CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N° : 500-06-000453-080

SUPERIOR COURT
(Class Action)

ANDRÉE MÉNARD

Class Plaintiff

v.

LINO P. MATTEO

-and-

PAUL D'ANDREA

-and-

DELOITTE & TOUCHE LLP

-and-

BDO DUNWOODY LLP

-and-

SCHWARTZ LEVITSKY FELDMAN LLP

-and-

B2B TRUST

Defendants

-and-

ERNST & YOUNG INC., IN THE CAPACITY OF LIQUIDATOR OF PENSON FINANCIAL SERVICES CANADA INC.

Defendant in continuance of suit

-and-

JOSEPH PETTINICCHIO

-and-

LAURENCE HENRY

-and-

ANDRIS SPURA

-and-

LOWELL HOLDEN

Mis en Cause

PLEA OF DEFENDANT BDO DUNWOODY LLP

FOR PLEA TO PLAINTIFF'S PARTICULARIZED RE-AMENDED INTRODUCTORY MOTION TO INSTITUTE PROCEEDINGS (February 24, 2014), DEFENDANT BDO DUNWOODY LLP (NOW KNOWN AS BDO CANADA LLP) DOES PLEAD AS FOLLOWS:

1. As to paragraph 1 thereof, it admits the Judgment dated August 25, 2011, Exhibit P-1, and the Judgment in Rectification dated September 21, 2011, and all not in conformity therewith is expressly denied.

2. As to paragraph 2 thereof, it admits the description of questions set forth in the Judgment dated August 25, 2011, Exhibit P-1, and all not in conformity therewith is expressly denied.

3. As to paragraph 3 thereof, it prays act of the admission contained therein to the effect that a vast fraud was perpetrated by unscrupulous criminals ("*une vaste fraude perpétrée par des criminels sans scrupules*") as well as by B2B Trust ("**B2B**") and Penson Financial Services Canada Inc. ("**Penson**") and all else is expressly denied, Defendant pleading averring moreover that rendering fraud possible in itself, without any direct involvement in the perpetration of the fraud, is not a cause of action against auditors in Quebec.

4. As to paragraph 4 thereof, same is denied, Defendant pleading averring moreover that the alleged losses of close to $130 million are grossly exaggerated, the said amount including very significant amounts of accumulated compound interest to which the members of the group are not entitled, and further averring that Gestion MRACS Limitée ("**MRACS**"), Investissements Real Vest Limitée ("**Real Vest**") and Corporation Real Assurance Acceptation ("**RAAC**") were not subsidiaries of Mount Real Corporation ("**MRC**") during the one year audit period terminating on December 31, 2003.

5. Paragraph 5 thereof is ignored.

6. It denies paragraph 6 thereof. Defendant pleading denies that during the 2003 calendar year, MRC did not have any actual business activities. Furthermore, it denies that any promissory notes were purchased by Plaintiff or members of the group based upon MRC's credibility or in reliance upon MRC's financial statements. Rather, promissory notes were purchased by Plaintiff and other members of the group for other reasons which are in no way attributable to Defendant pleading. In addition, Plaintiff's theory that the promissory notes in the present litigation were purchased in reliance upon the credibility of MRC or its audited financial statements is inconsistent with Plaintiff's cause of action, which specifically excludes any reliance upon MRC's financial statements. To the contrary, the evidence demonstrates that the investors relied, inter alia, upon the representations of the investment representatives and MRC's representatives to purchase the promissory notes.

7. As to paragraph 7 thereof, it prays act of the admission that the promissory notes referred to by Plaintiff in the present litigation were issued in contravention of the provisions of the *Securities Act*.

8. As to paragraph 8 thereof, it prays act of the admission that following the revelations that promissory notes were issued in contravention of the provisions of the *Securities Act*, the Minister of Finance of Quebec mandated monsieur Jean Robillard of the firm Raymond Chabot Grant Thornton to act as provisional administrator of MRC, MRACS, Real Vest and RAAC.

9. It prays act of the admissions contained in paragraphs 9, 10, 11, 12 and 13 thereof, Defendant pleading averring moreover that Defendant Matteo used his accounting skills, knowledge and experience, as well as his senior management positions with MRC, to perpetrate an elaborate fraud together with his accomplices. Furthermore, the facts alleged in the said paragraphs were not known to it at the time that Defendant pleading acted as auditor of the financial statements of MRC.

10. As to paragraph 14 thereof, it prays act of the admission that Defendant D'Andrea was controller of MRC during the year 2003, and it ignores the

remainder of the said paragraph.

11. It prays act of the admission contained in paragraph 15 thereof, Defendant pleading averring moreover that the senior management of MRC colluded together with others to perpetrate a complex fraud.

12. It prays act of the admission contained in paragraph 16 thereof, Defendant pleading averring moreover that Defendant D'Andrea used his skill, knowledge and experience in accounting to collude with Defendant Matteo and others in perpetrating an elaborate and complex fraud.

13. It prays act of the admission contained in paragraph 17 thereof, Defendant pleading averring moreover that the facts alleged in this paragraph were not known to it at the time that it acted as auditor of the financial statements of MRC.

14. It ignores the allegations contained in paragraph 18 thereof.

15. It prays act of the admissions contained in paragraphs 19 and 20 thereof.

16. As to paragraph 21 thereof, it prays act of the admission that the promissory notes issued by MRC, Real Vest, MRACS and RAAC contravened the provisions of the *Securities Act*, insofar as a prospectus is concerned, and all else contained in the said paragraph is denied, Defendant pleading averring moreover that during the 2003 audit period, MRACS, Real Vest and RAAC were not subsidiaries of MRC.

17. It ignores paragraph 22 thereof, Defendant pleading averring moreover that Exhibit P-5, which was prepared by the provisional administrator in 2005 or thereafter, was prepared with the use of hindsight and therefore is not applicable to the 2003 calendar year during which Defendant pleading acted as auditor of MRC. Furthermore, the chart, Exhibit P-5, fails to explain the relationships between the entities and the individuals mentioned therein.

18. It ignores paragraph 23 thereof, Defendant pleading averring moreover that the reports prepared by the provisional administrator, Exhibits P-6 and P-7, were prepared with the benefit of hindsight and were not applicable during the 2003 calendar year of MRC. Furthermore, Exhibits P-6 and P-7 do not specify the criteria used by the provisional administrator in issuing its opinion that Defendant Matteo, in fact, controlled the numerous entities referred to in these reports. Furthermore, this opinion is based on reports dated December 9, 2005 and February 23, 2006, which consider facts as they existed on each of these dates respectively, and which do not apply to the time period during which Defendant pleading acted as auditor of MRC.

19. As to paragraph 24 thereof, it admits that Justice Jean-Yves Lalonde rendered the Judgment, Exhibit P-8, but states that the findings made by Justice Lalonde

must be examined in light of the legal and factual issues that had to be decided by the Court and the evidence adduced before the Court. In particular, the Court adjudicated an appeal of the trustee's disallowance of a proof of claim in the bankruptcy of MRC which occurred on February 26, 2006, such that the evidence presented to the Court is not relevant to the 2003 calendar year in respect of which year Defendant pleading was the auditor of MRC's financial statements.

20. As to paragraph 25 thereof, the Notice of Bankruptcy, Exhibit P-9, is admitted and all not in conformity therewith is expressly denied.

21. It admits paragraphs 26, 27, 28 and 29 thereof.

22. It ignores paragraph 30 thereof.

23. It admits paragraph 31 thereof. Defendant pleading prays act of the admission that Defendants B2B and Penson were custodians and/or trustees of the notes sold by the investment representatives.

24. It admits paragraphs 32 and 33 thereof.

25. It ignores paragraphs 34, 35 and 36 thereof.

26. It admits paragraph 37 thereof.

27. It ignores paragraph 37.1 thereof.

28. It denies paragraph 37.2 thereof, Defendant pleading averring moreover that the events referred to therein allegedly occurred during a period prior to the period covered by the audit performed by Defendant pleading commencing on January 1, 2003.

29. It denies paragraph 37.3 thereof, Defendant pleading averring moreover that neither Exhibit P-15 nor Exhibit P-29 makes proof that all promissory notes issued by MRACS before and after September 30, 2002 were guaranteed by MRC.

30. As to paragraph 37.4 thereof, it prays act of the admission that MRACS made false representations to noteholders and it ignores the remainder of the said paragraph.

31. As to paragraph 37.5 thereof, the allegations contained therein are questions of law.

32. It prays act of the admission contained in paragraph 38 thereof.

33. It ignores paragraphs 38.1, 38.2, 38.3, 38.4 and 38.5 thereof.

34. It ignores paragraph 38.6 thereof, Defendant pleading averring moreover that same is based upon speculation, conjecture and opinion, and not upon relevant fact.

35. It denies paragraph 38.7 thereof.

36. It prays act of the admission contained in paragraph 38.8 thereof to the effect that Real Vest made false representations to the members of the group.

37. As to paragraph 38.9 thereof, the allegations contained therein are questions of law.

38. As to paragraph 39 thereof, Exhibit P-25 speaks for itself and all not in conformity therewith is denied.

39. It denies paragraph 39.1 thereof, Defendant pleading averring moreover that Plaintiff has failed to allege the existence of a guarantee by MRC for any promissory notes issued by RAAC and, in any event, has failed to produce any such promissory notes.

40. It ignores paragraph 40 thereof.

41. It ignores paragraph 41 thereof, Defendant pleading averring moreover that it audited the financial statements of MRC for the fiscal period ended December 31, 2003 and has no knowledge of the indebtedness due by MRACS, Real Vest and RAAC allegedly due to the members of the group as at February 23, 2006.

42. As to paragraph 42 thereof, it admits Exhibit P-26 and anything inconsistent therewith is denied.

43. As to paragraph 43 thereof, it admits Exhibit P-27 and anything inconsistent therewith is denied.

44. As to paragraph 44 thereof, it admits Exhibit P-28 and anything inconsistent therewith is denied.

45. It ignores paragraph 45 thereof, Defendant pleading averring moreover that the reports of the provisional administrator, Exhibits P-6 and P-7, are based upon conclusions and opinions arrived at with the benefit of hindsight and on the basis of incomplete and possibly inaccurate information. Furthermore, the opinions and conclusions arrived at by the provisional administrator are based on reports dated December 9, 2005 and February 23, 2006, which consider facts as they existed at each of these dates respectively, and are not applicable to the time period during which Defendant pleading acted as auditor of the financial statements of MRC for the 2003 calendar year.

46. As to paragraph 46 thereof, the definition of "Ponzi scheme" is a matter of opinion.

47. It ignores paragraph 47 thereof.

48. It ignores paragraph 48 thereof.

49. It prays act of the admissions contained in paragraph 49 thereof, Defendant pleading averring moreover that the perpetrators of the fraud were the direct, immediate and certain cause of the losses suffered by the members of the group.

