

FORTIS SETTLEMENT DISPUTE COMMITTEE  
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**INTERIM BINDING ADVICE**

**16 October 2020**

in the dispute between

[REDACTED]

Represented by M. Frank M. PETERS (Bureau Brandeis)

hereafter referred to as "[REDACTED]"

AND

**Computershare Investor Services PLC**

PO Box 82  
The Pavilions  
Bridgwater Road  
Bristol BS99 7NH  
United Kingdom

Represented by M. Stan PUTTER (Conway & Partners N.V.)

hereafter referred to as "**Computershare**"

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

in the presence of

**Stichting FORsettlement**

Prins Bernhardplein 200  
1097 JB Amsterdam  
The Netherlands  
Chamber of Commerce No. 65740599

Represented by Ms. Margriet DE BOER (Ysquare B.V.)

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

## I. THE PARTIES AND THE RECOURSE

1. The current dispute has been introduced on 28 April 2020 by [REDACTED], a [REDACTED] company helping institutional investors [REDACTED] file claims [REDACTED] in shareholder and antitrust settlements worldwide ([REDACTED]). [REDACTED] is incorporated in [REDACTED] under the laws of [REDACTED] with its global headquarters at [REDACTED] [REDACTED]. For the purpose of this dispute, [REDACTED] is represented by its counsel M. Frank PETERS (the Dispute).
2. Computershare Investor Services PLC is a company incorporated under the laws of the United Kingdom, acting as Fortis Settlement Claims Administrator and, in that capacity, having its registered office at PO Box 82, The Pavilions, Bridgwater Road, Bristol BS99 7NH (United Kingdom) (**Computershare**).<sup>1</sup> For the purpose of this dispute, Computershare is represented by its counsel M. Stan PUTTER.
3. [REDACTED]'s recourse has been introduced on the basis of Clause 4.3.5 of the Settlement Agreement.

## II. STICHTING FORSETTLEMENT

4. Stichting FORsettlement is a foundation under Dutch law with its registered address at Prins Bernhardplein 200, 1097 JB Amsterdam (The Netherlands) (**FORsettlement**). For the purpose of this dispute, FORsettlement is represented by its counsel Ms. Margriet DE BOER.
5. On 25 May 2020, FORsettlement requested to be allowed to submit observations in the dispute.

## III. THE DISPUTE COMMITTEE

6. The Dispute Committee shall, in accordance with Article 3.1 of its Regulations, be composed of a panel of three of its members<sup>2</sup>.
7. 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. Dirk SMETS.

## IV. BACKGROUND OF THE PROCEEDINGS

8. On 15 April 2020, [REDACTED] notified its intention to file a recourse before the Dispute Committee, against a decision of Computershare dated 17 March 2020 in relation to 538 claims filed by [REDACTED], on behalf of 397 client accounts (the **Dispute**).

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<sup>1</sup> Computershare has been appointed, pursuant to Article 4.2 of the Settlement Agreement, as an independent claims administrator to handle the claims process.

<sup>2</sup> "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 (...)."

9. Such recourse was filed on 28 April 2020 together with its exhibits.

In its recourse, ■■■ asked, *inter alia*, to the Dispute Committee that the proceedings be stayed pending the decision that the Amsterdam District Court would render in parallel proceedings previously initiated by ■■■.

10. On 29 April 2020, the Dispute Committee informed Computershare of the recourse filed by ■■■ on 28 April 2020, and invited Computershare to submit, by 11 May 2020, all comments, factual background, references, guidelines and any other element that it may deem relevant for the decision to be taken by the Dispute Committee.
11. On 30 April 2020, Computershare requested that additional documentation, previously transmitted by ■■■ to the Dispute Committee, be disclosed. Computershare also requested to be allowed an additional two-week period to respond to ■■■'s recourse.
12. On 1 May 2020, all documents transmitted by ■■■ to the Dispute Committee in the matter were shared with Computershare.
13. On the same date, the Dispute Committee granted Computershare's request to have its time limit extended. Computershare was therefore invited to submit its observations by 25 May 2020.
14. On 4 May 2020, Computershare requested that the e-mails sent to the Dispute Committee by ■■■ prior to 24 April 2020 be forwarded to it.
15. On the same date, the complete sequence of emails between ■■■ and the Dispute Committee preceding ■■■'s filing of the Dispute was shared with Computershare.
16. On 25 May 2020, Computershare submitted its "Explanatory Statement" in response to ■■■'s recourse of 28 April 2020. Computershare, *inter alia*, objected to ■■■'s request to the Dispute Committee to stay the proceedings.
17. On 26 May 2020, ■■■ requested that the Dispute Committee bifurcates the proceedings to rule first (i) on ■■■'s request to stay the proceedings and (ii) on FORsettlement's request to submit its observations, before examining the merits of the case.

