

FORTIS SETTLEMENT DISPUTE COMMITTEE  
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**BINDING ADVICE**

under Articles 7:900 *et seq.* of the Dutch Civil Code  
in accordance with Article 4.3.5 of the Settlement Agreement

in the dispute between

[REDACTED], representing the [REDACTED]  
[REDACTED] and [REDACTED]

with respect to Claims of

1. [REDACTED] Portfolio,
2. [REDACTED] Portfolio,
3. [REDACTED] Portfolio,
4. [REDACTED] Portfolio,
5. [REDACTED] Portfolio,
6. [REDACTED] Portfolio,
7. [REDACTED] Fund (CAD),
8. [REDACTED] Fund (CAD),
9. [REDACTED] Fund,
10. [REDACTED] Funds ICVC,

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

and

**Computershare Investor Services PLC**  
Fortis Settlement Claim Administrator

hereinafter referred to as "**Computershare**"

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

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**The Dispute Committee:**

Mr Jean-François TOSSENS  
Ms Henriëtte BAST  
Mr Harman KORTE

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**6 JUNE 2023**

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## I. INTRODUCTION

### A. The Parties

1. [REDACTED], with offices at [REDACTED], [REDACTED], United States ([REDACTED] *or the Claimant*), representing the [REDACTED] and [REDACTED] (together: [REDACTED]),<sup>1</sup> has brought forward Claims of the following ten Eligible Shareholders: [REDACTED].
2. Computershare Investor Services PLC is a company incorporated under the laws of the United Kingdom, acting as Fortis Settlement Claims Administrator and, in that capacity, having its registered office at PO Box 82 The Pavilions, Bridgwater Road, Bristol BS99 7NH, United Kingdom (*Computershare*).<sup>2</sup>

### B. Composition of the Dispute Committee

3. The Dispute Committee is composed of five members.<sup>3</sup> Article 3.1 of its Regulations<sup>4</sup> prescribes: *"Each matter coming before the Dispute Committee shall be decided by a panel of three members"*.
4. For the purpose of this particular dispute, the three members composing the panel are: Mr Jean-François Tossens (Chairman), Ms Henriëtte Bast and Mr Harman Korte.

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<sup>1</sup> The Request for Binding Advice mentions that [REDACTED] filed the Request "on behalf of [REDACTED]". That reference does not make completely clear on whose behalf the Request was filed. Involved in the Claims are entities called [REDACTED]. The Dispute Committee has understood from the documents provided by the Claimant and by the explanations during the hearings that [REDACTED] filed the Claims on behalf of [REDACTED]. That is why the Dispute Committee chose to define these three entities together as "[REDACTED]".

<sup>2</sup> Computershare has been appointed, pursuant to Clause 4.2 of the Settlement Agreement, as an independent claims administrator to handle the claims process.

<sup>3</sup> The Dispute Committee is composed of the following members: Ms Henriëtte Bast (from 30 April 2021), Mr Harman Korte (from the beginning), Ms Alexandra Schlupe (from 30 April 2021), Mr Dirk Smets (from the beginning) and Mr Jean-François Tossens (from the beginning). Mr Marc Loth was also a member of the Dispute Committee (from the beginning until 18 November 2020).

<sup>4</sup> The Regulations of the Dispute Committee can be consulted on the website FORsettlement: [www.forsettlement.com](http://www.forsettlement.com).

### **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 (*Vereniging van Effectenbezitters*),<sup>5</sup> *Stichting Investor Claims Against FORTIS*<sup>6</sup> and *Stichting FortisEffect*<sup>7</sup> (all in The Netherlands), and by *DRS Belgium CVBA*<sup>8</sup> 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 (**FORsettlement**).<sup>9</sup>
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 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.<sup>10</sup> and 14 October 2008 c.o.b. (the **Eligible Shareholders**) has had, now has or may have in the future against Ageas, its directors and any other parties in connection with the Events.

#### **C.3 The Settlement Agreement and Eligible Shareholders**

9. The above-mentioned agreement has been embedded in a formal settlement on 13 April 2018 between Ageas, VEB, SICAF, FortisEffect, Deminor and FORsettlement (the **Settlement**

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<sup>5</sup> *Vereniging van Effectenbezitters*, an association under Dutch law, having its registered office in The Hague, and registered in the trade register under number 40408053 (**VEB**).

<sup>6</sup> *Stichting Investor Claims Against FORTIS*, a foundation under Dutch law, with its registered office in Amsterdam, the Netherlands, and registered in the trade register under number 50975625 (**SICAF**).

<sup>7</sup> *Stichting FortisEffect*, a foundation under Dutch law, having its registered office in Utrecht, the Netherlands, and registered in the trade register under number 30249138 (**FortisEffect**).

<sup>8</sup> *DRS Belgium CVBA*, a cooperative company with limited liability incorporated under Belgian law, having its registered office in Brussels, Belgium, and registered with the Crossroads Bank for Enterprises under number 0452.511.928 (**Deminor**).

<sup>9</sup> A foundation under Dutch law, with its seat in Amsterdam, the Netherlands, and registered in the trade register under number 65740599.

<sup>10</sup> 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.

**Agreement**).<sup>11</sup> Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (portion of the Settlement Amount), the allocation of which is to be supervised by the Claims Administrator and the Dispute Committee.

10. The Settlement Agreement was declared generally binding by the Amsterdam Court of Appeal on 13 July 2018. As of that moment, the Settlement Agreement has pursuant to Article 7:908(1) of the Dutch Civil Code (**DCC**) between the parties referred to in the previous paragraph of this binding advice on the one hand and the Eligible Shareholders on the other the effect of a settlement agreement to which each of the Eligible Shareholders shall be a party, with the exception of the Excluded Persons as well as the Eligible Shareholders who have issued an Opt-Out Notice within the specified period.
11. Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (a portion of the Settlement Amount) to be determined in accordance with the Settlement Agreement and the Settlement Distribution Plan, the allocation of which is overseen by FORsettlement pursuant to Article 4.2.1 of the Settlement Agreement.
12. FORsettlement has appointed Computershare as Claims Administrator. Its task is to determine in first instance the validity of each claim submitted in a Claim Form and the amount due to an Eligible Shareholder. In doing so, Computershare acts as an independent assessor in accordance with Article 7:907(3)(d) DCC.

