CANADA
PROVINCE OF QUÉBEC
DISTRICT OF DISTRICT

SUPERIOR COURT

(CLASS ACTION)

NO: 500-06-000453-080

ANDRÉE MÉNARD

Class Plaintiff

v.

LINO P. MATTEO

-and-

PAUL D'ANDRÉA

-and-

B2B TRUST

-and-

DELOITTE LLP

-and-

BDO DUNWOODY S.R.L.

-and-

SCHWARTZ LEVITSKY FELDMAN S.R.L.

Defendants

-and-

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

Defendant in continuance of suit

-and-

JOSEPH PETTINICCHIO

-and-

LAURENCE HENRY

-and-

ANDRIS SPURA

-and-

LOWELL HOLDEN

Mis en cause

DEFENCE OF
SCHWARTZ LEVITSKY FELDMAN S.E.N.C.R.L./S.R.L./LLP

IN ANSWER TO PLAINTIFF'S RE-AMENDED MOTION TO INSTITUTE PROCEEDINGS, DEFENDANT SCHWARTZ LEVITSKY FELDMAN S.E.N.C.R.L./S.R.L./LLP ("SLF") RESPECTFULLY SUBMITS THE FOLLOWING:

1. With respect to the allegations set forth in paragraphs 1 and 2 of the Particularized Motion to Institute Proceedings of February 24, 2014 (the "**Class Action**"), it refers this Honourable Court to Exhibit P-1 and denies anything inconsistent therewith;

2. With respect to the allegations set forth in paragraph 3 of the Class Action, it takes act of the admission that the losses suffered by the Class members were caused by unscrupulous criminals, as well as by B2B Trust ("**B2B**") and Services Financiers Penson Canada Inc. ("**Penson**"), and denies the remainder of the allegations set forth therein and adds that rendering fraud possible, without any involvement in the perpetration of the fraud, is not a legitimate cause of action against auditors in Québec;

3. It denies the allegations set forth in paragraph 4 of the Class Action since the investor losses include significant amounts of accumulated pseudo interest and were suffered well before May 20, 2005. Furthermore, Gestion MRACS Limitée ("**MRACS**"), Investissements Real Vest Ltée ("**Real Vest**") and Corporation Real Assurance Acceptance ("**RAAC**") were not subsidiaries of Corporation Mount Real ("**MRC**") during the one-year audit period ended on December 31, 2004;

4. It ignores the allegations set forth in paragraph 5 of the Class Action;

5. It denies the allegations set forth in paragraph 6 of the Class Action. Furthermore, it adds that Plaintiff's theory that the Notes in litigation were sold based on MRC's credibility is inconsistent with Plaintiff's cause of action which is not predicated on reliance upon MRC's financial statements. In fact, the evidence demonstrates that the investors relied, *inter alia*, upon the representations of their investment representatives and those of MRC's employees or agents to purchase the Notes;

6. With respect to the allegations set forth in paragraph 7 of the Class Action, it takes act of the fact that the Notes in litigation were issued illegally;

7. With respect to the allegations set forth in paragraph 8 of the Class Action, it admits that the Finance Minister appointed Jean Robillard from Raymond Chabot Grant Thornton ("**RCGT**") as Provisional Administrator;

8. With respect to the allegations set forth in paragraphs 9 and 10 of the Class Action, it takes act of the fact that Defendant Lino P. Matteo ("**Matteo**") was a member of the Order of Certified Management Accountants ("**Order of CMA**") until he was struck off the roll of the Order, notes that he was highly skillful and held senior level positions within MRC and all else is ignored;

9. It ignores the allegations set forth in paragraphs 11, 12 and 13 of the Class Action;

10. With respect to the allegations set forth in paragraph 14 of the Class Action, it notes that the Defendant Paul D'Andrea ("**D'Andrea**") was the Chief Financial Officer of MRC in 2004. It ignores the remainder of the allegations;

11. With respect to the allegations set forth in paragraph 15 of the Class Action, it takes act of the fact that D'Andrea was the right-hand man of Matteo thereby demonstrating the high level of collusion that existed within MRC;

12. With respect to the allegations set forth in paragraph 16 of the Class Action, it takes act of the fact that D'Andrea was a member of the Order of CMA until he was struck off the roll of the Order, and that he colluded with Matteo, and all else is ignored;

13. It ignores the allegations set forth in paragraph 17 of the Class Action;

14. With respect to the allegations set forth in paragraph 18 of the Class Action, it refers this Honourable Court to Exhibit P-4 and denies anything inconsistent therewith;

15. It ignores the allegations set forth in paragraphs 19 and 20 of the Class Action;

16. It denies, as drafted, the allegations set forth in paragraph 21 of the Class Action, but takes act of the fact that the Notes in litigation were issued illegally;

17. It ignores the allegations set forth in paragraph 22 of the Class Action and notes that the allegations are based on a chart which fails to explain the relationships between the entities and individuals mentioned therein. Furthermore, this chart was prepared in late 2005 and, in any event, does not reflect the information provided to SLF by MRC's management;

18. It ignores the allegations set forth in paragraph 23 of the Class Action and notes that these allegations are based on the reports prepared by the Provisional Administrator, Exhibits P-6 and P-7. It adds that it is unaware of the criteria used by the Provisional Administrator for the purposes of arriving at his opinion that Matteo in fact controlled numerous entities referred to in the above mentioned reports;

19. With respect to the allegations set forth in paragraph 24 of the Class Action, it admits that Justice Jean-Yves Lalonde rendered the judgment, Exhibit P-8, but states that said judgment must be examined in light of the issues submitted to the Court. More particularly, the Court was seized with an appeal, made by companies which are not involved in the issues as set forth by Plaintiff, of the trustee's decision to dismiss a proof of claim following the bankruptcy of MRC on February 26, 2006;

20. With respect to the allegations set forth in paragraph 25 of the Class Action, it refers to Exhibit P-9 and denies anything inconsistent therewith;

21. It admits the allegations set forth in paragraphs 26 to 29 of the Class Action;

22. As regards the allegations set forth in paragraph 30 of the Class Action, SLF resigned on December 12, 2005. It did not do so earlier since the Autorité des Marchés Financiers ("**AMF**") had already issued a communiqué advising it was investigating MRC and the truthfulness of its financial statements. Pending the outcome of this investigation, SLF believed it was ethically appropriate not to take any position regarding its appointment or resignation. As well, SLF had not been retained to perform quarterly reviews of MRC's 2005 consolidated financial statements;

23. With respect to the allegations set forth in paragraph 31 of the Class Action, it takes act of the fact that Defendants B2B and Penson were custodians and/or trustees of the Notes sold by the investment representatives;

24. With respect to the allegations set forth in paragraph 32 of the Class Action, it refers to Exhibit P-12 and denies anything inconsistent therewith;

25. With respect to the allegations set forth in paragraph 33 of the Class Action, it refers this Honourable Court to Exhibit P-13 and denies anything inconsistent therewith;

26. It ignores the allegations set forth in paragraphs 34 to 36 of the Class Action;

27. With respect to the allegations set forth in paragraph 37 of the Class Action, it refers this Honourable Court to Exhibit P-14 and denies anything inconsistent therewith;

28. As regards the allegations set forth in paragraphs 37.1 and 37.2 of the Class Action, it refers to Exhibits P-15 and P-16 and denies anything inconsistent therewith;

29. It ignores the allegations set forth in paragraph 37.3 of the Class Action;

30. With respect to the allegations set forth in paragraph 37.4 of the Class Action, it takes act of the fact that the false representations made by MRACS were communicated to the Class members;

31. The allegations set forth in paragraph 37.5 of the Class Action are questions of law;

32. With respect to the allegations set forth in paragraph 38 of the Class Action, it refers to Exhibit P-19 and denies anything inconsistent therewith;

33. It ignores the allegations set forth in paragraphs 38.1 to 38.8 of the Class Action;

34. As regards the allegations set forth in paragraph 38.9 of the Class Action, it refers to Exhibit P-24 which addressed a question of law which was contingent on the veracity of the factual assumptions provided by MRC at the time;

35. With respect to the allegations set forth in paragraph 39 of the Class Action, it refers to Exhibit P-25 and denies anything inconsistent therewith;

36. It denies the allegations set forth in paragraph 39.1 of the Class Action as Plaintiff has failed to produce any Notes issued by RAAC guaranteed by MRC;

37. It ignores the allegations set forth in paragraph 40 of the Class Action;

38. It denies the allegations set forth in paragraph 41 of the Class Action and adds that the Provisional Administrator erroneously included approximately $58 million of fictitious interest in his estimate of amounts supposedly owed to investors;

