

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT INVOLVING OLYMPUS UNITED FUNDS CORPORATION /  
CORPORATION DE FONDS UNIS OLYMPUS

OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS  
OLYMPUS, BY ITS RECEIVER, RSM RICHTER INC.

Applicant

APPLICATION UNDER SECTIONS 8, 11, 11.02 AND 42 OF THE *COMPANIES'  
CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**APPLICATION RECORD**

**THORNTON GROUT FINNIGAN LLP**  
100 Wellington Street West, Suite 3200  
Toronto, Ontario M5K 1K7

John Finnigan (LSUC# 240408)  
Grant Moffat (LSUC# 32380L)  
Tel: 416-304-1616  
Fax: 416-304-1313

**FISHMAN FLANZ MELAND PAQUIN LLP**  
1250 René-Lévesque Boulevard West., Suite 4100  
Montreal, Quebec H3B 4W8

Avram Fishman  
Tel: 514-932-4100  
Fax: 514-932-4170

Lawyers for the Applicant

This document includes

1. Notice of Application; and
2. Affidavit of Raymond Massi.

All other schedules are already on our website.

## INDEX

### TAB

1. Notice of Application
  - Schedule A Draft Initial Order
2. Affidavit of Raymond Massi, sworn August 30, 2011
  - Schedule A** Initial Receivership Order, dated June 29, 2005
  - Schedule B** Extension Order, dated July 14, 2005
  - Schedule C** Expanded Order, dated September 9, 2005
  - Schedule D** Expanded Order, dated October 14, 2005
  - Schedule E** Minutes of Settlement Approval Order, dated August 22, 2011
  - Schedule F** Consent of Richter to act as Monitor, dated August 30, 2011
  - Schedule G** Olympus Funds Offering Memorandum, dated June 21, 2004
  - Schedule H** Articles of Olympus Funds, dated May 26, 2004
3. Draft Initial Order blacklined to Model Order

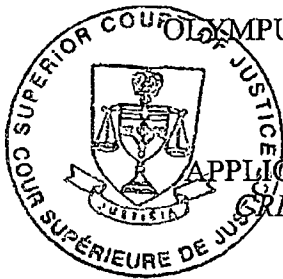
**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT INVOLVING OLYMPUS UNITED FUNDS CORPORATION /  
CORPORATION DE FONDS UNIS OLYMPUS

OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS  
OLYMPUS, BY ITS RECEIVER, RSM RICHTER INC.

Applicant



APPLICATION UNDER SECTIONS 8, 11, 11.02 AND 42 OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**NOTICE OF APPLICATION**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following pages.

**THIS APPLICATION** will come on for an *ex parte* hearing before a Judge on a date and at a time to be determined by the Court at 330 University Avenue, in the City of Toronto, in the Province of Ontario, M5G 1E6.

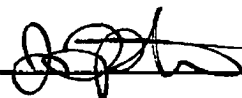
**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER MAY BE MADE IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.** If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contracting a Local Legal Aid office.

DATE: **31<sup>st</sup> August 2011**

Issued by: \_\_\_\_\_



Address of Court office:  
330 University Avenue  
Toronto, Ontario M5G 1E6

TO: **THIS HONOURABLE COURT**

**Giuseppe Dipietro**  
**Registrar**

## APPLICATION

1. The Applicant makes application for:
  - (a) an Order, if necessary, abridging the time for, validating the manner of, or dispensing with the service of this Notice of Application and the Application Record in this proceeding;
  - (b) an Order declaring that the Applicant, Olympus United Funds Corporation / Corporation de Fonds Unis Olympus (“**Olympus Funds**”), is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies and for further relief substantially on the terms set out in the form of the draft Initial Order appended to this Notice of Application; and
  - (c) such other relief as this Honourable Court deems just.
2. The grounds for the application are:
  - (a) Pursuant to Orders of Mr. Justice Campbell of this Honourable Court dated June 29, July 14, September 9 and October 14, 2005, made in accordance with the provisions of the Ontario *Securities Act* and *Courts of Justice Act*, RSM Richter Inc. (the “**Receiver**”) was appointed as the receiver of Olympus Funds, Norshield Asset Management (Canada) Ltd. / Gestion de Placements Norshield (Canada) Ltée, Norshield Investment Partners Holdings Ltd. / Gestion des Partenaires d’Investissement Norshield Ltée, Olympus United Funds Holdings Corporation, Olympus United Bank and Trust SCC (“**Olympus Bank**”), Olympus United Group Inc. / Groupe Olympus United Inc., Norshield Capital Management Corporation / Corporation Gestion de l’Actif Norshield and Honeybee Software Technologies Inc. / Technologies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation d’Investissement Norshield);