50. Paragraph 50 thereof is denied, Defendant pleading averring moreover that Plaintiff's cause of action is not based upon reliance upon the financial statements of MRC audited by Defendant pleading or any of the other Professional Defendants or upon any financial information regarding the financial performance of MRC. Furthermore, contrary to Plaintiff's allegation, a public company is not a prerequisite for setting up a Ponzi scheme.

51. Paragraph 51 thereof is denied, Defendant pleading averring moreover that Plaintiff's cause of action is not based upon any knowledge of the financial performance of MRC.

52. As to paragraph 52 thereof, all information contained in Exhibit P-29G thereof is admitted and the remainder is ignored.

53. Paragraph 53 thereof is denied, Defendant pleading averring moreover that the promissory notes were not issued by MRC during the 2003 audit period and, in any event, Plaintiff's cause of action is not based upon any financial information relating to MRC, as Plaintiff did not rely upon same.

54. Paragraph 54 thereof is denied, Defendant pleading averring moreover that Plaintiff has failed to provide evidence of such guarantees and, in the case of RAAC, has even failed to allege the existence of any such guarantees.

55. As to paragraph 55 thereof, it refers to Exhibits P-18 and P-31 which speak for themselves, without admission of the contents thereof. Furthermore, with respect to Exhibits P-31 and P-18, Plaintiff has not alleged having relied upon or even having received same and, in any event, same do not constitute guarantees but rather vague undertakings to support operations.

56. Paragraph 56 thereof is denied, Defendant pleading averring moreover that Plaintiff's cause of action is not based upon reliance by Plaintiff on any audited financial statements, on any financial information regarding MRC or any knowledge of the identity of any auditor of MRC's financial statements.

57. Paragraphs 57.1, 57.2 and 57.3 thereof are denied, Defendant pleading averring moreover that same are not relevant to Plaintiff's cause of action against it and, in any event, same constitute opinion by the provisional administrator based upon the use of hindsight.

58. Paragraphs 57.3, 57.4, 57.5, 57.6, 57.7, 57.8, 57.9, 57.10 and 57.11 thereof are ignored, Defendant pleading averring moreover that same are not relevant to Plaintiff's cause of action against it and, in any event, same constitute opinion by the provisional administrator based upon the use of hindsight.

59. It prays act of the admissions contained in paragraph 58 thereof, Defendant pleading averring moreover that the facts alleged therein were not known to it at the time of the performance of its audit of MRC's financial statements.

60. As to paragraph 59 thereof, it prays act of the admission that the notes in litigation were issued illegally in contravention of the provisions of the *Securities Act*.

61. Paragraph 60 thereof is denied, Defendant pleading averring moreover that, as auditor, it had the responsibility to express an opinion on MRC's financial statements taken as a whole rather than an opinion on the alleged guarantees.

62. Paragraph 61 thereof is denied.

63. Paragraph 62 thereof is ignored.

64. As to paragraph 63 thereof, Exhibit P-8 speaks for itself and all not in conformity therewith is denied, Defendant pleading averring moreover that the conclusions reached by Justice Lalonde must be read in the context of the issues which were submitted to him for adjudication. More particularly, the Court was seized with an appeal, made by companies which are not involved in the issues which are the subject of the present litigation, of the trustee's decision to disallow a proof of claim in the bankruptcy of MRC.

65. It prays act of the admissions contained in paragraph 64 thereof.

66. As to paragraph 65 thereof, it prays act of the admission contained therein save and except that it denies that the losses of the members of the group were close to $130 million.

67. Paragraph 66 thereof is denied.

68. Paragraph 67 thereof is ignored.

69. Paragraph 68 thereof is ignored.

70. As to paragraph 69 thereof, it prays act of the admission that the complaint of the Order of Certified Management Accountants ("CMA") that led to the striking of Matteo off the role of the Order alleged the facts mentioned therein.

71. It ignores paragraph 70 thereof.

72. As to paragraph 71 thereof, it prays act of the admission that Matteo was found guilty of all charges, and all else is ignored

73. As to paragraph 72 thereof, it prays act of the admission that D'Andrea was struck off the roll of the Order of CMA and that he colluded with Matteo, and all else is ignored.

74. Paragraph 73 thereof is ignored.

75. As to paragraphs 74 to 74.4 thereof, it ignores the statements made by D'Andrea to the Order of CMA.

76. Paragraphs 75, 75.1, 75.2, 75.3, 75.4, and 75.5 thereof are denied.

77. Paragraphs 76, 76.1 76.2, 76.3, 76.4, 76.5, 76.6, 76.7, 76.8, 76.9, 76.10 and 76.11 thereof are denied.

78. It prays act of the admission contained in paragraph 77 thereof.

79. As to paragraph 78 thereof, Exhibit P-35 is admitted and all not in conformity therewith is denied.

80. Paragraph 79 thereof is admitted.

81. As to paragraph 80 thereof, Exhibit P-36 is admitted and all not in conformity therewith is denied.

82. As to paragraph 81 thereof, Exhibit P-37 is admitted and all not in conformity therewith is denied.

83. It prays act of the admission contained in paragraph 82 thereof.

84. As to paragraph 83 thereof, Exhibit P-29 is admitted and all not in conformity therewith is denied, Defendant pleading averring moreover that MRC's financial results are not relevant to Plaintiff's cause of action, as Plaintiff admits that the members of the group did not rely on the audited consolidated financial statements of MRC.

85. Paragraph 84 thereof is denied.

86. It denies paragraph 85 thereof, Defendant pleading averring moreover that the provisional administrator's opinions are based upon incomplete and possibly inaccurate information and therefore cannot be relied upon. As expressly acknowledged at page 13 of the provisional administrator's report (Exhibit P-7):

> "Le portrait sommaire de la situation financière des sociétés a été effectué à partir des états financiers partiels internes, des documents saisis par l'AMF et d'interrogatoires menés par l'administrateur provisoire. Ces informations sont incomplètes et possiblement inexactes et comportent donc un degré d'incertitude important".
>
> (our emphasis)

87. It denies paragraphs 85.1, 85.1.1, 85.2, 85.3, 85.4 and 85.5 thereof.

88. It denies paragraph 86 thereof, Defendant pleading averring moreover that the responsibility for the preparation of the financial statements, including the notes thereto, is that of management. Furthermore, the allegations in the said paragraph are contradicted by those contained in paragraph 90 of Plaintiff's Re-Amended Introductory Motion.

89. It ignores the allegations made in paragraph 87 thereof.

90. Paragraph 88 thereof is denied.

91. Paragraph 89 thereof is denied.

92. Paragraph 90 thereof is denied, Defendant pleading averring moreover that the observation attributed to the provisional administrator which commences with "il semble" does not constitute reliable evidence before this Court.

93. Paragraph 91 thereof is denied, Defendant pleading averring moreover that MRC's financial results are not relevant to Plaintiff's cause of action, as Plaintiff admits that the members of the group did not rely on the audited consolidated financial statements of MRC.

94. Paragraph 91.1 thereof is denied, Defendant pleading averring moreover that auditors do not have a duty to discover fraud, as will be more fully explained herein.

95. It ignores the allegations made in paragraph 92 thereof, Defendant pleading averring moreover that Defendant D'Andrea is an admitted perpetrator of the fraud against Plaintiff and the members of the group.

96. Paragraph 93 thereof is denied.

97. Paragraph 94 thereof is denied, Defendant pleading averring moreover that Plaintiff's novel causality theory against auditors replaces the need for a direct, immediate and certain causal link with ill-founded assumptions, conjecture and unfounded speculation.

98. Paragraph 95 thereof is denied, Defendant pleading averring moreover that Plaintiff has speculated on what measures would have been taken by the AMF, the time frame in which such measures would have been taken and the presumed effects of such measures, none of which constitutes a direct, immediate and certain causal link, as required by law.

99. Paragraph 96 thereof is denied, Defendant pleading averring moreover that Plaintiff's theory of rendering a fraud possible is not a valid legal cause of action against auditors in Quebec.

100. As to paragraph 97 thereof, it prays act of the admission that Defendants B2B and Penson committed faults towards the members of the group, but it denies that Defendant pleading had any role whatsoever in the fraud or has any liability whatsoever for the prejudice suffered by the members of the group.

101. It prays act of the admissions contained in paragraphs 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109 thereof.

102. As to paragraph 109.1 thereof, it prays act of the admission contained therein, Defendant pleading averring moreover that Plaintiff is relying upon legal obligations between members of the group and Defendant B2B, which allegations create a direct, immediate and certain causal link.

103. It prays act of the admission contained in paragraph 109.2 thereof, Defendant pleading averring moreover that Defendant B2B had specific knowledge of the failure of MRC, MRACS and Real Vest to meet their obligations to certain members of the group and it failed to act upon such information.

104. It prays act of the admission contained in paragraph 109.3 thereof, Defendant pleading averring moreover that Defendant B2B specifically tolerated repeated acts of default by MRC, MRACS and Real Vest in contravention of its legal obligations, thus creating a direct, immediate and certain causal link.

105. It prays act of the admission contained in paragraph 109.4 thereof, Defendant pleading averring moreover that Defendant B2B consciously chose to extract an additional financial benefit from the repeated defaults of MRC, MRACS and Real Vest rather than fulfill its legal obligations to the members of the group, thus creating a direct, immediate and certain causal link.

106. It prays act of the admission contained in paragraph 109.5 thereof, Defendant pleading averring moreover that Defendant B2B was well-aware of its obligations as trustee to certain members of the group and inexplicably decided to ignore these obligations.

107. It prays act of the admission contained in paragraph 109.6 thereof.

108. It prays act of the admission contained in paragraph 109.7 thereof, Defendant pleading averring moreover that Defendant B2B repeatedly reminded MRC of its failures to fulfill its obligations to the members of the group but inexplicably failed to take any action to protect the members of the group notwithstanding its threats made to do so.

109. It prays act of the admission contained in paragraph 109.8 thereof, Defendant pleading averring moreover that Defendant B2B threatened to communicate the failure of MRC to provide required documentation to members of the group but inexplicably it failed to do so.

110. It prays act of the admission contained in paragraph 109.9 thereof, Defendant pleading averring moreover that Defendant B2B offered a preferential tariff to MRC, MRACS and Real Vest provided that MRC would meet certain conditions which MRC routinely failed to meet.

111. It prays act of the admission contained in paragraph 109.10 thereof, Defendant pleading averring moreover that Defendant B2B regularly and repeatedly tolerated the failure of MRC to pay amounts due to members of the group and inexplicably was satisfied to increase its charges to MRC rather than take any action to protect members of the group, the whole in direct contravention of its fiduciary duties.

112. It prays act of the admission contained in paragraph 109.11 thereof, Defendant pleading averring moreover that Defendant B2B inexplicably tolerated the failure of MRC to respect its obligations for years, to the detriment of members of the group, without taking any action whatsoever to protect the members of the group, thus creating a direct, immediate and certain causal link.

113. It prays act of the admission contained in paragraph 109.12 thereof, Defendant pleading averring moreover that Defendant B2B was well-aware of its fiduciary obligations to the members of the group and continued for years to ignore its fiduciary obligations.

