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] for the benefit of [redacted]

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***

The Dispute Committee:

Mr Jean-François TOSSENS
Mr Dirk SMETS
Ms Henriëtte BAST

7 JUNE 2023

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I. INTRODUCTION

A. The Parties

1. The Claim was filed by [redacted] ([redacted]), represented by [redacted], with offices at [redacted], United States acting on behalf of [redacted] ([redacted]) (***the Claimant***).[1] The Claimant was represented in the proceedings before the Dispute Committee by its Dutch counsel, Mr. Quirijn Bongaerts (Birkway).

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***).[2]

B. Composition of the Dispute Committee

3. The Dispute Committee is composed of five members.[3] Article 3.1 of its Regulations[4] 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), Mr Dirk Smets and Ms Henriëtte Bast.

C. Historical context and procedural background of the dispute

C.1 The Events

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

6. As a result of these allegations, a number of civil claims and legal proceedings were initiated both in The Netherlands and in Belgium, among others, by the Dutch Investors' Association

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1 [redacted] was already acting as attorney-in-fact of [redacted] when it submitted the Claim Form containing the Claim that is the subject of the present dispute.

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

3 The Dispute Committee is composed of the following members: Ms Henriëtte Bast (from 30 April 2021), Mr Harman Korte (from the beginning), Ms Alexandra Schluep (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).

4 The Regulations of the Dispute Committee can be consulted on the website FORsettlement: www.forsettlement.com.

(*Vereniging van Effectenbezitters),*[5] *Stichting Investor Claims Against FORTIS*[6] and *Stichting FortisEffect*[7] (all in The Netherlands), and by *DRS Belgium CVBA*[8] 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).[9]

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.[10] 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[11]

9. The above agreement has been embedded in a formal settlement on 13 April 2018 between Ageas SA/NV, Vereniging van Effectenbezitters (VEB), Stichting Investor Claims Against FORTIS (SICAF), DRS Belgium CVBA (Deminor), Stichting FortisEffect (FortisEffect) and Stichting FORsettlement (the Foundation) (the ***Settlement Agreement***).[12] Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (part of the Settlement Amount), the allocation of which is to be supervised by 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

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5 *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***).

6 *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***).

7 *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***).

8 *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***).

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

10 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.

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

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

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***).[13] The Regulations are accessible online.[14]

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 a dispute entrust a third party to settle the legal relationship between them. In accordance with Article 4.17 of the Regulations of the Dispute Committee, 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.

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13 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.

14 The Regulations of the Dispute Committee can be consulted on the website www.forsettlement.com.

II. HISTORY OF THE PROCEEDINGS BEFORE THE DISPUTE COMMITTEE

16. On 12 September 2022, the Claimant submitted by e-mail of its Dutch counsel Mr. Bongaerts, a Request for Binding Advice to the Dispute Committee against a Notice of Rejection issued by Computershare on 1 August 2022, in the case with Claim number 600646-9 in the name of ([redacted] for the benefit of) [redacted].

17. By email of 13 September 2022, the Dispute Committee confirmed the receipt of the Request to the Claimant and sent to Computershare a copy of the Request inviting Computershare to submit its reply by 23 September 2022 at the latest.

18. On 21 September 2022, Computershare requested an extension of time of 14 days for submitting its reply, which extension was granted to Computershare by email of 22 September 2022.

19. By email of 7 October 2022 Computershare sent its reply to the Dispute Committee and to the Claimant, together with annexes A through E.

20. On 10 October 2022, the Dispute Committee invited the Claimant to submit its comments on Computershare's submission, by 24 October 2022 at the latest.

21. The Claimant sent its reaction by email of 24 October 2022.

22. On 26 October 2022 the Dispute Committee invited Computershare to respond to the Claimant's reaction ultimately by 10 November 2022 and indicated to the Parties that a hearing would be scheduled on either of three proposed dates in November 2022.

23. On 27 October 2022 the Claimant confirmed its availability for a hearing on 30 November 2022.

24. On 28 October 2022 Computershare also confirmed its availability on that date.

25. On 1 November 2022 Computershare emailed its response to the Claimant's latest submission of 24 October 2022.

26. On 30 November 2022 a hearing took place by videoconference in the presence of:

    For the Claimant: Mr. [redacted] and Mr. Quirijn Bongaerts, counsel to the Claimant;

    For Computershare: Ms. Janainna Pietrantonio, Ms. Leonie Parkin, Mr. Keith Datz and Mr. Bryan D'Imperio;

    For the Dispute Committee: Mr. Jean-François Tossens (President), Ms. Henriëtte Bast and Mr. Dirk Smets, assisted by Mr. Simon Vanlaethem and Ms. Anne-Marie Devrieze.