#### C.4 The Dispute Committee

13. Article 4.3.5 of the Settlement Agreement provides that if an Eligible Shareholder disagrees with a determination made by Computershare, this Eligible Shareholder may submit the dispute to the Dispute Committee “for final and binding resolution by way of a binding advice (*bindend advies*) under Dutch Law”.
14. By signing and submitting the Claim Form, the Claimant has (re)agreed to the exclusive jurisdiction of the Dispute Committee in relation to the matters set forth in Articles 4.3.4 through 4.3.8 of the Settlement Agreement, including disputes between the Claimant and the Claims Administrator as to the entitlement to indemnification (including to the extent relevant as an Active Claimant), as well as the validity and/or the amount of the claim for indemnification as stated in the Claim Form, to be issued by the Dispute Committee by way of binding advice in accordance with the Regulations of the Dispute Committee (the **Regulations**).<sup>12</sup> The Regulations are accessible online.<sup>13</sup>
15. 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 et seq. DCC, by which the parties to

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

<sup>12</sup> Claim Form here means not only the form that is filled in manually and sent by postal mail to Computershare, but also the form that is filled in and submitted via Computershare's web application.

<sup>13</sup> The Regulations of the Dispute Committee can be consulted on the website [www.forsettlement.com](http://www.forsettlement.com).

a dispute entrust a third party to settle the legal relationship between them. In accordance with Article 4.17 of the Regulations, the Dispute Committee shall decide in accordance with Dutch law, with the provisions of the Settlement Agreement and the Regulations and, if relevant, in accordance with other rules or applicable trade usages which the Dispute Committee considers appropriate in view of the nature of the dispute.

## II. HISTORY OF THE PROCEEDINGS BEFORE THE DISPUTE COMMITTEE

16. On 21 April 2022 the Claimant submitted a Request for Binding Advice to the Dispute Committee against a Notice of Rejection issued by Computershare on 6 April 2022, in ten cases with Claim numbers 634032-6, 634034-2, 634035-0, 634036-9, 634037-7, 634038-5, 634040-7, 634041-5, 634053-9 and 634054-7 on behalf of [REDACTED] (the *Claims*).<sup>14</sup>
17. By email of 22 April 2022, the Dispute Committee confirmed the receipt of the Request to the Claimant.
18. On 24 April 2022 the Dispute Committee sent the Request to Computershare inviting Computershare to submit its reply by 13 May 2022 at the latest.
19. On 6 May 2022 Computershare requested an extension of time of 14 days for submitting its reply, which extension was granted by email of the same date.
20. On 25 May 2022 Computershare filed its submission by way of an email from Mr Stefan Derksen, counsel to Computershare.
21. On 26 May 2022 the Dispute Committee invited the Claimant by email to submit its comments on Computershare's submission by 8 June 2022 at the latest.
22. The Claimant sent its reaction by email of 9 June 2022.
23. On 10 June 2022 the Dispute Committee invited Computershare to respond to the Claimant's reaction ultimately by 24 June 2022.
24. On 24 June 2022 Computershare emailed its response.
25. On 7 July 2022, the Dispute Committee informed the Parties that a hearing would be held on either of three proposed dates in September 2022.
26. On 10 July 2022 Computershare confirmed its availability for 7 September 2022. The Claimant thereupon confirmed its availability for this date as well, by email of 19 July 2022. On 20 July 2022 the Dispute Committee confirmed that the hearing would be scheduled on 7 September 2022 at 18:00 CET.

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<sup>14</sup> See footnote 1.

27. On 7 September 2022 a hearing took place by videoconferencing in the presence of:
- For the Claimant: Ms [REDACTED], Mr [REDACTED] and Mr [REDACTED] of [REDACTED];
  - For Computershare: Mr Stefan Derksen, Ms Janainna Pietrantonio, Ms Leonie Parkin and Mr Keith Datz;
  - For the Dispute Committee: Mr Jean-François Tossens, Ms Henriëtte Bast, Mr Harman Korte, assisted by Mr Simon Vanlaethem and Ms Anne-Marie Devrieze.
28. By email of the same date the Dispute Committee invited Computershare to indicate, ultimately by 21 September 2022, on a claim-by-claim basis, what its position regarding the merits of the disputed claims would have been, if it had duly examined and processed the documentation provided by Claimant in reply to the Notice of Deficiency.
29. By email of 21 September 2022 Computershare sent its submission.
30. By email of 5 October 2022, the Claimant submitted its comments in reply, copying in Computershare's counsel.
31. By email of 12 October 2022, Computershare asked the Dispute Committee whether the Claimant had provided a response by 5 October 2022, or not.
32. By email of 13 October 2022 the Dispute Committee forwarded the Claimant's email of 5 October 2022 to Computershare inviting the Parties for a second hearing to be organized on either of three dates in November 2022.
33. On the same date the Parties indicated that they were available on 11 November 2022 for a second hearing.
34. By email of 21 October 2022 Computershare sent its final remarks to the Claimant's submission of 5 October 2022.
35. On 11 November 2022 a second hearing took place by videoconferencing in the presence of:
- For the Claimant: Ms [REDACTED], Mr [REDACTED] and Mr [REDACTED] of [REDACTED];
  - For Computershare: Mr Stefan Derksen, Ms Janainna Pietrantonio, Ms Leonie Parkin and Mr Keith Datz;
  - For the Dispute Committee: Mr Jean-François Tossens, Ms Henriëtte Bast, Mr Harman Korte, assisted by Mr Simon Vanlaethem and Ms Anne-Marie Devrieze.
36. By email of 23 March 2023 the Dispute Committee closed the proceedings and announced that it would soon issue its Binding Advice.

### III. SUMMARY OF THE DISPUTE

37. The present dispute concerns the application of Articles 4.3 and 4.4 of the Regulations.

38. A Determination of Rejection of the Claims was sent to the Claimant on 27 April 2020. The Claimant did not object to this Determination until March 2022, following which Computershare issued a Notice of Rejection stating that the Determination of Rejection of 27 April 2020 had become final and binding pursuant to Article 4.4, in absence of a Notice of Disagreement filed by the Eligible Shareholder within the time limit of 20 calendar day time limit prescribed by Article 4.3 of the Regulations.
39. The Claimant objects to the application of the sanction prescribed by Article 4.4 of the Regulations, in essence for the following reasons:
- (i) The 20 calendar day time limit prescribed by Article 4.3 of the Regulations would be excessively short. The sanction of Article 4.4 of the Regulations should therefore be found inapplicable, in accordance with standards of reasonableness and fairness.
  - (ii) This is even more the case in the present matter because the Claimant states that the Claims would have been approved if Computershare had properly reviewed the documentation submitted by the Claimant in due time in response to the Notice of Deficiency of 6 February 2020.
  - (iii) Computershare would have raised new deficiencies in the course of the present proceedings, of which the Claimant would not have been informed before. The Claimant had consequently not been given a possibility to cure these deficiencies in due time, before the Determination of Rejection.
40. Computershare contests the Claimant's position with respect to each aspect mentioned above and requests that the Determination of Rejection of 27 April 2020 be confirmed by application of Article 4.4 of the Regulations.