114. It prays act of the admission contained in paragraph 109.13 thereof, Defendant pleading averring moreover that Defendant B2B opted to increase its charges to MRC in the face of its continuous defaults, rather than take corrective action to

protect the members of the group, in accordance with its legal and fiduciary obligations.

115. It prays act of the admission contained in paragraph 109.14 thereof, Defendant pleading averring moreover that Defendant B2B unilaterally decided to be very accommodating to MRC, which accommodation constituted a breach of its fiduciary duties and it failed to take any action to protect the members of the group, the whole in breach of its fiduciary and legal obligations.

116. It prays act of the admission contained in paragraph 109.15 thereof, Defendant pleading averring moreover that Defendant B2B seemed content to repeatedly have discussions with representatives of MRC and sent meaningless letters to MRC rather than take immediate action to protect the members of the group, the whole in flagrant breach of its fiduciary and legal obligations.

117. It prays act of the admission contained in paragraph 109.16 thereof, Defendant pleading averring moreover that while Defendant B2B purported to be concerned about its reputation, it failed dismally in fulfilling its fiduciary and legal obligations to members of the group and failed to take corrective action, notwithstanding complaints made to it by clients, which presumably included members of the group.

118. It prays act of the admission contained in paragraph 109.17 thereof, Defendant pleading averring moreover that Defendant B2B repeatedly sent meaningless letters to MRC but failed to take any follow up action whatsoever to protect the members of the group, in breach of its fiduciary and legal obligations.

119. It prays act of the admission contained in paragraph 109.18 thereof, Defendant pleading averring moreover that Defendant B2B was specifically made aware of the fact that Real Vest required fresh funds from investors in order to reimburse expired promissory notes of MRACS, the whole constituting a flagrant red flag which Defendant B2B wilfully ignored.

120. It prays act of the admission contained in paragraph 109.19 thereof.

121. It prays act of the admission contained in paragraph 109.20 thereof, Defendant pleading averring moreover that Defendant B2B raised its tolerance level for defaults by MRC, MRACS and Real Vest rather than refusing to tolerate any defaults by the latter, the whole in contravention of its fiduciary and legal obligations to the members of the group, thus creating a direct, immediate and certain causal link.

122. It prays act of the admissions contained in paragraphs 109.21. 109.22, 109.23, 109.24, 109.25, 109.26, 109.27, 109.28, 109.29, 109.30, 109.31 and 109.32 thereof.

123. Paragraph 110 thereof is ignored.

124. Paragraphs 111 and 112 thereof are denied.

125. Paragraphs 113, 114, 115 and 116 thereof are ignored.

126. Paragraph 117 thereof is denied, Defendant pleading averring moreover that the amount of $132,026.35, without admission that such amount is correct or accurate, includes illegal and improper capitalized interest.

127. It prays act of the admission contained in paragraph 118 thereof.

128. Paragraph 119 thereof is denied.

FOR FURTHER PLEA TO PLAINTIFF'S RE-AMENDED INTRODUCTORY MOTION, DEFENDANT PLEADING PLEADS AS FOLLOWS:

A. ABSENCE OF CAUSAL LINK

1. Alleged fault not related to damages claimed

129. There is no direct, immediate and certain causal link between Plaintiff's alleged loss and the faults which she alleges against Defendants BDO, Deloitte and SLF ("**Professional Defendants**").

130. The loss suffered by Plaintiff is not attributable to the alleged faults of Defendant pleading or the other Professional Defendants. Rather, the direct, immediate and certain cause of Plaintiff's loss was: a) the perpetrators of the fraud, namely Defendants Matteo and D'Andrea, who exploited the members of the group with the complicity of Mis en Cause Pettinicchio, Henry, Spura and Holden; b) the brokerage firms who sold the promissory notes which were influenced by Defendant Matteo; c) Defendants B2B and Penson who breached their legal duties; d) the faults of Plaintiff's investment representative, Yves Mechaka, and possibly other causes unrelated to Defendant pleading or the other Professional Defendants.

131. Defendant pleading invokes Plaintiff's admissions in other court proceedings regarding the responsibility of her investment representative, Yves Mechaka, for her loss, wherein Plaintiff filed a proof of claim to recover the capital amount of her promissory notes in the bankruptcy of her investment brokerage firm, Valeurs Mobilières IForum Inc. In a letter dated March 20, 2006 sent with the proof of claim, Plaintiff stated that she held the brokerage firm "entièrement responsable" for the loss of her investment because the representative, Yves Mechaka, (i) failed to inform her of his conflict of interest when he advised her on her investments, (ii) gave her bad advice and acted contrary to her instructions and (iii) failed to inform her that the promissory notes were issued in contravention of

the *Securities Act*, the whole as appears from the motion in appeal of a disallowance of a proof of claim dated March 6, 2007 in the Bankruptcy of Valeurs Mobilières IForum in Superior Court file number 500-11-027066-055, the exhibits thereto and the affidavit signed by Plaintiff attesting to the truth of the facts alleged in said motion, communicated herewith *en liasse* as **Exhibit DBDO-1**.

132. Plaintiff's theory of liability put forward in the present class action fails to establish how the fault supposedly committed by Defendant pleading during its audit of the financial statements of MRC for the fiscal year ended on December 31, 2003 is in any way connected to the loss she suffered on her investments, renewed year after year, in promissory notes of MRACS, or to the losses suffered by the members of the group.

133. Plaintiff began investing in MRACS' promissory notes in 1995, for successive terms of one year, as is admitted by Plaintiff in paragraphs 113 and 114 of the Re-Amended Introductory Motion.

134. Plaintiff's investments in promissory notes of MRACS were made after being solicited by her investment representative, Yves Mechaka, as part of a plan to increase her RRSP, the whole as was admitted by Plaintiff in paragraph 2 of a summary of her testimony, communicated herewith as **Exhibit DBDO-2**.[1]

135. From 1996 until 2005, Plaintiff renewed her investment each year, by completing a one-page document entitled "*Formulaire de Rachat / Souscription pour un Nouveau Terme*" which gave her the option of renewing her investment for another term, or requesting redemption, the whole as appears from such renewal forms completed by Plaintiff between 1995 and 2005, already identified as Exhibit P-32.

136. The reasons for Plaintiff's investments in the promissory notes were based exclusively upon:

(i) the advice given to her by her investment representative, Yves Mechaka, upon whom she directly relied;

(ii) the high rate of return of the investment;

(iii) the eligibility of the investment for her self-directed RRSP; and

(iv) possibly other reasons which are in no way attributable to Defendant pleading.

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1 Filed as Exhibit R-21 of Plaintiff's Motion for Authorization to Institute a Class Action.

137. The reasons for Plaintiff's investments in the promissory notes, and renewal thereof, are unrelated to the audited financial statements of MRC, the identity of its auditors or the existence of any guarantees allegedly given by MRC for the promissory notes issued by MRACS, Real Vest and RAAC (sometimes collectively referred to herein as the "**Issuer Companies**").

138. Plaintiff's investments were not made based upon any opinions allegedly issued by Defendant pleading, and the audit report issued by Defendant pleading was not the determinative element which caused Plaintiff to invest in promissory notes of MRACS or to suffer any losses. In fact, the audit work and professional opinions of Defendant pleading played no part in the decision of Plaintiff to invest in, or renew her investments in promissory notes of MRACS. At the time of her investments, Plaintiff had never consulted a document emanating from Defendant pleading that would have encouraged her to invest.

2. Plaintiff's decision to invest and her investments in MRACS were made well prior to Defendant pleading's involvement in the audit of MRC

139. Defendant pleading was appointed as auditor of the financial statements of MRC for the 2003 calendar year on August 19, 2003, the whole as appears from the Notice of Change of Auditors dated August 19, 2003 and letters of even date from Defendant Deloitte and Defendant pleading, already identified as Exhibit P-35.

140. The sole audit report issued by Defendant pleading related to MRC's fiscal year ended on December 31, 2003. The said audit report was dated February 26, 2004 and it was included in MRC's annual report to the shareholders dated March 15, 2004, the whole as appears from the annual report to the shareholders of MRC communicated as Exhibit P-29G.

141. Plaintiff made her investments in MRACS prior to the involvement of Defendant pleading as auditor of MRC, and she renewed the loans annually before the issuance of MRC's audited financial statements and Defendant pleading's audit report for the 2003 fiscal year and thereafter. The alleged negligence of Defendant pleading is not the *causa causans* of her loss, nor of the loss of the members of the group.

3. Absence of reliance on the audited financial statements of MRC

142. Under Quebec law, in order for a third party to succeed in a claim for damages against an auditor, it must prove that it relied upon the professional opinions of the auditor, unless the auditor was involved in perpetrating a fraud.

143. Plaintiff's recourse against Professional Defendants is admittedly not predicated on any reliance by the members of the group with respect to MRC's audited financial statements, or purported guarantees for the purposes of purchasing and

renewing the promissory notes in litigation.

144. Plaintiff did not personally rely on the financial statements of MRC for the year ended December 31, 2003 audited by Defendant pleading or on any other financial statements of MRC audited by the other Professional Defendants at any time. As was acknowledged by the Court in paragraph 51 of the Judgment dated August 25, 2011, Exhibit P-1, Plaintiff admits that she did not rely on, or even take cognizance of MRC's audited financial statements:

> [51] Or, il se trouve que Mme Ménard ne s'est pas fiée aux états financiers endossés par les sociétés comptables intimées. En effet, elle reconnaît sans ambages qu'elle n'en a pas pris connaissance.

145. Plaintiff admitted that she did not see or rely on MRC's audited financial statements and her allegation as to the impact of MRC's audited financial statements on the sale of promissory notes at paragraph 53 of the Re-Amended Introductory Motion, where she contends that "*C'est sur la force de ces résultats que MRC a vendu, directement ou indirectement, les Billets à ordre aux membres du Groupe*", is patently unfounded. By her own admission, no promissory notes were sold to Plaintiff "on the strength" of audited financial results which she never saw.

146. Plaintiff does not allege in the Re-Amended Introductory Motion that any other member of the group saw or relied on audited financial statements reported upon by Professional Defendants, or any other professional opinions issued by Professional Defendants as the basis for their investment and renewal decisions, or that he or she was even aware of the contents of the audited financial statements. Plaintiff clearly has failed to establish the existence of a direct, immediate and certain causal link between the alleged fault of Professional Defendants and the prejudice suffered by the members of the group.

147. The requirement to prove causality is not diminished by the class action procedure and Plaintiff cannot use the collective nature of this procedural vehicle to avoid one of the constituent elements of the cause of action. As the representative of the group, Plaintiff cannot dispense with the requirement of establishing that the alleged fault of Defendant pleading was the direct, immediate and certain cause of her alleged loss nor assert that some other members of the group would be able to meet the burden of proof of demonstrating that they relied on the audited financial statements of MRC or that they relied upon their credibility for their purchase of the promissory notes sold by the Issuer Companies.