27. By email of 21 February 2023 the Dispute Committee closed the proceedings and announced that it would in due course issue its Binding Advice.

28. By email of 9 May 2023 the Claimant inquired about the expected date of delivery of the Binding Advice.

29. By email of 10 May 2023 the Dispute Committee informed the Parties that the Binding Advice would be delivered by 5 June 2023 at the latest.

30. By email of 5 June 2023 the Dispute Committee informed the Parties that the Binding Advice would be issued by 8 June 2023 at the latest.

III. SUMMARY OF THE DISPUTE

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

32. A "*Notice of Rejection*" was sent by Computershare to the Claimant on 31 October 2019. This letter was improperly named "*Notice of Rejection*" by Computershare, instead of Determination of Rejection. It is however not disputed by the Parties that such "*Notice of Rejection*" was a Determination in the sense of Art. 4.2 of the Regulations triggering the 20-calendar day time limit within which the Claimant must file a Notice of Disagreement according to Article 4.3 of the Regulations. The "*Notice of Rejection*" of 31 October 2019 will hereafter be referred to as the Determination of Rejection of 31 October 2019.

33. The Claimant did not object to the Determination of Rejection of 31 October 2019 until July 2022, following which Computershare submits that the Determination of Rejection has become final and binding pursuant to Article 4.4 of the Regulations, in absence of a Notice of Disagreement filed by the Eligible Shareholders within the 20-calendar day time limit prescribed by Article 4.3 of the Regulations.

34. The Claimant objects to the application under the circumstances of the sanction prescribed by Article 4.4 of the Regulations, in essence for the following reasons:

    (i) The standards of reasonableness and fairness as they are recognized by Dutch law;
    (ii) The rationale of the Settlement Agreement;
    (iii) The need of consistency with precedents in which Computershare was more lenient in applying formal requirements of the Settlement Agreement and the Regulations.

IV. POSITIONS OF THE PARTIES

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

35. The Claimant submitted a blank Claim Form dated 4 January 2018, referring to a 10-page excel overview of 369 shareholdings of '[redacted]" of which number 736 concerns the claim subject of this dispute (the Claim).[15] [redacted] also filed on different dates approximately [redacted] other claims for other Eligible Shareholders not involved in this dispute.[16]

36. The Claimant asked for compensation for 7.000 shares held by [redacted] at the beginning of Period 1 and 11.666 shares held by [redacted] in all other six positions relevant to the Settlement Agreement: the ending of Period 1 and the beginning and ending of Periods 2 and 3 and as the highest position in the fourth, overarching, period between 28 February 2007 and 14 October 2008.

37. More in particular, on 3 May 2018, the Claimant submitted claim 600646-9 (the Claim) for the following Fortis shares (see Exhibit D of Computershare's submission of 7 October 2022):

Period 1		Period 2		Period 3		
21 Sept. 2007	07 Nov. 2007	13 May 2008	25 June 2008	29 Sept. 2008	3 Oct. 2008	Highest Number of Shares
7000	11,666	11,666	11,666	11,666	11,666	11,666

38. On 20 June 2018, the Claimant also submitted a claim 605924-4 for the following Fortis shares (see Exhibit E of Computershare's submission of 7 October 2022):

Period 1		Period 2		Period 3		
21 Sept. 2007	07 Nov. 2007	13 May 2008	25 June 2008	29 Sept. 2008	3 Oct. 2008	Highest Number of Shares
7000	11,666	11,666	11,666	11,666	11,666	11,666

39. The two claims referred to above were part of a bulk file submission by [redacted]. Since those two claims (i.e. the Claim filed by [redacted] for [redacted] and the claim 605924-4 filed by [redacted] for another Eligible Shareholder), mention an identical number of Fortis shares for the same relevant periods, they were identified as potential duplicates by Computershare among other suspected

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15 Exhibit 1 to the Request for Binding Advice.

16 See the excel file attached to the Claim Form (Exhibit 1 of the Request for Binding Advice). In total, [redacted] filed approximately [redacted] claims for various Eligible Shareholders, among which 369 claims for its client [redacted].

duplicate filings within the bulk claim submission made by [redacted]. This gave rise to an exchange of emails between Computershare and [redacted] in August 2018.