In case the Dispute Committee would decide not to bifurcate the proceedings, ■■■ asked that the Dispute Committee orders Computershare and FORsettlement to provide ■■■ with (a) the 18 May 2020 Dispute Committee decision referenced in the last paragraph of FORsettlement's submission, and (b) that both FORsettlement and Computershare provide ■■■ with all other documents concerning their policies or treatment of 'placeholder claims' and concerning the submitted claims of ■■■ including how they would be treated or handled.

18. On 27 May 2020, FORsettlement indicated that it had no objection to share the 18 May 2020 decision rendered by the Dispute Committee, on a confidential lawyer-to-lawyer basis, with ■■■'s

counsel. On the same date, ■■■ indicated its agreement with FORsettlement's proposal to provide it with a copy of the above-mentioned decision.

19. On 5 June 2020, a case management conference was held.

On that case management conference, the issue of bifurcation was discussed. It was agreed that the Dispute Committee would decide on that issue without any further exchanges and submissions. The parties also discussed the further procedural calendar in the event the Dispute Committee would decide to bifurcate the proceedings.

20. On 8 June 2020, the Dispute Committee rendered its **Procedural Order n°1** by which it ruled that the proceedings shall be bifurcated, in order for the Dispute Committee to decide, first, (i) on the stay of the proceedings as requested by ■■■ in its 28 April 2020 submission and (ii) on FORsettlement's request to be allowed to submit observations in the Dispute as formulated by FORsettlement on 25 May 2020, before examining the merits of the case.

21. On 17 June 2020, ■■■ submitted its observations on the issue of FORsettlement's request to submit observations in the Dispute and requested that such request be denied.

22. On 14 July 2020, the Dispute Committee rendered its **Procedural Order n°2** by which the Dispute Committee:

- Decided to admit the observations submitted and to be submitted by FORsettlement in connection with
  - (i) the jurisdiction of the Dispute Committee to decide on the dispute brought before it by ■■■; and
  - (ii) the origin, implementation and relevance of (what ■■■ refers to as) the "*Two Weeks Prior – No Cure Rights Rule*";
- rejected ■■■'s request to stay the proceedings; and
- convened the Parties to a preliminary hearing in order to hear the Parties' explanations on all aspects of the Dispute and to determine a calendar for the further steps of the proceedings.

23. That preliminary hearing was later fixed on 9 September 2020, in consultation with the Parties.

24. On 8 September 2020, ■■■ and Computershare submitted their pleading notes and slides in view of the hearing of the next day.

25. On 9 September 2020 a hearing was held in accordance with Procedural Order n° 2, where each of the Parties and FORsettlement presented its oral pleadings.

At the end of the hearing, the Parties jointly requested that the Dispute Committee renders an interim decision.

26. On 14 September 2020, [REDACTED] and Computershare submitted in writing their respective requests with respect to the scope of such interim decision, as follows:

**a) [REDACTED]'s request**

- [REDACTED] clarified the relief it sought as follows:

*"[REDACTED] requests the Dispute Committee to require Computershare (i) to accept and compensate the Claims en masse or, alternatively, (ii) to (a) treat each of the Claims as 'timely' and (b) review each of the Claims on the basis of the information available to it per the date of the review including, for clarity, all information submitted to Computershare prior to this appeal and (c) compensate those it deems sufficient and to allow [REDACTED] rights and opportunities to cure Claims Computershare deems to be deficient and (d) to allow [REDACTED] to appeal before the Dispute Committee any Final Notice of Rejection Computershare may issue once the curative process has been completed."*

- With respect to the scope of the expected interim decision, [REDACTED]:

- Requested a first interim decision on its request to be provided by Computershare and FORsettlement with all documents in relation to the Placeholder Policy / Two Weeks Prior – No Cure rule and its claims (in the event it would be invited to file a further submission as set out below).
- Requested a second interim or final decision *"in respect of the question whether or not the Placeholder Policy / Two Week Prior – No Cure Rights policy may be applied and the May decision<sup>3</sup> will be treated as binding or dispositive for this Dispute"*.
- Requested to be allowed to file a submission in relation to a number of topics related to its claims and to the particulars of such claims that would allegedly distinguish them, according to Computershare, from the claims dealt with in the above mentioned May Decision.
- In any event [REDACTED] requested a further hearing on the scope of the remaining issues and an opportunity to respond in writing to the last submission of Computershare and to the new examples introduced by Computershare at the hearing of 9 September 2020.

