

**COPPER CLASS ACTION  
SETTLEMENT AGREEMENT**  
Made as of December 8, 2005

Between

**CELLO PRODUCTS INCORPORATED**  
(the "Plaintiff")

and

**SUMITOMO CORPORATION, CHASE MANHATTAN BANK, N.A., J.P. MORGAN & CO.,  
INC., MORGAN GUARANTY TRUST COMPANY OF NEW YORK, UBS AG (F/K/A UNION  
BANK OF SWITZERLAND AG), GLOBAL MINERALS AND METALS CORPORATION,  
MERRILL LYNCH & CO. INC., MERRILL LYNCH PIERCE FENNER & SMITH (BROKERS &  
DEALERS), LIMITED, AND MERRILL LYNCH INTERNATIONAL, INC.**  
(the "Settling Defendants")

**I. RECITALS**

WHEREAS the Action has been commenced in Ontario by the Plaintiff in which the Plaintiff alleges that the Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Copper;

WHEREAS the Plaintiff alleges that it was injured by manipulated and inflated prices for Copper, which were passed on to it in the chain of distribution;

WHEREAS the Settling Defendants deny the allegations as alleged in the Action;

WHEREAS the Plaintiff and Plaintiff's Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Plaintiff's Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the class it seeks to represent;

WHEREAS despite their denial of the allegations as alleged in the Action and their assertion that they have good defences thereto, the Settling Defendants are entering into this Settlement Agreement solely in order to achieve a final resolution of all claims asserted or which could have

been asserted against them by the Plaintiff, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

WHEREAS the Parties therefore wish to and, subject to the conditions set out in the within Settlement Agreement, hereby do, finally resolve, without admission of liability or wrongdoing, the Action as against the Settling Defendants;

WHEREAS for the purposes of settlement only, the Parties have consented to certification of the Action as a class proceeding and have consented to a Settlement Class and a Common Issue in the Action; and

WHEREAS the Plaintiff asserts that it is an adequate class representative for the Settlement Class and will seek to be appointed as the representative plaintiff in the Action.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed on the merits with prejudice as it relates to the Settling Defendants only, without costs, subject to the approval of the Court, on the following terms and conditions:

## II. DEFINITIONS

1. The following terms used in this Settlement Agreement have the meanings specified below:
  - (a) "Action" means Ontario Court File No. 39484 (London).
  - (b) "Bar Order" means the Order referred to in Section V.
  - (c) "Certification and Settlement Approval Order" means the order substantially in the form attached hereto as Exhibit A.
  - (d) "CFTC Order" means the Findings and Order of the Commodity Futures Trading Commission in In re Sumitomo Corporation, CFTC Docket No. 98-14 (May 11, 1998).
  - (e) "Claims Administrator" means the firm Neal, Pallet & Townsend<sup>LLP</sup> or such other firm as may be appointed by the Court.
  - (f) "Class Period" means the period June 1, 1993 through June 30, 1996 inclusive.

- (g) "Copper and/or Copper Products" means any of the following:
- (i) smelter and refinery feed and output including, but not limited to, copper concentrate, matte, blister and anode, cathode, continuous cast rod, wire, bar, ingot, billet, and cake;
  - (ii) copper wire mill fabricated items including, but not limited to, copper wire and cable, bare and insulated copper wire, magnet wire and power cable;
  - (iii) copper mill fabricated products including, but not limited to, sheet, strip, coil and extruded shapes, plumbing tube, thin wall tube, foil, sections, pipes, slabs, plates, fittings, forgings or powder consisting of refined copper or high copper alloys; or
  - (iv) any product consisting of a copper content of 80% or more.
- (h) "Court" means the Ontario Superior Court of Justice.
- (i) "Effective Date" means the thirtieth day after the Claims Administrator has advised the Settling Defendants of the total number of Settlement Class Members who have opted out of this Settlement Agreement, unless the Settling Defendants choose to terminate this Settlement Agreement before such time.
- (j) "Final" with respect to any order of judgment of the Court (including, but not limited to, the Certification and Settlement Approval Order), means the first business day on which:
- (i) the Court has entered such order or judgment;
  - (ii) thirty days following such order or judgment being granted, the order or judgment has not been withdrawn, rescinded, modified, vacated, reversed by the Court, or appealed; and
  - (iii) if an appeal from the order or judgment is taken, upon such appeal being disposed of.
- (k) "Non-Settling Defendants" means a Settling Defendant or Settled Defendant who terminates its respective Settlement Agreement in accordance with its terms.
- (l) "Notice of Certification and Settlement Approval" means the notice made to the Settlement Class of the Court's Certification and Settlement Approval Order, substantially in the form attached hereto as Exhibit B.
- (m) "Opt-Out" means any Person who validly and timely requests exclusion from the Settlement Class.
- (n) "Opt-Out Deadline" means the date on which requests for exclusion from the Settlement Class must be received by the Claims Administrator to be effective, which date shall be forty (40) days after first publication of the Notice of Certification and Settlement Approval.

- (o) "Parties" means the Plaintiff and Defendants.
- (p) "Person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships, limited liability companies, or governmental or quasi-governmental entities.
- (q) "Plaintiff" means Cello Products Incorporated.
- (r) "Plaintiff's Counsel" means the law firm of Siskind, Cromarty, Ivey & Dowler <sup>LLP</sup>.
- (s) "Released Claims" means all claims, demands, actions, suits, damages, rights, liabilities, and causes of action, known or unknown, suspected or unsuspected, accrued or unaccrued, fixed or contingent, direct or derivative, subrogated, individual, class or otherwise, whether or not concealed or hidden, in law or equity, under any body of law, including any provincial or federal law, or under the law of any other nation, whether by statute, regulation or common law, of every nature and description whatsoever, including actual, compensatory, punitive, exemplary, or treble damages, costs, expenses, penalties and lawyers' fees, that the Plaintiff and the Settlement Class or any member thereof, individually or as a class (whether or not they can make a claim upon or participate in the Settlement Fund), ever had, now have, or hereafter can, shall or may have, against the Released Persons or any of them, arising from or relating to any losses on or damages from prices paid, from the beginning of time to the date hereof, for any form of Copper, Copper Product, or Scrap or Recycled Copper Product, whether or not asserted in the Action, including without limitation, all losses or damages which (a) arise from or relate to any of the claimed acts, omissions, misrepresentations, facts, events, matters, transactions, subject matters or occurrences referred to or complained of in the Action or the CFTC Order; (b) have been asserted or could have been asserted in the Action or in any court or any other judicial or arbitral forum against the Released Persons or (c) arise under or relate to any federal, provincial or other antitrust, anti-monopoly, commodity manipulation, competition or racketeering law.
- (t) "Released Persons" means the Settling Defendants and each and all direct and indirect parents, subsidiaries and affiliates of the Settling Defendants and each and all of its or their respective past or present directors, officers, employees, partners, principals, agents, underwriters, insurers, co-insurers, shareholders, attorneys, accountants, advisors, analysts, personal representatives, predecessors, successors, parents, subsidiaries, divisions, assigns, spouses, heirs, and any members of their immediate families; any person, firm, trust, corporation, officer, director, or other individual or entity in which the Settling Defendants or any direct or indirect parent, subsidiary or affiliate thereof has a controlling interest or which is related to or affiliated with the Settling Defendants or any parent, subsidiary or affiliate of the Settling Defendants; or any trust of which the Settling Defendants or any parent, subsidiary or affiliate thereof is the settlor or which is for the benefit of the Settling Defendants, or parent, subsidiary or affiliate thereof or member of the family; but for greater certainty shall not include the Non-Settling Defendants, or the shareholders, directors, employees, subsidiaries or affiliates of the Non-Settling Defendants.