#### IV. POSITIONS OF THE PARTIES

##### A. The correspondence between the Parties preceding the procedure before the Dispute Committee

41. On 21 December 2018 the Claimant submitted a blank Claim Form referring to an Excel overview of shareholding for the 10 Claims which are subject of this Binding Advice procedure, together with many more claims from other Eligible Shareholders not involved in this procedure. Included were also letters of several entities, presumably client contacts of [REDACTED], providing a power of attorney to [REDACTED] to file claims on their behalf.
42. On 6 February 2020, Computershare sent a Notice of Deficiency by email to the Claimant. The following deficiencies were listed as pre-defined terms with abbreviations:

***“NAFD: The claim requires additional documentation that illustrates the authority/designation of the signatory to execute the POA on behalf of the entity. Please provide authority for the signatory of the POA to sign on behalf of the entity.***



**POA: A POA executed by the natural or legal person(s) who held shares in Fortis was not provided.** A POA must be submitted on behalf of the natural or legal person(s) who held shares in Fortis authorizing your organization to file and sign the Release on his, her or its behalf. Please provide an executed POA from the natural or legal person(s) who held shares in Fortis.

**RBS: This claim requires third-party documentation that confirms ownership of the account to which the payment is being made.** Please provide a copy of a bank statement, check card or other third-party documentation confirming the account number and name to which the payment is being directed.

**PVE: The account information provided for payment for this claim failed validation and is therefore incorrect.** Please provide updated payment information for this claim.”

The table enclosed in the Notice of Deficiency, which is partly reproduced below, indicated for each Claim number (1<sup>st</sup> column) of the ten Eligible Shareholders (3<sup>rd</sup> column) which of these deficiencies applied (2<sup>nd</sup> column). In the Notice of Deficiency, the term provided for curing the deficiencies was stated to end on 26 February 2020.

634032-6	D: PVE, POA	██████████ Portfolio
634034-2	D: PVE, POA	██████████ ██████████ Portfolio
634035-0	D: PVE, POA	██████████ ██████████ Portfolio
634036-9	D: PVE, POA	██████████ ██████ Portfolio
634037-7	D: NAFD, PVE, RBS, POA	██████████ ██████ Portfolio
634038-5	D: PVE, POA	██████████ Portfolio
634040-7	D: POA	██████████ Fund (CAD)
634041-5	D: NAFD, RBS, POA	██████████ Fund (CAD)
634053-9	D: NAFD, PVE, RBS, POA	██████████ Fund
634054-7	D: PVE, POA	██████████████████████ Funds ICVC

43. By email of 11 February 2020 the Claimant addressed a number of recipients in the domain “██████████.com”, referred to by the Claimant as “the client”, as follows:

*“We have (finally) received deficiency notices for the ageas SA/NV (f/k/a Fortis)(Netherlands) settlement. They are requesting some additional documents such as POAs and authorization to file. I’ve attached the full description of the deficiencies as well as a draft of the POA. Could you please assist in addressing these issues? They have given a **hard deadline** of February 25<sup>th</sup> or the claims will be completely rejected, no exceptions.”*

44. On 25 February 2020, the Claimant sent an email to Computershare with a zip file containing:

- three Powers of Attorney to [REDACTED], worded as follows:
  - a. one by “The [REDACTED], on behalf of [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio, and [REDACTED] Portfolio,... herein represented by [REDACTED]”,
  - b. one by “[REDACTED] Fund of the [REDACTED] Funds, by [REDACTED], solely in its capacity as Trustee,... herein represented by [REDACTED]” and
  - c. one by “[REDACTED] Fund of the [REDACTED] Funds, by [REDACTED], solely in its capacity as Trustee, ... herein represented by [REDACTED]” (italics added by the Dispute Committee),
  
- two Certificates containing signatures from authorized signatories for:
  - aa. [REDACTED] and [REDACTED] Fund (US) and
  - bb. [REDACTED], and
  
- five pages of bank account information.

45. In this email the Claimant indicated that the Powers of Attorney for the last two claims<sup>15</sup> would follow by email of 26 February 2020. Apart from this information, the documents in the zip file were not allocated to one or more particular Claim numbers.

46. By email of 26 February 2020 the Claimant sent an additional Power of Attorney to [REDACTED] by “[REDACTED] Funds ICVC, in relation to [REDACTED] Fund and [REDACTED] Fund, by [REDACTED], solely in its capacity as authorized corporate director,... herein represented by [REDACTED]” (italics added by the Dispute Committee) and an additional Certificate of Incumbency containing the signatures from authorized signatories for [REDACTED].

47. By email of the same date Computershare replied to the Claimant indicating:

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<sup>15</sup> These are the Claims with Claim numbers 634053-9 and 634054-7 on behalf of [REDACTED] Fund and [REDACTED] Fund of [REDACTED] Funds ICVC respectively.

*"We will process. Please note the NAF is only applicable for claim over a certain threshold amount (over USD 10.000); it is not required for every claim."*<sup>16</sup>

48. On 27 April 2020 Computershare sent a Determination of Rejection to the Claimant containing the same deficiencies as mentioned in the Notice of Deficiency of 6 February 2020 and stating:

*"to date we have not received a response that cures the deficiency from each claim reflected on the report".*

49. By email of 28 July 2021, the Claimant asked Computershare about the status of the Claims. As no reply followed, the Claimant repeated its request for information by email of 9 November 2021.

50. On 11 November 2021 Computershare informed the Claimant that the Claims had been rejected. By email of that same day the Claimant asked what the reason for the rejection was. By email of the same day Computershare responded that "[a] good portion of these were rejected for uncured deficiencies" referring to the attached reasons for the rejection (presumably the Determination of Rejection).<sup>17</sup>

51. On 22 March 2022 the Claimant emailed a spreadsheet to Computershare stating that all the deficiencies would have been cured by the Claimant(s) and requesting an explanation as to why these Claims continued to be rejected even though all requested items had been provided. The Claimant specifically asked:

*"Can you also provide any further communication you sent to us explaining why the items provided did not cure the deficiencies?"*

52. In its reply email of the same date Computershare responded as follows:

*"Thank you for your email. Unfortunately it is too late at this point to move forward with these claims. We sent a Determination of Rejection for these claims nearly two years ago with a response deadline of 20 days from 27 April 2020. Rejection deadlines are strictly enforced in this settlement and any objections to the rejections should have been made within the deadline set forth in the notice. Unfortunately, there is no further recourse for these claims."*

53. On 6 April 2022 Computershare issued a Notice of Rejection.

54. On 21 April 2022, the Claimant introduced its Request for Binding Advice with the Dispute Committee.

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<sup>16</sup> During the hearing of 11 November 2022, it became clear that "NAF" refers to the deficiency "NAFD".

<sup>17</sup> This is an assumption as the Parties did not submit the appendices of this communication to the Dispute Committee.