**b) Computershare's request**

- Computershare requested that the Dispute Committee renders an interim decision on the following issues:

- "1. Does the Dispute Committee have jurisdiction to decide the dispute?"*
- 2. Is it so that, if a submission to the Claims Administrator does not meet a certain minimum threshold, it does not qualify as a Claim Form and can be rejected without entitling the filer to cure its submission?"*

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<sup>3</sup> The decision rendered on 18 May 2020 by the Dispute Committee in the case 2019/0003.

3. *If so, what is the threshold (e.g. lack of identification of the Eligible Shareholder, lack of a signed release by (or, as the case may be, on behalf of) the Eligible Shareholder, absence of proof of the holding in Fortis Shares)?*
  4. *If relevant in view of the foregoing, should [REDACTED]'s conditional document production request be granted?"*.
- Computershare also suggested that *"If relevant, the Claims Administrator believes that the implementation of the criteria determined by the Dispute Committee may then in the first place be a task for the Claims Administrator, in consultation with [REDACTED], and that the Dispute Committee would only be called to review individual claims if there is still a dispute after that round of adjudication and after such dispute is escalated to the Dispute Committee in accordance with the Settlement Agreement"*.
  - Computershare finally requested that, as mentioned at the hearing, the Dispute Committee issues its interim binding advice on the basis of the currently available file, no further submission by either Party being allowed.

## V. SUMMARY OF THE DISPUTE

### 1) The claim filings

27. [REDACTED] submitted 538 claims which it deemed eligible for compensation and qualifying for early distribution of the Settlement Amount.  
  
[REDACTED] filed these claims on behalf of 297 client accounts.
28. 25 claims were filed between 27 December 2018 and 11 March 2019, while the remaining 513 claims were filed between 22 and 28 July 2019.
29. On 17 December 2018, before making the initial claim submissions, [REDACTED] contacted Computershare to discuss the best way to submit bulk claims electronically (Exhibit 5 of [REDACTED]).
30. By e-mail of 17 December 2018 as well, Computershare indicated that "[REDACTED] will most likely be able to submit a bulk electronic filing for Fortis but I believe it would have to be through a secure FTP site" (Exhibit 6 of [REDACTED]).
31. By e-mail of 18 December 2018, [REDACTED] asked to get access to such a secure FTP site to submit its filings in bulk. A reminder was sent by [REDACTED] on 21 December 2018 (Exhibit 7 of [REDACTED]).
32. On 9 January 2019, Computershare provided [REDACTED] with details to access to its secure FTP site (Exhibit 7 of Computershare).
33. [REDACTED] filed each of its 538 claims individually on the online portal.

34. ■■■ believes that all these claims were timely and adequately filed and should not have been rejected. ■■■ moreover states that proof of claim for all those 538 claims were submitted.

2) The rejection of ■■■'s claims and following exchanges

35. Computershare, as claims administrator, first rejected all 538 claims as "LATE", in a Determination letter of 30 January 2020 (Exhibit 11 of ■■■).

36. By e-mail of 3 February 2020 ■■■ challenged such determination, indicating that all claims were filed on time and requested clarification (Exhibit 13 of ■■■).

37. In the following days, ■■■ and Computershare exchanged on the alleged deficiencies affecting the claims. During these discussions, ■■■ re-packaged and re-presented the information submitted to ease Computershare's review.

38. In particular, on 5 February 2020, ■■■ provided Computershare with a spreadsheet of all clients and their accounts to help with the supporting documents provided in the initial claim submissions, and compiled information into a list to assist Computershare in its analysis. ■■■ also provided powers of attorneys and signed authorizations from its clients (Exhibit 15 of ■■■).

39. Ultimately, on 12 February 2020, Computershare allowed ■■■ to cure 25 claims, "*due to the filing date of these claims*"<sup>4</sup> (Exhibit 16 of ■■■), only 513 remaining rejected as "LATE" at that stage (Exhibit 16 of ■■■).

40. It appeared that Computershare considered that these 513 claims did not satisfy minimum filing requirements and could not be regarded as valid Claim Forms. Hence, Computershare did not grant ■■■ the possibility to cure deficiencies in such filings. Moreover, as Computershare considered those claims as "late", it also indicated that such claims were *per se* incurable.