- (b) Olympus Funds is an insolvent debtor company against which approximately 1,900 retail investors in Canada (the “**Retail Investors**”) hold total claims that far exceed \$5,000,000;
- (c) The Receiver has determined that material investments held by Olympus Funds and Olympus Bank were significantly impaired, such that the Receiver purports to have potential claims against, *inter alia*, KPMG LLP (“**KPMG**”), which reported upon the audited financial statements of Olympus Funds for the fiscal years ended September 30, 2000, September 30, 2001, September 30, 2002 and September 30, 2003;
- (d) KPMG denies such potential claims but, without admission, is prepared to make a payment of CAD \$7,500,000 (the “**Settlement Amount**”) to the Receiver, conditional upon:
  - (i) approval in accordance with section 6 of the CCAA of a plan of compromise and arrangement (the “**Plan**”) to be filed by Olympus Funds, which shall contain releases and bar orders described in confidential minutes of settlement executed by the Receiver and KPMG on or about July 27, 2011 (the “**Minutes of Settlement**”);
  - (ii) the issuance of an Order of this Honourable Court approving the Plan (the “**Sanction Order**”), or in the event of an appeal therefrom, confirmation of the Sanction Order on appeal;
  - (iii) the issuance of an Order by the Quebec Superior Court (the “**Quebec Court**”) dismissing the proposed class action commenced against KPMG in Court File No. 500-06-000434-080, or in the event of an appeal therefrom, confirmation of that Order on appeal; and
  - (iv) the issuance of an Order by the Quebec Court recognizing and giving effect to the Sanction Order, or in the event of an appeal therefrom, confirmation of that Order on appeal.

- (e) KPMG is also, without admission, prepared to make a contribution of up to \$750,000 in reimbursement of the professional fees and disbursements incurred in connection with the CCAA proceedings and related proceedings by the Receiver and its legal counsel, the whole in accordance with the Minutes of Settlement;
- (f) The Settlement Amount would constitute a significant addition to the amounts realized and identified by the Receiver in the receivership of Olympus Funds;
- (g) The purpose of this application is, subject to creditor and Court approval, to enable the Receiver to make a distribution to the creditors (which, in these proceedings, include the Retail Investors) of Olympus Funds, consisting of the Settlement Amount, other amounts already held and available for distribution by the Receiver and further amounts that may be realized at a later date;
- (h) A continuation of the stay of proceedings against the Applicant and the Receiver, which was already ordered by this Honourable Court, and a stay of proceedings against KPMG and related entities who will make the payment of the Settlement Amount, is required in order to maintain the *status quo* pending the holding of a creditors' meeting and any subsequent sanction hearing;
- (i) Bar orders and releases in favour of KPMG and other related parties are essential conditions of the Minutes of Settlement. The CCAA is the only mechanism by which the bar orders and releases in favour of KPMG and other related parties, which are essential pre-conditions to the payment of the Settlement Amount, can be achieved;
- (j) As Olympus Funds is presently under receivership and not operating and the Applicant is not seeking orders for interim financing or super priority charges, it is appropriate to exempt the Applicant from filing herewith the financial documentation prescribed in Section 10(2) of the CCAA, and to exempt the Monitor from reviewing or filing the financial documentation set out in Sections 23(1)(b) and (d) of the CCAA, or to deem that the representations made by the Applicant satisfy the requirements of those provisions;