148. In the absence of any allegation of reliance on the part of Plaintiff on Professional Defendants' work product, Plaintiff's action cannot in law lead to the conclusion

that Professional Defendants' alleged negligent opinions with respect to the financial position of MRC were the direct cause of the members' losses. In auditors' negligence cases, the requirement of a direct, immediate and certain causal link means that reliance on the opinions of the auditors or accountants is a necessary condition to any finding of liability. In order for professional opinions to cause harm as a certainty, the knowledge of Plaintiff of the contents of the impugned financial statements is required, as well as a demonstration that Plaintiff relied on such financial information and professional opinions. The causal link, an essential condition of liability in respect of third parties, is thus absent from the theory advanced by Plaintiff, as regards Professional Defendants.

149. Furthermore, Plaintiff's contention in paragraph 53 of the Re-Amended Introductory Motion that MRC benefited from a so-called "aura of credibility" because its financial statements were audited by Professional Defendants has no basis, since she does not allege that she, or the other members of the group, relied upon the credibility of the financial statements or was even aware of the identity of the auditors of MRC, an omission that is fatal to a determination that the auditors are liable for the members' losses.

150. Having abandoned the whole issue of reliance upon the audited financial statements, Plaintiff has explicitly argued that she, in fact, is advancing a new theory of liability of auditors pursuant to which proof of reliance on the professional opinions of the auditors is not required. In fact, Plaintiff is relying upon a theory which has been rejected time and again by our Courts. The theory of Plaintiff is that it is possible to avoid demonstrating that the alleged fault has a direct, immediate and certain causal link to the damages suffered. This is not compatible with our law.

151. The foregoing has recently been clearly confirmed by the Québec Court of Appeal in the matter known as the Castor case (*Wightman* c. *Widdrington (Succession de)*, 2013 QCCA 1187, motion for leave to appeal before the Supreme Court of Canada dismissed).

152. Plaintiff cannot unilaterally eliminate the necessity of proving reliance on audited financial statements of MRC by the members of the group by inventing a cause of action that is inconsistent with the legal requirement of establishing a direct, immediate and certain causal link.

153. The inherent flaws of Plaintiff's cause of action are illustrated, inter alia, by the fact that despite her position that her claim is not based on reliance by the members of the group on MRC's audited financial statements, many allegations contained in the Re-Amended Introductory Motion clearly recognize that reliance thereon is indeed required, as appears from paragraphs 52 and 53 of Plaintiff's Re-Amended Introductory Motion.

4. No participation of Defendant pleading in the fraud

154. Defendant pleading did not cause the members' alleged losses, and Plaintiff does not allege otherwise, as appears from paragraphs 51 and 96 of the Re-Amended Introductory Motion, wherein Plaintiff merely alleges that Professional Defendants rendered the fraud possible ("*ont rendu la fraude de Matteo et de ses acolytes possible*") and gave an "aura of credibility" to the investments.

155. Plaintiff's contention that Professional Defendants rendered the fraud possible and gave an aura of credibility to the investments rests on a vague and untenable theory of causation rather than allegations of a direct, immediate and certain causal link, and clearly does not satisfy the legal requirement of causality.

156. Plaintiff seeks to hold Professional Defendants liable for rendering the fraud possible, but does not allege any participation by Professional Defendants in the fraud or in causing the alleged loss. Plaintiff does not allege that Defendant pleading was a co-conspirator in the fraudulent schemes that led to her loss. In the absence of such specific allegations, it is not possible for this Court to conclude that causality exists. Rendering fraud possible, without any involvement in perpetrating the fraud, does not constitute a fault on the part of an auditor.

157. Plaintiff alleges that the mere presence of Professional Defendants would have given credibility to MRC; however, she does not contend that members of the group knew Professional Defendants or that they invested in the promissory notes due to the presence of Professional Defendants as auditors of the financial statements of MRC.

5. No "lien de droit" between Defendant pleading and Plaintiff or the members of the group

158. There is no direct relationship or "lien de droit" between Defendant pleading and Plaintiff or the other members of the group.

159. The sole entity audited by Defendant pleading was MRC. Plaintiff was not an investor in MRC during the period audited by Defendant pleading. Moreover, MRC was no longer issuing any promissory notes since 2002, namely, before the period of the audit performed by Defendant pleading, as is admitted by Plaintiff at paragraph 54 of the Re-Amended Introductory Motion.

160. Defendant pleading never rendered any audit opinions with respect to MRACS or any of the Issuer Companies which sold promissory notes to Plaintiff and the members of the group. In fact, MRACS, Real Vest and RAAC never had audited financial statements, as is admitted by Plaintiff at paragraph 60 of the Re-Amended Introductory Motion.

161. MRACS and the other Issuer Companies from which Plaintiff and the members of the group purchased promissory notes were not wholly-owned subsidiaries of MRC at the time that Defendant pleading performed its audit of MRC for fiscal year 2003, and the Issuer Companies were not controlled by MRC, as is admitted by Plaintiff at paragraphs 37.1, 38.1, 39 and 85.2 of the Re-Amended Introductory Motion.

162. As a matter of fact and law, the members of the group did not obtain MRC's guarantee of promissory notes issued by the Issuer Companies, and the Issuer Companies were not within the so-called audit perimeter of Professional Defendants as alleged by Plaintiff.

163. While Plaintiff has admitted the importance of the existence of guarantees in order to support her theory of liability with respect to Professional Defendants, the documents produced *en liasse* as Exhibits P-17 and P-32 do not establish the existence of any such guarantees with respect to the promissory notes held by Plaintiff or the members of the group. In particular:

(a) None of the promissory notes of MRACS held by Plaintiff or the members of the group as at November 9, 2005 were issued during the relevant time period during which MRACS was allegedly part of Defendant pleading's audit perimeter, and, in any event, these promissory notes are not guaranteed by MRC.

(b) the promissory notes of MRACS that were issued during the relevant time period during which MRACS was allegedly part of Defendant pleading's audit perimeter had matured prior to November 9, 2005 and, therefore, these notes are not relevant to the present class action, and, in any event, these promissory notes are not guaranteed by MRC.

(c) Plaintiff has not produced any promissory notes of Real Vest held by the members of the group as at November 9, 2005 which would have been issued during the relevant time period during which Real Vest was allegedly part of Defendant pleading's audit perimeter.

(d) Plaintiff has not produced any promissory notes of RAAC held by the members of the group as at November 9, 2005 which would have been issued during the relevant time period during which RAAC was allegedly part of Defendant pleading's audit perimeter.

(e) Plaintiff is unable to produce promissory notes of the Issuer Companies as described hereinabove, and this Court cannot assume that some other members of the group would be able to meet the burden of proof of demonstrating that they would be capable of producing evidence of the existence of guarantees allegedly given by MRC for the promissory notes.

164. Moreover, Plaintiff specifically admits that she does not base her recourse on the existence of a guarantee by MRC for the promissory notes issued by MRACS and other entities involved in the fraudulent scheme for her decision to invest in the promissory notes. This Court cannot assume that some other members of the group would be able to meet the burden of proof of demonstrating that they relied on the guarantees allegedly given by MRC for the promissory notes.

6. The alleged causal link is indirect, remote and speculative, not direct, immediate and certain

165. The causal link alleged by Plaintiff with respect to Professional Defendants is indirect and remote and is predicated on speculative and hypothetical arguments, not on relevant facts.

166. The "spotlight" theory of causation put forward by Plaintiff in paragraphs 94 and 95 of the Re-Amended Introductory Motion asserts that each of Professional Defendants should, at the time of their respective audits, have discovered the fraud and refused to report upon MRC's financial statements, thereby presumably triggering a cascade of events. In essence, Plaintiff's theory alleges that if audited financial statements had not been filed within the prescribed delays, this instantly would have turned a spotlight on MRC, and the Autorité des marchés financiers (the **"AMF"**) would have intervened without delay and made the continuation of the fraud impossible, and appears to be articulated as follows:

a. if Professional Defendants were not negligent, then they would not have issued unqualified audit opinions for MRC.

b. if Professional Defendants did not issue unqualified audit opinions, then MRC would not have been able to issue audited financial statements;

c. if MRC did not have audited financial statements, the requirement to file such statements on a timely basis would not have been met;

d. if the requirement to file such financial statements had not been met, then the AMF would have issued orders to stop MRC's activities;

167. The causal link imagined by Plaintiff in her "spotlight" theory of causation is anything but direct, immediate and certain, and contradicts the well-established principle that third parties must show that they actually relied on the professional opinions of an auditor in order to hold an auditor liable for their losses.

168. In the absence of reliance on the audited financial statements of MRC as a basis for her investment decisions, Plaintiff bases her allegations with respect to causality upon a chain of speculation, conjecture and opinion as to what the AMF might have done had it not received the audited financial statements of MRC on a timely basis. Plaintiff's cause of action against Defendant pleading is based

upon a series of unfounded hypotheses, inferences and speculation as to, inter alia:

a. the detection of the fraud;

b. the delay within which the audited financial statements of MRC could have been issued;

c. the possibility that replacement auditors would have been appointed had Defendant pleading not issued its audit report;

d. assuming that if such replacement auditors were named, they too would have refused to report upon the financial statements of MRC within the requisite delay;

e. the steps that the AMF would have taken;

f. the possibility of the AMF granting an extension to MRC to file its audited financial statements;

g. the resulting effect on the alleged fraud and investor losses, i.e. that the fraud would have ceased as of that moment;

h. even if the AMF had acted very quickly, which in the actual context of MRC at the time, is grossly speculative and highly unlikely, the members of the group would have been able to recover their losses out of the assets of MRC, which Plaintiff alleges had already been dissipated by the perpetrators of the fraud.

169. Plaintiff's assumption that the AMF would have "moved in" even faster on MRC, Defendant Matteo and their accomplices, based solely on a failure to file financial statements, is pure speculation.

170. Plaintiff has not alleged, and it is certainly not the case, that the AMF would have sought sanctions against MRC immediately if it had failed to file its audited financial statements on time.

171. Furthermore, it is reasonable to assume that MRC could have obtained an extension from the AMF to file its audited financial statements. Plaintiff does not appear to have considered that possibility.

172. Under Plaintiff's "spotlight" theory of causation, Defendant pleading's responsibility for the members' losses is based on the AMF's hypothetical involvement and the contemplation of whether or not a third party, completely unrelated to Defendant pleading and over which Defendant pleading had no control, would have taken action as a result of Defendant pleading's work and whether this possible action would have uncovered a fraud. The alleged liability

of Defendant pleading requires multiple possibilities which consist of pure speculation as to what could have been, would have been, or should have been, but does not correspond to reality. Speculation and hypotheses, and remote events which were never within the contemplation of the parties at the relevant time, cannot satisfy the strict legal requirement of a direct, immediate and certain causal link.