- (u) "Releasers" means, jointly and severally, the Plaintiff and the Settlement Class Members and their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (v) "Scrap or Recycled Copper Product(s)" means any of the following:
  - (i) any scrap containing copper, waste containing copper, or excess material containing copper generated during the smelting, refining, fabrication or manufacture of (A) Copper Product, (B) brass or products containing brass ("Brass"), (C) bronze or products containing bronze ("Bronze"), or (D) any alloy with a copper content of 50% or more by weight of products containing such an alloy ("Alloy");
  - (ii) any Copper Product, Brass, Bronze or Alloy acquired after it has been in the possession of any end-user or consumer or that is otherwise considered post-consumer material;
  - (iii) air conditioners, transformers, electrical generators, electrical motors or motor vehicle radiators containing copper or Alloys acquired after they have been in the possession of an end-user or consumer or that are otherwise considered post-consumer material; and
  - (iv) any other product, consisting of a copper content of 50% or more by weight, acquired after it has been in the possession of an end-user or consumer or that is otherwise considered post-consumer material.
- (w) "Settled Defendant" means Credit Lyonnais Rouse, Ltd.
- (x) "Settlement" means the settlement of the Action as set forth in this Settlement Agreement.
- (y) "Settlement Agreement" means the agreement set out herein.
- (z) "Settlement Class" means all persons resident in Ontario who, between June 1, 1993 and June 30, 1996, purchased Copper, Copper Products, or Scrap or Recycled Copper Products, for use in any trade or business or for resale (except the defendants, their subsidiaries, affiliates, current or former officers, directors, and employees), and all persons who, between June 1, 1993 and June 30, 1996 purchased Copper, Copper Products, or Scrap or Recycled Copper Products in Ontario for use in any trade or business (except the defendants, their subsidiaries, affiliates, current or former officers, directors, and employees).
- (aa) "Settlement Class Member" means any Person who is a member of the Settlement Class and who is not an Opt-Out.
- (bb) "Settlement Fund" means the collective amount paid by the Settling Defendants as set forth in paragraph 2 together with all interest earned thereon after the date of payment.

- (cc) "Settling Defendants" means Sumitomo Corporation, Chase Manhattan Bank, N.A., J.P. Morgan & Co., Inc., Morgan Guaranty Trust Company of New York, UBS A.G. (f/k/a Union Bank of Switzerland AG), Global Minerals and Metals Corporation, Merrill Lynch & Co. Inc., Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers), Limited, and Merrill Lynch International, Inc.
- (dd) "Settling Defendants' Counsel" means Bennett Jones<sup>LLP</sup>, McMillan Binch Mendelsohn<sup>LLP</sup>, Borden Ladner Gervais<sup>LLP</sup>, and Stikeman Elliott<sup>LLP</sup>.

### **III. SETTLEMENT FUND**

2. Within 10 business days of the execution of this Settlement Agreement, the Settling Defendants will pay the amounts specified below, on an all-inclusive basis, to Plaintiff's Counsel to be held by Plaintiff's Counsel in trust:
  - (a) Sumitomo Corporation - \$850,000.00 CDN
  - (b) Chase Manhattan Bank, N.A., J.P. Morgan & Co., Inc., Morgan Guaranty Trust Company of New York - \$200,000.00 CDN (collectively)
  - (c) UBS A.G. (f/k/a Union Bank of Switzerland AG) - \$200,000.00 CDN
  - (d) Global Minerals and Metals Corporation - \$2,500.00 CDN
  - (e) Merrill Lynch & Co. Inc., Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers), Limited, and Merrill Lynch International, Inc - \$150,000.00 CDN (collectively)
3. The Settling Defendants' obligations to pay the amounts specified in paragraph 2 are several and not joint and several.
4. Except as otherwise provided for herein, Plaintiff's Counsel shall not pay out any amount from the Settlement Fund, except in accordance with the provisions of this Settlement Agreement, without an order of the Court made on notice to or on consent of the Parties.
5. Within ten (10) days of the Effective Date Plaintiff's Counsel shall transfer the Settlement Fund, plus accrued interest, to the Claims Administrator. The Settlement Fund shall be paid by the Claims Administrator pursuant to the Distribution Protocol provided for in Exhibit "C".
6. The Settling Defendants shall have no liability or responsibility with respect to any conduct of the Plaintiff's Counsel or the Claims Administrator in connection with the administration of the Settlement Fund or otherwise. In no event shall any portion of the Settlement Fund, including principal or interest, be distributed or revert to the Settling Defendants after the Effective Date.

#### **IV. CERTIFICATION AND SETTLEMENT APPROVAL**

7. The Plaintiff will apply to the Court for the Certification and Settlement Approval Order.
8. Solely for the purposes of this Settlement, and without prejudice to the Parties' positions in the event that this Settlement Agreement does not become effective for any reason, the Plaintiff shall propose (and the Settling Defendants shall not oppose) that the Court certify, for the purposes of this Settlement only, the Settlement Class.
9. Solely for the purposes of this Settlement, and without prejudice to the Parties' positions in the event that this Settlement Agreement does not become effective for any reason (including, but not limited to termination pursuant to Section X hereof), the Plaintiff shall propose (and the Settling Defendants shall not oppose) that the Court certify, for the purposes of this Settlement only, the following common issue:
  - (a) Did the defendants or any of them conspire to artificially increase the price of copper on the London Metal Exchange?

#### **V. BAR ORDER**

10. All claims and/or proceedings for contribution, indemnity, subrogation or other claims over, by any of the Non-Settling Defendants or any other person or party, against the Settling Defendants or any Released Person in respect of the Released Claims, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, except currently pending or ongoing claims being asserted in other jurisdictions among any Settling Defendants, inclusive of interest, GST and costs, will be barred by order of the Court.
11. Settlement Class Members shall not make joint and several claims against the Non-Settling Defendants but shall restrict their claims to several claims against the Non-Settling Defendants such that Settlement Class Members shall be limited to the degree of liability proven against the Non-Settling Defendants.