**B. Position of the Claimant**

55. The Claimant admits that it received the Determination of Rejection on 27 April 2020 and that it did not timely send its Notice of Disagreement within 20 days after this Determination. The Claimant states that, in general, Determinations of Rejection were not followed up on within the organization of [REDACTED].
56. The Claimant however takes the position that the information which was timely provided by [REDACTED] in order to cure the deficiencies, in fact correctly cured the deficiencies for all ten Claims, with the exception of the Claim of [REDACTED] Portfolio,<sup>18</sup> and that Computershare acted in violation of the Regulations and reasonable due process by rejecting the other nine Claims without processing and taking this information into account.
57. The Claimant also states that the 20-calendar days term to disagree with a Determination of Rejection is onerously short for third party filers like [REDACTED] who have to obtain information from their clients in order to respond to determinations.
58. The Claimant explains that the three Certificates (of Incumbency) provide the required evidence of the authority/designation of the signatories to execute the Powers of Attorney on behalf of the Eligible Shareholders, one for the funds administered in the United States,<sup>19</sup> one for the funds administered in Canada<sup>20</sup> and one for the funds administered in the United Kingdom,<sup>21</sup> and refers to these Certificates as the information provided to cure the “NAFD” deficiencies. The Claimant states that these Certificates were relevant to all nine Claims because they demonstrate the authorization of the signatories of all the Powers of Attorney and that Computershare should have taken them into account in commenting on the merits of all nine Claims on a claim-by-claim basis, as the Certificates were submitted to Computershare in the emails of 25 and 26 February 2020 without restricting their relevance to the three Claims with the “NAFD” deficiency only.<sup>22</sup>
59. The Claimant further explains that the four Powers of Attorney to [REDACTED] would cure the “POA” deficiencies in the sense that the Powers of Attorney would have been given to [REDACTED] by the nine Eligible Shareholders. During the second hearing the Claimant however admitted that the Powers of Attorney were not signed by or duly on behalf of the Eligible Shareholders themselves. The Claimant stated that the parties who signed the Powers of Attorney were the owners of the nine respective Eligible Shareholders, however, without evidencing the alleged authority to represent these Eligible Shareholders.

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<sup>18</sup> Claim with Claim number 634035-0. With respect to this Claim the Claimant acknowledged at the second hearing of 7 November 2022 that the documents provided did not cure the POA deficiency since no POA was provided for the relevant Eligible Shareholder (see Computershare’s submission of 21 September 2022). The rejection by Computershare of this Claim is therefore no longer in dispute.

<sup>19</sup> Claim numbers 634032-6, 634034-2, 634036-9, 634037-7 and 634038-5.

<sup>20</sup> Claim numbers 634040-7 and 634041-5.

<sup>21</sup> Claim numbers 634053-9 and 634054-7.

<sup>22</sup> Claim numbers 634037-7 (US), 634041-5 (Canada) and 634053-9 (UK).

60. The Claimant states that in its submission on the merits of the claims on a claim-by-claim basis dated 21 September 2022, Computershare unduly added new (“NAFD”) deficiencies that would not have been notified to the Claimant in the Notice of Deficiency of 6 February 2020.
61. During the second hearing the Claimant further alleged that in its email of 26 February 2020 Computershare had conceded that for Claims under USD 10.000 no NAFD evidence would be required.<sup>23</sup>

**C. Position of Computershare**

62. Computershare admits that at the time of receipt, it did not duly process and take into account the information provided by the Claimant on 25 and 26 February 2020 in an attempt to resolve the deficiencies.
63. However, Computershare states that the Determination of Rejection of 27 April 2020 has nevertheless become final and binding in the absence of a timely Notice of Disagreement filed by the Claimant within 20 days after receipt of this Determination of Rejection, as prescribed in Articles 4.3. and 4.4. of the Regulations.
64. On the merits, Computershare states that on the one hand all the “PVE”<sup>24</sup> and “RBS”<sup>25</sup> deficiencies, which are of a financial nature, would have been cured by the information provided by the Claimant, except for one. Only the “PVE” deficiency of Claim number 634054-7 in the name of ██████████ Fund of ██████████ Fund was not resolved. There remained a mismatch between the bank account information and the Eligible Shareholder.
65. Computershare states that in giving its comment on the merits, on a claim-by-claim basis, it did not have to involve the three Certificates of Incumbency curing the “NAFD” Deficiency<sup>26</sup> in its assessment of all the other six “POA”<sup>27</sup> deficient Claims, as these Certificates would only have been submitted by the Claimant for the purpose of the three “NAFD” deficient Claims.<sup>28</sup>
66. Computershare states that, on the other hand, the nine “POA” deficiencies were never cured by the information sent by the Claimant – with or without the “NAFD” Certificates – as the Powers of Attorney have not been signed by or duly on behalf of the Eligible Shareholders, as required

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<sup>23</sup> This threshold argument only concerns the three Claims that suffered from the NAFD deficiency: Claim numbers 634037-7, 634041-5 and 634053-9. The Claimant referred to the email of 26 February 2020 quoted above in paragraph 47, in which Computershare mentioned this threshold, for the first time during the second hearing of 11 November 2022.

<sup>24</sup> The Claims Administrator used this abbreviation for the Deficiency it identifies as “the account information provided for payment failed validation”.

<sup>25</sup> The Claims Administrator used this abbreviation for the Deficiency it identifies as “the claim requires third party documentation that confirms ownership of the account to which the payment is being made”.

<sup>26</sup> The Claims Administrator used this abbreviation for the Deficiency it identifies as “the claim requires additional documentation that illustrates the authority/designation of the signatory to execute the POA on behalf of the entity”.

<sup>27</sup> The Claims Administrator used this abbreviation for the Deficiency it identifies as “a POA executed by the natural or legal person(s) who held shares in Fortis was not provided”.

<sup>28</sup> Claim numbers 634037-7 (US), 634041-5 (Canada) and 634053-9 (UK).

by the Settlement Agreement, and as notified to the Claimant in the Notice of Deficiency of 6 February 2020. None of the Powers of Attorney and the Certificates of Incumbency provided by the Claimant evidence that the nine Eligible Shareholders were duly represented when other entities provided Powers of Attorney to [REDACTED] on their behalf. The "NAFD" Certificates evidence who is authorized to sign on behalf of [REDACTED] Fund, [REDACTED] and [REDACTED], but these are not the nine Eligible Shareholders. The Powers of Attorney to [REDACTED] have been provided by other entities, without evidencing that these entities were entitled to duly represent the Eligible Shareholders. The deficiencies not being cured, Computershare rightly rejected the Claims on this basis, by its Determination of Rejection of 27 April 2020. This Rejection having become final and binding in absence of timely objections from the Claimant, no further recourse is available to the Claimant, pursuant to Articles 4.3 and 4.4. of the Regulations. Computershare denies that there would in this case be a ground for an exception to Articles 4.3. and 4.4. of the Regulations and it denies that it added new deficiencies during the process. The "POA" deficiencies were, and remained, that no Powers of Attorney were submitted by or duly on behalf of the Eligible Shareholders.

