

**DISTRIBUTION PROTOCOL  
CIBC MORTGAGE PREPAYMENT CHARGE CLASS ACTIONS**

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**DEFINITIONS**

1. The definitions set out in the Settlement Agreement apply to this Distribution Protocol and are incorporated herein.
  
2. For the purposes of this Distribution Protocol:
  - (a) **Class Periods** means the British Columbia Class Period and the Ontario Class Period.
  
  - (b) **British Columbia Class Period** means the period during which British Columbia Class Members paid an eligible Prepayment Charge, from October 7, 2005 to December 31, 2017.
  
  - (c) **Ontario Class Period** means the period during which Ontario Class Members paid an eligible Prepayment Charge, from October 7, 2009 to December 31, 2017.

- (d) **Eligible Claimant** means a Class Member who the Claims Administrator has identified as being entitled to receive settlement benefits, as described in this Distribution Protocol.
- (e) **Claims Bar Deadline** means one hundred and eighty (180) days from the commencement of the claims process, or such other date set by the Courts.

## **OBJECTIVE**

- 3. The objective of this Distribution Protocol is to distribute the Net Settlement Funds among Eligible Claimants in a simplified manner.

## **CLAIMS DISTRIBUTION PROCESS**

### **Determining Eligibility**

- 4. Eligible Claimants will be determined by the Claims Administrator based on a chart, detailed at paragraph 8 (the "Chart") that was developed with the assistance of an expert hired by Class Counsel, who reviewed a sample of the defendant CIBC's relevant mortgage files.
- 5. The Chart is derived from a formula, described in Appendix "1", hereto, which identifies the periods of time when Class Members were most likely to have paid a Prepayment Charge calculated with reference to an interest rate differential ("IRD") during the Class Periods.
- 6. The use of the Chart will allow the Claims Administrator to avoid complex individual determinations of Class Member's eligibility, which would be costly and which would require documentation that may no longer be available.
- 7. The Claims Administrator will determine if a Class Member is an Eligible Claimant by obtaining from the Class Member certain information, with whatever supporting documentation the Claims Administrator deems appropriate, particularly:

- (a) the date that the Class Member's mortgage loan was made or most recently renewed;
  - (b) whether the Class Member's mortgage loan was made by one of the Releasees;
  - (c) whether the Class Member's mortgage loan was for a fixed term at a fixed rate of interest;
  - (d) the length of the term of the Class Member's mortgage loan; and
  - (e) the date that the Class Member's mortgage loan was prepaid.
8. The Claims Administrator will then determine if a Class Member is an Eligible Claimant by reference to the Chart, set out below, which details the periods of time during which a Class Member was most likely to have paid a Prepayment Charge calculated with reference to an IRD:



- (b) For a claimant claiming on behalf of a Class Member or a Class Member's estate, the Claims Administrator shall be satisfied that:
    - (i) the claimant has authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs;
    - (ii) the person or estate on whose behalf the claim was submitted was a Class Member; and
    - (iii) the claimant has provided all supporting documentation required by the Claims Form or alternative documentation acceptable to the Claims Administrator, in its discretion acting reasonably, including up-to-date contact information for the Class Member or a representative of the Class Member's estate.
12. The Claims Administrator shall ensure that all claims for compensation are made only in respect of mortgage loans made by one of the Releasees.

**Deadline for Claims**

13. Any person who wishes to claim compensation shall deliver to or otherwise provide the Claims Administrator a claims form by the Claims Bar Deadline, or such other date set by the Courts. If the Claims Administrator does not receive a substantially complete claims form from a claimant by the Claims Bar Deadline, then the claimant shall not be eligible for any compensation from the Net Settlement Funds or otherwise.
14. By agreement between the Claims Administrator and Class Counsel, the Claims Bar Deadline may be extended up to a further one hundred and eighty (180) days, or as ordered by the Courts. Class Counsel and the Claims Administrator shall agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient

administration of the Settlement and it is in the best interests of the Class Members to do so.

#### **DISTRIBUTION OF NET SETTLEMENT FUNDS**

15. Subject to paragraphs 16 and 17, below, each Eligible Claimant shall be entitled to a payment of \$224.00 (the “**Claim Value**”), regardless of how many mortgage loans the Eligible Claimant prepaid during the Class Periods.
16. If the total value of the claims approved by the Claim Administrator in accordance with paragraph 11, above, exceeds the Net Settlement Funds, the Claim Value will be decreased so that the total value of approved claims is equal to the Net Settlement Funds. If the Net Settlement Amount exceeds the total value of the claims approved by the Claims Administrator in accordance with paragraph 11, above, the Claim Value will be increased so that the total value of approved claims is equal to the Net Settlement Funds, but notwithstanding any of the foregoing, the Claim Value will not exceed \$3,000.00.
17. Notwithstanding any other provision in this Distribution Protocol, if the distribution set out in paragraphs 15 and 16, above, would result in an unjust distribution of the Net Settlement Funds, Class Counsel will seek further directions from the Courts with respect to the distribution of the Net Settlement Funds.
18. The Claims Administrator shall process all claims in a cost-effective and timely manner, and in accordance with the terms of the Settlement Agreement, this Distribution Protocol, and orders of the Courts.