39. With respect to the allegations set forth in paragraphs 42 to 44 of the Class Action, it refers to Exhibit P-26, P-27 and P-28 and denies anything inconsistent therewith;

40. It ignores the allegations set forth in paragraph 45 of the Class Action, and notes that these allegations are based on the reports prepared by the Provisional Administrator, Exhibits P-6 and P-7. it adds that it is unaware of the criteria used by the Provisional Administrator for the purposes of arriving at his opinion that Matteo in fact controlled numerous entities referred to in the above mentioned reports. Furthermore, the allegations are based on information which was never made available to SLF by MRC's management;

41. It ignores the allegations set forth in paragraph 46 of the Class Action and adds that such allegations constitute opinions expressed by Plaintiff as to the definition of a "Ponzi scheme";

42. It denies the allegations set forth in paragraph 47 of the Class Action and adds that Exhibit P-7, identified by Plaintiff, recognizes that significant amounts were collected pursuant to magazine installment contracts thereby demonstrating valid business activities;

43. It ignores the allegations set forth in paragraph 48 of the Class Action and adds that such allegations constitute opinions expressed by Plaintiff as to the definition of a "Ponzi scheme";

44. With respect to the allegations set forth in paragraph 49 of the Class Action, it takes act of the fact that the perpetrators of the fraud caused the losses claimed by the Class members;

45. It denies the relevance of the allegations set forth in paragraph 50 of the Class Action as Plaintiff's cause of action is not based on reliance on MRC's audited consolidated financial statements and adds that, contrary to Plaintiff's allegation, it is not a prerequisite that a company be public in order to allow the elaboration of a Ponzi scheme;

46. It denies the allegations set forth in paragraph 51 of the Class Action and adds that the credibility of MRC is not relevant to Plaintiff's cause of action as Plaintiff admits that the Class members did not rely on the audited consolidated financial statements of MRC. In any event, the Class Plaintiff admitted during discovery that she had never heard of SLF;

47. With respect to the allegations set forth in paragraph 52 of the Class Action, it refers this Honourable Court to Exhibit P-29 H and denies anything inconsistent therewith;

48. It denies the allegations set forth in paragraph 53 of the Class Action and adds that the financial results of MRC are not relevant to Plaintiff's cause of action as Plaintiff admits that the Class members did not rely thereon;

49. It denies the allegations set forth in paragraph 54 of the Class Action;

50. With respect to the allegations set forth in paragraph 55 of the Class Action, it refers to Exhibits P-18 and P-31 which speak for themselves, without admission of the receipt or contents thereof;

51. It denies the relevance of the allegations set forth in paragraph 56 of the Class Action as Plaintiff's cause of action is not based on reliance on MRC's audited consolidated financial statements and adds that the characterization of MRC's financial situation is a matter of opinion;

52. With respect to the allegations set forth in paragraphs 57 to 57.2 of the Class Action, it states that the information provided to SLF by MRC's management did not at all correlate with the Provisional Administrator's forensic findings. Moreover, SLF is unaware of the criteria used by the Provisional Administrator when arriving at his conclusions regarding management's control of these other corporations;

53. It ignores the allegations set forth in paragraph 57.3 of the Class Action while adding that the Provisional Administrator appears to be confusing and erroneously attempting to compare cash receipts and income;

54. It ignores the allegations set forth in paragraphs 57.4 and 57.5 of the Class Action, while adding that the Provisional Administrator's analysis is both incomplete and incongruent;

55. It denies the allegations set forth in paragraph 57.6 and 57.7 of the Class Action since the Class Plaintiff has been unable to provide copies of the purported survey and has not verified its accuracy or reliability;

56. It ignores the allegations set forth in paragraphs 57.8 to 57.11 of the Class Action, while adding that these allegations are misleading since MRC's 2004 audited consolidated financial statements did not report total receivables of $99,496,000 nor did SLF need to effectively report on 222,929 subscription contracts as of December 31, 2004. As well, the value of active contracts as of December 5, 2005 was irrelevant to and postdated SLF's audit of MRC's 2004 consolidated financial statements;

57. It ignores the allegations set forth in paragraph 58 of the Class Action;

58. With respect to the allegations set forth in paragraphs 59 of the Class Action, it takes act of the admission that the Notes in litigation were issued illegally in contravention of the provisions of the *Securities Act*;

59. With respect to the allegations set forth in paragraph 60 of the Class Action, it admits that SLF was never retained to audit the stand-alone financial statements of MRACS, Real Vest and RAAC. Furthermore, SLF, as auditor, had the responsibility to express an opinion on MRC's 2004 consolidated financial statements taken as a whole rather than an opinion on the alleged guarantees;

60. It ignores the allegations set forth in paragraph 61 of the Class Action;

61. With respect to the allegations set forth in paragraph 62 of the Class Action, it states that the forensic conclusions arrived at by the Provisional Administrator in late 2005 and 2006 were not relevant for the audit work performed by SLF for the year ended on December 31, 2004;

62. With respect to the allegations set forth in paragraph 63 of the Class Action, it admits that Justice Jean-Yves Lalonde rendered the judgment, Exhibit P-8, but states that the conclusions reached by Justice Lalonde must be examined in light of the issues that were submitted to the Court. More particularly, the Court was seized with an appeal, made by companies which are not involved in the issues as set forth by Plaintiff, of the trustee's decision to disallow a proof of claim following the bankruptcy of MRC on February 26, 2006;

63. It takes act of the admission set forth in paragraph 64 of the Class Action;

64. With respect to the allegations set forth in paragraph 65 of the Class Action, it takes act of the fact that Matteo and D'Andrea caused the losses claimed by the Class members and adds that they were assisted by skillful accomplices who held senior level positions within MRC, as will be explained below. Moreover, it denies that the losses suffered by the Class members were close to $130M;

65. It denies the allegations set forth in paragraph 66 of the Class Action;

66. With respect to the allegations set forth in paragraphs 67 and 68 of the Class Action, it takes act of the admissions set forth therein;

67. With respect to paragraph 69 of the Class Action, it only admits that the complaint of the Order of CMA that led to the striking of Matteo off the roll of the Order alleged the facts mentioned therein;

68. It ignores the allegations set forth in paragraph 70 of the Class Action;

69. With respect to the allegations set forth in paragraph 71 of the Class Action, it takes act of the fact that Matteo was declared guilty of all charges and all else is ignored;

70. With respect to the allegations set forth in paragraph 72 of the Class Action, it takes act of the fact that D'Andrea was struck off the roll of the Order of CMA, that he colluded with Matteo and all else is ignored;

71. With respect to the allegations set forth in paragraph 73 of the Class Action, it takes act of the admissions set forth therein;

72. With respect to the allegations set forth in paragraphs 74 to 74.4 of the Class Action, it ignores the statements made by D'Andrea to the Order of CMA;

73. It denies the allegations set forth in paragraphs 75 and 75.1 of the Class Action;

74. With respect to paragraph 75.2 of the Class Action, as regards the relevant time period for SLF, it notes that Plaintiff fails to identify which specific transactions are the subject matter of the paragraph. It denies the relevance of the relationship between the generation of profits by the investees and the gains from dilution or sales of investments, as suggested by Plaintiff. It ignores the reasons underlying Plaintiff's opinions that some transactions did not have any economic substance;

75. As regards the 2004 audit by SLF, it denies the allegations set forth in paragraph 75.3 of the Class Action and adds that Plaintiff fails again to identify which specific transactions are the subject matter of the paragraph. It also denies Plaintiff's opinions that the repetitive nature of the transactions is indicative of fraud, such transactions i.e. investing and divesting of investments in companies, was in fact in the normal course of business for MRC as disclosed in its annual reports and as appears from the "Business acquisitions and divestitures" note and the notes relating to Investments, to the audited consolidated financial statements in Exhibits P-29 H. Moreover, as will be explained hereinbelow, auditors did not have the duty to discover fraud;

76. As regards the 2004 audit by SLF, it denies the conclusions set forth in paragraph 75.4 of the Class Action in which Plaintiff suggests that the transactions mentioned in table 75.4 were frauduient as they did not generate cash from operations. Furthermore, it adds that Plaintiff fails to identify which specific transactions are the subject matter of this paragraph and it ignores the reasons underlying Plaintiff's conclusions that such transactions did not have any economic substance;

77. As regards the 2004 audit by SLF, it denies the allegations set forth in paragraph 75.5 of the Class Action and adds that as will be explained hereinbelow, auditors did not have the duty to discover fraud;