67. Finally, Computershare is of the opinion that the Claimant should not be allowed to raise, for the first time during the second hearing, the argument that "NAFD" evidence would not have been necessary for claims under USD 10.000.

## V. FINDINGS AND CONSIDERATIONS OF THE DISPUTE COMMITTEE

### A. Admissibility of the Claimant's Request for Binding Advice

68. In order to be admissible, a Request for Binding Advice must be submitted to the Dispute Committee in accordance with Article 4.3.5 of the Settlement Agreement within 30 business days of Computershare's letter rejecting, in whole or in part, the Eligible Shareholder's objections to the rejection of its claim. The Dispute Committee has determined that Computershare sent a Notice of Rejection to the Claimant on 6 April 2022 and that the Request for Binding Advice was submitted to it on 21 April 2022, pursuant to which the Dispute Committee has considered the Request for Binding Advice as timely submitted.

### B. Has the Determination of Rejection of 27 April 2020 become final and binding in the sense of Articles 4.3. and 4.4. of the Regulations?

#### B.1 Application of Articles 4.3 and 4.4 of the Regulations in this case

69. Article 4.3 of the Regulations states that if a Claimant disagrees with Computershare's Determination, it must follow a specific procedure and meet a specific deadline: "*If such person disagrees with the Determination, such person ("Disputing Claimant") may submit a notice of disagreement ("Notice of Disagreement") to the Claims Administrator within twenty (20) calendar days after the date on which the Determination was sent. The Notice of Disagreement must be in writing and must set out the reasons for the Disputing Claimant's disagreement*".

70. Article 4.4 of the Regulations provides for the consequences of the Disputing Claimant's failure to file its objection in time: "*If a Disputing Claimant does not file a Notice of Disagreement within the 20-day period referred to in section 4.3, then the Determination by the Claims Administrator will be binding and no further recourse shall exist*".
71. This sanction is a specific measure which was elaborated in the Regulations implementing the organization of the management of claims as provided in Article 4.3.5 of the Settlement Agreement, which was approved by the Court of Appeal of Amsterdam in its Judgment of 13 July 2018.
72. Compliance with the deadline of Article 4.4 is of importance for the Claims Administrator in order to be able to award the Settlement Amount, as defined in Article 4.1.1 of the Settlement Agreement, to the Eligible Shareholders in accordance with the criteria laid down in the Settlement Agreement, with all due legal certainty and within a reasonable time. It would be unacceptable if an individual shareholder could challenge, without time limitation, the Settlement Amount that the Claims Administrator has awarded or denied him. Any change in the award of compensation to an individual shareholder *ipso facto* affects the balance of the Settlement Amount allocated to the other Eligible Shareholders.
73. The Dispute Committee is bound, just as Computershare, by the terms of the Regulations. In applying the Regulations, the Dispute Committee has upheld in a significant number of cases the sanction prescribed by Article 4.4 of the Regulations.<sup>29</sup>
74. In the instant case the Claimant has acknowledged the timely receipt of the Determination of Rejection of 27 April 2020. No Notice of Disagreement was sent within the 20-day period of Article 4.3. of the Regulations. The Claimant enquired about the status of the Claims more than one year later and did not contend until 22 March 2022 that the deficiencies would have been cured.
75. As a consequence, subject to the Claimant's objections discussed hereafter, the Determination of Rejection of 27 April 2020 must be provisionally found binding and final, with no further recourse available, pursuant to Article 4.4 of the Regulations.

**B.2. Claimant's objections against the time limit of Article 4.3 of the Regulations and its sanction**

76. The Claimant has argued in its submission of 8 June 2022 that the 20-calendar day term mentioned in the Regulations is onerously short and unfair to professional third party filers (like ██████), who need time to obtain information from their clients to respond to determinations issued by Computershare.

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<sup>29</sup> See Binding Advices n° 2020/0067, 2020/0124, 2021/0003, 2021/0004, 2021/0008, 2021/0009, 2021/0010, 2021/0014, 2021/0018, 2021/0052, 2021/0074, 2021/0060, 2021/0123, 2021/79, 2021/33, 2021/93, 2021/135, 2021/137 and 2021/138, which are published on the FORsettlement website: [www.forsettlement.com](http://www.forsettlement.com).

77. Pursuant to its Article 10.1, the Settlement Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by Dutch law. In line therewith, the Dispute Committee shall, pursuant to Article 4.17 of the Regulations decide "*in accordance with Dutch law, the provisions of the Settlement Agreement and these regulations and, if relevant, in accordance with other rules of law or any applicable trade usages which it considers appropriate in view of the nature of the dispute.*"
78. The principle of reasonableness and fairness forms part of Dutch law.<sup>30</sup> Agreements (in general), such as Settlement Agreements (in particular), may be supplemented or limited in scope and content, by the operation of reasonableness and fairness. In the application of the principle of reasonableness and fairness, there is indeed a distinction between the supplementing effect and the restrictive effect.<sup>31</sup>
79. The restrictive effect of this principle is applied with restraint.<sup>32</sup> In line with established case law of the Dutch Supreme Court, it is the opinion of the Dispute Committee, that a provision of a settlement agreement between parties, can only be set aside due to a violation of the principle of reasonableness and fairness, in very exceptional situations, namely if application of the provision would lead to an outcome that would in the given circumstances be unacceptable according to the standards of reasonableness and fairness.
80. Despite the absence of (higher) case law regarding settlement agreements that have been declared generally binding by the Amsterdam Court of Appeal under Section 7:907 DCC, the Dispute Committee can only assume that any judicial review of an individual application of a settlement agreement that the Court of Appeal of Amsterdam has approved, such as the Settlement Agreement, is even more restrictive than in application of Article 6:248 in case of ordinary agreements or of Article 7:904 DCC in case of settlement agreements.<sup>33</sup>
81. In the context of the present Settlement Agreement, a deviation from the rules of the Settlement Agreement and the Regulations could only come into play if it would be

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<sup>30</sup> As laid down in Article 6:248 DCC. Article 6:248 DCC reads: "*1. An agreement not only has the legal effects which parties have agreed upon, but also those which, to the nature of the agreement, arise from law, usage (common practice) or the standards of reasonableness and fairness. - 2. A rule, to be observed by parties as a result of their agreement, is not applicable insofar this, given the circumstances, would be unacceptable to standards of reasonableness and fairness*" (free translation from Dutch).

<sup>31</sup> Asser/Sieburgh 6-III 2018/391, 410 and following.