#### **Payment of Funds**

19. The Claims Administrator shall make arrangements to pay claims from the Net Settlement Funds as expeditiously as possible.

20. All payments will be calculated in Canadian currency and payments will be paid by cheque in Canadian currency.
21. The Claims Administrator shall keep clear records, such that any amounts remaining after the payment to Eligible Claimants can be identified as resulting from uncashed cheques, undeliverable cheques, the cap on the Claim Value, or otherwise, so that any such funds can be dealt with in accordance with the Settlement Agreement.
22. In the event that the distribution of cheques for the Claim Value to Eligible Claimants does not result in the distribution of the entirety of the Net Settlement Funds, the Claims Administrator will distribute any balance in accordance with Section 7 of the Settlement Agreement.
23. If directions from the Courts are sought in respect of the distribution of the Net Settlement Funds, to the extent that any amounts in issue would not affect the amounts payable in respect of all other claims, the Claims Administrator may proceed with payment of those other claims before the Courts provide directions.

## **MISCELLANEOUS**

### **Taxation of the Interest Earned on Settlement Funds**

24. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the funds in the Trust Account and shall have the discretion to pay any taxes imposed on such funds out of the funds in the Trust Account.

### **Reporting to Class Counsel**

25. The Claims Administrator shall provide regular reports to Class Counsel and counsel for the Defendant regarding the administration of the Settlement.

### **Communication with Class Members**

26. All written communications from the Claims Administrator to a Class Member shall be transmitted via regular first class mail to the last address provided by the Class Member to the Claims Administrator or by email, if consent has been given to communicate by email. For greater certainty, the Claims Administrator shall have no obligation to determine email addresses for Class Members.
  
27. The Claims Administrator shall not reissue payments to Eligible Claimants returned as undeliverable, or that become stale-dated six (6) months after they are issued.

### **Preservation and Disposition of Claim Submissions**

28. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, records relating to each claim, until the termination of one (1) year after the last claim has been paid out and at such time shall dispose of the submissions, by shredding or such other means as will render the materials permanently illegible.

### **Confidentiality**

29. All information received in respect of the Class Members collected, used and retained by the Claims Administrator for the purposes of administering the Settlement Agreement, including evaluating the Class Member's eligibility status under the Settlement Agreement is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 (PIPEDA). The information provided by the Class Members is strictly private and confidential and will not be disclosed without the prior express written consent of the Class Member, except to Class Counsel or counsel for the Defendant, or in accordance with the Settlement Agreement, orders of the Court, and/or this Distribution Protocol.



## Appendix "1" – Description of Formula Underpinning the Chart

In the relevant mortgage contracts, CIBC calculates the Prepayment Charge as the greater of an IRD and three months' interest.

Based on this concept, the Chart considers the change in the Defendant's posted interest rates for mortgage loans between the date that the mortgage loan was made and the date that it was prepaid to estimate whether a Prepayment Charge was likely calculated with reference to the IRD or three months' interest.

For the purpose of the Chart, both the IRD and three months' interest are calculated as a percentage of the principal outstanding on the mortgage loan and they are calculated as follows:

The IRD is equal to the difference between (i) the posted interest rate when the mortgage loan was made or last renewed; and (ii) the posted interest rate for the remaining term at the time of prepayment, multiplied by the time in the remaining term. For example:

- 5-year mortgage loan made when Defendant's posted rate of interest was 5% per annum.
- Mortgage is prepaid after 2 years, when posted rate of interest for a 3-year mortgage loan was 4% per annum.
- IRD (as a percent of principal) would be determined as (initial posted rate minus posted rate at prepayment date) x outstanding term, or (5% - 4%) x 3 years remaining = 3% of principal at the time of prepayment.

Three months' interest is equal to (i) the posted rate of interest at the time the mortgage loan was made or last renewed; multiplied by (ii) 3/12; multiplied by (iii) the principal at the time of prepayment. For example:

5-year mortgage loan made when posted mortgage rate of interest was 5% per annum.

Three months' interest would be determined as  $5\% \times 3/12 = 1.25\%$  of principal at the time of prepayment.

In the example above, the Prepayment Charge would have been calculated with reference to the IRD because 3% of principal is higher than 1.25% of principal.

For the sake of simplicity, the Chart assumes that the posted mortgage rates in each quarter are the average of the posted mortgage rates on the first business day of each month in the quarter and assumes that originations, renewals and prepayments of mortgage loans occurred at the midpoint of each quarter.