78. As regards the 2004 audit by SLF, it denies the allegations set forth in paragraph 76 of the Class Action and adds that the reports (Exhibits P-6 and P-7) of the Provisional Administrator were prepared in 2005-2006 with the benefit of information and analysis previously gathered during the course of three lengthy AMF forensic investigations, the first of which commenced in 2003. The Provisional Administrator also had the benefit of documentation seized at the establishments of MRC and its acolytes. Hence, to suggest the Provisional Administrator was able to arrive at his conclusions in a few weeks is disingenuous. Notwithstanding this abundance of work product dropped on the Provisional Administrator's desk, he felt compelled to nevertheless qualify and attenuate his conclusions, as appears from the notice to reader contained in Exhibits P-6 and P-7 which reads as follows:

> "Notre analyse a consisté essentiellement en prise de renseignements, procédés analytiques et discussions portant sur les renseignements qui nous ont été fournis. Ce travail ne constitue pas une vérification et, conséquemment, nous n'exprimons pas d'opinion sur les informations financières recueillies et analysées"; (our emphasis)

79. With respect to the allegations set forth in paragraph 76.1 of the Class Action as regards the 2004 audit by SLF, it denies the contents and characterization of the table set forth in paragraph 57.4 of the Class Action;

80. As regards the 2004 audit by SLF, it denies the allegations set forth in paragraph 76.2 i) of the Class Action and adds that Plaintiff fails to provide the underlying reasons supporting her opinion that the private companies referred to were under the influence of MRC and its officers;

81. As regards the 2004 audit by SLF, it denies the allegations set forth in paragraph 76.2 ii) of the Class Action and adds that Plaintiff has failed to confirm which public entities she is supposedly referring to;

82. With respect to the allegations set forth in paragraph 76.2 iii) of the Class Action as regards the 2004 audit by SLF, it admits that only that one investment was made to an entity established in the Bahamas and that Plaintiff fails to establish any reasonable reasons supporting her opinion that this company was under the influence or under the direct or indirect control of MRC's directors and officers;

83. It denies the allegations set forth in paragraph 76.2 iv) of the Class Action;

84. As regards the 2004 audit by SLF, it denies the allegations set forth in paragraph 76.2 v) of the Class Action and adds that Plaintiff fails to provide the underlying reasons supporting her opinion that the value of such investments was significantly below book value;

85. It ignores the allegations set forth in paragraph 76.3 of the Class Action and adds that the analysis performed in the Provisional Administrator's report (Exhibit P-7) is not relevant to the audit work performed by SLF for the year ended December 31, 2004;

86. It denies the allegations set forth in paragraph 76.4 of the Class Action and adds that the Provisional Administrator's opinion contained in his report (Exhibit P-7) is not relevant to the audit work performed by SLF for the year ended December 31, 2004;

87. It denies the allegations set forth in paragraph 76.5 of the Class Action for the 2004 audit by SLF;

88. It admits the allegations set forth in paragraphs 76.6 and 76.7 of the Class Action, but only as at December 31, 2004;

89. It denies the allegations set forth in paragraphs 76.8 to 76.11 of the Class Action. Furthermore, Plaintiff has failed to identify why SLF should have concluded the transactions were false, artificial and misleading;

90. With respect to the allegations set forth in paragraphs 77 and 78 of the Class Action, it refers to Exhibit P-35 and denies anything inconsistent therewith;

91. With respect to the allegations set forth in paragraphs 79 and 80 of the Class Action, it refers to Exhibit P-36 and denies anything inconsistent therewith;

92. With respect to the allegations set forth in paragraph 81 of the Class Action, it refers to Exhibit P-37 and denies anything inconsistent therewith;

93. With respect to the allegations set forth in paragraph 82 of the Class Action, it refers to Exhibit P-38 and denies anything inconsistent therewith;

94. With respect to the allegations set forth in paragraph 83 of the Class Action, it refers to Exhibit P-29 H and denies anything inconsistent therewith;

95. It denies the allegations set forth in paragraph 84 of the Class Action and adds that the exceptional nature of the fraud which involved the highest levels of management and certain members of the Board of Directors (including Defendants Matteo, D'Andrea, Joseph Pettinicchio ("**Pettinicchio**"), Laurence Henry ("**Henry**") and Andris Spura ("**Spura**")), and the extensive collusion, including with third party perpetrators, impeded SLF's supposed ability to discover the fraud in the course of its audit of the 2004 consolidated financial statements of MRC, as is hereinafter explained. Furthermore, it adds that the five criteria listed in paragraph 84 were considered during the audit, to the extent applicable;

96. It denies the allegations set forth in paragraph 85 of the Class Action and notes that the Provisional Administrator's opinions are based on 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)

97. It denies the allegations set forth in paragraphs 85.1 and 85.1.1 of the Class Action, which amount to unsubstantiated and unwarranted opinions;

98. It denies the allegations set forth in paragraphs 85.2 to 85.5 of the Class Action since they do not concern SLF's 2004 audit;

99. It denies the allegations set forth in paragraph 86 of the Class Action and adds that the responsibility for the preparation of the financial statements, including the

notes thereto rests with management. Furthermore, such allegations are contradicted by the allegations set forth in paragraph 90 of the Class Action;

100. It denies the allegations set forth in paragraph 87 of the Class Action, while adding that the Provisional Administrator's opinions were entirely gratuitous and unwarranted;

101. With respect to the allegations set forth in paragraph 88 of the Class Action, as regards the 2004 audit performed by SLF, it refers to Exhibit P-29 H and denies anything inconsistent therewith;

102. It denies the unwarranted opinion set forth in paragraph 89 of the Class Action as regards the 2004 audit performed by SLF;

103. With respect to the allegations set forth in paragraph 90 of the Class Action, as regards the 2004 audit performed by SLF, it denies Plaintiff's characterization of what is contained in the consolidated financial statements of MRC in respect of amounts due to MRC. Furthermore, it adds that Plaintiff's position set forth in paragraph 86 is contradicted by the Provisional Administrator's opinion as reflected by the allegations in paragraph 90;

104. It denies the allegations set forth in paragraph 91 of the Class Action which amount to an unwarranted and gratuitous opinions;

105. It denies the allegations set forth in paragraph 91.1 of the Class Action and adds that auditors did not have the duty to discover fraud as will be more fully explained hereinbelow;

106. With respect to the allegations set forth in paragraph 92 of the Class Action, it ignores the statements made by D'Andrea to the Order of CMA;

107. It denies the allegations set forth in paragraph 93 of the Class Action and refers to its responses mentioned in the previous paragraphs of its Defence;

108. It denies the allegations set forth in paragraphs 94 and 95 of the Class Action and adds that Plaintiff's novel causality theory is based on a litany of ill-founded assumptions, conjectures and speculations;

109. It denies the allegations set forth in paragraph 96 of the Class Action;

110. With respect to the allegations set forth in paragraph 97 of the Class Action, it takes act of the fact that B2B and Penson are responsible for the damages

claimed by the Class members and denies being responsible for any such damages;

111. It ignores the allegations set forth in paragraphs 98 and 99 of the Class Action;

112. With respect to the allegations set forth in paragraphs 100 to 102 of the Class Action, it does not contest that letters of the nature mentioned in said paragraphs were sent to Class members, without admission of the receipt or contents thereof;

113. With respect to the allegations set forth in paragraph 103 of the Class Action, it takes act of the fact that B2B and Penson held the Notes in litigation on behalf of the investors and attested to the value of the Notes;

114. It takes act of the Class Plaintiff's allegations set forth in paragraphs 104 to 109 of the Class Action, to the effect that B2B and Penson were responsible for the losses of Class members;

115. As regards the allegations set forth in paragraphs 109.1 to 109.32, it takes act of the Class Plaintiff's admission that all Class member losses suffered on or before July 2000 were attributable to the Co-Defendant B2B;

116. It ignores the allegations contained in paragraph 110 of the Class Action;

117. With respect to the allegations set forth in paragraph 111 the Class Action, it denies having participated in or rendered the fraud possible (which is not a recognized cause of action against auditors in Québec) and adds that the Defendants Matteo, D'Andrea, Pettinicchio, Henry, Spura and Lowell Holden ("**Holden**") are responsible for the perpetration of the fraud. Furthermore, Penson, B2B and the investment representatives who sold the Notes in litigation to the investors are, together with the above-mentioned Defendants, responsible for the damages claimed by the Class Members;

118. It ignores the allegations set forth in paragraphs 112 and 113 of the Class Action;

119. With respect to the allegations set forth in paragraphs 114 of the Class Action, it acknowledges that the words "Senior Promissory Securitized Note" (Billet à Ordre Garanti de Premier Rang) appear on certain of the Notes issued by MRACS (Exhibit P-32) but does not admit that this indication constitutes a legal guarantee. Furthermore, Plaintiff's investments were renewed yearly further to Plaintiff's explicit instructions in this regard;