41. This decision of Computershare to reject 513 claims without granting a curative period was based on its consideration that certain cumulative criteria should be fulfilled for a filing to be considered as a claim and to constitute a valid Claim Form. It also followed guidance Computershare received from FORsettlement according to which, if a claim is submitted without supporting and appropriate documentation of holdings (*i.e.* reaching a certain threshold), such claim should be considered a Placeholder Claim and therefore be rejected without any opportunity to cure the deficiency (the so-called "Two Weeks Prior - No Cure Right Rule").

In the particular case of ■■■, it was deemed by Computershare that the 513 claims did not meet several of these criteria. Notably, such ■■■'s filings: (i) were not made in the name of any Eligible Shareholders, (ii) did not contain a valid release, (iii) did not explain in which capacity ■■■ was filing the claims (nor provided any evidence of such capacity), and (iv) did not contain documentary evidence showing ownership of the relevant shares by identified Eligible Shareholders or persons

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<sup>4</sup> The 25 remaining claims have been reassessed by Computershare after granting ■■■ a curative period, 6 of which having been rejected and accepted as such by ■■■ and 19 remaining under review.

in whose name the claims were intended to be filed, or in some instance by any natural or legal person or even by anyone at all.

42. ■ submitted a Notice of Disagreement on 18 February 2020 against the rejection of its 538 claims by Computershare. It challenged both the “late” character of such claims and the “Two Weeks Prior - No Cure Right Rule” applied by Computershare (Exhibit 20 of ■).
43. On 5 March 2020, Computershare indicated to ■ that “*The SFTP site has now been setup for your use*” and provided details and instructions to access such site (Exhibit 21 of ■).
44. In the following weeks, ■ continued to submit additional documentation with respect to the claims (Exhibit 22 of ■).
45. On 17 March 2020, Computershare confirmed its rejection of ■’s claims by the issuance of a “Notice of Rejection of your Disagreement” (Exhibit 19 of ■). Computershare identified the following deficiencies in ■’s claims:
- “(a) [t]hey [the filings] contained no relevant claimant information”, “the identification of the shareholders for whom the claims were filed was not provided with the claim filing”;*
- (b) [t]hey [the filings] (...) were materially lacking in any of the information/documentation required to be considered a claim”, “the submissions were effectively filed without any supporting documentation confirming the shareholdings; and*
- (c) the purported claims were not filed with the required power of attorney authorizing ■ to file and sign the release on behalf of the underlying holders of the shares”<sup>5</sup>.*
46. It is in this context that the present Dispute arose.
47. On 24 April 2020, in parallel with the present proceedings, ■ lodged an appeal with the Amsterdam Court of Appeal, against the same decisions of Computershare (Exhibit 27 of ■).
48. ■ disagrees with Computershare’s findings. ■ claims that the application by Computershare of the so-called “Two Weeks Prior - No Cure Right Rule” is incompatible with the Settlement Agreement and breaches principles of due process and of reasonableness and fairness. It therefore contends that it should have been granted a deficiency cure period and moreover underlines that it had made a good faith attempt to evidence to provide proof of shareholding, the required release and additional information for its filings.
49. As it stems from the above, ■ and Computershare are essentially in dispute about whether Computershare was right in applying a threshold before granting the right to the filer to cure any deficiencies, in particular in implementing the guidance received from FORsettlement through the so-called “Two Weeks Prior - No Cure Right Rule” to the claims filed by ■.

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<sup>5</sup> Computershare’s submissions of 25 May 2019, p. 18



## VI. SCOPE OF THIS INTERIM BINDING ADVICE

50. While the Parties have both requested that the Dispute Committee issues an interim binding advice, they have expressed diverging views as to the scope of such interim decision (see above, para. 26).
51. The Dispute Committee shall first reassess its jurisdiction to decide on this dispute, since such jurisdiction is not recognized by ■■■, as it has been confirmed by ■■■ at the hearing of 9 September 2020.
52. In the Dispute Committee's view, a distinction has then to be made between:
- (i) whether the Claims Administrator has validly rejected ■■■'s submission without entitling the filer to cure its deficiencies, in particular by implementing the so called Two Weeks Prior - No Cure Right Rule (first issue) and;
  - (ii) whether the filings made by ■■■ constitute valid "Claim Forms" and subsequently qualify as valid claims for the purpose of the distribution of the Settlement Amount (second issue).
53. With respect to the *first issue* above, ■■■ claims that it has already been decided on by the Dispute Committee in its 18 May 2020 Decision, rendered in the case nr 2019/003 (the May Decision). According to ■■■, the May Decision should be binding or dispositive for this Dispute. As a consequence, in all cases, ■■■ should have been given the possibility to cure any deficiencies in its claims, as initially submitted.