40. By email of 20 August 2018, Computershare wrote to the Claimant as follows:

"*Ok, so what you're saying is of the 55 duplicates these 21 you agree with, but you want an explanation of the other 34?*
14 of those 34 are from the [redacted] work from the end of July, so if I get you information on the other 20 tomorrow would that work?"

41. By email of the same date, the Claimant replied:

"*Correct, let me know about the other 20 you flagged and I will confirm if they should be removed or not. Is that okay with you?"*

42. By undated reply email Computershare wrote to the Claimant:

"*There were originally 13 of your claims that were found to be duplicative of [redacted] claims, and we took that number down to 2. I am extremely confident those two are dups, do you want information on them as well?"*

43. By email of 28 August 2018, Computershare wrote to the Claimant:

"*As per the potentially independent claims, if they can provide transaction level information, to confirm that while the holdings are the same the transactions are different, that would resolve the duplicate issue. If the transactions are identical… hopefully there is other information provided in that detail which differentiates the two*. (…)"

44. By email of the same date, the Claimant replied:

"*What kind of supporting evidence do you need? Could a fund prospectus be used to support they are unique funds under completely different investment managers?* "

45. And again on the same date, Computershare replied:

"*For the ones that are claiming not to be duplicative? The underlying transactions (purchases and sales) with affidavits from each attesting to the accuracy of the transactions.*

If the transactions don't match, that's sufficient. The claims are currently just matched on account similarity and holding… does that make sense of do you want to call me?"

46. Also, on this date of 28 August 2018 the Claimant emailed to Computershare:

"*Please find the attached original data from each claimant. I have highlighted the transactions in yellow for your convenience. Furthermore, I have provided a signed affidavit that supports*

> *the accuracy of these original transactions. Let me know if this helps resolves the duplicate issue*."

47. While allowing the majority of the +/- [redacted] claims filed by [redacted], Computershare issued on 31 October 2019 a Determination of Rejection [17] for the Claim and for approximately [redacted] other claims filed by [redacted]. The reason for rejecting the Claim 600646-9 was defined as "*DUP": the claim submitted is a duplicate to another claim already submitted for the same amount*." The Claimant was given a 20-day term to file a Notice of Disagreement to Computershare in case the Claimant would consider that the Claim was not duplicative.

48. In an email of 14 July 2022, the Eligible Shareholder [redacted] wrote to [redacted]:

> "*May I come back to you in regards of the fund "*[redacted]*" (D-736). Although the fund was included in the advice from June 2018 it was not included within the first Disbursement Statement.*
> *We received information that the Claims Administrator supposed the fund to be a duplicate and that the fund would receive its payment within the next disbursement. As the fund was not included in the second disbursement, we assumed it to be included within the final payment. Kindly ask you to double-check why the fund is not receive any final payment (which should include the former payments it did not receive)."*

49. On 14 July 2022, the Claimant and Computershare had a call, in which the Claimant asked Computershare about the status of the Claim. The Claimant sent an email the same day to Computershare stating that the client concerning "[redacted] (D736)" "*apparently was expecting a final payment for this claim as the duplicative deficiency might have been cured*".

50. On 19 July 2022 the Claimant sent a reminder to Computershare.

51. On the same date Computershare responded to the Claimant that a report from 2018 was found in file, in which this Claim was notified as being a duplicate, without any information as to the claims being unique, i.e., not duplicative.

52. Later that day, Computershare responded that the formal rejection letter was found in file,[18] and that it had not found a response to that rejection.

53. On 20 July 2022 the Claimant explained to Computershare that the Claim was originally considered a duplicate of the [redacted] Claim number 605924-4 and that it was not sure whether they had informed Computershare whether or not one claim should have taken precedence over the other.

54. By email of 21 July 2022 [redacted] informed [redacted] of the following:

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17 Named « *Notice of Rejection* », see above par. 32.