120. It ignores the allegations set forth in paragraphs 115 and 116 of the Class Action and notes that Plaintiff's examination on discovery demonstrated that one of her investments was not made in a RRSP;

121. It denies the allegations set forth in paragraph 117 of the Class Action as the amount of $132,026.35 includes capital and illegal capitalized interest;

122. With respect to the allegations set forth in paragraph 118 of the Class Action, it takes act of the fact that Plaintiff was appointed inspector to the estate of MRC, Real Vest, MRACS and RAAC;

123. With respect to the allegations set forth in paragraph 119 of the Class Action, it denies being responsible for any damages suffered by Plaintiff or by the other Class Members;

AND FOR FURTHER DEFENCE, SLF RESPECTFULLY SUBMITS AS FOLLOWS:

I. AUDIT CONSIDERATIONS

A) Fraud Considerations

124. Plaintiff alleges that SLF 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 December 31, 2004 consolidated financial statements;

125. The Canadian Institute of Chartered Accountants ("**CICA**") Handbook Assurance ("**CICA Handbook**") contains the standards applicable to the conduct of an audit of financial statements in Canada;

126. More particularly, the recommendations contained in paragraph 17 of the CICA Handbook Section 5135 *The auditor's responsibility to consider fraud and error* ("**Section 5135**") effective with respect to audits of financial statements relating to periods ended on or after December 15, 2004, specifically recognize that an auditor's assurances concerning the lack of misstatements arising from fraud are necessarily lower than those arising from error. Hence, misstatements resulting from fraud are not necessarily attributable to a failed audit:

> 5135.017 As described in AUDIT OF FINANCIAL STATEMENTS — AN INTRODUCTION, Section 5090, the objective of an audit of financial statements is to enable the auditor 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, except in the circumstances referred to in reporting standard (iv) of GENERALLY ACCEPTED AUDITING STANDARDS, paragraph 5100.02. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial statements will not be detected, even though the audit is properly planned and performed in accordance with generally accepted auditing standards. For the reasons set out in paragraphs 5135.018-.020, the assurance an auditor provides concerning lack of misstatements arising from fraud is necessarily lower than the assurance provided concerning those arising from error. The nature and scope of a public sector audit relating to the detection of fraud and error may be affected by legislation, regulation, ordinances and ministerial directives. The terms of the mandate may be a factor that the public sector auditor needs to take into account when exercising judgement.
>
> (our emphasis)

B) Management responsibility for prevention and detection of fraud

127. 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 2 of the CICA Handbook Section 5090, Audit of financial statement – An Introduction ("**Section 5090**") :

> 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 appropriate 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 and may assist management in their preparation. However, financial statements remain the representations of management subject to the oversight of those charged with governance, particularly the audit committee or equivalent. (our emphasis)

128. As also described in paragraph 13 of the CICA Handbook Section 5135, it is clearly incumbent upon management and the Board of Directors to prevent and detect fraud within the company:

> 5135.013 The primary responsibility for the prevention and detection of fraud and error rests with both those charged with the governance of the entity and with management. The respective responsibilities of those charged with governance and of management may vary by entity, by jurisdiction, and according to the relevant statute and regulation. In some entities, the governance structure may be more informal, as those charged with governance may be the same individuals as management of the entity. (our emphasis)

129. 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 in the instant case;

C) Assumption of Management's Good Faith

130. As regards the audit of financial statements for periods prior to December 15, 2004, auditors normally designed auditing procedures on the assumption of management's good faith. 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;

131. While Section 5090 was amended, in April 2004, and references to the assumption of management's good faith were removed, additional guidance was added with regards to the auditor's attitude in dealing with the honesty and integrity of management and those charged with governance;

132. The Recommendations in revised Section 5090 were effective with respect to audits of financial statements relating to periods ended on or after December 15, 2004;

133. The following two paragraphs refer to management's honesty and integrity:

> 5090.07 Honesty and integrity on the part of management and of those charged with governance are critical for the effective operation of the financial reporting process. In planning and performing an audit, the auditor neither assumes that management is dishonest nor assumes unquestioned honesty. This means that it is not the auditor's objective to prove management's honesty and integrity, but to approach the audit

> with an attitude of professionals scepticism that includes being alert for indications of dishonesty. It also means that, notwithstanding prior experience indicating that management is honest, the auditor nevertheless generally obtains corroborating evidence for management representations, including responses to enquiries resulting from the performance of analytical procedures. If the auditor has specific reason to doubt management's honesty and integrity the auditor needs to consider the audit evidence that may be compromised and, if so, to what extent. The auditor considers whether the risk of compromised audit evidence can be mitigated by different or more extensive audit procedures, or whether it brings into question the auditor's ability to complete the audit, in which case the auditor refers to THE AUDITOR'S RESPONSIBILITY TO CONSIDER FRAUD AND ERROR, Auditor unable to continue the engagement, section 5135.
>
> 5090.08 The honesty and integrity of those charged with governance is critical in setting the overall ethical tone of the entity. Those charged with governance have statutory responsibilities to act in the interests of the entity, but do not normally have control over its day-to-day operations and are therefore not usually a primary source of audit evidence.
>
> (our emphasis)

134. As will be explained herein below, numerous factors impeded the discovery of the fraud;

D) Factors impeding the auditor's ability to discover fraud

135. The CICA Handbook Section 5135 addresses factors impeding the auditor's ability to discover fraud in the course of an audit in paragraphs 5135.018 to 5135.020;

136. As will be explained hereinbelow, many of the factors referred to in paragraph 5135.018 which impede the auditor's ability to detect fraud are present in the case under consideration:

> 5135.018 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 individuals involved. While the auditor may be able to identify potential opportunities for fraud to be perpetrated, it is difficult for the auditor to determine whether misstatements in judgement areas such as accounting estimates are caused by fraud or error. The auditor may inform the audit committee or equivalent, in an engagement letter, that the audit will be performed in accordance with generally accepted auditing standards and that fraud or error may not be detected by the application of procedures that comply with these standards. (our emphasis)

137. Furthermore, as appears from paragraph 5135.019 of the CICA Handbook Section 5135, the perpetration of fraud by management further impedes the auditor's ability to detect the fraud, which was the case in this matter:

> 5135.019 Furthermore, the likelihood of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud, because management is frequently in a position to directly or indirectly manipulate accounting records and present fraudulent financial information. 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 employee's to do something or solicit their help to assist in carrying out a fraud, with or without the employees knowledge.
>
> (our emphasis)

138. Moreover, paragraph 5135.020 of Section 5135 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:

> 5135.020 The subsequent discovery of a material misstatement of the financial statements resulting from fraud does not, in and of itself, indicate a failure to comply with generally accepted auditing standards. This is particularly the case for certain kinds of intentional misstatements, since audit procedures may be ineffective for detecting an intentional misstatement that is concealed through collusion between or among one or more individuals among management, the audit committee or equivalent, employees or third parties, or that involves falsified documentation. Whether the auditor has performed an audit in accordance with generally accepted auditing standards is

> determined by the audit procedures performed in the circumstances, the sufficiency and appropriateness of the audit evidence obtained as a result thereof and the suitability of the auditor's report based on an evaluation of that evidence.
>
> (our emphasis)

E) Skillfulness and seniority of the individuals involved in the fraud under consideration

(i) Within MRC

139. As recognized by the aforementioned auditing standards, either the skillfulness of the perpetrator and/or the seniority of those individuals within management, involved in the fraud impedes the auditor's ability to detect fraud;

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

141. 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;

142. 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 skillfulness and seniority, in his capacity as CEO of MRC, to plan, orchestrate and execute the elaborate fraudulent scheme in litigation and to mislead SLF;

143. As regards Spura, he held a Bachelor of Science degree in Business Administration and a Masters of Business Administration. 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 the Laurentian International Investments. He had the skillfulness and seniority to participate in the perpetration of the elaborate fraud in litigation and to mislead SLF;

144. 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;

145. 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, Pare. He had the skillfulness and seniority to participate in the perpetration of the elaborate fraud in litigation and to mislead SLF;

146. 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 skillfulness and seniority to participate in the perpetration of the elaborate fraud in litigation;

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

(ii) Third party perpetrators

148. In the case under consideration, the participants in the fraud also included third party perpetrators, such as Holden and Hancock, who were also highly skillful;

149. 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 internal audit team;

150. 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;

F) Collusion in the case under consideration

151. 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;

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

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

154. 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 DS-1**, SLF 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;

