as the Dispute Committee, with valuable indications as to how the Settlement Agreement should be implemented or interpreted. As observed above, the practice of Guidance Notes is rooted itself in the supervisory role devoted to the Foundation by Clause 4.2.1 of the Settlement Agreement.

152. As it was decided in the present case by the Dispute Committee, no effect should be given to such guidance or Guidance Notes if this would conflict with the terms of the Settlement Agreement or with the legitimate expectations of the Eligible Shareholders based on these terms. To that extent, the common intention of the parties of the Settlement Agreement, in so far as it would be reflected in such guidance, shall never prevail over the objective interpretation of the Settlement Agreement, which is indeed the rule with respect to WCAM settlement agreements.

G. <u>The "final observations" of the Claimant</u>

153. The Claimant submits some "*final observations"* consisting in diverse and varied criticisms on the composition of the Dispute Committee, as well as on the scope and on the findings of the Dispute Committee's Interim Binding Advice of 6 February 2020. The Claimant also expresses

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31 The Claimant's submission of 17 March 2020, p.13, para. 37.

32 See, in that respect, the Dispute Committee's findings regarding the principles of Dutch law regulating interpretation of contracts (para. 60 of the Binding Advice rendered by the Dispute Committee in joint disputes n°2019/0001 and 2019/0002, available on https://www.forsettlement.com/page/documents). In particular, the Dispute Committee found that: "*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* […]".

suspicions as to the impartiality of the Dispute Committee and as to the sources on which the Dispute Committee has based its decisions[33].

154. The Dispute Committee deems unnecessary to respond in detail to these allegations from which the Claimant does not draw any conclusion for the purpose of the present Binding Advice.

The Dispute Committee shall limit itself to the following comments:

- All information and/or documents on which the Dispute Committee has based its decisions in the present matter have been shared with both Parties;
- The Dispute Committee, its composition, its mission and its rules exist by virtue of a Settlement Agreement that has been approved by the Amsterdam Court of Appeal, as repeatedly invoked by the Claimant itself;
- The Dispute Committee has not been instituted by the Settlement Agreement as a chamber of appeal of its own decisions. Unless and until such decisions would be set aside by a competent court, it is not the Eligible Shareholders' views that are binding on the Dispute Committee but the decisions of the Dispute Committee that are binding on the parties, as per terms of the same Settlement Agreement.

H. <u>Substance of Computershare's determination of the Claimant's claims and scope of the present Binding Advice</u>

155. In the present proceedings before the Dispute Committee, the Parties have mainly debated the issue of the integrity of the claims assessment procedure by the Claims Administrator. As Computershare puts it: "*The Claims Administrator respectfully requests the Dispute Committee to decide whether it considers that the omissions which* [redacted] *made with its filing should form the basis of an outright rejection of the claims and therefore whether the Placeholder definition which was applied to the* [redacted] *should stand* […]".

The Dispute Committee has concluded in this respect that Computershare could not validly reject the Claimant's claims for being ineligible and late, without granting the latter a period during which it could have cured such deficiencies, if any.

156. This conclusion leaves open the following questions:

- were the Claimant's claims effectively deficient with respect to the applicable evidentiary proof requirements?; and
- assuming that such deficiencies could have been or can be cured, which distribution is the Claimant entitled to in accordance with the Settlement Agreement and with the Settlement Distribution Plan?

157. The Claimant correctly contends that the Dispute Committee has the authority to decide that its claims are valid and must be accepted[34]. This is the object of its principal claim[35].

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33 *Supra*, para. 85.

34 The Claimant's submission of 10 October 2019, p. 21, para. 60.

35 See, para. 109 *supra.*

158. Yet, the Dispute Committee does not find itself in a position to include in the present Binding Advice a decision on the merits of the Claimant's claims.

In its submission of Dispute of 10 October 2019, the Claimant explains in some details why it should already be inferred from the documentation it provided that its claims are valid and should be accepted. Neither in its submission of 18 October 2019, nor in its subsequent submissions has Computershare addressed these developments in a comprehensive and systematic way. Computershare has mainly insisted on the rightfulness of its decision to reject the claims without further investigation. Computershare has also commented on alleged deficiencies in the presentation of the Claimant's claims but, in the Dispute Committee's view, failed to convincingly establish the materiality of such alleged deficiencies, as well as, especially, the fact that these would not be curable.

In such context, the Dispute Committee's view is that it has not been provided with all factual and legal evidence and arguments that may be relevant for a thorough assessment of the merits of the Claimant's claims.

159. Moreover, as per the terms of the Settlement Agreement, the review and determination of the claims must substantially remain, in first instance, the task of the Claims Administrator. If and when the Claims Administrator has completed such task by issuing a Notice of Rejection, then its determination is subject to a recourse by the Eligible Shareholder before the Dispute Committee.

In this case, the Claims Administrator has not, at least not completely, performed its task with respect to the determination of the Claimant's claims since it issued Notices of Rejection based on the fact that the Claimant's claims would have been ineligible and late, and then late only. These Notices of Rejection have been found invalid by the Dispute Committee. The Parties are now set back in the situation where no such Notices of Rejection would have been issued.

160. For the above reasons, the Dispute Committee shall not decide in the present Binding Advice on the merits of the Claimant's claims and shall not grant the relief sought by the Claimant in principal order. The Dispute Committee shall only grant the relief sought by the Claimant in alternative order.

161. Computershare objects that such alternative relief would not be permitted in absence of a contractual basis providing that a claim can be referred back to the Claims Administrator.