<sup>32</sup> Dutch Supreme Court 10 July 2009, ECLI:NL:HR:2009:BI3820; the Court applies the restrictive effect of reasonableness and fairness only with the utmost restraint (Supreme Court 9 January 1998, ECLI:NL:HR:1998:ZC2540 (*Gemeente Apeldoorn/Duisterhof*)). It is not sufficient that an outcome is 'not fair' (Supreme Court 25 February 2000, ECLI:NL:HR:2000:AA4942 (*FNV/Maas*)) or 'not within the reasonable' (Supreme Court 14 December 2001, ECLI:NL:HR:2001:AD4504 (*Bouwkamp/Van Dijke*)). See Parliamentary History to article 6:248 DCC, Kluwer 1981, p. 919-925 and Sdu 2021. More recently, see Supreme Court 29 January 2021, ECLI:NL:HR:2021:153.

<sup>33</sup> Article 7:904 DCC par 1 holds: "*An assessment made by one of the parties or a third party is voidable if its binding force, in view of its content or the way in which it was made, would in the given circumstances be unacceptable according to standards of reasonableness and fairness*" (free translation from Dutch).



unacceptable under the circumstances in view of the standards of reasonableness and fairness that the Claimant be bound by Computershare's decision.

82. Against this background, the Dispute Committee will weigh the circumstances on the sides of both Parties. It appears from the correspondence between [REDACTED] and [REDACTED] quoted in paragraph 43 above that [REDACTED] was well aware of the strict time limits imposed by the Regulations. Notwithstanding such awareness, [REDACTED] did not submit any disagreement against the Determination of Rejection of 27 April 2020 for almost two years.
83. [REDACTED] acknowledged that the Determination of Rejection was not properly followed up within its own organization.<sup>34</sup> It is only due to a later enquiry of [REDACTED]' clients [REDACTED], in July 2021, that [REDACTED] reviewed the Claims' status and finally filed a Notice of Disagreement months later.
84. As a result, the Dispute Committee finds that it is not the shortness of the 20-day time limit deadline imposed by Article 4.3 of the Regulations that caused [REDACTED]' failure to respond within the applicable time-limit. It is Claimant's prolonged internal mishandling of Computershare's Determination that caused this failure. Under these circumstances, considerations based on reasonableness and fairness cannot justify deviating from the sanction of Article 4.4 of the Regulations. Reasonableness and fairness cannot be valid grounds for avoiding the consequences of a time limit that had been identified in due course by [REDACTED] and that [REDACTED] exceeded by many months due to a failure in its internal organization.
85. The Claimant also argues that the 20-day time limit term of Article 4.3 of the Regulations cannot be sanctioned by the loss of the claim due to the very finality of class actions settlement agreements, which aim by nature at the compensation of shareholders.
86. The Dispute Committee does not follow the Claimant in this respect. As explained above and as rightly submitted by the Claims Administrator,<sup>35</sup> the Settlement Amount is a fixed amount to be distributed among all Eligible Shareholders. It is essential for the proper implementation and the progress of the Settlement that the procedural rules and deadlines are applied uniformly and strictly. The Claims Administrator must be able to rely on the fact that a particular Determination, potentially affecting the situation of all other Eligible Shareholders, becomes final and binding if not properly and timely challenged. Hence, the loss of a claim for having missed the applicable deadline is a sanction that appears proportionate to the overarching objective of achieving the implementation of the Settlement Agreement.
87. As a conclusion, the Dispute Committee finds that the outcome of applying the time limit prescribed by Article 4.3 is not unacceptable according to the standards of reasonableness and fairness, in respect of the arguments discussed above.

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<sup>34</sup> See above, paragraph 55.

<sup>35</sup> Paragraph 71 and the Claims Administrator's submission of 25 May 2022, para 4, p. 2.

**C. Had the Claimant actually cured the deficiencies before the issuance of the Determination of Rejection?**

88. Moreover, the Claimant has stated in its 8 June 2022 submission that the sanction of Article 4.4. of the Regulations should not be imposed in this case where the aggrieved investors would have timely and accurately provided the requested supporting documentation for their claims. Computershare has objected that the documentation provided by the Claimant did not cure the POA deficiencies notified in the Notice of Deficiency of 6 February 2020, because the Powers of Attorney were not given by or duly on behalf of the relevant Eligible Shareholders. As prescribed in Article 4.3.1 of the Settlement Agreement, only Eligible Shareholders can be compensated for claims evidenced in accordance with Article 4.3.3 of the Settlement Agreement.
89. By reference to the above considerations on reasonableness and fairness, the Claimant seems to imply that since the documentation timely provided had actually cured the POA deficiencies, the outcome of Computershare’s Determination would be unacceptable under the standards of reasonableness and fairness for that reason also. This argument becomes relevant only if the POA deficiencies were in fact cured by the documentation provided by the Claimant, which the Dispute Committee will now assess.
90. The Claimant submitted in February 2020 four Powers of Attorney and three Certificates (of Incumbency) in an attempt to cure the notified deficiencies.
91. The information provided by the Claimant in February 2020 was as follows:

Claim no.	Country	Deficiencies	Eligible Shareholder	POA	"NAFD" certificate of signatories for:	Signatories
634032-6	US	D: POA	[REDACTED] [REDACTED] [REDACTED] Portfolio	"The [REDACTED], on behalf of [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio, and [REDACTED] Portfolio,... herein represented by [REDACTED]",	[REDACTED] [REDACTED] and [REDACTED] [REDACTED]	[REDACTED]
634034-2	US	D: POA	[REDACTED] [REDACTED] [REDACTED] Portfolio	"The [REDACTED], on behalf of [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio, and [REDACTED] Portfolio,... herein represented by [REDACTED]",	[REDACTED] [REDACTED] and [REDACTED] [REDACTED]	[REDACTED]



92. Since the nine Claims still in dispute<sup>36</sup> all suffer from the POA-deficiency, the Dispute Committee will first address this POA-deficiency. Computershare's defense in all nine Claims in dispute, in its submission of 21 September 2022 and during the second hearing of 11 November 2022 was that in order to prove authority to represent an Eligible Shareholder, a valid Power of Attorney of that Eligible Shareholder should be provided. A mere declaration of the stated proxyholder does not suffice.
93. The Dispute Committee will first assess the documents provided for the five US Claims and thereafter the documents provided for the two Canadian and the two UK Claims, before the conclusion for the nine Claims in dispute.

#### The US Claims

94. The "US" Power of Attorney, that is presented as having been given on behalf of the five US Eligible Shareholders ( [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio, [REDACTED] Portfolio), is signed by [REDACTED] of the [REDACTED]. There is no US Certificate of Incumbency that includes the signature of [REDACTED] as an authorized person to represent [REDACTED]. The Certificate provided for the US Eligible Shareholders does list her as authorized to represent [REDACTED], [REDACTED] Fund, [REDACTED], and the [REDACTED], but these entities are not mentioned in the US Power of Attorney.
95. As Computershare made clear during the second hearing, a further deficiency of this Power of Attorney is that the Claimant has not evidenced that the [REDACTED] would be authorized to duly represent the five US Eligible Shareholders to give power of attorney to [REDACTED].
96. The Claimant has stated during the second hearing that this authority to represent the five US funds that are Eligible Shareholders would stem from the fact that [REDACTED] would be the owner of these five funds, but neither ownership nor the authority to represent these funds has been evidenced.