173. Whereas Plaintiff's class action portrays the AMF as the savior, the failure of the AMF to act promptly, and thereby uncover a company's fraud, is a possibility which Plaintiff does not appear to have even considered. Such failure to act by the AMF was the basis for a successful motion for the authorization of a class action against the AMF in the decision rendered by Jasmin, J.S.C. in *Pellemans c. Lacroix*, 2006 QCCS 5080, communicated herewith as **Exhibit DBDO-3**. In this decision, Jasmin, J.S.C., cited allegations referring to correspondence in 2003 between the company and the AMF as well as a newspaper article which referred to a report that had been sent by the police to the AMF about transactions that had the appearance of a fraud and questioned whether the AMF could have acted earlier (paragraphs 106 to 116 of the decision). Thus, it is far from obvious that the AMF would have intervened immediately had MRC failed to file its audited financial statements on time.

174. As a matter of fact, it appears that the AMF had already put a "spotlight" upon MRC, and that the AMF had many opportunities to intervene and stop MRC from operating, but never did so.

175. In December 2003, the AMF started its investigation into MRC, the whole as appears from the certificate of the AMF dated October 14, 2008 attesting to the date of opening of the investigation file on December 5, 2003, communicated herewith as **Exhibit DBDO-4**. The said investigation eventually led to the laying of penal charges by the AMF against Defendants Matteo and D'Andrea and Mis en cause Henry, Spura and Pettinicchio, five (5) years later, in September 2008, as appears from some of the penal indictments communicated herewith *en liasse* as **Exhibit DBDO-5**; however, it did not induce the AMF to immediately put a halt to MRC's activities.

176. On September 20, 2004, MRC filed with the AMF a Notice of Change of Auditors, in which MRC announced the resignation of Defendant pleading as auditor effective September 10, 2004, as appears from such Notice of Change of Auditors, identified as Exhibit P-36. In the Notice of Change of Auditors, MRC stated that Defendant pleading's resignation was not due to any disagreement or unresolved issues with MRC, but was due to budgetary issues of MRC.

177. In response to the said Notice of Change of Auditors, Defendant pleading issued a letter addressed, inter alia, to the AMF, in which Defendant pleading rectified MRC's assertions and stated that its resignation was in fact due to several

reasons, including "unresolved issues" relating to advice given by Defendant pleading on the manner in which MRC should recognize income in its interim financial statements for the first and second quarters of 2004, as appears from Defendant pleading's letter dated September 30, 2004, identified as Exhibit P-37.

178. On February 21, 2005, the AMF launched a further investigation into MRC and the Issuer Companies, MRACS, Real Vest and RAAC, in connection with the issuance by these entities of the subject promissory notes, the whole as appears from the AMF's internal decision communicated herewith as **Exhibit DBDO-6** and from the certificate of the AMF dated February 11, 2008 attesting to the date of opening of the investigation file on September 21, 2005, communicated herewith as **Exhibit DBDO-7**. The said investigation eventually led to the laying of penal charges by the AMF against Defendants Matteo, D'Andrea, Henry, Spura and Pettinicchio, five (5) years later, in September 2008, as appears from some of the penal indictments already identified as Exhibit DBDO-5; however it did not induce the AMF to immediately put a halt to the Issuer Companies' activities.

179. In addition, a second parallel AMF investigation of MRC's financial statements and activities was also launched in the spring of 2005, at the initiative of the AMF's direction des marchés des capitaux, the whole as appears from the affidavit sworn by Michel Vadnais, investigator at the AMF, on December 5, 2005, filed in connection with search warrants in the penal proceedings brought by the AMF against the perpetrators of the fraud and communicated herewith as **Exhibit DBDO-8**. The directors of MRC were also supposedly questioned by the AMF on their financial statements in the course of this investigation. On May 19, 2005, the AMF confirmed its decision to investigate Defendants Matteo and Pettinicchio and MRC's securities related transactions, the whole as appears from the AMF's internal decision dated May 19, 2005, communicated herewith as **Exhibit DBDO-9**.

180. As appears from the foregoing, three (3) seemingly distinct investigations were in fact initiated into MRC, MRACS, Real Vest, RAAC, Defendant Matteo and his accomplices at three (3) different periods of time, yet it appears the AMF chose to complete its investigations before requesting an *ex parte* hearing before the *Bureau de décision et de révision en valeurs mobilières* (the "**BDRVM**") to request that it issue freeze and cease trading orders and a recommendation to the Minister of Finance to appoint a provisional administrator with respect to MRC and the Issuer Companies, based on its belief that there were "*motifs impérieux*" to intervene, as appears from the freeze and cease trading orders issued by the BDRVM on November 9, 2005, the application therefor by the AMF dated November 8, 2005 and the affidavit of David Lemay in support thereof, and from the recommendation to the Minister of Finance to appoint a provisional administrator issued by the BDRVM on November 9, 2005, the application therefor by the AMF dated November 8, 2005 and the affidavit of David Lemay in

support thereof, communicated herewith *en liasse* as **Exhibit DBDO-10**.

181. Immediate and permanent requests for a blocking order against MRC does not appear to have been the AMF's preferred course of action. There is no indication that the AMF would have proceeded any differently had Professional Defendants refused to report upon MRC's financial statements during each of their respective audit periods.

182. It is clear from the conduct of the AMF in this matter that it considered that the only way to put an end to the fraud perpetrated against the members of the group was to fully complete its investigations, obtain compelling evidence of the existence of a fraud, and seek blocking orders to put an end to the fraud.

183. In this context, the failure to file audited financial statements would not have changed the course of action chosen by the AMF, to complete its investigations, obtain compelling evidence of the existence of a fraud, and seek blocking orders to put an end to the fraud.

184. It is only through the use of blocking orders that the AMF could remove the perpetrators of the fraud and prevent them from further misappropriating the assets of MRC and the Issuer Companies.

185. Plaintiff has not alleged that each member made or renewed investments after the date on which the AMF allegedly would have intervened in respect of the 2003 fiscal year audited by Defendant pleading nor has she alleged what losses, if any, were allegedly incurred after that date. Even if the fraud had been discovered and halted by the time Defendant pleading issued its audit report on MRC, MRC would have been liquidated and the investments of the members of the group would have already been lost just the same.

186. Plaintiff further attempts to unilaterally circumvent the requirement to prove a direct, immediate and certain causal link by inventing a second cause of action based on the credibility that the Professional Defendants would have allegedly lent to MRC, which in turn would have rendered the fraud possible.

187. In this regard, Plaintiff alleges that the mere involvement of Professional Defendants as auditors of MRC would have lent credibility to MRC, without alleging that the members of the group were aware of the identity of the Professional Defendants and that they actually invested in the notes in litigation due to such credibility.

188. In fact, the evidence contradicts the existence of a direct, immediate and certain causal link as Plaintiff was unaware of the fact that Defendant pleading had audited MRC's financial statements.

189. Moreover, before purchasing the notes in litigation, Plaintiff never received any documents pertaining to MRC and did not even know the nature of MRC's activities, thereby rendering her allegation at paragraph 51 of the Re-Amended Introductory Motion that MRC benefited from an "aura of credibility" ill-founded.

190. In fact, Plaintiff decided to invest in the notes in litigation as she was operating under the erroneous assumption that such investments were guaranteed by the Canadian and Québec governments on the basis that they were RRSP eligible.

B. AUDIT CONSIDERATIONS

(I) Consideration of fraud in the context of an audit

1. Objectives of an audit

191. Plaintiff alleges that Defendant pleading should have discovered the highly complex and carefully orchestrated fraud which was perpetrated by the highest levels of management, certain members of the Board of Directors of MRC and third parties, in the context of the audit of MRC's financial statements.

192. The CICA Handbook contains the provisions applicable to the conduct of an audit of financial statements in Canada. More particularly, CICA Handbook Section 5135 (December 2002) *The auditor's responsibility to consider fraud and error in an audit of financial statements* in paragraph 13 specifically recognizes that an auditor is not and cannot be held responsible for the prevention of fraud and error:

> 5135.13 As described in AUDIT OF FINANCIAL STATEMENTS — AN INTRODUCTION, Section 5090, the objective of an audit of financial statements is to express an opinion whether the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows in accordance with generally accepted accounting principles, or in special circumstances another appropriate basis of accounting. An audit conducted in accordance with generally accepted auditing standards is designed to provide reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error. For the reasons set out in paragraphs 5135.15-.17, the assurance an auditor provides concerning misstatements arising from fraud is of necessity lower than the assurance provided concerning those arising from error. The fact that an audit is carried out may act as a deterrent, but the auditor is not and cannot be held responsible for the prevention of fraud and

> error. The nature and the scope of a public sector audit may be affected by legislation, regulation, ordinances and ministerial directives relating to the detection of fraud and error.
>
> (our emphasis)

2. Management responsibility for prevention and detection of fraud

193. The responsibility for the preparation of the financial statements, including the responsibility for the prevention and detection of fraud and error, lies with management as clearly expressed by paragraph 5090.02 of the CICA Handbook (December 2002) :

> 5090.02 The operations of an entity are controlled by management under the direction of those charged with governance, including those with oversight responsibility for the financial reporting process. Management has the primary responsibility for the accurate recording of transactions and the preparation of financial statements in accordance with generally accepted accounting principles. These responsibilities include those related to internal control such as designing and maintaining accounting records, selecting and applying accounting policies, safeguarding assets and preventing and detecting error and fraud. An audit of the financial statements does not relieve management of its responsibilities. The auditor may make suggestions as to the form or content of the financial statements or the auditor may draft them in whole or in part, based on management's accounting records. However, financial statements remain the representations of management and of those charged with governance, particularly the audit committee or equivalent.
>
> (our emphasis)

194. As also described in paragraph 5135.10 of the CICA Handbook (December 2002), it is clearly incumbent upon management and the Board of Directors to prevent and detect fraud within the company:

> 5135.10 The primary responsibility for the prevention and detection of fraud and error rests with both those charged with the governance and the management of an entity. The respective responsibilities of those charged with governance and management may vary by entity, by

> jurisdiction, and according to the relevant statute and regulation. Management, with the oversight of those charged with governance, needs to set the proper tone, create and maintain a culture of honesty and high ethics, and establish appropriate controls to prevent and detect fraud and error within the entity.
>
> (our emphasis)

195. As will be established hereinbelow, it is precisely those individuals, among others, who were responsible for the prevention and detection of fraud who committed the fraud under consideration.