- (k) To preserve the integrity of the claims process and the privacy of the Retail Investors and other creditors, it is appropriate to exempt the Monitor from filing, distribution and/or communication, at this time, of a list of names and addresses of creditors of Olympus Funds and the estimated amounts of their claims, as prescribed by Section 23(1)(a) of the CCAA, and to order that such information be treated as confidential;
  - (l) Service of the application on all affected parties is not practical or feasible, due to the significant number of parties that may be affected by the Plan; any affected parties having standing would have the opportunity to receive information and address the Court during the course of the CCAA proceedings;
  - (m) The Applicant relies upon Rules 2.03, 3.02 and 14.05(2) of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and Sections 8, 11, 11.02 and 42 of the CCAA; and
  - (n) Such other grounds as counsel may advise and this Honourable Court permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Raymond Massi, sworn August 30, 2011;
  - (b) the consent of RSM Richter Inc. to act as Monitor, dated August 30, 2011; and
  - (c) such other materials as counsel may advise and this Honourable Court permit.

August 31<sup>st</sup>, 2011

**THORNTON GROUT FINNIGAN LLP**  
100 Wellington Street West, Suite 3200  
Toronto, Ontario M5K 1K7

John Finnigan (LSUC# 240408)  
Grant Moffat (LSUC# 32380L)  
Tel: 416-304-1616  
Fax : 416-304-1313



**FISHMAN FLANZ MELAND PAQUIN LLP**  
1250 René-Lévesque Boulevard West., Suite 4100  
Montreal, Quebec H3B 4W8

Avram Fishman  
Tel: 514-932-4100  
Fax: 514-932-4170

Lawyers for RSM Richter Inc., in its capacity as  
Receiver of the Applicant Olympus United Funds  
Corporation / Corporation de Fonds Unis Olympus

Court File No. \_\_\_\_\_

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36. AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT INVOLVING OLYMPUS UNITED FUNDS CORPORATION /  
CORPORATION DE FONDS UNIS OLYMPUS

OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS  
OLYMPUS, BY ITS RECEIVER, RSM RICHTER INC.

Applicant

**AFFIDAVIT OF RAYMOND MASSI**  
(Sworn August 30, 2011)

I, Raymond Massi, of the City of Montreal, Province of Quebec, Canada, Chartered Accountant and Licensed Trustee pursuant to the *Bankruptcy and Insolvency Act*, MAKE OATH AND SAY:

**A. INTRODUCTION**

1. I am a partner with RSM Richter Inc. ("**Richter**") and, as such, I have knowledge of the matters to which I herein depose. Where the source of my information is other than myself or other representatives of Richter, I have set out the source thereof and I believe it to be true.
2. Pursuant to the Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") dated June 29, 2005 (the "**Initial Receivership Order**"), Richter was appointed for a period of fifteen days as Receiver (in such capacity, the "**Receiver**") pursuant to Section 129 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended, without security, of all of the assets, undertakings and properties of:
  - (a) Norshield Asset Management (Canada) Ltd. / Gestion de Placements Norshield (Canada) Ltée ("**NAM**");
  - (b) Norshield Investment Partners Holdings Ltd. / Gestion des Partenaires d'Investissement Norshield Ltée;
  - (c) Olympus United Funds Holdings Corporation;
  - (d) Olympus United Funds Corporation / Corporation de Fonds Unis Olympus ("**Olympus Funds**");

- (e) Olympus United Bank and Trust SCC ("**Olympus Bank**"); and
- (f) Olympus United Group Inc. / Groupe Olympus United Inc..

(collectively, the "**Original Respondents**").

A copy of the Initial Receivership Order is attached hereto as **Schedule A**.