#### The Canadian Claims

97. The Powers of Attorney presented as having been given by the Canadian Eligible Shareholders ([REDACTED] Fund (CAD) and [REDACTED] Fund (CAD)) are signed by [REDACTED] of [REDACTED], whose signature is included as an authorized person on the Canadian certificate of [REDACTED].
98. The deficiency of these Powers of Attorney is, as Computershare made clear during the second hearing, that the Claimant has not evidenced that [REDACTED] is authorized to duly represent the two Canadian funds to give power of attorney to [REDACTED] (the POAs state that [REDACTED] acted in its capacity of Trustee).

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<sup>36</sup> See footnote 18.

99. With respect to the Canadian funds also, the Claimant has stated during the second hearing that the authority to represent the Eligible Shareholders would stem from the fact that [REDACTED] [REDACTED] would be the owner of these two funds, but ownership or the authority to represent these funds (based on Trusteeship), has not been evidenced.

#### The UK Claims

100. The Power of Attorney for the UK Eligible Shareholders ([REDACTED] Fund and [REDACTED] Fund of [REDACTED] Funds ICVC) is signed by [REDACTED] [REDACTED] of [REDACTED], whose signature is included as an authorized person on the UK Certificate of [REDACTED].
101. The deficiency of this Powers of Attorney is, as Computershare made clear during the second hearing, that the Claimant has not evidenced that [REDACTED] is authorized to duly represent the two UK funds to give power of attorney to [REDACTED] (the POA states that [REDACTED] acted solely in its capacity as authorized corporate director).
102. With respect to the UK funds also, the Claimant has stated during the second hearing that the authority to represent the Eligible Shareholders would stem from the fact that [REDACTED] [REDACTED] would be the owner of these two UK funds, but ownership or the authority to represent these UK funds (based on directorship), has not been evidenced.

#### General conclusion regarding the POA deficiencies

103. Concludingly, the Dispute Committee finds that the Powers of Attorney provided by [REDACTED] in April 2020 were not given by or duly on behalf of the Eligible Shareholders, so that the deficiencies were not cured. For each of the Claims, [REDACTED] failed to submit sufficient evidence to conclude that [REDACTED] has been properly authorized to represent the relevant shareholders, in particular because the signing authority of the POA's signatory was not established. The circumstance that the definition of the POA deficiency provided by Computershare does not explicitly mention the requirement to prove the signing authority of the signatory does not prevent Computershare from finding the claim deficient in absence of such proof. The principles laid down in Articles 4.3.1 and 4.3.3. of the Settlement Agreement that only Eligible Shareholders can be compensated, and that Eligible Shareholders have to evidence their claims themselves, constitute the basic fundamentals of the Settlement Agreement.

#### **D. Has the Claimant been given a sufficient opportunity to cure the alleged deficiency?**

##### *D.1. Admissibility of the argument*

104. In addition to the objections raised against the time limit of Article 4.3 of the Regulations itself, the Claimant has also argued that Computershare would have added a new deficiency in the

course of the proceedings that did not exist originally, by stating that no proper signing authority would have been provided for six of the Claims.<sup>37</sup>

105. The Dispute Committee must first assess whether this argument is admissible in view of its provisional finding above sub. B, that the sanction of Article 4.4 of the Regulations should be applied.
106. In two cases the Dispute Committee has allowed for an exception to the sanction of Article 4.4 of the Regulations.
107. In its Binding Advice 2021/0023, the Dispute Committee has held that Article 4.1 of the Regulations, which is in line with Article 4.3.5 of the Settlement Agreement, implies that Computershare can only reject (part of) a Claim, if it has given a real opportunity to the Claimant to cure the deficiency upon which the later rejection is based:

*“...article 4.1 of the Regulation, which provides in line with article 4.3.5 of the Settlement Agreement, that “If the Claims Administrator finds any deficiency in a 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”. Only after the Claimant has been given the possibility to cure an identified deficiency and after the deficiency cure period referred to above has passed can Computershare issue a Determination rejecting the claim on the basis of such deficiency.*

*As the Dispute Committee decided in earlier Binding Advices,<sup>38</sup> Computershare must inform each claimant of each particular deficiency that it intends to take into account for issuing its Determination and must grant such claimant the explicit possibility to cure such deficiency. Computershare has not done so in this case. .... In any event, even if the Claimant could have easily identified the discrepancy in the Determination, he should have been given the explicit opportunity to cure such deficiency. ”*

108. In Binding Advice 2021/0012 the Dispute Committee has held that the deadline of Article 4.3 of the Regulations would not be operative in case of absence of a Notice of Deficiency, because Computershare has to provide the Claimant by means of a Notice of Deficiency with an opportunity to complement the Claim Form in case the evidence enclosed in or attached to the Claim Form would demonstrate a shareholding giving right to a higher compensation.
109. In the view of the Dispute Committee, the Regulations grant all Eligible Shareholders two opportunities to cure deficiencies: first, after the issuance of a Notice of Deficiency, clearly identifying the deficiencies of the Claim, and then a second time, after the issuance of the Determination of Rejection (Article 4.3). Computershare has argued, in its 25 May 2022 submission that the need for two distinct possibilities to cure deficiencies would be limited to situations in which a Notice of Acceptance was issued while no preceding Notice of Deficiency

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<sup>37</sup> See Claimant’s submission of 5 October 2022.

<sup>38</sup> See for example Binding Advice 2020/0002.

would be necessary in case a Determination of Rejection is issued.<sup>39</sup> The Dispute Committee does not agree. The Dispute Committee ruled in the above-mentioned Binding Advice 2021/0023 that, also in a situation where the deficiency could have been easily identified, an earlier explicit opportunity should have been given to the Eligible Shareholder to cure such deficiency through the notification of a Notice of Deficiency. The Dispute Committee sees no reason to restrict the need for two distinct possibilities to cure deficiencies to situations in which a Determination of Acceptance has been issued, while the same two opportunities would not be granted in situations in which Computershare has issued a Determination of Rejection.

110. The Dispute Committee shall therefore examine below whether the Notice of Deficiency of 6 February 2020 gave the Claimant a clear, distinct and effective opportunity to cure the deficiencies on which the later Determination of Rejection was based.