3. Assumption of management's good faith

196. The assumption of management's good faith was fundamental to the conduct of the subject audit, as recognized by the following paragraphs of the CICA Handbook (December 2002):

> 5090.05 In planning and performing an audit, the auditor neither assumes that management is dishonest nor assumes unquestioned honesty. The auditor normally designs auditing procedures on the assumption of management's good faith, and exercises professional judgment in determining the nature, extent and timing of those procedures, in evaluating their results and assessing determinations made by management. However, the auditor performs the audit with an attitude of professional scepticism, without which the auditor may not be alert to circumstances which should lead him or her to be suspicious and he or she may then draw inappropriate conclusions from evidence gathered.
>
> 5090.06 The assumption of management's good faith means the auditor, in the absence of evidence to the contrary, can accept accounting records and documentation as genuine and representations as complete and truthful. This assumption is normally necessary for an audit to be economically and operationally feasible. However, representations from management are not a substitute for obtaining sufficient appropriate evidence to draw reasonable conclusions on which to base the audit opinion.
>
> 5090.07 An attitude of professional scepticism recognizes that circumstances may exist that cause the

> financial statements to be materially misstated. It means the auditor makes a critical assessment, with a questioning mind, of the sufficiency and appropriateness of audit evidence obtained and is alert for evidence that contradicts or brings into question the reliability of documents or management representations. It does not mean the auditor is obsessively sceptical or suspicious. The attitude of professional scepticism is necessary throughout the audit process to reduce the risk of overlooking suspicious circumstances, of overgeneralizing when drawing conclusions from audit observations, and of using faulty assumptions in determining the nature, timing and extent of the audit procedures and evaluating the results thereof.
>
> (our emphasis)

197. In the case under consideration, Defendant pleading rightfully relied upon management's good faith while performing the audit with an appropriate attitude of professional scepticism.

198. As will be explained hereinbelow, numerous factors impeded the discovery of the fraud.

4. Factors impeding the auditor's ability to discover fraud

199. The CICA Handbook (December 2002) addresses factors impeding the auditor's ability to discover fraud in the course of an audit in paragraphs 5135.15 to 5135.17.

200. As will be explained hereinbelow, many of the factors referred to in paragraph 5135.15 which impede the auditor's ability to detect fraud are present in the case under consideration:

> 5135.15 The likelihood of not detecting a material misstatement resulting from fraud is higher than the likelihood of not detecting a material misstatement resulting from error because fraud may involve sophisticated and carefully organized schemes designed to conceal it, such as forgery, deliberate failure to record transactions, or intentional misrepresentations being made to the auditor. Such attempts at concealment may be even more difficult to detect when accompanied by collusion. Collusion may cause the auditor to believe that evidence is persuasive when it is, in fact, false. The auditor's ability to detect a fraud depends on factors such as the skilfulness of the perpetrator, the

> frequency and extent of manipulation, the degree of collusion involved, the relative size of individual amounts manipulated, and the seniority of those involved. Audit procedures that are effective for detecting an error may be ineffective for detecting fraud.
>
> (our emphasis)

201. Furthermore, as appears from paragraph 5135.16 of the CICA Handbook, the perpetration of fraud by management further impedes the auditor's ability to detect the fraud, which was the case in this matter:

> 5135.16 Furthermore, the likelihood of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud, because those charged with governance and management are often in a position that assumes their integrity and enables them to override the formally established control procedures. Certain levels of management may be in a position to override internal controls designed to prevent similar frauds by other employees (for example, by directing subordinates to record transactions incorrectly or to conceal them). Given its position of authority within an entity, management has the ability to either direct employees to do something or solicit their help to assist management in carrying out a fraud, with or without the employees' knowledge.
>
> (our emphasis)

202. Moreover, paragraph 5135.17 of the CICA Handbook, emphasizes the significance of collusion in respect of the auditor's ability to detect fraud. It also recognizes that an audit does not guarantee the discovery of fraud:

> 5135.17 The auditor's opinion on the financial statements is based on the concept of obtaining reasonable assurance; hence, in an audit, the auditor does not guarantee that material misstatements, whether from fraud or error, will be detected. Therefore, the subsequent discovery of a material misstatement of the financial statements resulting from fraud or error does not, in and of itself, indicate:
>
> (a) a failure to obtain reasonable assurance;
>
> (b) inadequate planning, performance or judgment;

(c) the absence of professional competence and due care; or

(d) a failure to comply with generally accepted auditing standards.

This is particularly the case for certain kinds of intentional misstatements, since auditing procedures may be ineffective for detecting an intentional misstatement that is concealed through collusion between or among one or more individuals among those charged with governance, management, other employees, or third parties, or involves falsified documentation. Whether the auditor has performed an audit in accordance with generally accepted auditing standards is determined by the adequacy of the audit procedures performed in the circumstances and the suitability of the auditor's report based on the result of these procedures.

(our emphasis)

(II) Application of relevant factors to the fraud under consideration

1. Skilfulness and seniority of the individuals involved in the fraud under consideration

(a) Within MRC

203. As recognized by the aforementioned standards, either the skilfulness of the perpetrator or the seniority of those individuals, within management, involved in the fraud impedes the auditor's ability to detect fraud.

204. In the case under consideration, there were numerous perpetrators, including Matteo, Spura, Pettinicchio, Henry and D'Andrea, who were all both highly skilful and held senior positions within MRC.

205. In this regard, Matteo, the CEO, and Spura were on the Board of Directors of MRC in addition to being members of the audit committee and therefore necessarily misled certain members of the audit committee and the Board of Directors.

206. Matteo graduated from Concordia University and obtained a Bachelor of Commerce degree with a major in Accounting in 1984. He also obtained his CMA professional designation (Certified Management Accountant) in 1988. He had the skilfulness and seniority, in his capacity as CEO of MRC, to plan, orchestrate and execute the elaborate fraudulent scheme in litigation and to mislead the auditors.

207. As regards Spura, he held a Bachelor of Science degree in Business Administration and a Masters of Business Administration (MBA). Prior to joining MRC, his career included multiple management positions in the financial services industry such as Vice-President and General Manager of Canagex Limited (a mutual fund manager), Vice-President of National Bank Mortgage Corporation, Manager of Specialized Deposit Services at National Bank of Canada, Chairman of the Board of Directors of La Gestion Européenne La Laurentienne S.A. and Vice-President of Laurentian International Investments. He had the skilfulness and seniority to participate in the perpetration of the elaborate fraud in litigation and to mislead the auditors.

208. Pettinicchio, in his capacity as Vice-President Finance and subsequently as President and COO of MRC (1999-2005), was at the highest levels of management and, in addition, was a member of the Board of Directors of MRC.

209. Pettinicchio was also a CGA (Certified General Accountant) with impressive business experience, including senior positions with various financial institutions including AGF Management, Royal Bank, Royal Trust, Royal Mutual Funds, Placement Geoffrion Leclerc and Scotia Factors. He also worked at a public accounting firm, Raymond, Chabot, Martin, Paré. He had the skilfulness and seniority to participate in the perpetration of the elaborate fraud in litigation and to mislead the auditors.

210. As regards Henry, in his capacity as Vice-President Corporate Development at MRC from 1999 until 2001, he was at the highest levels of management. He had 35 years of experience in management, during which time he had served in various senior executive positions in industries such as leasing, factoring, natural wellness products, franchising and management consulting. He had the skilfulness and seniority to participate in the perpetration of the elaborate fraud in litigation.

211. D'Andrea held senior management positions within MRC, as controller (2000-2003) and CFO (2004-2005). He held a Bachelor of Commerce degree with a major in Management and Accounting from McGill University. He also was a CMA and had the skilfulness and seniority to participate in the perpetration of the elaborate fraud in litigation and to mislead the auditors.

(b) Third-party perpetrators

212. In the case under consideration, the participants in the fraud also included third-party perpetrators, such as Holden and Hancock, who were also highly skilful.

213. As regards Holden, he became a director and President of MRACS and a director of Real Vest and RAAC in 2005. He held a Bachelor of Science degree,

and during his career, he worked at Dayton Hudson Corporation (now known as Target Corporation) as part of the corporate audit team.

214. Hancock was the President of Investsafe, the UK company involved in the Real Vest and MRACS transactions characterized as fictitious by Plaintiff. He was a Chartered Accountant and a fellow of the Institute of Chartered Accountants in England and Wales. Prior to the relevant time period, he had been deputy managing director of a subsidiary of ABN AMRO Bank of the Netherlands.

2. Collusion in the case under consideration

215. As recognized by the applicable standards discussed hereinabove, collusion may cause the auditor to believe that evidence is persuasive when it is, in fact, false.

216. Therefore, the ability of an auditor to discover the fictitious nature of fraudulent transactions is seriously impeded in the case of collusion.

217. In the case under consideration, the complex and sophisticated fraud necessarily involved collusion not only among the members of MRC's senior management and certain members of the Board of Directors but also with third-party perpetrators.

218. Given the highly complex nature of the fraud as recognized by Jean St-Gelais in the AMF Press Release dated September 22, 2008, communicated herewith as **Exhibit DBDO-11**, Defendant pleading submits that it would have been impossible for Matteo to carry out such a fraud without the participation of numerous accomplices, not limited to those mentioned hereinbelow.

(a) Lino Matteo and Paul D'Andrea

219. Plaintiff recognized that Matteo provided false and misleading information to the auditors, as appears from her answer to undertaking SLF-19, communicated herewith as **Exhibit DBDO-12**.

220. As for D'Andrea, he admitted that he participated in the fraud orchestrated by Matteo by pleading guilty to the 131 penal charges laid against him by the AMF.

(b) Joseph Pettinicchio

221. During the period relevant to the class action, Pettinicchio, was Vice-President Finance, President and COO of MRC, as well as a member of the Board of Directors.

222. The AMF's investigation demonstrated that Pettinicchio was involved in MRACS and Real Vest, more particularly in that he signed cheques issued by these

companies, as did Matteo and D'Andrea, as appears from paragraphs 78 and 80 of the BDRVM Decision identified as Exhibit P-10.

223. During the relevant period, Pettinicchio held senior positions in the companies involved in the sale of the promissory notes in litigation. In this regard, he was a director, President, CEO and member of the audit committee of iForum Financial Network, the parent company of iForum Financial Services and iForum Securities, which sold promissory notes to members of the group, as well as a director and Vice-President of iForum Financial Services.

224. He was also a shareholder and President of 3251497 Canada Inc., the principal shareholder of iForum Financial Network.

225. According to the BDRVM, Pettinicchio, as a director and Vice-President of iForum Financial Services, was responsible for ensuring that only qualified representatives of iForum Financial Services could sell promissory notes in accordance with the *Securities Act*, as appears from paragraph 65 of the BDRVM Decision identified as Exhibit P-10.

226. It is clear that Pettinicchio was an accomplice of Matteo and that he was involved in the sale of promissory notes to members of the group in contravention of various securities laws.

227. Furthermore, in the context of the MRACS transaction characterized as fictitious by Plaintiff, Pettinicchio made representations to the CVMQ for the purposes of the Continuous Disclosure Review Program that Investsafe was an arm's length party, as appears from paragraph 1.5.2 of MRC's letter to the CVMQ dated May 28, 2003, communicated herewith as **Exhibit DBDO-13**.

228. Pettinicchio's involvement in the MRACS transaction will be more fully explained herein below.

(c) Laurence Henry

229. During the period relevant to the class action, Henry acted as Vice-President Corporate Development of MRC, and President and a director of RAAC, MRACS and Real Vest.

230. He was directly involved in the management and administration of MRC, RAAC, MRACS and Real Vest and in the issuance of promissory notes to the members of the group.

231. The AMF's investigation demonstrated that several promissory notes issued illegally by one or the other of MRC, MRACS, Real Vest and RAAC were signed by Matteo, D'Andrea and Henry, as appears from paragraph 79 of the BDRVM Decision identified as Exhibit P-10.