3. Pursuant to the Order of the Honourable Mr. Justice Campbell of the Ontario Court dated July 14, 2005 (the "**Extension Order**"), the Receiver's appointment in respect of each of the Original Respondents was continued in accordance with the terms of the Initial Receivership Order until such time as the Receiver has completed its administration of the estate herein. A copy of the Extension Order is attached hereto as **Schedule B**.
4. Pursuant to two additional Orders of the Honourable Mr. Justice Campbell of the Ontario Court dated September 9, 2005 and October 14, 2005 (the "**Expanded Orders**"), Richter was also appointed as Receiver pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended, without security, of all of the assets, undertakings and properties of:
  - (a) Norshield Capital Management Corporation / Corporation Gestion de l'Actif Norshield ("**Norshield Capital Management**"); and
  - (b) Honeybee Software Technologies Inc. / Technologies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation d'Investissement Norshield) ("**Honeybee Software**").

Copies of the Expanded Orders are attached hereto as **Schedule C** and **Schedule D** respectively.

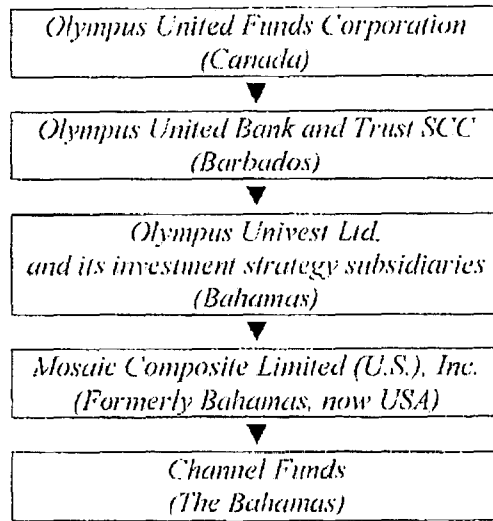
5. By judgments of the Quebec Superior Court (Commercial Division), the Initial Receivership Order, the Extension Order and the Expanded Orders were recognized and declared enforceable in the Province of Quebec.
6. The Original Respondents, Norshield Capital Management and Honeybee Software are collectively referred to as the "**Norshield Companies**" in this Affidavit.
7. Richter and Brian F. Griffith & Company, a Barbados accounting firm, have been appointed Joint Custodians of Olympus Bank by Order of the Barbados High Court of Justice dated September 22, 2005.
8. G. Clifford Culmer ("**Culmer**"), a partner of BDO Mann Judd, an accounting firm located in Nassau, in the Commonwealth of The Bahamas ("**The Bahamas**"), and I were appointed Joint Official Liquidators of Olympus Uninvest Ltd. ("**Olympus Uninvest**") by Order dated February 6, 2006 of the Supreme Court of the Commonwealth of The Bahamas ("**Bahamas Court**").

9. Culmer and I were appointed Joint Receivers of Mosaic Composite Limited (U.S.), Inc. (“**Mosaic**”) by Order of the Bahamas Court dated January 20, 2006.
10. Culmer and I were appointed Joint Provisional Liquidators of Mosaic by Order of the Bahamas Court, dated March 22, 2006. On January 23, 2007, Mosaic was placed under Court supervised liquidation by Order of the Bahamas Court and Culmer and I were appointed Joint Official Liquidators of Mosaic.
11. The facts alleged herein are based on information and records available from the Norshield Companies, Olympus Uninvest, Mosaic, as well as from third parties, including the September 30, 2003 financial statements (the most recent and complete financial statements available, many of which were audited) of the Norshield Companies, Olympus Uninvest, Mosaic and other entities described herein.
12. The Receiver’s review of this information did not constitute an audit of the financial position or operating results of any of the entities described herein. The information and records available to the Receiver were incomplete, and it is possible that the transactions that occurred prior to June 29, 2005, the date of the Initial Receivership Order, were not all accounted for.
13. The financial information presented herein, including asset recovery information, remains subject to change in the event further information becomes available to the Receiver. Any such additional information could affect the conclusions drawn herein.
14. All references to dollars are in Canadian currency unless otherwise noted. Where amounts are reflected on the originating documents in US dollars, they have been converted into Canadian dollars at the exchange rate in effect at the date of the transaction.
15. The activities of the Receiver and the factual background summarized herein are set out more fully in reports of the Receiver available at the Receiver’s website: <http://www.rsmrichter.com/Restructuring/Norshield.aspx>.