## **VI. RELEASES AND COVENANTS NOT TO SUE**

12. As an express and material condition of this Settlement Agreement, upon the Effective Date, the Releasors:
- (a) Shall be hereby deemed to have, and by operation of the Order shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Persons;
  - (b) Covenant hereby not to assert or prosecute any of the Released Claims against any of the Released Persons in the Action or in any other action or proceeding in this or any other jurisdiction; and
  - (c) Shall forever be enjoined from asserting or prosecuting any of the Released Claims against any of the Released Persons in the Action or in any other action or proceeding in this or any other jurisdiction.
13. Notwithstanding the preceding paragraph, for any member of the Settlement Class resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Released Persons but instead covenant and undertake not to bring any cause of action, proceeding, claim, action, suit, or demand or in any way or to threaten, commence, or continue any proceeding, claim, action, suit or demand in any jurisdiction against the Released Persons in respect of or in relation to the Released Claims.
14. Notwithstanding paragraphs 12 and 13, the Releasors shall preserve and retain their potential claims against the Non-Settling Defendants.

## **VII. NOTICES**

15. The proposed Settlement Class shall be given notice of (i) hearings at which the Court will be asked to approve the Settlement Agreement; (ii) the certification or authorization of the Action as a class proceeding and the approval of this Settlement Agreement; and (iii) the termination of the Settlement Agreement, if applicable.
16. Subject to the Court's approval, the Notice of Certification and Settlement Approval shall be substantially in the form set out in Exhibit B to this Settlement Agreement. The form of the Notice of Hearing, and Notice of Termination if applicable, and the manner of their publication and distribution, shall be as agreed to by the Parties and approved by the Court.



17. Subject to the Court's discretion, Plaintiff's Counsel shall, within 30 days of the Certification and Settlement Approval Order becoming Final, disseminate the Notice of Certification and Settlement Approval by the following means:
  - (a) Causing a copy of the Notice of Certification and Settlement Approval to be mailed to the following industry organizations for distribution to their respective memberships;
    - (i) Canadian Copper and Brass Development Association ("CCBDA");
    - (ii) Canadian Foundry Association ("CFA"); and
    - (iii) Canadian Association of Recycling Industries ("CARI").
  - (b) Causing a copy of the Notice of Certification and Settlement Approval to be published in the national edition of the Globe and Mail; and
  - (c) Causing a copy of the Notice of Certification and Settlement Approval to be published on Plaintiff's Counsel's website at [www.classaction.ca](http://www.classaction.ca).
18. Plaintiff's Counsel and/or the Claims Administrator may pay the costs of the notices set out in paragraph 15(i) and (ii) above from the Settlement Fund, but only up to a maximum of \$30,000.00 and only after the respective notices have been agreed to by the Parties and approved by the Court. The costs of notice shall be divided pro-rata among the Settling Defendants and the Settled Defendants based on their respective contributions to the Settlement Fund. The cost of notice allocable to the Settling Defendants shall be paid out of the Settlement Fund. The cost of notice set out in paragraph 15(iii) shall be paid in accordance with paragraph 27.

#### **VIII. OPT-OUT REQUIREMENTS AND PROCEDURES**

19. Persons wishing to request exclusion from the Settlement Class shall be directed in the Certification and Settlement Approval Order to provide reasonable information in writing including, but not limited to: (a) name, address, and telephone number; (b) province or provinces of residence during the Class Period; (c) province in which Copper, Copper Products, and/or Scrap or Recycled Copper Products were purchased during the Class Period; (d) type and dollar amount of Copper, Copper Products and/or Scrap or Recycled Copper Products purchased during the Class Period; (e) the date(s) on which such Copper, Copper Products and/or Scrap or Recycled Copper Products were purchased; and (f) the request to be excluded from the Settlement Class. All requests for exclusion from the Settlement Class shall be deemed untimely unless received by the Claims Administrator on or before the Opt-Out Deadline. The Claims Administrator shall

furnish to the Settling Defendants' Counsel and to Plaintiff's Counsel copies of all requests for exclusion from the Settlement Class and all non-privileged communications from members of the Settlement Class or purported members of the Settlement Class, no later than three business days after they are received by the Claims Administrator, and the Claims Administrator shall provide the Settling Defendants' Counsel and Plaintiff's Counsel with a complete and accurate list of all requests for exclusion within 7 business days after the Opt-Out Deadline.

**IX. PLAINTIFF'S COUNSEL FEES AND EXPENSES**

20. Plaintiff's Counsel may submit one or more motions to the Court for distribution to them from the Settlement Fund of lawyers' fees, reimbursement of actual expenses and costs, including the fees of any experts or consultants, incurred in connection with the prosecution and resolution of the Action, plus interest on such lawyers' fees, costs, and expenses at the same rate and for the same periods as earned by the Settlement Fund. Plaintiff's Counsel do not acknowledge that the Settling Defendants have standing on the issue of Plaintiff's Counsel's fees or expenses.
21. Plaintiff's Counsel's fees, expenses and costs, including fees of experts and consultants to the extent approved by the Court, shall be paid to Plaintiff's Counsel after the Effective Date exclusively from the Settlement Fund.
22. The procedure for the allowance or disallowance by the Court of any application by Plaintiff's Counsel for fees, costs and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Settlement Agreement. Any order or proceedings related to such application for fees, costs, and expenses, or any appeals from any order relating solely thereto or reversal or modification thereof, shall not modify, terminate or cancel this Settlement Agreement or affect or delay the Effective Date.
23. The Settling Defendants shall have no obligations with respect to fees or costs of the Plaintiff's Counsel and there shall be no assessment of fees or costs against any Party.