232. In fact, Henry signed promissory notes issued by MRACS to Plaintiff, as appears from copies of the notes included in Exhibit P-32.

233. The AMF's investigation also demonstrated that Henry, like Matteo, Pettinicchio and D'Andrea, was signatory of MRACS cheques drawn on accounts held with Royal Bank of Canada, Bank of Montreal and TD Canada Trust and signatory of Real Vest cheques drawn on accounts with Royal Bank of Canada, as appears from paragraphs 78(a) and 78(b) of the BDRVM Decision identified as Exhibit P-10.

234. In light of the facts related hereinabove, it is clear that Henry is an accomplice of Matteo and that he participated in the sale of the promissory notes to the members of the group.

235. Moreover, Henry was involved in the scheme aimed at changing MRACS' ownership from UK ownership (Investsafe) to Canadian ownership (Mapleridge Financial Management Corporation ("**Mapleridge**")), as will be more fully explained hereinbelow.

236. In this regard, Henry was President, director and sole shareholder of Mapleridge, a company incorporated in Alberta, which became the majority shareholder of MRACS pursuant to a scheme aimed at changing MRACS' UK ownership, as appears from the Resolution of the Directors of MRACS of May 16, 2003 and the Notice of Subscription by Mapleridge already identified as Exhibit P-58.

237. Henry was also a President, director and shareholder of 1082095 Alberta Limited which was created on December 31, 2003 to acquire the shares of MRACS and Real Vest owned by Investsafe, as appears from two agreements dated February 19, 2004 between Investsafe and 1082095 Alberta Limited, communicated herewith *en liasse* as **Exhibit DBDO-14**. Investsafe was the UK company involved in the MRACS and Real Vest transactions, which transactions are characterized as fictitious by Plaintiff. Contemporaneously with the acquisition, 1082095 Alberta Limited changed its name for Investsafe Ltd. (same name as the UK Company).

(d) Andris Spura

238. During the period relevant to the class action, Spura was a member of the Board of Directors of MRC and a member of the audit committee.

239. Furthermore, he held senior positions within the companies which issued the notes in litigation. In this regard, he was a director and Secretary of MRACS, a director and Secretary of RAAC and a director and Secretary-Treasurer of Real Vest.

240. He was also involved in the scheme aimed at changing MRACS' ownership from UK ownership (Investsafe) to Canadian ownership (Mapleridge), as appears from the Resolution of the Directors of MRACS of May 16, 2003, already identified as Exhibit P-58.

241. Moreover, it was Spura who represented Real Vest for purposes of the Real Vest transaction characterized as fictitious by Plaintiff, as will be explained hereinbelow.

242. In light of the facts related hereinabove, it is clear that Spura was an accomplice of Matteo and that he participated in setting up a transaction characterized as fictitious by Plaintiff.

(e) Lowell Holden

243. Holden was an accomplice of Matteo and was aware of the fraudulent activities orchestrated by Matteo, since he agreed, at Matteo's request, to become a director of MRACS, Real Vest and RAAC in the summer of 2005, when these companies were being investigated by the AMF further to their refusal to reimburse the noteholders.

(f) Stephen Hancock

244. Hancock, as will be explained hereinbelow, was involved in the MRACS and Real Vest transactions that are characterized as fictitious by Plaintiff.

3. Perpetrators of the fraud also misled independent members of MRC's Board of Directors and three successive audit firms

245. The independent members of the Board of Directors of MRC were also misled by the perpetrators of the fraud despite the knowledge and experience of said Board members.

246. Furthermore, they were necessarily misled on a continuous basis since they not only approved MRC's annual financial statements but they also approved MRC's quarterly unaudited financial statements.

247. Robert Laflamme, a Board member of MRC until 2005 and a member of the audit committee, had extensive investment dealer and business experience and was well known in the business community. He was a registered representative, institutional representative, Vice-President and sales manager in the Canadian finance and investment industry. He was the co-founder of Investpro Securities Inc., a duly registered member of the Investment Dealers Association (now known as IIROC).

248. Mtre Guy A. Gagnon, a Board member of MRC until 2003, was a tax specialist and recognized lawyer as well as a partner at a leading Montreal law firm.

249. Paul K. Marchand, a Board member of MRC until 2004, was an insurance broker and managing partner of Marchand, Fairchild, Blais Financial Services Inc.

250. Elyse Claire Rowen, a Board member of MRC from 2002 to 2005, held a Masters of Business Administration (MBA) and had worked for several public companies including Canadian Pacific, Sun Life, Schering-Plough, Pfizer and Kraft.

251. Andrew McAusland, a Board member of MRC from 2003 to 2005 and a member of the audit committee, was Executive Director of Instructional and Information Technology Services and Director of Academic Technology at Concordia University, and President and Chief Executive Officer of eConcordia, a private company funded by the Concordia University Foundation providing online-distance education.

252. Catherine Dine, a Board member of MRC from 2003 to 2005, held a Bachelor of Commerce degree and was President of Dine & Associates (now known as Dine Discoveries), a market research firm working in a wide range of industries for organizations including CIBC, Clorox, Canadian Tire, HBC, Kellogg's, Kraft, OLG, Pfizer, Rogers, Thompson Reuters, TSX and Yahoo! Prior to founding her firm, she was President of Market Probe Canada, and had experience in the financial sector including banking, wealth management, capital markets, pensions and insurance, and had worked as manager, strategic research and planning for Royal Trust and Royal Bank.

253. The fact that three well known, highly reputable audit firms were all defrauded demonstrates the exceptional skill and knowledge of the perpetrators of the fraud and the collusion of third parties.

(III) Real Vest and MRACS Transactions

254. Plaintiff has characterized the Real Vest and MRACS transactions as fictitious and accuses Defendant Deloitte of failing to discover the fictitious nature of these transactions.

1. Real Vest Transaction

255. In September 2000, Real Vest issued shares to Investsafe, a UK company, resulting in the dilution of the MRC ownership in Real Vest to 35%, with Investsafe holding the remaining 65%, thereby providing Investsafe with control of Real Vest, as appears from the Share Subscription Agreement identified as Exhibit P-23.

256. The Share Subscription Agreement was signed by Spura for Real Vest and by Hancock on behalf of Investsafe, as appears from the Share Subscription Agreement identified as Exhibit P-23.

257. For the purposes of the audit for the period ended December 31, 2000, Defendant Deloitte received representations from the highest levels of management, including from Matteo and D'Andrea, that Investsafe was a third-party.

258. These representations were also publicly confirmed by MRC's press release of October 3, 2000, communicated herewith as **Exhibit DBDO-15**, in which Pettinicchio was quoted, as well as by the Management Discussion and Analysis contained in the 2000 Annual Report signed by Matteo and Pettinicchio, identified as Exhibit P-29D.

259. This transaction was approved by the Board of Directors of MRC, as appears from the Minutes of a meeting of the Board held on September 25, 2000, communicated herewith as **Exhibit DBDO-16**.

260. If Plaintiff's characterization of the Real Vest transaction as fictitious is accurate, it is the result of high level collusion within MRC by Matteo, Spura, D'Andrea and Pettinicchio and by Hancock, a third-party perpetrator, who signed the Share Subscription Agreement identified as Exhibit P-23 on behalf of Investsafe.

2. MRACS Transaction

261. On September 30, 2002, MRACS, a wholly-owned subsidiary of MRC, was sold to Investsafe, a UK company, pursuant to the terms of a Share Purchase Agreement identified as Exhibit P-15.

262. The Share Purchase Agreement was signed by Matteo for MRC and by Hancock on behalf of Investsafe, as appears from the Share Purchase Agreement identified as Exhibit P-15.

263. This sale was reflected in the third quarter unaudited financial statements of MRC, which were approved by the Board of Directors, as appears from the unaudited financial statements for the 9-month period ended September 30, 2002 and the minutes of a meeting of the Board of Directors of MRC held on November 21, 2002 approving said financial statements, communicated herewith *en liasse* as **Exhibit DBDO-17**.

264. For the purposes of the audit for the period ended December 31, 2002, Defendant Deloitte received representations from the highest levels of management, including from Matteo, Pettinicchio and D'Andrea, that Investsafe was a third-party.

265. These representations were also publicly confirmed by MRC's press release of October 2, 2002, communicated herewith as **Exhibit DBDO-18**, as well as in the subsequent press release of November 22, 2002, communicated herewith as **Exhibit DBDO-19**.

266. Furthermore, identical representations were made by Pettinicchio in the Message of the President to the shareholders contained in the 2002 Annual Report, identified as Exhibit P-29F.

267. Furthermore, Pettinicchio reiterated such representations in a letter to the CVMQ in the context of the Continuous Disclosure Review Program, as appears from section 1.5.2 of MRC's letter to the CVMQ dated May 28, 2003, already communicated as Exhibit DBDO-13.

268. The MRACS transaction was discussed by the Board of Directors of MRC, as appears from the Minutes of a meeting of the Board held on August 21, 2002, communicated herewith as **Exhibit DBDO-20**, was later approved by the Board, as appears from the Minutes of the meeting of the Board of Directors held on October 1, 2002, communicated herewith as **Exhibit DBDO-21**, and was further discussed at a meeting of the Board of Directors held on November 21, 2002, as appears from the Minutes of the said meeting, already communicated as Exhibit DBDO-17.

269. If Plaintiff's characterization of the MRACS transaction as fictitious is accurate, it is the result of high level collusion within MRC by Matteo, Pettinicchio, D'Andrea and Spura as well as by Hancock, a third-party perpetrator, who signed the Share Purchase Agreement identified as Exhibit P-23 on behalf of Investsafe.

270. Such collusion in respect of the Real Vest and MRACS transactions was exceptional due, inter alia, to the involvement of a significant number of highly skilful perpetrators, including: i) members of senior management of MRC (Matteo, D'Andrea, Pettinicchio) ii) certain members of the Board of Directors of MRC who approved the transactions (Matteo, Spura, Pettinicchio) and iii) a third-party perpetrator (Hancock).

271. As explained hereinabove, the CICA Handbook recognizes that the existence of only one of the factors mentioned in paragraphs 5135.15 to 5135.17 seriously impedes the ability of the auditor to discover fraud, whereas in the case under consideration, several of these factors exist, thereby further significantly increasing the likelihood of not discovering the fraud.

272. In summary, the senior management positions of the perpetrators of the fraud, their specific knowledge and experience, and the role of third party accomplices all combined to defraud not only Plaintiff, the members of the group and the outside directors mentioned above but also the Professional Defendants.

C. ABSENCE OF DAMAGES

I. Plaintiff's loss had crystallized prior to Defendant pleading's involvement

273. Plaintiff invested funds in MRACS prior to the involvement of Defendant pleading as auditor of MRC, renewed her investments prior to the issuance of the audited financial statements, and has alleged a purely hypothetical argument about what would have happened if Defendant pleading would have resigned as auditor.