(i) Lino Matteo and Paul D'Andrea

155. 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 DS-2**;

156. 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;

(ii) Joseph Pettinicchio

157. 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;

158. 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;

159. 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 Class Members, as well as a Director and Vice President of iForum Financial Services;

160. He was also a shareholder and president of 3251497 Canada Inc., the principal shareholder of iForum Financial Network;

161. 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;

162. It is clear that Pettinicchio was an accomplice of Matteo and that he was involved in the sale of promissory Notes to Class members in contravention of various securities laws;

163. 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 DS-3**;

(iii) Laurence Henry

164. During the period relevant to the Class Action, Henry acted as Vice President Corporate Development of MRC, and President and Director of RAAC, MRACS and Real Vest;

165. 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 Class members;

166. The AMF's investigation demonstrated that several promissory Notes issued illegally by either 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;

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

168. The AMF's investigation also demonstrated that Henry, like Matteo, Pettinicchio and D'Andrea, was a signatory of MRACS cheques drawn on accounts held with Royal Bank of Canada, Bank of Montréal 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 BDRVM Decision identified as Exhibit P-10;

169. In light of the facts related hereinabove, it is clear that Henry was an accomplice of Matteo and that he participated in the sale of the promissory Notes to the Class Members;

170. Moreover, Henry was involved in the scheme aimed at changing MRACS's ownership from U.K. ownership (Investsafe) to Canadian ownership (Mapleridge Financial Management Corporation ("**Mapleridge**")), as is evidenced in part by an MRAC's Resolution of the Directors and Notice of Subscription dated May 16, 2003 communicated herewith together as **Exhibit DS-4**;

171. Henry was also 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 together as **Exhibit DS-5**. Investsafe was the UK company involved in the MRACS and Real Vest transactions, which transactions are characterized as fictitious by the Plaintiff. Contemporaneously with the acquisition, 1082095 Alberta Limited changed its name for Investsafe Limited (same name as the UK Company);

(iv) Andris Spura

172. 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;

173. 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;

174. He was also involved in the scheme aimed at changing MRACS' ownership from U.K. ownership (Investsafe) to Canadian ownership (Mapleridge), as appears from the Resolution of the Directors of MRAC of May 16, 2003 (filed as Exhibit P-429 in the penal trial of Matteo) already communicated as Exhibit DS-4;

175. Moreover, it was Spura who represented Real Vest for purposes of the Real Vest transaction characterized as fictitious by Plaintiff;

176. 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;

(v) Lowell Holden

177. 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;

(vi) Stephen Hancock

178. Hancock was involved in the MRACS and Real Vest transactions that are characterized as fictitious by Plaintiff;

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

179. 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;

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

181. Gwyer Moore, a Board member of MRC from 2000 to 2002 and a member of the audit committee, had impressive credentials. He was, *inter alia,* a former governor of the Toronto Stock Exchange and a Board member of the Investment Dealers Association. He was also chief executive of Deacon Capital Corporation and BZW Canada Limited, the investment banking division of Barclays Bank and a senior executive of Burns Fry Limited (now BMO Nesbitt Burns);

182. 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);

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

184. 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;

185. 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;

186. Elyse Claire Rowen, a Board member of MRC from 2002 to 2005, held an MBA and had worked for several public companies including Canadian Pacific, Sun Life, Schering-Plough, Pfizer and Kraft;

187. Finally, the fact that three highly reputable audit firms were all successively defrauded attests to the exceptional skill and knowledge of the perpetrators of the fraud and collusion of third parties;

II. LACK OF CAUSATION

A) Reliance is a *sine qua non* requirement of any causal link vis-à-vis auditors

188. Plaintiff's cause of action against the professional Defendants Deloitte, BDO Dunwoody and SLF (the "**Professional Defendants**") is admittedly not predicated on the Class Members' reliance on MRC's audited consolidated financial statements for the purposes of purchasing and renewing the Notes in litigation;

189. As noted by this Honourable Court at paragraph 51 of the Rectified Judgment authorizing the Class Action, Plaintiff did not rely on or even take cognizance of MRC's audited consolidated financial statements:

> [51] Or, il se trouve que Mme Ménard ne s'est pas fiée aux états financiers endossés[5] par les sociétés comptables intimées. En effet, elle reconnaît sans ambages qu'elle n'en a pas pris connaissance.
>
> [5] Les sociétés comptables intimées signalent que, strictement parlant, les états financiers ne sont pas préparés par les vérificateurs externes mais plutôt par la direction de l'entreprise et adoptés par son conseil d'administration alors que les vérificateurs externes ne font que livrer leur opinion quant aux états financiers que l'entreprise leur soumet. Sans s'attarder sur cette question, le présent jugement utilise dans ce contexte le terme endosser pour indiquer que les vérificateurs externes ont livré une opinion professionnelle favorable et sans réserve quant aux états financiers en cause.

190. In the context of an action against auditors in Québec based on losses suffered by investors, the burden of establishing a direct, certain and immediate causal link has always required the demonstration of prior reliance on audited financial statements by investors;

191. This principle was again recently and unequivocally confirmed by the Québec Court of Appeal in the well-known Castor matter (*Wightman c. Widdrington (Succession de)*, 2013 QCCA 1187, motion for leave to appeal before the Supreme Court of Canada dismissed);

192. Plaintiff cannot unilaterally eliminate the necessity of proving each Class Member's reliance on the audited consolidated financial statements of MRC, by inventing a cause of action that marginalizes the legal requirement to establish a direct, certain and immediate causal link;

193. The inherent flaws of Plaintiff's novel causation theory are illustrated in paragraphs 52 and 53 of the Class Action, which nevertheless import reliance in the instant proceedings;

194. Plaintiff further attempts to unilaterally circumvent the requirement to prove a direct, immediate and certain causal link by inventing a second cause of action which rests on the credibility of the Professional Defendants;

195. In this regard, Plaintiff alleges that the mere involvement of the Professional Defendants as auditors of MRC gave an aura of credibility to MRC, such that Class members invested in the Notes on this basis. Yet, the Class Plaintiff does

not even allege that the Class members were aware of the identity of the Professional Defendants;

196. In fact, the evidence contradicts the existence of a direct, immediate and certain causal link in this regard as well, since the Class Plaintiff was not only admittedly unaware that SLF had audited MRC's 2004 consolidated financial statements, but was also unaware of the existence of this accounting firm;

197. 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;

198. 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;

199. 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. Her allegation at paragraph 51 of the Class Action that MRC benefited from an "aura of credibility" is therefore baseless and ill-founded;

B) The Class Plaintiff's novel causation theory is hopelessly vague and speculative *vis-à-vis* SLF

200. In any event, the Class Plaintiff's causation theory is nothing more than an evolving wish list of vague and hopeless presumptions;

201. The Class Plaintiff would have this Honourable Court believe that if SLF had discovered the fraud and refused to report on MRC's 2004 consolidated financial statements, the following factual cascade would have ineluctably flowed from this decision:

a) no replacement auditors would have been appointed;

b) no audited financial statements would have been filed by MRC on or before May 19, 2005;

c) no extension of the delay to file the audited financial statements would have been obtained by MRC;

d) that the AMF would have immediately sanctioned MRC on May 20, 2005 for this omission to file audited financial statements;

e) that the AMF would have immediately solicited cease trading and blocking orders precluding MRC and its acolytes from participating in any securities transaction and from withdrawing or disposing of any funds, securities or other goods on deposit or under their care or control;

f) that the AMF would not have pursued its pending investigations into the affairs of MRC;

g) that the AMF would not have waited until November 8, 2005 when it completed these investigations, to seek these orders during an *ex parte* hearing before the *Bureau de décision et de révision en valeurs mobilières* (the "**Bureau**");

h) that MRC and its corporate acolytes would have been under a public projector, preventing them from distributing the products (i.e. Notes);

i) that the fraud would have ceased (earlier) as of that moment, i.e. at some point from May 20 to November 7, 2005;

j) that the capital previously invested and reinvested by Class members since 1997 and until November 8, 2005 could have been retraced and recovered *in toto* or in part from May 20, 2005 to November 7, 2005;

202. The Class Plaintiff has failed to adduce one iota of evidence which corroborates in any manner these invitations to speculate;

203. The Class Plaintiff's own allegations undermine the cornerstone of this proposed conjectural exercise;

204. For instance, the Class Plaintiff admittedly recognized that three professional accounting firms accepted to act as auditors for MRC for the years ended 2002, 2003 and 2004. Yet they fail to establish why this Honourable Court could not reasonably conclude that no other auditor would have come forward had SLF refused to audit MRC's 2004 consolidated financial statements;