*D.2. Were the deficiencies of the Claims clearly and completely communicated to the Claimant in the Notice of Deficiency of 6 February 2020?*

111. For all Claims, the “POA” deficiency was notified to the Claimant. The Dispute Committee holds first and foremost that the Settlement Agreement is clear in that only Eligible Shareholders can be entitled to compensation under its terms. According to the Dispute Committee, the Notice of Deficiency of 6 February 2020 was sufficiently clear in pointing out to the Claimant that each Eligible Shareholder should give a power of attorney to ██████ to file a Claim Form on its behalf. The description of the “POA” deficiency specifies three times<sup>40</sup> that the legal entity holding the shares should provide a power of attorney to file a Claim Form on its behalf. Therefore, the Dispute Committee holds that it was clear from the Notice of Deficiency that a power of attorney from another (group) entity would not cure the deficiency, at least not without providing sufficient evidence that the Eligible Shareholder itself gave power of attorney to that other entity to provide, on its behalf, a power of attorney to ██████.<sup>41</sup>
112. The “NAFD” deficiency was notified to the Claimant for three Claims.<sup>42</sup> According to the Dispute Committee, the “NAFD” deficiency required the Claimant in clear terms to illustrate the authority/designation of the signatory to execute the POA. The Dispute Committee establishes that the Claimant seems to have understood this deficiency code, given the fact that it submitted the Certificates (of Incumbency) holding the authority of the signatories of the Powers of

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<sup>39</sup> As Computershare has argued in its submission of 25 May 2022, paragraph 12.

<sup>40</sup> **“POA: A POA executed by the natural or legal person(s) who held shares in Fortis was not provided. A POA must be submitted on behalf of the natural or legal person(s) who held shares in Fortis authorizing your organization to file and sign the Release on his, her or its behalf. Please provide an executed POA from the natural or legal person(s) who held shares in Fortis”.**

<sup>41</sup> See Binding Advices 2020/0048, 2020/00475, 2021/0030, 2021/0035 and 2021/0113 for examples of cases where the Claim was rejected by reason that the Eligible Shareholder (legal entity) was allegedly liquidated and that no proper evidence was submitted to show that the claim rights attached to the Fortis shares had been transferred to the Claimant and/or for the reason that the Eligible Shareholder was not duly represented.

<sup>42</sup> Claim numbers 634037-7 (US), 634041-5 (Canada) and 634053-9 (UK).

Attorney [REDACTED] and [REDACTED] ) to represent the entities providing the Powers of Attorney.

113. The “PVE” and the “RBS” deficiencies were, according to the Dispute Committee, also clearly communicated. As noted in paragraph 64 above, the Claimant addressed these deficiencies in a correct manner, except for one Claim, in which case (Claim number 634054-7 in name of [REDACTED] Fund of [REDACTED] Fund), the Claimant did not contest Computershare’s standpoint that there remained a mismatch between the bank account information and the Eligible Shareholder.
114. The Dispute Committee holds therefore that the four distinct deficiencies mentioned in the Notice of Deficiency of 6 February 2020 were clearly notified to the Claimant. Furthermore, the Determination of Rejection of 27 April 2020 mentioned precisely the same deficiencies as the Notice of Deficiency as the basis to reject the Claims.
115. The Claimant has argued in its 5 October 2022 submission (plus attachment) that Computershare unduly added new “NAFD” deficiencies in its 21 September 2022 submission providing its ‘claim-by-claim’ position regarding the merits of the disputed claims. The Claimant commented on Computershare’s Excel overview of positions per Claim, that Computershare would have added the “NAFD” deficiency to the six remaining Claims where the “NAFD” deficiency was originally not notified.
116. The Dispute Committee will examine Computershare’s position which it formulated in general terms for all Claims in the Excel overview of 21 September 2022, as follows:
- “For claim ID .... filed on behalf of X, the POA granting authority to [REDACTED] to file, collect etc. with regard to the Fortis settlement was signed by Z of Y. The Claims Administrator notes that the documentation provided does not clearly establish that Y is authorized to represent X nor has it been documented that Z is authorized to execute the POA on behalf of Y/X. Without explicit authorization provided by X as the shareholder, either directly to [REDACTED] or in agreeing to Y as its representative and without documentation outlining the authority of Z to sign we therefore determine the POA to be insufficient.”*
117. The Dispute Committee holds that in doing so, Computershare did not add “NAFD” deficiencies to Claims that did not ‘suffer’ this “NAFD” deficiency before, but rather repeated, for all ten Claims, the “POA” deficiency, explaining to the Claimant (again) that the Powers of Attorney should have been given, directly or indirectly, by the Eligible Shareholders.
118. The Dispute Committee concludes that the Claimant has had a distinct, clear and effective possibility to cure the deficiencies based upon which the Claims were later rejected in the Determination of Rejection of 27 April 2020 and that no deficiencies were added by Computershare. In the present case, where the Claimant has not satisfactorily cured deficiencies of which it had been made properly aware through a Notice of Deficiency prior to the Determination of Rejection, the Dispute Committee shall not by application of the principle of reasonableness and fairness deviate from the Settlement Agreement and the Regulations.



119. Therefore, any possible exception to the (consequence of the) deadline of Articles 4.3 and 4.4. of the Regulation, formulated in the Dispute Committee's earlier Binding Advices 2021/0023 and 2021/0012, does not apply in this case. The Determination of Rejection of 27 April 2020 has become binding and final pursuant to Articles 4.3. and 4.4. of the Regulations because the Claimant did not timely object to it. As a conclusion, the Dispute Committee shall reject the Claims of the Claimant.
120. Finally, in view of the foregoing discussions and conclusions, the question whether or not Computershare limited the necessity of NAFD documentation to claims under USD 10.000, and whether or not the Claimant was restricted to make this argument in the written rounds of submissions does not need be addressed by the Dispute Committee because there are no answers that would cure the POA deficiencies. For the same reason, the question whether the PVE deficiency of Claim number 634054-7 was or was not cured does not need to be addressed.

## VI. DECISION

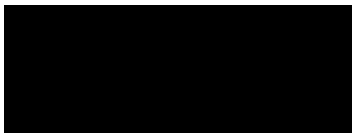
The Dispute Committee, on the basis of the above findings and considerations:

- Rejects the Claims of the Claimant as contained in its Request for Binding Advice of 21 April 2022 pursuant to Articles 4.3. and 4.4. of the Regulations;
- Decides that the present Binding Advice shall be published in an anonymized form (with respect to the Claimant and the Eligible Shareholders) on [www. FORsettlement.com](http://www.FORsettlement.com).

This Binding Advice is issued in four original, identical versions, one for each of the Parties, one for FORsettlement, and one for the Dispute Committee.

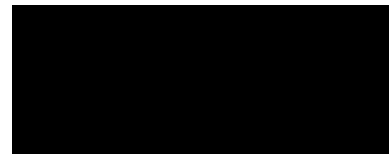
Done on 6 June 2023

The Dispute Committee:



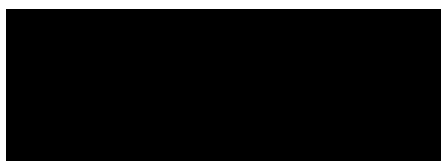
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Mr Harman Korte



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Ms Henriëtte Bast



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Jean-François Tossens