18 This is supposedly the Determination of Rejection of 31 October 2019.

> "*Computershare considered the Claim filed for fund 736 as a duplicate of claim 605924-4 filed by* [redacted]*. I have reviewed* [redacted]*'s email as well as our records and correspondence with Computershare and* [redacted] *and I found the following correspondence from* [redacted] *regarding these claims:*
> *"600646-9-EUR 15,328.23* [redacted] *736*
> *605924-4-EUR 15,328.23* [redacted] *formerly known as* [redacted]
>
> *We believe that these claims refers to funds managed by us. As far as we can see,* [redacted] *was entitled to claim for such fund."*
>
> *Based on the foregoing, it seems that the* [redacted] *claim was declared as primary claim and the* [redacted] *claim was considered the duplicate and rejected by the Claims Administrator. Have you had any conversations with Mr.* [redacted] *about this claim? "*

55. On 26 July 2022 [redacted] informed [redacted] that they had checked their data warehouse for historical data and that they had found no hint of any connection between these two funds. [redacted] concluded as follows : "*From our point of view, both funds and claims are totally independent".*

56. On the same date, Computershare suggested that if the Claimant would like to disagree to the duplicate status, Computershare could formally reject the disagreement and open the avenue to the Dispute Committee.

57. On 1 August 2022 Computershare issued a Notice of Rejection stating: "*You filed a Notice of Disagreement with the Final Determination Letter on 14 July 2022. This Notice of Disagreement was out of time because it was not submitted within thirty (30) calendar days after the date when the Final Determination letter was sent. The Final Determination is now final and binding and no further recourse exists"*.[19]

58. On 10 August 2022 [redacted] emailed a copy of the Notice of Rejection to [redacted] informing [redacted] that the dispute could be taken to the Dispute Committee, warning however for significant procedural hurdles concerning the timing of the disagreement with the claim.

59. In an email of 24 August 2022, [redacted] reiterated to [redacted] the following message:

> "*As you know, in 2019, Computershare determined 736 to be a duplicate with the following* [redacted] *claim and ultimately rejected the claim on that basis:*

[19] Computershare must have meant the 20-day term of Article 4.3. of the Regulations.

Claim Number	*Claim Value*	*Claimant*
600646-9	*€ 15,328.23*	[redacted] *736*
605924-4	*€ 15,328.23*	[redacted] *formerly known as* [redacted]

At that time, we did not file a disagreement with Computershare's rejection determination. It wasn't until after we discussed this matter with you and Michael last month that we informed Computershare that their determination was wrong, that this claim was not a duplicate of the [redacted] *claim, and that we were disputing the determination. In response, Computershare issued the attached letter rejecting our dispute. This rejection allows us to take our disagreement to the Dispute Committee where we can argue that Computershare's duplicate determination of 600646-9 was incorrect.*

Based on the information you provided, we believe that we have solid case on the merits (i.e. that the claims are not duplicates), however, we face significant procedural hurdles because of when we filed the dispute…."

60. On 12 September 2022, the Claimant sent its Request for Binding Advice to the Dispute Committee.

B. Position of the Claimant

61. The Claimant admits that it received the Determination of Rejection of 31 October 2019 and that it did not timely send its Notice of Disagreement in response to it. The Claimant explains that the Eligible Shareholders [redacted] and [redacted] were informed of the duplicate status issue. [redacted] received confirmation from [redacted] that the claim was correctly filed. The Claimant states that it did not timely receive the information from [redacted] to timely object to the alleged duplicate status of the Claim.

62. The Claimant nevertheless objects to the rejection of the Claim. *Firstly*, according to the Claimant, concepts of reasonableness and fairness, as they are recognized in Dutch law [20] would command to overturn Computershare's decision. The Claimant states that the duplicate status reported by Computershare was not justified because it was allegedly based on a superficial review of the information provided by the Claimant. According to Claimant the qualification of [redacted]'s claim as duplicate claim was manifestly incorrect since the comparison between the two claims would have demonstrated that trade dates, number of shares traded on these dates, the

[20] Art. 6:248(2) DCC and Art. 7:904(1) DCC.

prices per share and transaction totals would have been different. Now that the duplicative status appears to be wrong, based on information obtained from [redacted] in 2022, it would, according to the Claimant, be in violation of the applicable principles of reasonableness and fairness if Computershare would be allowed to dismiss the Claim, solely on the basis of the formal time limit sanctioned by Article 4.4 of the Regulations.

63. On the same grounds of reasonableness and fairness, the Claimant also submits that it would have relied in good faith on the material correctness of Computershare's Determination of Rejection of 31 October 2019.

64. At the hearing, the Claimant also referred to Binding Advices 2021/0037, 2021/0040, 2021/0043, 2021/0057 and 2021/0080, in which the Dispute Committee has held that the rejection of claims made in application of time limits set forth by the Settlement Agreement and the Regulations could not be set aside solely on the basis of arguments of reasonableness and fairness. The Claimant argued that the present case should be distinguished from these precedents because the claimants had not raised similar arguments and because the issues were different.