**X. CONDITIONS OF SETTLEMENT**

24. In the event that a Final order or judgment is entered disapproving, overturning, setting aside or otherwise nullifying this Settlement Agreement, then this Settlement Agreement shall be automatically terminated.
25. In the event that any of the following occurs, each Settling Defendant shall have the right but not the obligation, in its sole discretion, to terminate this Settlement Agreement as it relates to that Settling Defendant:
  - (a) The Court refuses to approve the Certification and Settlement Approval Order substantially in the form attached hereto as Exhibit A. Any dispute as to whether the Certification and Settlement Approval Order ultimately approved by the Court is substantially in the form of Exhibit A hereto will be determined by the Court granting the Certification and Settlement Approval Order; or
  - (b) The Plaintiff does not make application for the Bar Order or the Court denies such application in whole or in part, or such determination is reversed, vacated, disapproved, overturned, set aside or modified by the Court or on appeal; or
  - (c) On the basis of the Opt-Out material filed the total value of Copper Products and Scrap or Recycled Copper Products allegedly purchased by the Opt-Outs during the Class Period equals or exceeds \$22,500,000.00 CDN.
26. Any right to terminate under this Section shall be exercised by the terminating party providing written notice to the other Parties within 21 business days after the terminating party obtains knowledge of the event or events justifying such termination.
27. In the event that this Settlement Agreement is terminated by one or more of the Settling Defendants after the Notice of Certification and Settlement Approval has been published, a notice of the termination will be disseminated, in a form and at a time to be agreed to by the parties and approved by the Court. The cost of publishing the notice of termination shall be borne by the terminating party from its respective share of the Settlement Fund and paid by the Claims Administrator or Plaintiff's Counsel from the Settlement Fund.
28. In the event that this Settlement Agreement is terminated by one or more of the Settling Defendants, then the Settlement Fund plus (a) any interest accrued thereon, less (b) all costs paid or incurred from the Settlement Fund in respect of the notices, shall revert to the terminating party in the relative proportions set out in paragraph 2.

29. If the Settlement Agreement is terminated by one or more of the Settling Defendants, the terminating party shall bring a motion before the Court (to which the Plaintiffs shall consent) which shall issue an order:
- (a) declaring the Settlement Agreement to be null and void and of no force or effect (except for paragraphs 1, 24, 27, 28, and 29) only as it relates to the terminating party;
  - (b) setting aside any order certifying or authorizing the Action as a class proceeding on the basis of the Settlement Agreement solely as it relates to the terminating party.

**XI. SETTLEMENT NOT AN ADMISSION**

30. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Settling Defendants or of the truth of any of the claims or allegations alleged in the Action or otherwise. In the event that the Settlement does not become final or is terminated in accordance with the terms hereof, then this Settlement Agreement, and the orders entered pursuant thereto, shall be of no force or effect (except for paragraphs 1, 24, 27, 28, and 29) and the terms of this Settlement Agreement shall not be offered or received in any proceeding for any purpose. The Parties hereto agree that this Settlement Agreement, whether or not it becomes Final, and any and all negotiations, documents and discussions associated with it, shall be without prejudice to the rights of any Party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Settling Defendants or of the truth of any of the claims or allegations, including without limitation any claim that the Settling Defendants are subject to in personam jurisdiction of the Court or in any court within Canada, or of any alleged defence, or of any absence of wrongdoing or limitation of damage or injury, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, by any Person, whether in the Action or in any other action or proceeding. This Settlement Agreement shall not be offered or received in evidence for any purpose whatsoever, or construed as an admission of any kind, including, but not limited to, an admission concerning whether the Settlement Class or any other putative class in the Action is certifiable, whether there is a common issue between members of the putative class, or whether the Plaintiff is a proper representative of any class, and the Settling Defendants shall have the right to oppose the maintenance of the Action as a class action on any grounds. The Parties expressly

reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

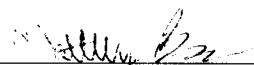
## **XII. MISCELLANEOUS PROVISIONS**

31. The Parties:
  - (a) Acknowledge that it is their intent to consummate this Settlement Agreement; and
  - (b) Agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Settlement Agreement.
32. This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed upon by the Parties with respect to the subject matter thereof, and is not subject to any condition not provided for therein. The Settlement Agreement may not be amended or modified except by a written instrument signed by or on behalf of all Parties or their successors-in-interest or by their counsel.
33. Plaintiff's Counsel, on behalf of the Settlement Class, is expressly authorized by the Plaintiff to execute this Settlement Agreement, to take all appropriate actions required or permitted to be taken by them pursuant to the Settlement Agreement to effectuate its terms, and to enter into any modifications or amendments to the Settlement Agreement on behalf of the Plaintiff which they deem appropriate.
34. Each counsel or other Person executing the Settlement Agreement on behalf of any Party warrants that such Person has the full authority to do so.
35. The Parties agree to keep private and confidential the terms of this Settlement Agreement until such terms are disclosed in the Plaintiff's motion for Certification and Settlement Approval Order, except that the Parties may disclose such terms to their respective employees, insurers, auditors, regulators, and legal advisors, or as otherwise required to do so by law, or as may be required in order to comply with the Rules of any Stock Exchange.
36. All notices hereunder shall be delivered to the Parties' respective counsel or such other addressee as any Party may designate in accordance with this Settlement Agreement.
37. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

38. The Settlement Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.
39. None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision thereof for purposes of any rule of construction that might cause any provision to be construed against the drafter.
40. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement. The Plaintiff and Settling Defendants submit to the jurisdiction of the Court for the purpose of interpreting, implementing and enforcing this Settlement Agreement.
41. The Settlement Agreement and exhibits hereto will be considered to have been negotiated, executed and delivered in the Province of Ontario, and the rights and obligations of the Parties to the Settlement Agreement will be construed and enforced in accordance with the laws of the Province of Ontario without giving effect to that province's choice of law principles.
42. References in this Settlement Agreement to the masculine shall include the feminine and vice versa, and references in this Settlement Agreement to the singular shall include the plural and vice versa, as the context requires. Headings in this Settlement Agreement are for convenience of reference only and shall not affect the interpretation of this Settlement Agreement.
43. References in this Settlement Agreement to any approval, order, judgment or consent of the Court means the Final approval, order, judgment or consent of the Court, as the case may be, following the expiry of any applicable appeal period or, where an appeal has been taken, Final resolution of that appeal.

**IN WITNESS WHEREOF**, the parties hereto have caused this Settlement Agreement to be executed, by their duly authorized counsel as of the date on the cover page.

December 12, 2005  
Date

**Siskind, Cromarty, Ivey & Dowler<sup>LLP</sup>**  
Per:   
Matthew Baer  
Solicitors for the Plaintiff

December 15 / 05  
Date

**McMillan Binch Mendelsohn<sup>LLP</sup>**  
Per: David Kent  
David Kent  
Solicitors for Chase Manhattan Bank, N.A.,  
J.P. Morgan & Co., Inc., Morgan Guaranty  
Trust Company of New York

December 15 / 05  
Date

**McMillan Binch Mendelsohn<sup>LLP</sup>**  
Per: David Kent  
David Kent  
Solicitors for UBS A.G. (f/k/a Union Bank of  
Switzerland AG)

\_\_\_\_\_  
Date

**Bennett Jones<sup>LLP</sup>**  
Per: \_\_\_\_\_  
Eric Hoaken  
Solicitors for Sumitomo Corporation

\_\_\_\_\_  
Date

**Borden Ladner Gervais<sup>LLP</sup>**  
Per: \_\_\_\_\_  
Wendy Earle  
Solicitors for Global Minerals and Metals  
Corporation

\_\_\_\_\_  
Date

**Stikeman Elliott<sup>LLP</sup>**  
Per: \_\_\_\_\_  
Katherine Kay  
Solicitors for Merrill Lynch & Co. Inc., Merrill  
Lynch Pierce Fenner & Smith (Brokers &  
Dealers), Limited, and Merrill Lynch  
International, Inc.