## **B. BACKGROUND**

### **B-1. Overview of the Olympus Funds Investment Structure**

16. The Receiver has determined that funds invested by approximately 1,900 retail investors in Canada (the “**Retail Investors**”) and other Canadian investors flowed through numerous entities/jurisdictions involving Olympus Funds, Olympus Bank, Olympus Uninvest and Mosaic (the term “investment strategy subsidiaries” that appears in the chart below refers to entities that exist but appear to merely be “shell” entities) (collectively referred to herein as the “**Olympus Funds Investment Structure**”):



17. The Retail Investors, a significant number of whom reside in Ontario, held investments in Olympus Funds in the amount of approximately \$159 million as at June 2005, according to the records of Olympus Funds. Based on the audited financial statements for Olympus Funds, Olympus Bank, Olympus Uninvest and Mosaic as at September 30, 2003, Olympus Funds made significant investments in its wholly-owned subsidiary, Olympus Bank in Barbados. Olympus Bank held investments in Olympus Uninvest in The Bahamas. These investments were then co-mingled in Olympus Uninvest with investments received from Canadian pension funds and financial institutions and individuals and entities whose investments were in cash/cash equivalents and/or alleged contributions "in kind". Olympus Uninvest held substantial investments in Mosaic. Mosaic, in turn, held investments in both hedged and non-hedged assets. The hedged assets were predominantly comprised of two cash settled equity barrier call options with the Royal Bank of Canada, which were consolidated into a single option on March 31, 2004 (referred to in other reports of the Receiver as the "RBC SOHO Option") while the non-hedged assets consisted mainly of investments in a number of private entities, namely:

- (a) Channel Fixed Income Fund Ltd.;
- (b) Channel F.S. Fund Ltd.;
- (c) Channel Technology Fund Ltd.; and
- (d) Channel Diversified Private Equity Fund Ltd.

(collectively, the "Channel Funds").

18. Mosaic was the largest shareholder of Channel Fixed Income Fund Ltd., which was the parent of the other three Channel Funds.

**B-2. Collapse of the Olympus Funds Investment Structure**

19. Extensive forensic investigative work into the activities of the Norshield Companies, Olympus Uninvest, Mosaic and the Channel Funds has led to a conclusion by the Receiver that the above-mentioned Canadian, Barbadian and Bahamian entities, as well as their directors and officers, all operated in concert and with common interest despite attempts to give the appearance that many of the entities and individuals were unconnected and acting independently.
20. As the funds flowed through the Olympus Funds Investment Structure, significant dissipation of investor funds occurred at each level as a result of redemptions at artificially inflated net asset values ("NAV's"), unexplained payments to entities related or connected to the Norshield Companies and/or their principals, and the costs of maintaining the investment structure itself.
21. Those inflated NAVs were employed to camouflage the dissipation of investor funds and to provide a false positive picture of the Olympus Funds Investment Structure to investors.
22. As time went by, there ceased to be enough money in the Olympus Funds Investment Structure to meet redemptions. Existing assets had been overvalued and many were illiquid. In the months leading up to the Receiver's appointment, new subscriptions were entirely used to fund redemptions.
23. The failure of the Norshield Companies, Olympus Uninvest and Mosaic was caused, *inter alia*, by the enormous disparity between the real and the reported values of the assets purportedly held in the Olympus Funds Investment Structure, which resulted in collective losses in excess of \$400 million suffered by the Retail Investors in Olympus Funds as well as by direct investors in Olympus Uninvest.
24. Olympus Funds no longer conducts any business and has no operations, save for the realization of its assets by the Receiver.