65. *Secondly*, the Claimant argues that the rejection of the Claim is against the rationale of the Settlement Agreement. Allowing the Claim would not jeopardize the winding up of the entire Settlement Agreement, as it is presumably one of the last claims to be processed and there might be some unclaimed, bounced or residual funds to pay out this Claim.

66. *Thirdly*, the Claimant refers to precedents where formal requirements and consequences prescribed by the Settlement Agreement would not have been applied in the strictest manner. The Claimant refers to a case where it filed a signed Claim Form after the Claim Submission Deadline of 28 July 2019 that was later accepted by Computershare for considerations of reasonableness and fairness. The Claimant also refers to a case of 2021 where both Computershare and FORsettlement sought the reimbursement of a compensation that had been paid to Eligible Shareholders represented by [redacted] on the basis of incorrect data, despite the fact that such overcompensation had been granted by way of a Final Determination. According to the Claimant, there would be no difference of principle between this 2021 claim (***the 2021 matter***) and the present case whereby Computershare has wrongly assumed the claims to be duplicative. If, in the 2021 matter, [redacted] had to return the compensation amount back to Computershare, it should now be up to Computershare to overturn its 'incorrect' Determination of Rejection of the Claim of 31 October 2019.

67. As a conclusion, according to Claimant, the Determination of Rejection of the Claim of 31 October 2019 should be set aside and on the basis of the objective evidence at hand since 2022, the Claim should be accepted in accordance with Clause 4.3.5. of the Settlement Agreement

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

68. Computershare states that the excel sheet presented by the Claimant together with the blank Claim Form held, on the face of the amounts of shares and of the amounts of compensation,

several duplicate claims. In the excel sheets provided by the Claimant, the only unique elements of the claims were the names of the Eligible Shareholders.

69. Computershare sets out that the Claimant had cured (at least) some 20 of these duplicates by providing transactional data, being the evidence required to be attached to the Claim Form in the first place, by virtue of Article 4.3.3. of the Settlement Agreement, but not the one subject of this Claim.

70. Computershare states that the Determination of Rejection of 31 October 2019 has become final and binding by absence of Claimant's timely Notice of Disagreement within 20 days, in the sense of Articles 4.3. and 4.4. of the Regulations and that it is important for the winding up of the entire Settlement Agreement that these terms can be relied upon.

71. With respect to the invoked precedents of softer application of formalities, Computershare states that the reimbursement request in the 2021 matter was based on the civil law principle of 'unjust enrichment', necessitated by erroneously filed claims by [redacted] and [redacted] conceded that the claimant in question was not entitled to the compensation in the first instance. Computershare does not agree that the situations of the two cases are similar. Therefore the binding determination cannot be overturned, particularly now after the completion of the distribution of the Settlement Amount. Hence, there is no possibility nor reason to derogate to Articles 4.3 and 4.4. of the Regulations in this case.

72. Computershare also challenged the admissibility of the Request for Binding Advice, for reasons that will be examined in the next section.

V. FINDINGS AND CONSIDERATIONS OF THE DISPUTE COMMITTEE

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

73. 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 1 August 2022 and that the Request for Binding Advice was submitted to it on 12 September 2022, pursuant to which the Dispute Committee has considered the Request for Binding Advice as timely submitted.

74. Computershare disputed the admissibility of the Request for Binding Advice for the reason that the Claimant should have expressed a disagreement with the Final Determination Letter of 24 June 2022 by 24 July 2022, in accordance with Article 4.9/2 of the Regulations.[21] Since no written Notice of Disagreement would have been sent to Computershare before 24 July 2022, Claimant

[21] See Computershare's submission of 7 October 2022.

would have lost any possibility to appeal the determination. Computershare also disputed the admissibility of the Request for Binding Advice for the reason that the disagreement of 14 July 2022 would have been expressed by the Claimant only verbally. As a consequence, according to Computershare, the Notice of Rejection that Computershare issued on 1 August 2022 would have been "premature", in absence of any valid Notice of Disagreement prior to the 24 July 2022 distinct deadline, so that such Notice of Rejection should be disregarded as a path to a recourse before the Dispute Committee.