**McMillan Binch Mendelsohn<sup>LLP</sup>**

Per:

\_\_\_\_\_  
Date

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David Kent  
Solicitors for Chase Manhattan Bank, N.A.,  
J.P. Morgan & Co., Inc., Morgan Guaranty  
Trust Company of New York

**McMillan Binch Mendelsohn<sup>LLP</sup>**

Per:

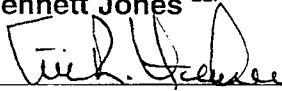
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David Kent  
Solicitors for UBS A.G. (f/k/a Union Bank of  
Switzerland AG)

**Bennett Jones<sup>LLP</sup>**

Per:

December 13/2005  
Date

\_\_\_\_\_  
  
Eric Hoaken  
Solicitors for Sumitomo Corporation

**Borden Ladner Gervais<sup>LLP</sup>**

Per:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Wendy Earle  
Solicitors for Global Minerals and Metals  
Corporation

**Stikeman Elliott<sup>LLP</sup>**

Per:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Katherine Kay  
Solicitors for Merrill Lynch & Co. Inc., Merrill  
Lynch Pierce Fenner & Smith (Brokers &  
Dealers), Limited, and Merrill Lynch  
International, Inc.



**McMillan Binch Mendelsohn<sup>LLP</sup>**

Per: \_\_\_\_\_  
David Kent  
Solicitors for Chase Manhattan Bank, N.A.,  
J.P. Morgan & Co., Inc., Morgan Guaranty  
Trust Company of New York

\_\_\_\_\_  
Date

**McMillan Binch Mendelsohn<sup>LLP</sup>**

Per: \_\_\_\_\_  
David Kent  
Solicitors for UBS A.G. (f/k/a Union Bank of  
Switzerland AG)

\_\_\_\_\_  
Date

**Bennett Jones<sup>LLP</sup>**

Per: \_\_\_\_\_  
Eric Hosken  
Solicitors for Sumitomo Corporation

\_\_\_\_\_  
Date

**Borden Ladner Gervais<sup>LLP</sup>**

Per: Wendy Earle  
Wendy Earle  
Solicitors for Global Minerals and Metals  
Corporation

December 19, 2005  
Date

**Stikeman Elliott<sup>LLP</sup>**

Per: \_\_\_\_\_  
Katherine Kay  
Solicitors for Merrill Lynch & Co. Inc., Merrill  
Lynch Pierce Fenner & Smith (Brokers &  
Dealers), Limited, and Merrill Lynch  
International, Inc.

\_\_\_\_\_  
Date

**McMillan Binch Mendelsohn<sup>LLP</sup>**

\_\_\_\_\_  
Date

Per: \_\_\_\_\_

David Kent  
Solicitors for Chase Manhattan Bank, N.A.,  
J.P. Morgan & Co., Inc., Morgan Guaranty  
Trust Company of New York

**McMillan Binch Mendelsohn<sup>LLP</sup>**

\_\_\_\_\_  
Date

Per: \_\_\_\_\_

David Kent  
Solicitors for UBS A.G. (f/k/a Union Bank of  
Switzerland AG)

**Bennett Jones<sup>LLP</sup>**

\_\_\_\_\_  
Date

Per: \_\_\_\_\_

Eric Hoaken  
Solicitors for Sumitomo Corporation

**Borden Ladner Gervais<sup>LLP</sup>**

\_\_\_\_\_  
Date

Per: \_\_\_\_\_

Wendy Earle  
Solicitors for Global Minerals and Metals  
Corporation

**Stikeman Elliott<sup>LLP</sup>**

2005-12-21  
Date

Per: \_\_\_\_\_

*Stikeman Elliott LLP*  
Katherine Kay  
Solicitors for Merrill Lynch & Co. Inc., Merrill  
Lynch Pierce Fenner & Smith (Brokers &  
Dealers), Limited, and Merrill Lynch  
International, Inc.

**EXHIBIT "A"**

Court File No. 39484CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable )  
Justice )  
 ) of , the day  
 ) of , 2005

**B E T W E E N:**

**CELLO PRODUCTS INCORPORATED**

Plaintiff

– and –

|  
SUMITOMO CORPORATION, GLOBAL MINERALS AND METALS CORPORATION,  
MERRILL LYNCH & CO., INC., MERRILL LYNCH PIERCE FENNER & SMITH  
(BROKERS & DEALERS), LIMITED, MERRILL LYNCH INTERNATIONAL, INC.,  
CREDIT LYONNAIS ROUSE, LTD., J.P. MORGAN & CO., INC, MORGAN GUARANTY  
TRUST COMPANY OF NEW YORK, UNION BANK OF SWITZERLAND AG,  
CHASE MANHATTAN BANK, N.A.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**ORDER**

**THIS MOTION**, made by the Plaintiff for an order certifying this action as a class proceeding for settlement purposes as it relates to the Defendants Sumitomo Corporation, Chase Manhattan Bank, N.A., J.P. Morgan & Co., Inc., Morgan Guaranty Trust Company of New York, UBS A.G. (f/k/a Union Bank of Switzerland AG), Global Minerals and Metals Corporation, Merrill Lynch & Co. Inc., Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers), Limited, and Merrill Lynch International, Inc. (the "Defendants") and approving the Settlement Agreement entered into with the Defendants was heard this day at the Court House, 361 University Avenue, Toronto, Ontario.

**ON READING** the materials filed, including the Settlement Agreement attached to this order as Schedule A, and on hearing the submissions of Plaintiff's Counsel and Defendants' Counsel:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this order the use of capitalized terms in this order shall have the same meaning as that found in the Section II of the attached Settlement Agreement or as otherwise defined in this order except that to the extent the definitions of a term in the Settlement Agreement and this order conflict, the definition of the term as set forth in this order shall govern.

2. **THIS COURT ORDERS** that the Action be certified as a class proceeding for settlement purposes only.

3. **THIS COURT ORDERS** that the Settlement Class be defined as:

All persons resident in Ontario who, between June 1, 1993 and June 30, 1996, purchased Copper, Copper Products, or Scrap or Recycled Copper Products, for use in any trade or business or for resale (except the defendants, their subsidiaries, affiliates, current or former officers, directors, and employees), and all persons who, between June 1, 1993 and June 30, 1996 purchased Copper, Copper Products, or Scrap or Recycled Copper Products in Ontario for use in any trade or business (except the defendants, their subsidiaries, affiliates, current or former officers, directors, and employees).