**C. ACTIVITIES OF THE RECEIVER**

25. Since our appointments, the Receiver and/or I, in our respective capacities, undertook a number of activities, including:
  - (a) the identification and realization of assets of the Norshield Companies, Olympus Uninvest and Mosaic;
  - (b) a detailed review of the various available accounting ledgers, banking records of the numerous trust and operating accounts and other available documentation;
  - (c) a review of the Original Respondents' voluminous electronic records, including key word searches on the e-mails contained therein;

- (d) the update of the books and records and financial statements of both Olympus Funds and Olympus Bank to June 30, 2005;
- (e) examinations under oath of certain individuals who were believed to possess information relating to the Norshield Companies, Olympus Uninvest, Mosaic and the Channel Funds;
- (f) a review of certain auditors' working papers regarding Olympus Funds, Olympus Bank, Olympus Uninvest, Mosaic and the Channel Funds;
- (g) meetings, communications and consultations with Me Jean Fontaine of the law firm Stikeman Elliott LLP, who was appointed to act as representative counsel on behalf of the Retail Investors ("**Representative Counsel**") by Orders of the Ontario Court dated July 14, 2005 and February 7, 2006;
- (h) various meetings and significant communications with individual Retail Investors and/or their representatives;
- (i) the implementation of a toll free telephone number, an e-mail address and a web page in order to answer questions from all stakeholders and to post all public information including Court Orders and reports of the Receiver;
- (j) the holding of simulcast Retail Investor information meetings in Montreal, Toronto and Vancouver, on February 21, 2006;
- (k) various information mailings to Retail Investors;
- (l) communications with both the Ontario Securities Commission (the "**OSC**") and *l'Autorité des marchés financiers*, including my own testimony as a representative of the Receiver before the OSC in proceedings against John Xanthoudakis, who had *de facto* control over the investment decision making of the entities within the Olympus Funds Investment Structure. These proceedings also included actions against Dale Smith and Peter Kefalas, other principals of the Norshield Companies;
- (m) communications with law enforcement authorities, including the RCMP and the *Service de police de la ville de Montreal* (City of Montreal Police Department), as well as the Bahamian securities regulator;
- (n) the institution of legal proceedings before the Superior Court of Quebec against the auditors of the Channel Funds, Brooks, Di Santo and its partners;
- (o) the analysis of the flow of funds for Olympus Funds, Olympus Bank, Olympus Uninvest, Mosaic and the Channel Funds, as set out in the available books and records thereof; and
- (p) the implementation of a claims process, pursuant to the Claims Process Order rendered on January 5, 2010 by this Honourable Court (the "**Claims Process Order**").

**D. NEGOTIATIONS AND PROPOSED SETTLEMENT WITH KPMG LLP**

26. The Receiver obtained the audit working papers of Olympus Funds in Canada and Olympus Bank in Barbados for the fiscal years ended September 30, 2002 and September 30, 2003.
27. The Receiver determined that material investments held by Olympus Funds and Olympus Bank were significantly impaired, such that the Receiver purports to have potential claims against, *inter alia*, KPMG, which reported upon the audited financial statements of Olympus Funds for the fiscal years ended September 30, 2002 and September 30, 2003.
28. Confidential meetings were held and confidential correspondence was exchanged between KPMG and the Receiver's counsel regarding the potential claims of the Receiver and the means of addressing those claims in the most expeditious, cost-effective manner.
29. After much negotiation, including the assistance of a mediator, KPMG and the Receiver were able to reach an agreement and, on or about July 27, 2011, executed confidential minutes of settlement (the "**Minutes of Settlement**"), subject to creditor and Court approval.
30. KPMG denies the Receiver's potential claims but, without admission, is prepared to make a payment of \$7,500,000 (the "**Settlement Amount**") to the Receiver, conditional upon:
  - (a) approval in accordance with section 6 of the *Companies' Creditors Arrangement Act* ("**CCAA**") of a plan of compromise and arrangement (the "**Plan**") to be filed by Olympus Funds, which shall contain releases and bar orders described in the Minutes of Settlement;
  - (b) the issuance of an Order of the Ontario Court approving the Plan (the "**Sanction Order**"), or in the event of an appeal therefrom, confirmation of the Sanction Order on appeal;
  - (c) the issuance of an Order by the Quebec Superior Court (the "**Quebec Court**") dismissing the proposed class action commenced against KPMG in Court File No. 500-06-000434-080, or in the event of an appeal therefrom, confirmation of that Order on appeal; and
  - (d) the issuance of an Order by the Quebec Court recognizing and giving effect to the Sanction Order, or in the event of an appeal therefrom, confirmation of that Order on appeal.
31. KPMG is also, without admission, prepared to make a contribution of up to \$750,000 in reimbursement of the professional fees and disbursements incurred in connection with the CCAA proceedings and related proceedings by the Receiver and its legal counsel, the whole in accordance with the Minutes of Settlement.