75. The Dispute Committee does not follow Computershare in that reasoning:
- the Notice of Rejection of 1 August 2022 acknowledges the Notice of Disagreement of Claimant on 14 July 2022. The mere issuance of a Notice of Rejection opens a recourse before the Dispute Committee, pursuant to Articles 4.5 and 4.9/5 of the Regulations, as it is explicitly confirmed by the Notice of Rejection of 1 August 2022;
- the Notice of Disagreement of 14 July 2022 has been made in writing since it was confirmed by an email of the same date of [redacted] for the Claimant to Michael Jacoby for Computershare (exhibit 4 of Claimant's submission of 12 September 2022);
- the Final Determination Letter of 24 June 2022 did not relate to the disputed Claim 600646-9; hence it constitutes no relevant communication for the present dispute.

76. It is moreover the Dispute Committee's understanding that Computershare withdrew at the Hearing its objection against the admissibility of the Request for Binding Advice of 12 September 2022.

77. The Request for Binding Advice is thus admissible. The Dispute Committee shall assess whether the Determination of Rejection of 31 October 2019 has become binding and final in the sense of Articles 4.3. and 4.4. of the Regulations and if so, whether there are in the present circumstances valid reasons for a deviation or for a derogation from these Regulations.

B. <u>Has the Determination of Rejection of 31 October 2019 become final and binding in accordance with Articles 4.3. and 4.4. of the Regulations?</u>

B.1 Application of Articles 4.3 and 4.4 of the Regulations - Principle

78. 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*".

79. 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*".

80. 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.

81. 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.

82. The Dispute Committee, that is bound, as well as Computershare, by the terms of the Regulations, has upheld in a significant number of cases the sanction prescribed by Article 4.4 of the Regulations.[22]

83. In the present case, the Claimant has acknowledged the timely receipt of the "*Notice of Rejection*" of 31 October 2019. Even if this communication was improperly named "*Notice of Rejection*", it is not disputed that it actually constituted a "*Determination of Rejection*", i.e. a Final Determination Letter within the meaning of Article 4.2 of the Regulations, triggering the above-mentioned 20-calendar day time limit prescribed by Article 4.3 for the issuance of a Notice of Disagreement by the Eligible Shareholder.

    The Claimant does not dispute either that it did not express in any form a disagreement with that Determination of Rejection of 31 October 2019, until July 2022.

84. As a consequence, subject to the Claimant's objections discussed hereafter, the Determination of Rejection of 31 October 2019 must be provisionally found binding and final, with no further recourse available pursuant to Article 4.4 of the Regulations.

B.2 Reasonableness and fairness

85. The Claimant deems that "*it would be inacceptable to reject the claim on the basis of a strict application of formalities*" for reasons of reasonableness and fairness, as these concepts are recognized in Dutch law, more in particular in Art. 6:248(2) DCC and in Art. 7:904(1) DCC. Applied in their restrictive effect (*beperkende werking van de redelijkheid en de billijkheid*), these

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22 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.

provisions should be applied in a manner that would set aside the rejection of the Claim by Computershare.

86. Pursuant to its Article 10.1, the Settlement Agreement and any non-contractual obligation arising out of or in connection with it, is governed 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.*"

87. The principle of reasonableness and fairness forms part of Dutch law.[23] 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.[24]

88. The restrictive effect of this principle is applied with restraint.[25] 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 the 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.

89. 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.[26]

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23 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).

24 Asser/Sieburgh 6-III 2018/391, 410 and following.

25 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.

26 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).

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

91. Against this background, the Dispute Committee will weigh the circumstances on the sides of both Parties. In the present case, it appears that prior to the issuance of the Determination of Rejection of 31 October 2019, [redacted] had been made aware that some of the claims it made for its client [redacted] were suspected to be duplicative of other claims submitted to Computershare. Computershare and [redacted] exchanged correspondence about such potential duplicates in August 2018. It does not appear from the correspondence submitted that the Parties would have reached an explicit conclusion on that issue prior to the Determination of Rejection of 31 October 2019.

92. Even if it appears today accepted that [redacted]'s disputed Claim was not duplicative of other claims, it is not established in the Dispute Committee's opinion, that Computershare would have performed a negligent and superficial review of the documentation provided by [redacted] or that Computershare would have raised a manifestly erroneous suspicion as to the duplicative nature of the Claim. Computershare initiated a valid discussion as to the duplicative nature of a number of claims submitted by [redacted]. [redacted] acknowledged at least 20 double filings within the bulk filing of thousands of claims together with the Claim Form. The information provided for the disputed Claim in the excel sheet was similar to another claim filed by [redacted] for another Eligible Shareholder, [redacted]. In the excel overview of the [redacted] claims, the exact same amount of 7.000 shares at the start of Period 1 and 11.666 shares in all other six positions relevant to the Settlement Agreement were listed for both claims.[27] Data specifically supporting the Claim (in the sense of article 4.3.3(b) of the Settlement Agreement), evidencing the unique nature of the Claim and distinguishing it from other claims, had not been provided to Computershare by the Claimant before 31 October 2019. It cannot be inferred from those circumstances that Computershare would have breached the fundamental principles of due process by not taking into serious consideration the documentation provided by [redacted].