4. **THIS COURT ORDERS** that Cello Products Incorporated be appointed as the representative plaintiff for the Settlement Class.

5. **THIS COURT ORDERS** that the Action be certified as a class proceeding for settlement purposes only, on the basis of the following common issue:

Did the defendants or any of them conspire to artificially increase the price of copper on the London Metal Exchange?

6. **THIS COURT DECLARES** that the Settlement Agreement annexed hereto as Schedule A to this order is fair, reasonable and in the best interests of the Settlement Class.

7. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
8. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this order and is binding upon the representative plaintiff, upon all Settlement Class Members, Opt-Outs, and upon the Defendants.
9. **THIS COURT ORDERS** that the opt-out period run for a period of forty (40) days from the date of the first publication of the Notice of Certification and Settlement Approval herein. Each member of the Settlement Class who elects to opt out of the Action must provide reasonable information in writing on or before the opt-out deadline, including (a) name, address, and telephone number; (b) province or provinces of residence during the Class Period; (c) province in which Copper, Copper Products, and/or Scrap or Recycled Copper Products were purchased during the Class Period; (d) type and dollar amount of Copper, Copper Products and/or Scrap or Recycled Copper Products purchased during the Class Period; (e) the date(s) on which such Copper, Copper Products and/or Scrap or Recycled Copper Products were purchased; and (f) the request to be excluded from the Settlement Class.
10. **THIS COURT ORDERS** that any member of the Settlement Class who has opted out of the Action by submitting a properly completed opt-out form to the Claims Administrator within forty (40) days following the first publication of Notice of Certification and Settlement Approval herein, is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of the Action.
11. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal of any Other Actions

he, she or it has commenced against the Released Persons, without costs and with prejudice.

12. **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Ontario by a Settlement Class Member shall be and is hereby dismissed against the Released Persons, without costs and with prejudice.
13. **THIS COURT ORDERS AND DECLARES** that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Released Persons from the Released Claims.
14. **THIS COURT ORDERS** that each Releasor shall not commence or continue any action or take any proceeding relating in any way to the Released Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Released Persons, provided that nothing in this order affects the rights of a Settlement Class Member to claim or continue to claim against any Non-Settling Defendant.
15. **THIS COURT ORDERS AND DECLARES** that the Released Persons have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Released Persons, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Claims, except with respect to any currently pending or ongoing claims being asserted in other jurisdictions among any Defendants.
16. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" and "Released Persons" in this order does not constitute a release of

claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

17. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Released Persons in respect of or in relation to the Released Claims.
18. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought against a Released Person by any Non-Settling Defendant, Settled Defendant or any other person or party, or by a Released Person against a Non-Settling Defendant, Settled Defendant or any other person or party, are barred, prohibited and enjoined (unless such claim is made in respect of a claim by an Opt-Out) except with respect to any currently pending or ongoing claims being asserted in other jurisdictions among any Defendants.
19. **THIS COURT ORDERS** that the Settlement Class Members shall restrict their claims against the Non-Settling Defendants to several claims such that the Settlement Class Members shall be limited to the degree of liability proven against the Non-Settling Defendants at trial.
20. **THIS COURT DECLARES** that a Non-Settling Defendant may seek an order from the Court providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court.

21. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 20 above on a Settling Defendant by service on counsel of record for the Settling Defendants in the Action.
22. **THE COURT ORDERS** that, except as provided herein, this order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants in the Action.
23. **THIS COURT ORDERS** that Neal, Pallett & Townsend<sup>LLP</sup> be appointed as Claims Administrator.
24. **THIS COURT ORDERS** that the Settlement Amount shall be distributed by the Claims Administrator in accordance with the Distribution Protocol attached hereto as Schedule B.
25. **THIS COURT ORDERS** that Settlement Class Members shall submit a claim form to the Claims Administrator on or before the date which is ninety days from the date of first publication of the Notice of Certification and Settlement Approval and any Settlement Class Member who fails to do so shall not share in any distribution made in accordance with the Distribution Protocol attached hereto as Schedule B unless the Court orders otherwise.
26. **THIS COURT ORDERS** that Notice of Certification and Settlement Approval be given to class members substantially in the form attached hereto as Schedule C and in accordance with paragraph 17 of the Settlement Agreement. Notice of Certification and Settlement Approval shall be published within thirty (30) days of this order becoming Final.



27. **THIS COURT ORDERS AND ADJUDGES** that the Action be and is hereby dismissed against the Settling Defendants without costs.

Date:

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(Signature of judge, officer or registrar)

**EXHIBIT "B"**

**NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL IN THE  
MATTER OF THE COPPER AND COPPER PRODUCTS CLASS ACTION  
LITIGATION**

**PLEASE READ THIS NOTICE CAREFULLY IF YOU ARE A MEMBER OF THE  
CLASS DESCRIBED HEREIN, YOUR RIGHTS MAY BE AFFECTED BY  
LEGAL PROCEEDINGS IN THIS LITIGATION.**

TO: All persons resident in Ontario who, between June 1, 1993 and June 30, 1996, purchased Copper, Copper Products, or Scrap or Recycled Copper Products, for use in any trade or business or for resale, and all persons who, between June 1, 1993 and June 30, 1996 purchased Copper, Copper Products, or Scrap or Recycled Copper Products in Ontario for use in any trade or business or for resale ("Settlement Class Members").

Copper, Copper Product and Scrap or Recycle Copper Product are defined as follows:

"Copper and Copper Product" means, without limitation, any of the following: (i) smelter and refinery feed and output, including, but not limited to, copper concentrate, matte, blister and anode, cathode, continuous cast rod, wire bar, ingot, billet, and cake; (ii) copper wire mill fabricated items, including, but not limited to, copper wire and cable, bar and insulated copper wire, magnet wire and power cable; (iii) copper mill fabricated products, including, but not limited to, sheet, strip, coil and extruded shapes, plumbing tube, thin wall tube foil, sections, pipes, slabs, plates, fittings, forgings or powder consisting of refined copper or high copper alloys; or (iv) any product consisting of a copper content of 80% or more.

"Scrap or Recycled Copper Product" means, without limitation, any of the following: (i) any scrap containing copper, waste containing copper, or excess material containing copper generated during the smelting, refining, fabrication or manufacture of (A) Copper Product, (B) brass or products containing brass ("Brass"), (C) bronze or products containing bronze ("Bronze"), or (D) any alloy with a copper content of 50% or more by weight or products containing such an alloy (an "Alloy"); (ii) any Copper Product, Brass, Bronze or Alloy acquired after it has been in the possession of an end-user or consumer or that is otherwise considered post-consumer material; (iii) air conditioners, transformers, electrical generators, electrical motors, motor vehicle radiators containing copper or Alloys acquired after they have been in the possession of an end-user or consumer or that are otherwise considered post-consumer material; and (iv) any other product consisting of a copper content of 50% or more by weight acquired after it has been in the possession of an end-user or consumer or that is otherwise considered post-consumer material.