To the contrary, Computershare contends that "*The circumstances of the ■■■ submissions are totally different from the Claims Forms submitted in case 2019/003 such that there are threshold determinations which the Dispute Committee must make about ■■■'s filings in the first instance, before it can reach any determination about whether principles in binding advice in case 2019/003 apply to ■■■.*"<sup>6</sup>. According to Computershare, ■■■'s filings were in this case so much below the minimum standards of a professional practice that, irrespectively of the Placeholder Policy and of the Two Weeks Prior – No Cure Rule, such filings did not even constitute a Claim Form and/or a claim submission at all, and the filer could not and should not have been granted a right to cure deficiencies.

54. With respect to the *second issue*, Computershare argues more in particular that ■■■ claims have not met before the Claims Submission Deadline a number of the minimum cumulative criteria that must be fulfilled before a filing can be considered as a claim and can constitute a "Claim Form" in the meaning of the Settlement Agreement (1° identification of an Eligible Shareholder, 2° proof of shareholding, 3° release to be signed by or on behalf of the Eligible Shareholders, 4° power of attorney or other documentation proving the representative capacity of any intermediary making a filing and 5° filings made before the Claims Submission Deadline)<sup>7</sup>.

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<sup>6</sup> Computershare's pleading notes of 8 September 2020, p. 1, para 1.3.

<sup>7</sup> Computershare's pleading notes of 8 September 2020, p. 2.

■ contends to the contrary that all of its claims as initially filed did already constitute valid Claim Forms. In particular, according to ■, the relevant Eligible Shareholder could be identified from the initial filings. Moreover, ■ argues that no distinction should be made between the 25 claims which Computershare ultimately allowed to be cured on one hand and the other claims, which Computershare rejected as constituting invalid Claim Forms ineligible to curative rights on the other hand.

With respect to this second issue, ■ has requested to be authorized to file further submissions, before the Dispute Committee makes any decision<sup>8</sup>.

55. In view of the above, the Dispute Committee shall address the first issue i.e. whether the Claims Administrator has validly rejected ■'s submission without entitling the filer to cure its deficiencies, in particular by implementing the so called Two Weeks Prior - No Cure Right Rule.

The Dispute Committee shall **not** address in this Interim Binding Advice whether or not the claims filed by ■ actually constituted valid Claim Forms or have met any threshold in this particular case (second issue).

56. To the extent relevant in view of the decision on the first issue, the Dispute Committee shall then decide which minimum threshold(s) the Claims Administrator may apply in due course.
57. The Dispute Committee shall finally decide whether ■'s request for documents is relevant for the above decisions and whether it should be granted.
58. This Interim Binding Advice shall deal with the above issues in the following order:

- 1/ Does the Dispute Committee have jurisdiction to decide this dispute (*infra*, section VII)?
- 2/ Has the Claims Administrator validly rejected ■'s submission without entitling the filer to cure its deficiencies, in particular by implementing the Placeholder Policy Rule and the Two Weeks Prior – No Cure Rule, or for the reasons that such submission would not meet, in the Claims Administrator's assessment of the Settlement Agreement's requirements, a minimum threshold in order to qualify as a valid Claim Form (*infra*, section VIII)?
- 3/ To the extent relevant in view of the answer to be given to the previous question, what threshold may be applied by the Claims Administrator in its determination of what constitutes a valid Claim Form (*infra*, section IX)?
- 4/ In view of the decision made on the previous issues, should ■'s document production request be granted (*infra*, section X)?

## VII. THE JURISDICTION OF THE DISPUTE COMMITTEE

59. At the hearing of 9 September 2020, ■ confirmed its previous position that the present Dispute would fall outside the Dispute Committee's authority<sup>9</sup>.

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<sup>8</sup> ■'s communication of 14 September 2020, p. 2.

<sup>9</sup> As discussed in Procedural Order n° 2 of 14 July 2020, paras 62-93.