93. The principle established by the Settlement Agreement is that each Eligible Shareholder must "*provide reliable evidence as accepted under the Claims Administrator's standard practice in class action claims administration*" of its shareholding (Article 4.3.3(b) of the Settlement Agreement). [redacted] as a professional filer elected to submit in bulk form thousands of claims. It was primarily its duty to provide Computershare with clean supporting evidence of each particular claim. If it had been so obvious that the disputed Claim was not duplicative with another claim filed by [redacted] on behalf of [redacted], it should have been similarly immediately obvious to [redacted] itself. This was not the case as it appears from the correspondence between the parties in August 2018.

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27 Exhibit D and E to Computershare's submission of 7 October 2022 and see for the exact same amounts of compensation of EUR 15.328,23, the Notice of Rejection of 31 October 2019, exhibit 3 to the Claimant's Request for Binding Advice.

94. The Dispute Committee finds also relevant that the Claimant explained at the Hearing that it alerted his client [redacted] of the alleged duplication of its Claim already in 2018 and that no response followed at that time from [redacted]. According to the Claimant itself, it is only in July 2022, following the pay-out compensation, that [redacted] became aware that no payment would occur on the Claim and that the Claim was nevertheless valid and not duplicative.[28] It is only then that [redacted] liaised again with [redacted] about the alleged duplicate deficiency of the Claim, which prompted [redacted] to put the question again to Computershare (see [redacted]'s email of 14 July 2022 to Michael Jacoby of Computershare).

95. As a result, it appears that without the Claimant's and [redacted]'s prolonged internal mishandling of Computershare's determination, the issue of the so-called duplicative nature of [redacted]'s Claim would have been cured in due time before the Determination of Rejection of 31 October 2019 or at the latest before the expiry of the time limit of Article 4.3 of the Regulations.

    For the reasons above, under the circumstances of the case taken as a whole, the Dispute Committee finds that the outcome of the Determination of Rejection of 31 October 2019 made by Computershare does not conflict with the standards of reasonableness and fairness, as these concepts must be applied with utmost restraint, according to Dutch law. It results from the 2018 correspondence that the Claimant was given the opportunity to cure the suspected deficiency of the duplicative nature of the Claim. Such issue was not raised inadvertently or unreasonably by Computershare. If it was not cured in due time, it is mainly due to the absence of appropriate response by [redacted] in 2018. Reasonableness and fairness cannot be valid grounds for escaping the sanction of a time limit of which the Claimant was aware and that was exceeded by many months due mainly to a deficient communication between the Claimant and its client. The shortness of the 20-calendar day time limit cannot explain the late disagreement of the Claimant in these circumstances.

96. The very nature of a time limit implies that a claim that is substantially valid is no longer accepted if the required formality (such as the submission of a Claim Form or the notification of a Notice of Disagreement) is not performed within that particular time limit. The mere finding that a claim would have been found in good order in absence of the time limit does not make such time limit or its sanction contrary to the standards of reasonableness and fairness.[29] Only in exceptional circumstances, that are not present in the instant case for the reasons discussed above, would these standards justify to overrule a Determination that enforces the sanction of a prescribed time limit.

97. Also, the Claimant cannot complain that it would have relied in good faith on the material correctness of Computershare's Determination of Rejection of 31 October 2019. The Claimant cannot contend on the one hand that "*the qualification of [redacted]'s claim as duplicate is… manifestly incorrect*"[30] and on the other hand that it "*relied in good faith on the material*

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28 Claimant's submission of 12 September 2022, p. 102, paras 6-7.