**YOU ARE HEREBY NOTIFIED** that by Order dated \_\_\_\_\_, 2005, the Honourable Justice \_\_\_\_\_ of the Ontario Superior Court of Justice has certified a class action for the purpose of settlement with Sumitomo Corporation, Global Minerals and Metals Corporation, Merrill Lynch & Co. Inc., Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers), Limited, Merrill Lynch International, Inc., Credit Lyonnais Rouse, Ltd., J.P. Morgan & Co., Inc., Morgan Guaranty Trust Company of New York, UBS A.G. (f/k/a Union Bank of Switzerland AG), and Chase Manhattan Bank, N.A. (the "Defendants") and has approved settlements between the plaintiff class and the Defendants.

## I. THE LITIGATION

On June 7, 2002, *Cello Products Incorporated v. Sumitomo Corporation et al.* was filed in the Court as a proposed class action on behalf of certain persons who were purchasers of Copper, Copper Products or Recycled or Scrap Copper Products.

The Class Action seeks redress for Defendants' alleged course of conduct in allegedly colluding to fix, stabilize and maintain artificially inflated prices of copper during the Class Period. The plaintiff (the corporation that brought the lawsuit) alleges that Defendants colluded and conspired with Sumitomo Corporation ("Sumitomo") to form a conspiracy for the purposes of manipulating copper prices on the London Metal Exchange (the "LME") and worldwide. The Defendants deny each and every allegation of unlawful conduct or wrongdoing, assert numerous factual and legal defences to the plaintiff's claims, and disclaim any wrongdoing or liability whatsoever.

## II. THE SETTLEMENTS

Two separate settlements have been reached, one between the plaintiff and Credit Lyonnais Rouse, Ltd., and a second between the plaintiff and Sumitomo Corporation, Chase Manhattan Bank, N.A., J.P. Morgan & Co., Inc., Morgan Guaranty Trust Company of New York, UBS A.G. (f/k/a Union Bank of Switzerland AG), Global Minerals and Metals Corporation, Merrill Lynch & Co. Inc., Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers), Limited, and Merrill Lynch International, Inc. The settlements have been approved and the lawsuit has been certified as a class proceeding in relation to the Defendants.

This Notice is to advise you of the settlements and inform you of your rights as a Settlement Class Member under the settlements. You will be bound by the terms of the settlements and subsequent results of the litigation unless you decide to exclude yourself by opting out of the settlements. Opting out is explained in Section III of this Notice.

Under the terms of the settlements, the Defendants have agreed, in exchange for a full release of claims against them relating to the above-noted litigation, to pay a combined sum of \$1,677,500.00. The Defendants do not admit any wrongdoing or liability on their part. The settlements represent a compromise of disputed claims.

Pursuant to the terms of the Distribution Protocol, \$1,577,500.00 plus accumulated interest, less deductions for Class Counsel fees and disbursements, costs of notice, and costs of administration, has been allocated to directly compensate eligible Settlement Class Members. Settlement Class Members who are resident of Ontario and had purchases of Copper, Copper Products, or Scrap or Recycled Copper Products of \$2,000,000.00 or more between June 1, 1993 and June 30, 1996, and Settlement Class Members who had purchases of Copper, Copper Products, or Scrap or Recycled Copper Products of \$2,000,000.00 or more in Ontario between June 1, 1993, and June 30, 1996, will be entitled to make claims for direct compensation. Eligible Settlement Class Members will receive settlement benefits from the direct compensation settlement fund on a pro-rata basis based on the total dollar value of purchases made as well as the applicability of relative indices on the purchase and related sale prices of the product.

Settlement Class Members eligible for direct compensation must complete a Claim Form, and submit certain required documentation outlined in the Claim Form. Please contact the Claims Administrator at the contact information below in order to receive a Claim Form. The Claim Form together with the required supporting documentation must be submitted to the Claims Administrator by [insert claims deadline].

Pursuant to the terms of the Distribution Protocol, \$100,000.00 has been allocated to be paid out through a distribution to organizations which operate for the general benefit of Settlement Class Members to indirectly compensate Settlement Class Members who are not eligible for direct compensation.

The Proceeding was certified and the Settlement approved by the Order of the Honourable Mr. Justice \_\_\_\_\_ dated \_\_\_\_\_.

### **III. OPTING OUT OF THE SETTLEMENT**

If you opt out of the proceeding, you will not be able to participate in these settlements or any future settlements or judgments which are achieved against other defendants. If you would like to exclude yourself from the settlements, you can opt out by submitting a written request to be excluded to plaintiff's counsel. Your request must include the following information:

- (a) name, address, and telephone number
- (b) province or provinces of residence during the Class Period;
- (c) province or state in which Copper Products and/or Scrap or Recycled Copper Products were purchased during the Class Period;
- (d) type and dollar amount of Copper Products and/or Scrap or Recycled Copper Products purchased during the Class Period;
- (e) the date(s) when such Copper Products and/or Scrap or Recycled Copper Products were purchased; and
- (f) the request to be excluded from the Settlement Class.

The request for exclusion must be mailed by **[date]** to:

CLAIMS ADMINISTRATOR

[INSERT ADDRESS]

### **IV. QUESTIONS ABOUT THE SETTLEMENTS**

If you would like a copy of the settlement agreements or have questions, you can call plaintiff's counsel information line at 1-800-461-6166 (Jennifer). A copy of the settlement agreements can be obtained at [www.classaction.ca](http://www.classaction.ca) or they can be sent to you at a cost of \$20 per copy, which amount represents the cost of photocopying and mailing the settlement agreements. **INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT.**

### **V. INTERPRETATION**

If there is a conflict between the provisions of this notice and the settlement agreements and any of their respective appendices, the terms of the settlement agreements shall prevail.

**This Notice has been authorized by Order of the Ontario Superior Court of Justice.**

## EXHIBIT "C"

### DISTRIBUTION PROTOCOL

The procedures set forth herein are intended to govern the administration of the Settlement Funds paid in accordance with the Settlement Agreements. The procedures shall be implemented by the Claims Administrator, subject to the ongoing authority and supervision of the Ontario Superior Court of Justice. The definitions set out in the Settlement Agreements apply to and are incorporated into this Distribution Protocol which operates with respect to Copper, Copper Products, and Scrap or Recycled Copper Products.