205. As well, to presume that this replacement auditor would not have been duped by the convoluted financial machinations of Matteo and his acolytes and refused to sign its audit report is entirely speculative as well;

C) The Class Plaintiff's theory of causation is particularly incoherent and absurd *vis-à-vis* SLF

206. On November 8, 2005, the AMF successfully petitioned the Bureau on an urgent basis for the issuance of cease trading and blocking orders against MRC and the

issuers of the Notes, as well as for the appointment of a Provisional Administrator to take over its affairs on November 9, 2005, as appears from a copy of this application communicated herewith as **Exhibit DS-6**;

207. The Class Plaintiff readily admits that SLF only audited MRC's 2004 consolidated financial statements;

208. The filing and first public disclosure date of MRC's 2004 consolidated financial statements was on March 31, 2005, as appears from the SEDAR extract communicated herewith as **Exhibit DS-7**;

209. However, the Quebec *Securities Act* and securities regulations permitted MRC to file its 2004 consolidated financial statements on or before May 19, 2005, 140 days after MRC's year-end;

210. Hence, SLF's presumed refusal to report on MRC's 2004 consolidated financial statements would not have triggered the AMF's attention prior to May 20, 2005;

211. Even so, there is no plausible or reasonable basis to presume that the AMF would have "moved in" on Matteo and his acolytes 5½ months faster on May 20, 2005, based solely on SLF's refusal to report on MRC's 2004 consolidated financial statements;

212. To begin with, the failure to file financial statements within the requisite delay of May 19, 2005 would not necessarily have resulted in immediate sanctions or any correlative AMF spotlight;

213. Also, the Class Plaintiff's presumption that this spotlight would have led to the issuance of blocking and cease trading orders by the Bureau prior to November 8, 2005 is totally incongruent with the AMF's actual knowledge of MRC's affairs and its investigation process;

214. Indeed, as appears from Exhibit P-10, it is only when the AMF completed its investigations and concluded there were urgent and imperative grounds to petition the Bureau for such Orders that it filed proceedings requesting a hearing with the Bureau in order to obtain the said Orders as well as the appointment of a provisional administrator;

215. This AMF investigation into the affairs of MRC and its related entities had begun unofficially in December 2003, as appears from a La Presse article dated December 6, 2008 communicated herewith as **Exhibit DS-8**. Said article read in part as follows:

"L'Autorité des marchés financiers (AMF) a enquêté pendant deux ans sur Mount Real avant d'intervenir, deux ans pendant lesquels les investisseurs ont continué de confier leur argent à l'entreprise.

C'est ce qui ressort du document détaillant les chefs d'accusation contre les cinq dirigeants de Mount Real, qui vient d'être rendu public. Selon ce document, l'AMF a débuté son enquête sur l'organisation en décembre 2003. À l'époque, elle commençait à douter de la véracité des communiqués de presse et des états financiers des entités liées à Mount Real. Or, l'AMF n'a bloqué l'organisation qu'en novembre 2005, près de deux ans plus tard.

«À partir de décembre 2003, l'AMF a procédé à une analyse très approfondie des documents publics liés Mount Real. Nous soupçonnions la présence, déjà à ce moment là, d'informations fausses ou trompeuses dans les documents administratifs. Nous avons donc eu de nombreux échanges avec les dirigeants. L'AMF exigeait notamment la transmission de documents justificatifs à l'appui des états financiers, qui ne venaient pas nécessairement», a expliqué le porte-parole de l'AMF, Sylvain Théberge."

(our emphasis)

216. The penal indictments of Matteo, d'Andrea, Henry, Spura, Holden and Pettinicchio filed by the AMF effectively confirm that the latter began its investigation into the alleged charges in 2003, as appears from copies of some of these indictments communicated herewith as **Exhibit DS-9**;

217. The AMF officially confirmed that it also launched a further investigation regarding MRC, MRACS and the subject promissory Notes on February 21, 2005, as appears from a copy of this internal decision communicated herewith as **Exhibit DS-10**:

"AUTORITÉ
DES MARCHÉS
FINANCIERS
Décision n°: 2005-SMV-0030
Objet: Mount Real Acceptance Corporation

Vu les pouvoirs délégués conformément à l'article 24 de la Loi sur l'Autorité des marchés financiers L.R.Q., c. A-7.03, et en vertu des articles 239 et suivants de la *Loi sur les valeurs mobilières*, L.R.Q. c. V-1,1, l'Autorité des marchés financiers institue une enquête relative aux activités de placement de valeurs mobilières de « Mount Real Acceptance Corporation », « Mount Real Financial Corporation » et des sociétés ayant ou ayant eu des activités reliées à ces dernières. L'enquête portera sur les transactions effectuées par leurs dirigeants, employés, représentants et mandataires, sur la pratique des activités de courtier ou de conseiller exercées par ces mêmes personnes, ainsi

que sur l'utilisation des sommes recueillies. L'enquête visera notamment les personnes physiques et morales suivantes:

Mount Real Acceptance Corporation
Mount Real Financial Corporation
Mount Real Corporation
Services financiers Bear Bay Inc.
Bear Bay Holding Canada Inc.

Fait à Montréal, le 21 février 2005
Daniel Laurion
Surintendant de la direction de
l'encadrement des marchés de valeurs" (our emphasis)

218. The Affidavit of the Investigator Michel Vadnais, dated December 5, 2005, further confirms that the Direction des Marchés des Capitaux of the AMF questioned MRC's senior management executives regarding the contents of their financial statements and various transactions reported therein, as appears from a copy of Mr. Vadnais' Affidavit communicated herewith as **Exhibit DS-11**;

219. Mr. Vadnais' Affidavit further confirms that the answers obtained by the AMF from MRC's management were not deemed satisfactory and raised doubts regarding the validity and truthfulness of these statements:

"3. En date du 21 février 2005, l'**AMF** a institué une première enquête en vertu de l'article 239 de la *Loi sur les valeurs mobilières* (décision 2005-SMV-0030) relativement aux activités de placements de valeurs mobilières de Mount Real Acceptance Corporation (maintenant connue sous le nom de MRACS Management Ltd depuis le 2 juin 2004) («**MRACS**»), Mount Real Financial Corporation (maintenant connue depuis le 22 décembre 1994 sous le nom de **MRC**) et des sociétés ayant ou ayant eu des activités reliées à ces dernières ;

[...]

7. Initialement, l'enquête portait sur des placements effectués illégalement puisqu'ils ont été faits sans prospectus visé par l'**AMF** contrairement à la *Loi sur les valeurs mobilières* et que des représentants avaient pratiqué l'activité de courtier ou de représentant sans être inscrit auprès de l'**AMF**;

8. Parallèlement, les analystes de la Direction des Marchés des capitaux de l'**AMF** ont transmis une demande d'enquête le 13 mai 2005 et ont soumis au Service des enquêtes de l'**AMF** leurs interrogations suite à l'analyse et à l'examen des états financiers annuels pour les années 2003 et 2004 de **MRC** et des sociétés ayant des liens dont les sociétés publiques

suivantes : Upland Global Corporation (« **Upland** »), Gopher Media Services Corporation (« **Gopher** ») et **HBT**;

9. De nombreuses observations concernant les différents documents d'information continue ont alors été soulevées par les analystes, notamment sur la détermination de la valeur des nombreuses transactions entre **MRC** et diverses sociétés ayant des liens entre eux ;

10. Les réponses alors obtenues des différents dirigeants de **MRC**, **Upland**, **Gopher** et **HBT** n'ont pas été jugées satisfaisantes par les analystes de la Direction des Marchés des capitaux de l'**AMF** et n'ont fait que soulever de nouvelles interrogations sur la validité et véracité des informations financières présentées dans leurs états financiers ;"

220. On May 13, 2005, the Direction des Marchés des Capitaux therefore requested that another investigation be launched by the AMF Investigation Services, given the doubts it had regarding the truthfulness and validity of MRC's consolidated financial statements;

221. On May 19, 2005 the AMF effectively confirmed yet a third decision to investigate Matteo, MRC's securities related transactions, the activities of Pettinicchio (IForum) and the conformity of MRC's consolidated financial statements, as appears from a copy of this decision communicated herewith as **Exhibit DS-12**;

"AUTORITÉ
DES MARCHÉS
FINANCIERS

Décision n°: 2005-SMV-0084

Objet: Corporation Mount Real

Vu les pouvoirs délégués conformément à l'article 24 de la *Loi sur l'Autorité des marchés financiers* L.R.Q., c. A-7.03, et en vertu des articles 239 et suivants de la *Loi sur les valeurs mobilières*, l'Autorité des marchés financiers institue une enquête relative aux activités sur valeurs de Corporation Mount Real, ses dirigeants, employés, représentants et mandataires, les sociétés ayant ou ayant eu des activités reliées à celle-ci, sur Lino Matteo et sur Joseph Pettinicchio. L'enquête vise notamment les opérations sur valeurs, les placements de valeurs, l'exercice des activités de courtiers et conseillers en valeurs ainsi que sur l'utilisation des sommes recueillies. L'enquête portera également sur la conformité aux principes comptables généralement reconnus des états financiers soumis par ces entreprises à l'AMF.