29 For a similar finding, see Binding Advices n° 2021/0037, p. 9, para. 48 and 2021/0057, p. 8, para. 37.

30 Claimant's submission of 12 September 2022, p. 2, par. 10.

correctness of Computershare's Notice of Rejection of 31 October 2019".[31] In view of the correspondence between the Parties of August 2018, that left the query of Computershare without a conclusive answer, and in the absence of clarification received from [redacted] in the meantime, the Claimant cannot have acquired the belief that the Claim had been validly rejected by Computershare. As a consequence, the Claimant cannot have been misled by the Determination of Rejection of 31 October 2019, which should have triggered an immediate reiteration of its prior inquiry to [redacted], with a view to file a timely disagreement against the rejection of the Claim.

C. The rationale of the Settlement Agreement

98. According to the Claimant, the rationale of the Settlement Agreement and industry practice in opt-out class actions would command to set aside the sanction of the timeliness of submissions, in order to implement one of the main objectives of the Settlement Agreement which is to provide Eligible Shareholders with an adequate compensation for their loss.

99. Moreover, according to Claimant, the delay associated to the reopening of the determination of the Claim would remain without any adverse consequences on the implementation of the Settlement Agreement which has almost come to an end.

100. The Dispute Committee cannot follow the Claimant in this respect. As explained above and as rightly submitted by the Claims Administrator, 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 these 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.

101. The circumstance that the implementation of the Settlement Agreement has almost come to an end can play no role in this assessment since no distinct regime can be applied to particular Eligible Shareholders depending on the timing of their respective proceedings.

D. Precedents set by Computershare and by FORsettlement

102. The Claimant refers in its submission to precedents where Computershare applied the Settlement Agreement in a way that would leave room for a less formal application of its terms of the Settlement Agreement. On one occasion, Computershare decided to accept a Claim Form signed by [redacted] after the Claim Submission Deadline. On another occasion, FORsettlement and Computershare sought and obtained from [redacted] the reimbursement of a final determination

[31] Claimant's submission of 12 September 2022, p. 3, par. 20.

that was later recognized and accepted to be based on incorrect data. In such case, Computershare also justified its request for reimbursement by the overall principle of fairness.

103. The Claimant contends that if fairness grants Computershare the right to reconsider a final determination and to reclaim distributed funds, fairness should also be an appropriate ground to repair situations in which a distribution was not made due to incorrect information, while such distribution would have been substantially in line with the terms of the Settlement Agreement and with its rationale.

104. The Dispute Committee reviews the assessment of the validity and of the value of the claim made by the Claims Administrator, as well as the procedure followed by the Claims Administrator for making its final determination of the claim (Article 4.3.5 of the Settlement Agreement and the Regulations). The determination of a claim by the Claims Administrator consists in assessing "*the validity of each claim made on a Claim Form and the amount allocated to each Eligible Shareholder who complies with the requirements of this agreement" (*Article 4.3.4 of the Settlement Agreement). The Dispute Committee finds that it is only competent to review the determination of a particular claim by the Claims Administrator on the basis of the facts and circumstances pertaining to that particular claim.

105. As a consequence, the Dispute Committee does not find itself competent to assess whether the terms of the Settlement Agreement, as approved by the Amsterdam Court of Appeal, are themselves reasonable and fair. Also, the Dispute Committee is not competent for supervising, monitoring and administering the distribution of the Settlement Amount. Such task has been entrusted to FORsettlement (Article 4.2.1 of the Settlement Agreement). Hence, the Dispute Committee can only apply the reasonableness and fairness test to circumstances specific to the disputed claim, as it did under section B above. It cannot examine whether the determination of a particular claim is consistent with the determinations made and actions performed by the Claims Administrator for other claims and/or for other Eligible Shareholders. Such review would not only exceed the jurisdiction of the Dispute Committee that is limited by Article 4.3.5 of the Settlement Agreement. It would also be inappropriate for the Dispute Committee to infer legal consequences from matters of which it was not duly seized and of which it has only received a partial account from the Parties.

106. As such, the determinations made and actions performed by Computershare in other cases have no contractual or legal bearing on the determination of the disputed Claim. They have no precedent value in the Dispute Committee's view.

107. For the reasons above, the inferences made by the Claimant from the so-called precedents set by Computershare and FORsettlement in cases that are not the subject of the present dispute, shall not impact the Dispute Committee's findings regarding the Claim.

E. <u>Conclusion</u>

108. As a conclusion, the Dispute Committee shall reject the Claim of the Claimant.

VI. DECISION

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

- Rejects the Claim of the Claimant as contained in its Request for Binding Advice of 12 September 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) on 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 7 June 2023

The Dispute Committee:

Jean-François Tossens

Dirk Smets

Henriëtte Bast