#### 1. **SETTLEMENT BENEFITS AVAILABLE TO CLASS MEMBERS**

1.1. A direct compensation Settlement Fund equal to the total monies payable by the Defendants plus accrued interest, less (a) applicable Class Counsel fees and disbursements, (b) costs of notice, (c) costs of administration, and (d) monies allocated for distribution pursuant to section 2 of this protocol, shall be available to directly compensate eligible Settlement Class Members.

#### 1.2 **Eligibility**

Subject to the approval of the Claims Administrator, a Settlement Class Member shall be eligible for compensation out of the direct compensation Settlement Fund upon filing a properly completed claim form postmarked on or before the claim deadline establishing that the Settlement Class Member either:

- a) Is resident in Ontario, and had purchases of Copper, Copper Products, or Scrap or Recycled Copper Products, of \$2,000,000.00 or more between June 1, 1993 and June 30, 1996, for use in any trade or business or for resale; and/or
- b) Had purchases of Copper, Copper Products, or Scrap or Recycled Copper Products, of \$2,000,000.00 or more in Ontario between June 1, 1993 and June 30, 1996, for use in any trade or business or for resale.

#### 1.3. **Entitlement to Compensation**

Settlement Class Members who satisfy the eligibility requirements outlined in section 1.2 of this Distribution Protocol shall be entitled to compensation based on placement into one of four categories as follows:

- 1. Settlement Class Members who (i) were resident in Ontario and had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases of \$2,000,000.00 or more between June 1, 1993 and June 30, 1996 and/or (ii) had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases of \$2,000,000.00 or more in Ontario between June 1, 1993 and June 30, 1996, and
  - (a) whose purchases and related sales were both based on either the London Metal Exchange ("LME") and/or New York Commodity Exchange ("COMEX") indices, or

- (b) whose purchases and related sales were both not based on either the LME and/or COMEX indices, or
- (c) whose purchases were not based on either the LME and/or COMEX indices, but the Copper, Copper Product, and/or Scrap or Recycled Copper Product purchased were manufactured into, or incorporated into a new product for which the sale price was based on either the LME or COMEX indices

will be placed in category 1.

2. Settlement Class Members who (i) were resident in Ontario and had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases between \$2,000,000.00 and \$9,999,999.99 between June 1, 1993 and June 30, 1996 and/or (ii) had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases between \$2,000,000.00 and \$9,999,999.99 in Ontario between June 1, 1993 and June 30, 1996, and

- (a) whose purchases were based on either the LME and/or COMEX indices, but the Copper, Copper Product, and/or Scrap or Recycled Copper Product purchased were manufactured into, or incorporated into a new product for which the sale price was not based on either the LME or COMEX indices, will be placed in category 2.

3. Settlement Class Members who were resident in Ontario and had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases between \$10,000,000.00 and \$24,999,999.99 between June 1, 1993 and June 30, 1996 and/or had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases between \$10,000,000.00 and \$24,999,999.99 in Ontario between June 1, 1993 and June 30, 1996, and

- (a) whose purchases were based on either the LME and/or COMEX indices, but the Copper, Copper Product, and/or Scrap or Recycled Copper Product purchased were manufactured into, or incorporated into a new product for which the sale price was not based on either the LME or COMEX indices, will be placed in category 3.

4. Settlement Class Members who were resident in Ontario and had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases of \$25,000,000.00 or more between June 1, 1993 and June 30, 1996 and/or had Copper, Copper Product, and/or Scrap or Recycled Copper Product purchases of \$25,000,000.00 or more in Ontario between June 1, 1993 and June 30, 1996, and

- (a) whose purchases were based on either the LME or COMEX indices, but the Copper, Copper Product, and/or Scrap or Recycled Copper Product purchased were manufactured into, or incorporated into a new product for which the sale price was not based on either the LME or COMEX indices, will be placed in category 4.

The compensation available in the Settlement Fund for distribution to the benefit of these Settlement Class Members shall be \$1,577,500.00 plus accumulated interest, less deductions for Class Counsel fees and disbursements, costs of notice, and costs of administration. The direct compensation Settlement Fund will be divided into equal shares and distributed to eligible Settlement Class Members as follows:

- (a) Settlement Class Members in category 1 will receive 1 share;
- (b) Settlement Class Members in category 2 will receive 2 shares;
- (c) Settlement Class Members in category 3 will receive 3 shares;
- (d) Settlement Class Members in category 4 will receive 4 shares.

Settlement Class Members are only allowed to be placed in one category. Settlement Class Members who qualify for placement into more than one category will be placed in the highest category in which they qualify.

#### **1.4 General Claims Processing Guidelines**

##### **Efficiency**

The Claims Administrator shall process all claims in a cost-effective and timely manner.

##### **Technical Deficiencies**

If during claims processing, the Claims Administrator finds that technical deficiencies exist in a claimant's claim form, the Claims Administrator shall notify the claimant of the deficiencies via regular mail and shall allow the claimant thirty (30) days from the date of mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the claim without prejudice to the right of the claimant to resubmit the claim provided the claimant is able to meet the filing deadlines and other requirements set forth in this Distribution Protocol.

Technical deficiencies shall not include missing the deadline for filing the claim form. In no event shall the Claims Administrator accept claim forms postmarked after the claim deadline.

##### **Notification and Payment of Claims**

The Claims Administrator shall notify via regular mail all claiming Settlement Class Members as to the approval or rejection of their claims under this Distribution Protocol.

The Claims Administrator shall make arrangements to pay approved claims as expeditiously as possible.

##### **Appeal of Claims**

All claimants shall be granted thirty (30) days from the date it receives notice pursuant to section 1.4 of this Distribution Protocol, to appeal the rejection (in whole or in part) of its claim. Such appeal will be on the basis of written submissions, supported only by the

documentation originally provided to the Claims Administrator. The appeals will be determined by the Ontario Superior Court of Justice.

The judgment of the Ontario Superior Court of Justice respecting any appeal from the Claims Administrator's decision is final and binding and shall not be subject to any further appeal or review whatsoever.

**2. SETTLEMENT BENEFITS TO CLASS MEMBERS NOT ELIGIBLE FOR DIRECT COMPENSATION**

**2.1** Settlement Class Members who do not satisfy the eligibility requirements in section 1.2 of this Distribution Protocol will be compensated through a distribution to organizations which operate for the general benefit of Copper and Copper Product purchasers. These organizations will use the funds for the general benefit of Settlement Class Members.

The compensation available in the settlement fund for distribution to the benefit of these Settlement Class Members shall be \$100,000.00.

The organizations specified below have been identified as appropriate recipients for this distribution and will receive funds in the percentage specified:

- (a) Canadian Copper and Brass Development Association – 50%
- (b) Canadian Foundry Association – 50%