Actually, for the reasons above, the relevant contractual basis that justifies such alternative relief can be found in the provisions of the Settlement Agreement that entrust the Claims Administrator with the task of assessing the Eligible Shareholders' claims. The Dispute Committee does not "*refer back*" the claims to the Claims Administrator. As a consequence of the invalidation of its Notices of Rejection, the Claims Administrator finds itself in the position that it must fulfil and complete its tasks as if no Notices of Rejection had been issued.

It is only if and when the Claims Administrator would issue a new Notice of Rejection after a thorough assessment of the evidence provided by the Claimant and, as the case may be, after an assessment of the merits of the case, that a recourse would be open again to the Claimant before the Dispute Committee against such other Notice of Rejection. Then only the Dispute

Committee would be in a position to exercise its control over such other Notice of Rejection, by reference to a new motivation pertaining to the evidence and, as the case may be, to the merits.

I. Publication of the Dispute Committee's Binding Advice

162. The Claimant requests the publication of the Binding Advice, as well as the publication of the Interim Binding Advice of 6 February 2020 in view, in short, of the public interests at stake[36].

163. Computershare objects to such publication mainly by reference to the confidential nature of binding advice proceedings, as supported by Dutch law and by Article 4.21 of the Regulations.

164. Article 4.21 of the Regulations stipulates that "*The proceedings before the Dispute Committee are confidential and all persons involved either directly or indirectly shall be bound to secrecy, except and insofar as disclosure ensues from the law or the parties' agreement. The Dispute Committee and/or the Foundation may publish an anonymized version of the Binding Advice on www.forsettlement.com*".

165. Such provision thus makes a distinction between the proceedings before the Dispute Committee, which are confidential, and the Binding Advice itself, which may be published at the discretion of the Dispute Committee and/or the Foundation.

166. The Dispute Committee takes the view that as a general rule, binding advices should be made public on an anonymized basis (with respect to the name of the Claimant, unless otherwise requested by the latter), considering the interest that non-parties to the Dispute may have in the way the Settlement Agreement is implemented, especially when issues of principles are at stake, as in the present Dispute. As a consequence, in absence of extraordinary circumstances that would make such publication inappropriate, the Dispute Committee decides that its Interim Binding Advice of 6 February 2020 and the present Binding Advice shall be published. Such publication can be decided by the Dispute Committee on its own motion and does not require a request from the Claimant.

J. The Claimant's costs

167. The Claimant claims recovery of translation costs incurred during the current proceedings for a total amount of [redacted] (excluding taxes), *i.e.* approximately EUR 24,078.48. These costs consist in "*full translation or summarization in* [redacted]" of the various submissions exchanged before the Dispute Committee in this Dispute from 10 October 2019 to 31 March 2020[37].

168. Computershare seeks rejection of these costs as these would neither be strictly necessary for the proceedings nor reasonable in their amount[38].

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36 See *supra*, para 87.

37 *Supra*, para. 88.

38 *Supra*, para. 108.

169. The principle set out in Article 4.22 of the Regulations is that "*The Disputing Claimant shall bear his own costs in relation to the proceedings* […]*"* but that *"upon finding that the Disputing Claimant's claim has merit, the Dispute Committee may decide, in its sole discretion, that the Foundation must compensate the Disputing Claimant for reasonable costs* […]", such as translation costs but excluding any costs of legal representation or assistance.

170. Relying upon its discretionary authority on the subject matter, the Dispute Committee decides that no compensation shall be granted to the Claimant for its claimed translation costs. The Dispute Committee finds that the Claimant has not established for what particular purpose and for the use of which particular individuals it would have been necessary to translate the submissions exchanged in the current proceedings.

One cannot assume that a major international actor of the finance sector, such as the Claimant, moreover represented by an international law firm, actually needs a systematic translation into [redacted] of procedural documents exchanged in English, that is the *lingua franca* of international trade and in particular of the finance sector.

VII. DECISION

For the above reasons, the Dispute Committee:

- decides that it shall not rule in the present Binding Advice on the relief sought in principal order by the Claimant;

- allows the Claimant to (re-)submit to the Claims Administrator, within 30 calendar days after the date of this Binding Advice, a new Claim Form, together with supporting information and documentation, limited to the shares that were already included in the Claimant's claims as submitted on 28 December 2018, and decides that such (re-)submitted claims shall be deemed as having been submitted before the Claim Submission Deadline and the Exclusion Date as referred to in the Settlement Agreement and will be assessed and settled in accordance with Clause 4.3 of that Settlement Agreement;

- orders the Claims Administrator:

  a. to promptly – and in any event within six weeks after the submission of the new Claim Form – assess the Claimant's claims and inform the latter in accordance with Article 4.1 of the Regulations of the Dispute Committee whether it has found any deficiencies in such claims; and
  b. if it finds any deficiencies in such claims:
     - to explain to the Claimant precisely which deficiencies it has found and how these can be cured; and
     - allow the Claimant a reasonable period during which it can cure such deficiencies, which period shall in any event not be shorter than 3 calendar months; and

c. to otherwise follow the Rules of Procedure as set out in Article 4 of the Regulations of the Dispute Committee, including but not limited to Clauses 4.2 and 4.3 of these Regulations, when assessing the claims (re-)submitted by the Claimant.

- rejects the Claimant's application to obtain reimbursement of its translation costs as submitted on 24 April 2020.

- decides that its Interim Binding Advice of 6 February 2020 and 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 6 original copies, one for each of the Parties, one for the Foundation and one for each of the panel members of the Dispute Committee.

Done on 18 May 2020

The Dispute Committee:

M. Marc LOTH

M. Harman KORTE

M. Jean-François TOSSENS