274. Plaintiff's loss was crystallized prior to Defendant pleading's involvement in the audit of MRC, such that the alleged wrongdoing of Defendant pleading was not the cause of Plaintiff's loss.

275. Plaintiff's "spotlight" theory of causation fails to explain even minimally how the losses allegedly incurred by the noteholders resulting from the elaborate and complex fraud orchestrated by Defendants Matteo and D'Andrea with the complicity of others (losses that had already been incurred and crystallized prior to the involvement of Defendant pleading) could possibly have been caused by the alleged actions or omissions of Defendant pleading.

276. Plaintiff does not allege that she or the members of the group could have recovered any of their investments had Defendant pleading not committed the alleged fault. Rather, Plaintiff specifically alleges in paragraphs 85.1 and 85.5 of the Re-Amended Introductory Motion, that the assets of MRACS, Real Vest and RAAC were always insufficient to honour their promissory notes and that MRC could not have met its obligations pursuant to the alleged guarantees, thus admitting the absence of a causal link between the loss of her investment and the alleged fault of Defendant pleading.

277. If, as asserted by Plaintiff, the assets were insufficient before Defendant pleading conducted its audit of MRC's financial statements, then any alleged fault on the part of Defendant pleading in carrying out the audit could not have possibly caused the losses of the members of the group.

278. If the Issuer Companies were incapable of honouring the promissory notes and MRC was incapable of honouring its alleged guarantees, then the losses allegedly incurred by the noteholders had already been incurred and crystallized prior to the involvement of Defendant pleading, and could not have been caused by the alleged actions or omissions of Defendant pleading. Defendant pleading could not have redressed Plaintiff's inability to recover her investment. Plaintiff's own allegations make it clear that no causal link exists between the alleged fault and the loss.

II. Capitalized Interest

279. Subsidiarily and without prejudice to the foregoing, Plaintiff is attempting to recover illicit and exaggerated amounts from Professional Defendants.

280. Plaintiff's theory is predicated on the assumption that had Professional Defendants fulfilled their respective obligations, the notes in litigation would not have been sold to the members of the group and therefore they would not have suffered any losses.

281. Indeed, neither Plaintiff nor any other member of the group is entitled to claim the excessive interest generated by the fraudulent notes. In short, a fraudulent note cannot give rise to legitimate interest.

282. Hence, only the actual capital invested by the members of the group could form the basis of their individual claims.

283. Yet, Plaintiff is relying on estimates prepared by the provisional administrator, which include approximately $58 million of such fictitious interest, as appears from the provisional administrator's report already identified as Exhibit P-7.

284. Numerous members of the group also received purported interest payments following their investment in the notes in litigation.

285. These fictitious interest payments must be accounted for in such manner so as to reduce the claim in capital of the members of the group in order to reflect the actual loss.

D. FAULT OF THIRD PARTIES

The losses sustained by the members of the group were caused by third parties and not by Professional Defendants

286. There is no direct, immediate and certain causal link between the losses of the members of the group and the alleged negligence of Professional Defendants.

287. The losses sustained by the members of the group were caused by the perpetrators of the fraud, including the highest levels of management, certain members of the Board of Directors of MRC and third parties mentioned hereinabove as well as by the investment representatives who sold the notes in litigation and made false representations to the members of the group, as well as by Defendants B2B and Penson.

I. Investment representatives

288. From 1996 to 2005, Plaintiff renewed her investments in MRACS notes yearly, by completing a one-page document entitled "*Formulaire de rachat / souscription pour un nouveau terme*" which gave her the option of renewing her investments for another term or requesting redemption thereof, the whole as appears from renewal forms completed by Plaintiff, already identified as Exhibit P-32.

289. Plaintiff invested in the notes issued by MRACS due to the wrongful and fraudulent representations made to her by her investment representative, Yves Mechaka, whom she sought to hold solely liable for her losses in the context of a motion in appeal of a disallowance of a proof of claim in the bankruptcy of Valeurs mobilières IForum, in support of which she personally signed an affidavit attesting to the truth of the facts alleged in the motion, as appears from said motion, the exhibits thereto and Plaintiff's affidavit in support thereof, already communicated as Exhibit DBDO-1.

290. The members of the group purchased and renewed the notes in litigation on the basis of false representations by their investment representatives.

291. In this regard, the representative Yves Tardif (Tardif) pleaded guilty to penal charges laid by the AMF which involved 21 members of the group to whom Tardif had made false representations, as appears from paragraph 33 of the decision rendered by the Court of Québec:

> [33] Tant et aussi longtemps que c'était payant, que l'accusé recevait ses commissions, il ne se pose pas de questions allant même jusqu'à donner des informations fausses, trompeuses à propos de placements soi-disant garantis, qui sont aux yeux du Tribunal, de graves infractions.

as appears from the decision *R.* c. *Tardif*, 2010 QCCQ 11090, communicated herewith as **Exhibit DBDO-22**.

292. Similarly, the representative Paul Messier (Messier) pleaded guilty to numerous penal charges laid by the AMF involving seven members of the group who were misled by false representations made by Messier, as appears from the decision in *Thibault* c. *Messier*, 2008 CanLII 13824 (QC CDCSF), communicated herewith as **Exhibit DBDO-23**.

293. In the same vein, the representative René Proteau made false representations to his clients, including the fact that their investments in the notes in litigation were guaranteed by an insurance policy, as appears from the judgment in the case *Roberge* c. *Planification Copepco inc.*, 2010 QCCS 114 (appeal dismissed, 2011 QCCA 2118) communicated herewith *en liasse* as **Exhibit DBDO-24**.

294. Furthermore, in its decision, already identified as Exhibit P-10, the BDRVM recognized that the investors had been misled over the course of a very long period by their investment representatives:

> Nous sommes en présence d'une situation inacceptable où des professionnels du marché auraient abusé de leur situation pour tromper les investisseurs, sur une longue période, et cela perdurerait encore. Alors que ces personnes devraient constituer un rempart destiné à assumer la protection des investisseurs qui leur avaient confié leurs avoirs, ils auraient plutôt profité de cette situation pour mieux bafouer les intérêts de ces mêmes épargnants.

II. B2B

295. The negligence of B2B, which was holding notes in litigation and dealing directly with the perpetrators of the fraud, including with the investment representatives, in respect of, inter alia, the purchase, renewal and redemption of the notes, was also the direct, immediate and certain cause of the losses sustained by the members of the group.

296. Defendant pleading incorporates herein the allegations of gross negligence made by Plaintiff against Defendant B2B in paragraphs 97 to 101, 103, 104 and 106 to 109.32 of the Re-Amended Introductory Motion.

297. In light of such serious allegations, Defendant pleading submits that the losses suffered by the members of the group, at least as of 2000, are attributable to Defendant B2B.

III. PENSON

298. Defendant pleading incorporates herein the allegations of negligence made in paragraphs 97 to 100, 102 to 106 and 109 of Plaintiff's Re-Amended Introductory Motion against Defendant Penson.

E. COMPOSITION OF THE GROUP

299. Defendant pleading submits that the perpetrators of the fraud, including the investment representatives and any person who is or was in any way related to such perpetrators, as well as companies with more than 50 employees, should be excluded from the group.

F. ABSENCE OF SOLIDARITY AMONG PROFESSIONAL DEFENDANTS

300. No finding of solidary liability as among the Professional Defendants could ever be lawfully permitted.

301. Plaintiff necessarily recognizes that Professional Defendants conducted successive yet separate audits of MRC's financial statements at time periods which were at least 12 months apart.

302. They allegedly committed distinct faults and caused different and abstract damages at different times.

303. Even if Plaintiff's fault allegations are presumed to be true, Defendant pleading could not be held solidarily liable for losses caused by either Professional Defendants Deloitte or SLF, or their supposed failure to discover the fraud and refusal to sign the audited statements of MRC.

304. Defendant pleading could not be held extra-contractually liable with the other Professional Defendants for damages which were caused to members of the group who invested or reinvested in their last notes before MRC's 2003 financial statements were ever publicly disclosed (i.e. before Defendant pleading allegedly committed a fault by failing to discover and thereby facilitating the fraud).

305. Professional Defendants, by their alleged faults, did not cause one unitary and massive loss or solidary claim of $130 million. On the contrary, the Plaintiff alleges that approximately 1,600 investors suffered distinct individual losses, at different times and as a result of various faults.

306. The segregation and apportionment of the losses caused to members of the group as a result of each Professional Defendant's supposed failure to discover the fraud would only relate to the distinct time period for each Professional Defendant's audit period(s). Again, each auditor could not be held liable for losses caused before it allegedly committed any fault. This would remain true whether Plaintiff's novel theory of causation or reliance is instead applied.

307. Only new losses, if any, suffered after March 2004 could be imputed to Defendant pleading since it could not be liable for investments which had already been stolen or disappeared.

308. Even in cases where the last certificates were issued after March 2004, but represented investments which had been "rolled over" repeatedly for years without any new cash injection, the loss suffered by such members of the group necessarily occurred well before any supposed omission by Defendant pleading in March 2004.

309. The cumulative investments of members of the group invested from 1997 to 2004 were obviously not lost on November 9, 2005. The investments were necessarily diverted and misappropriated gradually and well before then as specifically alleged by Plaintiff.

310. Moreover, the provisional administrator prepared a detailed questionnaire sent to all investors, which requested a history of the capital investments and refunds of purported interest or capital.

311. The regrouping of member claims is merely procedural and cannot alter the individual nature of these investor losses.

312. The members of the group who could have been theoretically harmed as a result of Defendant pleading's supposed omission to refuse signing its audit report, are distinct and easily identifiable. So too can their supposed capital losses suffered after Defendant pleading's audit, if any.

313. Thus, none of the Plaintiff's factual allegations could give rise to any solidary findings as among Professional Defendants. Their alleged faults, even if presumed to be true, are distinct and successive. Moreover, they gave rise to distinct losses caused to different members of the group at various times.

314. The Re-Amended Introductory Motion does not allege that Professional Defendants ever plotted, orchestrated, committed or participated in any fraud. They could not, absent such allegations, be obligated towards all investors in the same manner as MRC's principals, Matteo and D'Andrea.

315. In other words, the Re-Amended Introductory Motion does not allege the concerted commission of a collective fault by all of the Professional Defendants. The alleged fraud was solely conceived and perpetrated by Defendants Matteo, D'Andrea and their individual and corporate accomplices. The paramount and determinative cause of each investor loss, as recognized by the Plaintiff herself, was the fraud perpetrated by Matteo, D'Andrea and their network of corporate accomplices.

316. Collective recovery by the members of the group is not possible in the present circumstances.

FOR THE FOREGOING REASONS, MAY IT PLEASE THIS HONORABLE COURT TO:

DISMISS the Motion of the Plaintiff Andrée Ménard;

MAINTAIN the Plea of BDO Canada LLP;

THE WHOLE, with costs, including the costs of all experts.

Montreal, March 24, 2014

Fishman Flanz Meland Paquin LLP

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BDO DUNWOODY LLP