60. In its Procedural Order n° 2 of 14 July 2020 rendered in this Dispute, the Dispute Committee provisionally held that it has exclusive jurisdiction to decide on this Dispute, in the following terms:

*“Clause 4.3.3. (h) of the Settlement Agreement provides that, by submitting its Claim Form, each Eligible Shareholder shall “consent to the exclusive jurisdiction of the Claims Administrator and the Dispute Committee, in respect of the matters set out in Clauses 4.3.4 through 4.3.8 by way of binding advice (bindend advies) [...]”.*

*It has been decided by the Dispute Committee in its Decision of 8 May 2020 that it is competent for assessing its own jurisdiction<sup>10</sup>.*

*Clause 4.3.5 of the Settlement Agreement provides that, if an Eligible Shareholder disagrees with the determination of its claim by the Claims Administrator, and if the parties are unable to resolve the dispute, the Eligible Shareholders “may submit the dispute to the Dispute Committee for final and binding resolution by way of a binding advice (bindend advies) under Dutch Law [...]”. This is precisely what ■ did in the present case, by filing a recourse before the Dispute Committee on 28 April 2020.*

*It stems from the above that the Dispute Committee has prima facie exclusive jurisdiction to decide on this Dispute which is consequently prima facie not subject to the alternative jurisdiction of the Amsterdam District Court, that is competent “with respect to any other dispute such Eligible Shareholders may have [...]” only (Clause 4.3.3 (h) of the Settlement Agreement).*

61. The Dispute Committee also held in the same Procedural Order *“that the grounds for which a Notice of Rejection is issued by Computershare have no relevance for assessing whether or not the Dispute Committee would have jurisdiction”.*

In other words, the defense raised by Computershare, according to which ■’s claims would not constitute valid Claim Forms in the meaning of the Settlement Agreement, in such a way that the filer of these claims would not qualify as an Eligible Shareholder and would hence not enjoy the rights vested on such Eligible Shareholders by the Settlement Agreement, does not deprive the Dispute Committee from its competence to decide on the submitted dispute and to determine whether ■ filed a valid claim and whether the claimant qualifies as an Eligible Shareholder. Computershare’s alternative position would have as (unacceptable) consequence that its defense would determine the jurisdiction of the Dispute Committee.

62. ■ has brought no new element in support of its challenge of the jurisdiction of the Dispute Committee.

As a consequence and for the reasons above, the Dispute Committee hereby confirms its previous provisional assessment that it has *prima facie* jurisdiction to decide on the Dispute.

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<sup>10</sup> Decision of 8 May 2020, paras 114-121, pp. 18-19 and references cited.

**VIII. THE PLACEHOLDER POLICY, THE TWO WEEKS PRIOR - NO CURE RULE AND THE CURATIVE RIGHTS OF THE FILER**

63. In its May Decision, the Dispute Committee held that:

*“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.”*

64. The Dispute Committee does not follow Computershare when it reiterates that only when the filings meet a number of cumulative criteria identified by Computershare, such filings can be considered as a claim giving rise to the faculty for the filer to cure their potential deficiencies.

65. The right to cure deficiencies cannot exist only from the moment where the filer would have provided all the constitutive elements of a fully valid claim or Claim Form. If that was the case, the right to cure deficiencies in the formulation of claims would have little value for the Eligible Shareholders since they would enjoy such right only in situations where their claim would already meet most of or all of the criteria required for obtaining their share in the Settlement Amount. The purpose of curative rights is by nature to be granted to imperfect claims, even to significantly imperfect claims. As a principle, an imperfect or incomplete Claim Form does not deprive the claimant from its right to be informed of its deficiencies and to be given the faculty to cure such deficiencies, including, if necessary, through the filing of a new valid Claim Form.

66. It is true that a number of requirements are imposed by the Settlement Agreement with respect to the Claim Form (Article 4.3.3). The compliance with these requirements will determine the validity of the claim and the associated right for compensation, to be assessed by the Claims Administrator in the performance of its task of independent reviewer (Article 4.3.4. of the Settlement Agreement).

The compliance with these requirements, provided that the filings are made before the relevant deadline, does not determine however the existence of the curative rights of the filer. The simple fact that a purported Claim Form has been submitted obliges the Claims Administrator to *“advise the Eligible Shareholder in writing if it accepts or rejects a claim..., including a period for Eligible Shareholders to cure deficiencies ...”* (Article 4.3.5. of the Settlement Agreement).

67. It is also true that Article 4.3.5. of the Settlement Agreement states that the *“Eligible Shareholders”* must be advised by the Claims Administrator of the status of their claim submission. Such wording

does not imply, in the Dispute Committee's opinion, that only those filers who have brought the prior demonstration that they fulfil the conditions to qualify as an Eligible Shareholder would enjoy the right to cure any deficiencies in their initial filings. The mere submission of a Claim Form before the relevant deadline triggers the right for the filer to be informed in due time of the status of its claim and to be given the faculty to cure any deficiencies, including through the filing of a new valid Claim Form, if required. The content and the quality of the initial filings, with respect to any of the requirements listed under Article 4.3.3. of the Settlement Agreement, do not constitute a condition of such procedural right.