Fait à Montréal, le 19 mai 2005

Denis Laurion
Surintendant aux marchés de valeurs" (our emphasis)

222. Hence, by May 13, 2005, the AMF had already initiated three concurrent investigations into the affairs of MRC. The AMF also had doubts as to the validity and truthfulness of MRC's consolidated financial statements and had already taken the decision to appoint its own forensic experts in this regard;

223. Thus, it is entirely unwarranted and absurd to presume that the AMF would have had a dimmer view of MRC's accounting and financial practices or the validity and truthfulness of its financial information, if SLF's presumed decision not to report on MRC's 2004 consolidated financial statements had come to light 6 days later on May 20, 2005;

224. The AMF manifestly had not completed its forensic investigations into the financial affairs of MRC and its acolytes on May 20, 2005 nor were these investigations completed in June 2005 when disturbing press articles were published regarding MRC's affairs;

225. In effect, as appears from the La Presse articles, both dated June 18, 2005, communicated herewith as **Exhibit DS-13,** MRC and its principals were under considerable scrutiny with respect to the following allegations:

a) that MRC had been issuing promissory Notes totalling $56 million from 1998 to 2003;

b) that MRC had liquidity/cash flow problems for seven years;

c) that the MRC promissory Notes issued from 1998 to 2003 had not been supported by a prior prospectus or notice to the AMF;

226. As of June 22, 2005, the AMF was manifestly not yet ready to petition the Bureau for cease trading and blocking Orders. SLF's presumed refusal to report on MRC's 2004 consolidated financial statements on May 20, 2005 would not have voided the need to pursue its investigation or have accelerated same;

227. It is precisely because these investigations were still ongoing and necessary that the AMF instead chose to make public its May 19, 2005 investigations by way of press release dated June 22, 2005, a copy of which is communicated herewith as **Exhibit DS-14;**

"L'AUTORITÉ DES MARCHÉS FINANCIERS
ENQUÊTE SUR CORPORATION MOUNT REAL

Montréal, le 22 juin 2005 - L'Autorité des marchés financiers annonce qu'une enquête est en cours sur les opérations financières de la Corporation Mount

Real. En support à cette enquête, l'Autorité a retenu les services d'une firme de juri-comptabilité.

Rappelons que les transactions sur le titre de Corporation Mount Real ont été suspendues pour une journée, le 20 juin, en raison de la chute de 40% du prix offert de l'action. Cette suspension a été exigée par le Service de réglementation des marchés (SRM).

L'Autorité déploie toutes les ressources appropriées à ce dossier sous enquête et entend prendre tous les moyens à sa disponibilité afin de protéger les investisseurs et d'assurer l'intégrité des marchés.

L'Autorité des marchés financiers est l'organisme de réglementation et d'encadrement du secteur financier du Québec." (our emphasis)

228. The AMF's exceptional public disclosure of its investigation into the conformity of MRC's financial statements amounted to the most scathing public warning possible regarding MRC's financial products. The AMF was fully aware that cease trading orders would ultimately result from its announcement, as appears from the following La Presse article communicated herewith as **Exhibit DS-15**;

"La Presse Affaires, jeudi 23 juin 2005, p. LA PRESSE AFFAIRES2

Les autorités font enquête sur Mount Real

Vailles, Francis

Les transactions sur le titre de la Corporation Mount Real ont à nouveau été suspendues, hier, dans la foulée d'une annonce d'enquête de la part de l'Autorité des marchés financiers du Québec (AMF).

À 14 h 02, l'AMF a annoncé " qu'une enquête est en cours sur les opérations financières de la Corporation Mount Real. En support à cette enquête, l'Autorité a retenu les services d'une firme de juricomptabilité. L'Autorité déploie toutes les ressources appropriées à ce dossier sous enquête et entend prendre tous les moyens à sa disposition afin de protéger les investisseurs et d'assurer l'intégrité des marchés ".

Joint au téléphone, le porte-parole de l'AMF, Philippe Roy, a été peu loquace sur les motifs de l'enquête. Selon M. Roy, cette enquête est en cours depuis quelques mois déjà. Une enquête type dure de 12 à 18 mois. " Au terme de l'enquête, nous déciderons si nous intenterons des poursuites ou non ", a déclaré M. Roy, qui n'a pas voulu nommer la firme de juricomptables, ni dire quand elle avait été retenue.

L'annonce d'une enquête par l'AMF est exceptionnelle. Habituellement, l'organisme de réglementation ne divulgue pas publiquement les dossiers sur lesquels elle enquête, question de ne pas nuire à une entreprise ciblée si une affaire n'était pas fondée. " Dans ce cas-ci, la

> protection des investisseurs justifie qu'on rende public le fait qu'on fasse une enquête ", a dit M. Roy. [...]" (our emphasis)

229. Given the June 22, 2005 communiqué by the AMF confirming that MRC's financial operations were under investigation, the TSX again suspended the trading of the latter's shares;

230. The markets erased 29% of MRC's stock on June 21, 2005 and 22.6% on June 24, 2005;

231. Consequently, the Class Plaintiff has failed to establish any veritable factual matrix which could permit this Court to second guess the decisions of the AMF based solely on SLF's presumed refusal to report on MRC's 2004 consolidated financial statements. Such a failure to report on these statements on time would not have sped up the AMF investigations given what it already knew and the mandate it had already entrusted to its forensic experts;

232. It is unreasonable to presume that the AMF would have moved in on MRC any faster than it did after May 19, 2005, especially when it declared publicly on June 22, 2005 (Exhibit DS-14) that it was already deploying all appropriate resources and all means at its disposal to protect investors and the integrity of the markets:

> **"L'AUTORITÉ DES MARCHÉS FINANCIERS ENQUÊTE SUR CORPORATION MOUNT REAL**
>
> [...]
>
> L'Autorité déploie toutes les ressources appropriées à ce dossier sous enquête et entend prendre tous les moyens à sa disponibilité afin de protéger les investisseurs et d'assurer l'intégrité des marchés. [...]" (our emphasis)

233. In short, the AMF's own spotlight was already shining brightly on MRC by May 13, 2005. Furthermore, on June 18, 2005, the press directed an added public spotlight on MRC. The AMF also ensured this public spotlight on MRC became permanent on June 22, 2005;

234. Without prejudice to the foregoing, the Class Plaintiff's novel spotlight causation theory became, in any event, entirely superfluous and irrelevant by June 22, 2005. Any investor who chose to invest new capital after the June 2005 press articles and the AMF communiqué were immune to any enlightenment;

235. As well, no Class member could have reasonably relied on any MRC financial statements or aura of credibility supposedly conferred by SLF after June 22, 2005 either;

III. FAULT OF THIRD PARTIES

A) The losses sustained by Class Members were caused by third parties and not by the Professional Defendants

236. There is no direct, immediate and certain causal link between the losses of the Class Members and the alleged negligence of the Professional Defendants;

237. The losses sustained by the Class Members were caused entirely by the perpetrators of the fraud, including individuals of the highest level of management, certain members of the Board of Directors of MRC, third party investment representatives who sold the Notes and made false representations to the Class Members, Penson and B2B;

(i) Investment representatives

238. From 1996 to 2005, the Class 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;

239. Plaintiff invested in the notes issued by MRACS due to the wrongful and fraudulent representations made to her by her investment representative, Yves Mechaka ("**Mechaka**"), whom she sought to hold exclusively liable for her losses in the context of a motion to appeal the disallowance of her proof of claim in the bankruptcy of Valeurs mobilières IForum. In support of this motion, she personally signed an affidavit attesting to the truth of the facts alleged in the said proceedings, as appears from copies of the said motion, her renewal forms and Notes annexed thereto and her affidavit communicated herewith *en liasse* as **Exhibit DS-16**;

240. The Class Members similarly purchased and renewed their investments on the basis of false representations made by their investment representatives;

241. For instance, the representative Yves Tardif pleaded guilty to penal charges filed by the AMF which involved 21 Class Members 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 of *R.* v. *Yves Tardif*, 2010 QCCQ 11090, communicated herewith as **Exhibit DS-17**;