32. The Settlement Amount would constitute a significant addition to the amounts already realized and identified by the Receiver in the receivership of Olympus Funds and would offer creditors a predictable and cost-effective option to resolve its potential claims against KPMG.
33. Representative Counsel to the Retail Investors supports the approval of the Minutes of Settlement.
34. By Order dated August 22, 2011, the Honourable Mr. Justice Campbell of the Ontario Court authorized the Receiver's execution of the Minutes of Settlement, declared that they are fair and reasonable, and approved same, as appears from a copy of the Order attached hereto as **Schedule E**.

#### **E. THE PROPOSED CCAA PROCEEDINGS**

35. The Settlement Amount constitutes a reasonable realization of the claims of Olympus Funds against KPMG by transforming the inherent uncertainty, cost and delays of litigation into a predictable liquid asset, subject to the approval of creditors and the Court.
36. The CCAA is the only mechanism by which the bar orders and releases in favour of KPMG and parties related thereto, which are essential pre-conditions to the payment of the Settlement Amount, can be achieved.
37. The Plan would allow Olympus Funds to provide, in an orderly manner, a distribution to its creditors, consisting of the Settlement Amount, other amounts already held by the Receiver and available for distribution and further amounts that may be realized at a later date.
38. Richter has consented to act as Monitor in the proposed CCAA proceedings, as appears from its written consent attached hereto as **Schedule F**.

#### **F. STATUS OF RETAIL INVESTORS**

39. At first glance, the form of the investments made by the Retail Investors may appear to be in the nature of equity, because shares were issued and shown as equity in the financial statements of Olympus Funds. However, the substance of the Retail Investors' relationship with Olympus Funds is in the nature of debt.
40. For the reasons discussed below, the Receiver is of the view that the Retail Investors are akin to, and should be treated as, creditors of Olympus Funds in the proposed CCAA proceedings, without regard to accepted redemption requests that remain unfulfilled.
41. In arriving at its opinion, the Receiver has considered the following:
  - (a) Olympus Funds was merely a flow-through conduit and Olympus Bank was akin to an asset manager, in that:

- (i) Olympus Funds described itself as a mutual fund corporation that was only a holding company, as stated at pages 1 and 8 of the June 21, 2004 Olympus Funds Offering Memorandum (the "**2004 Memorandum**") attached hereto as **Schedule G** and, just as investors in a mutual fund hold no equity in the mutual fund company, the Retail Investors held no real equity in Olympus Funds;
  - (ii) Olympus Bank is described at pages 1 and 7 of the 2004 Memorandum as a provider of "*financial services*" and as "*manager and administrator*" of the investors' funds, such that Olympus Bank was not, in itself, an investment;
  - (iii) the authorized capital of Olympus Funds allowed for numerous classes of shares, each of which was intended to flow through to a corresponding fund and segregated asset cell established by Olympus Bank, as appears from the 2004 Memorandum, which states that investors' funds would be used to "*provide capital to the segregated asset cells of Olympus United Bank*" (at page 1) to be managed by NAM and Olympus Bank and invested in other entities and with other portfolio managers (at page 4). This flow-through structure was utilized as early as 1999;
  - (iv) the share classes of Olympus Funds were to be used as a means of managing separate and distinct investment strategies of different investors, as stated at page 1 of the 2004 Memorandum;
  - (v) the Retail Investors, who financed the purchase of the assets underlying Olympus Bank's segregated asset cells, were always intended to be the ultimate beneficiaries thereof;
  - (vi) any rise or fall in the common equity of Olympus Funds would have no effect on the return on investment of an individual investor, which was based on the NAV of the fund and segregated asset cell associated with the investor's share class which, as stated at page 16 of the 2004 Memorandum, was based on the NAVs of the underlying cell assets;
  - (vii) the Retail Investors' returns were not tied to the performance of Olympus Funds as a corporate entity, but were intended to be "*determined primarily on the basis of the net value of the applicable Associated Assets and as determined by the Board in accordance with such method of valuation as the Board may deem proper, provided that such method is in accordance with generally accepted accounting principles applicable thereto*", as stated at page 9 of the articles of amendment of Olympus Funds dated May 26 (the "**Articles**"). attached hereto as **Schedule H**;
- (b) the Retail Investors' investments with Olympus Funds had the following attributes traditionally associated with debt, as opposed to equity:

- (i) the 2004 Memorandum states at page 16 that, “[u]nder Barbados company law, segregated asset cells are used to protect assets from creditors with respect to obligations arising from transactions involving segregated asset cells and from transactions involving non-cellular assets”. The investors in the segregated asset cells rank above the general creditors of Olympus Bank despite the fact that their interest was reflected in the form of shares;
  - (ii) Olympus Funds acted as a mere conduit for investors investing in the funds and cells of Olympus Bank, who were actually higher ranking than the creditors thereof and would be paid in full from the underlying assets of the particular cell in priority to such creditors;
  - (iii) the Retail Investors in Olympus Funds had no voting rights, and therefore no means of influencing the decisions of its management, as appears from page 14 of the Articles;
  - (iv) according to the financial statements of Olympus Funds, no dividends were paid to the Retail Investors during the period from 1999 to 2003; and
  - (v) the reasons for postponement or suspension of redemptions, listed at pages 11 to 12 of the Articles, do not involve the solvency test typically considered for redemptions of equity, but instead refer to business and logistical considerations, such as the ability to liquidate the underlying assets at normal rates of exchange.
- (c) Olympus Funds did not provide Retail Investors with the choice to invest in debentures or other commonplace debt instruments; the only Olympus Funds investments available to the Retail Investors were the classes of shares associated with Olympus Bank asset cells.
42. The Retail Investors are substantially the only stakeholders in Olympus Funds, and their treatment as creditors would not be prejudicial to others since, as at the March 31, 2010 claims bar date established by this Court in the Claims Process Order, only the following three amounts were claimed by alleged creditors other than the Retail Investors:
- (a) \$9,963.67, claimed by an alleged service provider;
  - (b) \$111,153.85, claimed from each of the Norshield Companies by one alleged former employee, whose claim is expected to be disallowed in respect of Olympus Funds, as that corporation appears to have had no employees; and
  - (c) \$100,000, claimed after the claims bar date by a Retail Investor claiming status as a creditor.
43. In the period leading up to the receivership, the funds of the Retail Investors were in large part not invested, but were instead used to redeem the investments of Retail Investors and other parties at inflated NAVs, paid without apparent justification to entities related or

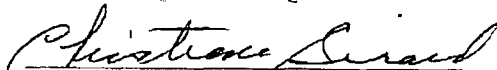
connected to the Norshield Companies and/or their principals, and used to fund the costs of maintaining the Olympus Funds Investment Structure itself, such that the claims of the Retail Investors are based on an entitlement to obtain damages from Olympus Funds for the diversion of their funds and its failure to provide the contractually agreed-upon financial management services.

44. The Retail Investors, treated as creditors of Olympus Funds, hold total claims against Olympus Funds that far exceed \$5,000,000, such that Olympus Funds is a company to which the CCAA applies.
45. It is expected that the Plan will seek to treat Retail Investors equally, without regard to the specific class of shares purportedly associated with their investments, considering that the funds invested by each Retail Investor cannot be traced directly to the Olympus Bank asset cells with which they were intended to be associated.
46. Under the circumstances, to treat the Retail Investors as holders of equity claims would neither be just nor equitable, and would result in the triumph of form over substance.

AND I HAVE SIGNED

  
RAYMOND MASSI

SOLEMNLY AFFIRMED before me in  
Montreal, Quebec, August 30, 2011.

  
Commissioner for Oaths for Quebec