The terms of Article 4.1 of the Regulations of the Dispute Committee are especially clear in that respect : *"if the Claims Administrator finds any deficiencies in a claim, it shall give the person who submitted the Claim Form concerned, the opportunity to cure such deficiency"*. Such right is therefore given to any *"person"* who filed a Claim Form, not only to a person who has actually demonstrated his/her quality of Eligible Shareholder or any other substantial requirement for benefiting of the Settlement Amount. It is even more so that filings can be made through proxy holders. The identification of the actual Eligible Shareholders and the justification of the representative authority of the filer can be a reasonable source of uncertainties and of imperfections to be cured. Such right is granted with respect to *"any deficiency in a claim"*.

68. For the reasons above, the so-called Placeholder Policy of FORsettlement, according to which *"a claim submission is to be treated as a 'placeholder claim' which is not timely for the purposes of a 70% Early Distribution Amount (deadline of 31 December 2018) or of any distribution (deadline of 28 July 2019) if it does not include any proof of the holdings in Fortis Shares in the relevant periods or if it does not include any signed release"*<sup>11</sup> is found incompatible with the terms of the Settlement Agreement and with the curative rights granted to the filers of claims<sup>12</sup>.

69. For similar reasons, the so-called Two Weeks Prior – No Cure Rights Rule, according to which *"a claim should only be treated as a 'placeholder claim' if it meets the criterion adopted on 4 September 2019 and if it was filed two weeks or less before the relevant deadline"*<sup>13</sup>, is also found by the Dispute Committee incompatible with the curative rights granted by the Settlement Agreement.

The curative rights cannot depend on the date of the filing if such date finds no basis in the terms of the Settlement Agreement.

70. Computershare insists that in this particular case, █████'s filings were so deficient that they cannot even qualify as submitted claims, irrespectively of the Placeholder Policy rules. Hence they would not be eligible to be cured of any deficiency (see the list of alleged deficiencies put forward by Computershare (*supra*, para. 45).

71. The Dispute Committee cannot follow Computershare in such contention for the following reasons:

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<sup>11</sup> Guidance from FORsettlement, 4 September 2019.

<sup>12</sup> As previously decided by the Dispute Committee in its May Decision, para 140.

<sup>13</sup> Guidance from FORsettlement, 28 November 2019.

- it is a fact that ■ submitted before the relevant deadlines hundreds of claims through the online claim filing portal of Computershare, accompanied, according to Computershare itself, *“by hundreds of thousands of pages of documentation...”*<sup>14</sup>; such a massive filing, through the relevant online platform, by a well identified professional institution, should not have been deemed inexistent by the Claims Administrator without at least giving a prompt warning to the filer ;
- these filings were preceded by exchanges between ■ and Computershare by which ■ sought guidance as *“how we can best file for all of or several hundred clients in a way that is most efficient and easiest for you to process”* (see, for instance e-mail of ■ to Computershare of 17 December 2018 (para. 30 *supra*); this constitutes at least a presumption that ■ tried to comply with the applicable requirements;
- it is not contested that these initial filings contained at least partially relevant information to form valid claims;
- Computershare has not put forward convincing reasons for which it later declared 25 claims, out of the original 538 claims, eligible for curative rights, apart from the date of their filing that is deemed irrelevant by the Dispute Committee: this suggests that the rejection of the majority of ■’s claims was prompted by a strict application of the Two Weeks Prior – No Cure Rule, while such other claims are intrinsically not less eligible to curative rights than the 25 claims that the Claims Administrator has later accepted to take under pending consideration.

72. Even if, as Computershare sustains, ■’s initial filings did not identify in each case the underlying Eligible Shareholder, even if they were not tailored in a legible way and were lacking the conciseness, the clarity, the accompanying explanations and the supporting evidence that is usually required from a professional filer according to standard practice - what is being disputed by ■ - these filings could not be treated by the Claims Administrator as non-existing.

Irrespectively of any Placeholder Policy rule, Computershare does not establish that these filings would merely constitute a bad faith attempt to meet the Claim Submission Deadline, in absence of a fair belief of the filer in the reality of its claimed rights. And even if that were the case, it would not help ■ since its claims would then ultimately turn out to be found ineligible.