242. Similarly, the representative Paul Messier (Messier) pleaded guilty to numerous penal charges laid against him by the AMF involving seven Class Members who were misled by his false representations, as appears from the decision in *Thibault* v. *Messier*, 2008 CanLII 13824 (QC CDCSF), communicated herewith as **Exhibit DS-18**;

243. In the same vein, the representative René Proteau misled his clients by advising them that the Notes were guaranteed by an insurance policy, as appears from the judgment in the case *Roberge* v. *Planification Copepco inc.*, 2010 QCCS 114, and *Roberge* v. *Smith*, 2011 QCCA 2118 (appeal dismissed) communicated herewith together as **Exhibit DS-19**;

244. Furthermore, in the decision already filed by the Class Plaintiff 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

245. B2B's failure to bring the fraud to light should not be overlooked or marginalized. B2B's role in the redemption and renewal of purported RRSP eligible Notes provided this custodian with a singular vantage point in respect of the fraud. As recognized by the Class Plaintiff, B2B could have put an end to the fraud as early as 2000, some five years before SLF signed its audit report;

246. SLF refers to and incorporates herein the allegations of gross negligence made by the Class Plaintiff against B2B in paragraphs 97 to 101, 103, 104, 106 to 109.32 of the Class Action;

247. In light of these serious allegations, SLF submits that the losses suffered by the Class Members, as of at least June 2000, were attributable to B2B;

(iii) Penson

248. SLF refers to and incorporates herein the allegations of negligence made by Class Plaintiff against Penson in paragraphs 97 to 100, 102 to 106 and 109 of the Class Action;

249. As appears from the email dated October 28, 2005 communicated herewith as **Exhibit DS-20**, Penson was also aware since at least May 2005 that MRC, MRACS and Real Vest did not have sufficient funds to fulfill Note redemption requests. Yet they failed to warn Noteholders or advise the AMF of these facts;

IV. ABSENCE OF ANY VERITABLE LOSSES SUPPOSEDLY SUFFERED AT THE HANDS OF SLF

250. The Class Plaintiff admittedly suffered her own loss well before May 20, 2005 when SLF's refusal to report on MRC's 2004 consolidated financial statements would presumably have come to light;

251. The Class Plaintiff admitted during discovery that she did not invest any new capital in her Notes since August 10, 2001;

252. Moreover, the Class Plaintiff admitted she was not aware of the existence, let alone the appointment, of SLF;

253. The Class Plaintiff has therefore failed to establish any loss supposedly suffered at the hands of SLF, whether directly or indirectly;

254. As well, but without prejudice to the foregoing, even if cease trading and blocking orders could have been issued earlier by the Bureau at some point in time on or after May 20, 2005, but before November 8, 2005, no evidence has been adduced which could permit this Court to presume that any investor losses suffered by Class members holding Notes on November 9, 2005 could have been averted. Nor is there any basis to presume that greater sums would have been recovered at the twilight of this fraud;

255. By April 2005, the fraud had been in effect for many years, as admitted by the Class Plaintiff;

256. MRC lost its access to a merchant credit card processor in November 2004. By April 2005, it was experiencing a chronic inability to honor even the redemption requests required to maintain the fraud in place;

257. MRC's representatives began offering longer two to four year terms for the Notes at higher "guaranteed rates";

258. As appears from Exhibit P-6, the provisional administrator was only able to recover tangible assets of approximately $1 million from MRC and the issuers as of November 9, 2005. To presume more liquid cash or other assets would have been recovered from Matteo or some offshore account had blocking and cease trading orders been issued 5½ months earlier or less in 2005, is excessively naive and speculative;

259. In summary, the Class Plaintiff's causation theory, even if presumed to be legitimate, is manifestly incongruent *vis-à-vis* SLF, given the fraud had been amply consummated and in fact had begun to unravel even before SLF's refusal to report on MRC's consolidated financial statements could presumably have come to light on May 20, 2005;

260. Subsidiarily, the Class Plaintiff is attempting to recover illicit and exaggerated amounts from the Defendants;

261. Indeed, neither the Class Plaintiff nor any other Class member is entitled to claim the pseudo interest promised in the fraudulent Notes. The fraudulent Notes could not give rise to legitimate interest;

262. Hence, only the veritable capital invested by Class members could form the basis of their individual claims;

263. Yet, the Class Plaintiff is relying on estimates prepared by the Provisional Administrator, which include approximately $58 million of such fictitious interest;

264. As will be demonstrated at trial, numerous Class members also received purported interest payments following their investment in the Notes;

265. These fictitious interest refunds must be accounted in such manner so as to reduce a Class member's capital claim;

266. Moreover, some Class members received partial capital refunds of their last Notes;

267. Hence, in the event any limited new capital investment losses could somehow be attributed to SLF as of May 20, 2005 (which is categorically denied), they would have to be reduced by any accumulated and refunded interest as well as refunded capital;

268. Finally, any perpetrators or accomplices of the fraud, as well as any investment representatives or other parties involved in the fraud, as well as any entities with 50 or more employees who purchased Notes, must be excluded from the Class;

V. ABSENCE OF SOLIDARITY BETWEEN THE PROFESSIONAL DEFENDANTS

269. Without prejudice to the foregoing, no finding of solidary liability as between the Professional Defendants could ever be lawfully permitted;

270. The Class Plaintiff necessarily recognizes that the Professional Defendants conducted successive yet separate audits of MRC's consolidated financial statements at time periods which were at least 12 months apart;

271. They allegedly committed distinct faults and caused different losses at different times;

272. Even if the Class Plaintiff's fault allegations are presumed to be true, SLF could not be held solidarily liable for losses caused by either the "borrowed" reputations of Deloitte or BDO, or their supposed failure to discover the fraud and refusal to sign the audited statements of MRC for the years ended on December 31, 1997 to 2003;

273. As stated earlier, SLF's presumed refusal to audit MRC's 2004 consolidated financial statements could not have been noted by the AMF prior to May 20, 2005;

274. SLF could not be held extra-contractually liable with the other Professional Defendants for damages which were caused to Class members who invested or reinvested in their last Notes before SLF allegedly committed a fault by failing to discover the fraud and failing to refuse to report on MRC's 2004 consolidated financial statements;

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

276. While the task of segregating and apportioning any supposed liability towards the 1,600 investors between the Professional Defendants would be time consuming, it would certainly not be impossible;

277. The segregation and apportionment of the losses caused to Class members as a result of each Professional Defendant's supposed failure to discover the fraud would first be anchored on the distinct audit period(s). Again, each auditor could not be held liable for losses caused before it allegedly committed any fault;

278. Hence, only new capital losses, if any, suffered as of May 20, 2005 could be imputed to SLF since it could not be theoretically liable for capital which had already been usurped or disappeared;

279. Even in cases where the last certificates were issued on or after May 20, 2005, but represented investments which had been "rolled over" repeatedly for years without any new cash injection, then the loss suffered by such Class members necessarily occurred well before any supposed omission by SLF;

280. The cumulative capital of Class members invested from 1997 to 2004 was evidently not lost from 9:00 a.m. to 9:00 p.m. on November 9, 2005. The investments were necessarily diverted and usurped gradually many years before;

281. Evidence of the initial capital investment dates can easily be gathered from the Class members or the records of the Co-Defendants B2B Trust/Penson;

282. 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;

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

284. The Class members who could have been theoretically harmed as a result of SLF's supposed omission to refuse reporting on MRC's 2004 statements, are distinct and easily identifiable;

285. Thus, none of the Plaintiff's factual allegations could give rise to any solidary findings as between the 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 Class members at various times;

VI. COLLECTIVE RECOVERY ORDERS SOUGHT ARE UNFEASIBLE AND ARBITRARY

286. Without prejudice to the foregoing, the Class Plaintiff's request for a collective recovery of all Noteholder claims is unfeasible and would necessarily vitiate SLF's fundamental defence rights;

287. It will be impossible at trial to establish with sufficient accuracy the total amount of the Noteholder claims since not only the amount but the validity of each claim would depend on a host of individual factors entirely personal to each of them;

288. Defendant SLF's defence is therefore well founded both in law and in fact;

WHEREFORE, PLEASE THIS HONOURABLE COURT:

DISMISS Plaintiff's Class Action;

MAINTAIN the Plea of Schwartz Levitsky Feldman S.E.N.C.R.L./s.r.l./LLP;

THE WHOLE with costs, including those of experts.

Montréal, March 24, 2014
(S) DENTONS CANADA S.E.N.C.R.L./LLP

DENTONS CANADA LLP
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Schwartz Levitsky Feldman S.E.N.C.R.L./s.r.l./LLP

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