73. As a conclusion, neither in the principles nor under the factual circumstances of the case, does Computershare justify, in the Dispute Committee’s opinion, its decision to reject as late all of ■’s claims but 25 of them and to deny these claims any curative rights.

It is the Dispute Committee’s interim decision that the Claims Administrator should, in consultation with ■, resume its task of Claims Administrator with respect to all of ■’s claims, and should review all these claims individually and reassess, after granting ■ a reasonable period of time for curing any outstanding deficiencies, whether such claims comply with the requirements for compensation set forth by the Settlement Agreement and by the Settlement Distribution Plan.

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<sup>14</sup> Pleading Notes of 8 September 2020, para. 2.13

**IX. THE THRESHOLD THAT CAN BE APPLIED BY THE CLAIMS ADMINISTRATOR**

74. For the reasons above, the Dispute Committee finds that any filer of a purported claim filed before the applicable claim submission deadline should have been advised in writing by the Claims Administrator, promptly after the filing, of the status of its filing (accepted, rejected or subject to a cure of deficiencies). If the Claims Administrator was, rightly or wrongly, of the opinion that the filing did not even qualify as a valid Claim Form, it should also have advised the filer accordingly, in order to give such filer the opportunity to cure any deficiency, in meeting the applicable standards, including, if necessary through the filing of an entirely new Claim Form.
75. It is the Dispute Committee's finding that only under exceptional circumstances, that are not met in the present case, could the Claims Administrator rightfully deem a filing as non-existing and deny the filer curative rights. Such exceptional circumstances would require that the Claims Administrator actually demonstrates that the rejected filings were so manifestly lacking any of the characteristics of a potentially valid claim that it could not reasonably be expected from the filer any satisfactory corrective action.
76. The various so-called minimum requirements listed by Computershare in its submissions<sup>15</sup> appear, *prima facie*, in line with the requirements of the Settlement Agreement and adopted in conformity with the mission entrusted with the Claims Administrator by Article 4.3.4. of the Settlement Agreement.
77. Yet the Claims Administrator can only apply such criteria at the stage of the assessment of the validity of each claim, after granting the filer a reasonable faculty to cure any deficiencies, provided that the initial filings have been made before the Claims Submission deadline.

**X. ■■■'S DOCUMENT PRODUCTION REQUEST**

78. ■■■'s conditional request for documents was presented with a view to substantiate its challenge of the Shareholder Policy/Two Weeks Prior – No Cure Rule.
79. Since the Dispute Committee has found that these rules are no valid basis for its assessment of the Claims Administrator's action, ■■■'s request for document production appears to be deprived of its cause. It shall therefore be rejected.

**XI. DECISION**

80. For the reasons above, the Dispute Committee:
- (i) Invites Computershare, in consultation with ■■■, to reassess ■■■'s claims taking in due consideration the above findings of the Dispute Committee, *i.e.* to (a) treat each of ■■■

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<sup>15</sup> Pleading Notes of 8 September 2020.

claims as 'timely' and (b) review each of these claims on the basis of the information available to it per the date of the review including all information submitted to Computershare prior to the present recourse and (c) allow █████ rights and opportunities to cure claims Computershare deems to remain deficient;

- (ii) Invites the Parties, after the assessment of the claims sub (i) above has been completed, by 23 November 2020 or by another near date to be agreed between them, to inform the Dispute Committee, if possible through a joint communication, of their outstanding disagreements on any particular claims, if any;
- (iii) Invites Computershare to confirm, by the same date, any such outstanding disagreement, if any, by the issuance of a reasoned Final Notice of Rejection with respect to the rejected claims;
- (iv) Decides that █████ shall have the faculty to appeal any such Final Notice of Rejection and to file an additional submission with respect to the rejected claims, within 30 business days from the communication of such Final Notice of Rejection;
- (v) Decides that Computershare shall have the faculty to file a submission in response within 30 business days from the receipt of █████'s submission sub (iv) above;
- (vi) Decides that a hearing shall be held by videoconference before the Dispute Committee renders a final Binding Advice, if so requested by any of the Parties, at a date to be fixed in consultation with the Parties upon receipt of their communication sub (ii) above; and
- (vii) Rejects █████'s document production request.

This interim Binding Advice is issued in 6 original copies, one for each of the Parties, one for the Foundation and one for each of the members of the Dispute Committee

Tilburg, 16 October 2020

The Dispute Committee

M. Marc Loth

M. Dirk Smets

M. Jean-François Tossens