

**DISTRIBUTION PROTOCOL  
IN THE MATTER OF THE METHIONINE CLASS ACTION LITIGATION**

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## GENERAL PRINCIPLES OF THE ADMINISTRATION

1. The procedures set forth herein are intended to govern the administration of the following:
  - (a) the methionine fund created in the settlement agreement with Aventis Animal Nutrition S.A. and Rhône-Poulenc Canada Inc., as part of the larger vitamins settlement, dated November 1, 2004, amended January 6, 2005 (the "Vitamins Settlement");
  - (b) the settlement agreement entered into with Novus International, Inc. and Novus International (Canada) Inc., dated February 17, 2009; and
  - (c) the settlement agreement entered into with Degussa-Hüls AG, Degussa Corporation, and Degussa Canada Inc., dated December 20, 2009 (collectively the "Settlement Agreements").
2. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and this Distribution Protocol, the definition in this Distribution Protocol shall apply herein.
3. The administration shall:
  - (a) implement and conform to the Settlement Agreements;
  - (b) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible; and
  - (c) be bilingual in all respects and include a bilingual toll-free telephone service to be operated by live operators at times that accommodate access by putative Settlement Class Members across Canada.
4. Upstream Purchasers must disclose whether they received compensation as part of the U.S. Litigation or a private settlement. This will help to ensure that Upstream Purchasers are not compensated twice in respect of the same Methionine Purchases.
5. The "Excluded Persons" as identified in the Settlement Agreements cannot claim benefits under this Distribution Protocol.

## DEFINITIONS

6. For the purpose of this document:
  - (a) ***Claims Administrator*** means the person or entity appointed by the Courts to administer the Settlement Agreements.
  - (b) ***Claims Filing Deadlines*** means the date by which Summary Claims or Detailed Claims, as appropriate, must be postmarked, faxed, emailed, or uploaded to the Database in order for Upstream Purchasers to be eligible to receive compensation from the Upstream Purchaser Fund.

- (c) **Class Period** means January 1, 1985 to December 31, 1998.
- (d) **Consumer** means any person or entity in Canada who purchased Methionine Products in Canada during the Class Period for their personal use and who did not resell the Methionine Products.
- (e) **Consumer Fund** means the portion of the Settlement Amounts plus accrued interest available to compensate Consumers as determined in accordance with paragraph 50.
- (f) **Cy-Pres Organization** means a non-profit organization identified herein as a possible recipient of monies from the Consumer Fund or the Intermediate Purchaser Fund.
- (g) **Database** means a web-based database created and maintained by the Claims Administrator that incorporates information received from the Defendants, acquired as a result of the administration of the Vitamins Settlement, and acquired through the claims process.
- (h) **Detailed Claim** means the form that an Upstream Purchaser, who does not agree with the Defendant information or who has not been identified by the Defendants, must complete in order to be eligible for compensation under this Distribution Protocol.
- (i) **Direct Purchaser** means a person or entity in Canada, other than a Distributor, who purchased Methionine in Canada during the Class Period directly from a Methionine manufacturer.
- (j) **Distributor** means a person or entity in Canada who purchased Methionine directly from a Methionine manufacturer and resold the Methionine without further processing or including it in any other product.
- (k) **Downstream Purchasers** means Consumers and Intermediate Purchasers.
- (l) **Eligible Methionine Purchases** means the Methionine Purchases for which an Upstream Purchaser is entitled to compensation pursuant to the Settlement Agreements, orders of the Courts and/or this Distribution Protocol.
- (m) **Intermediate Purchaser** means a person or entity in Canada, other than an Upstream Purchaser or Consumer, who purchased Methionine Products in Canada during the Class Period.
- (n) **Intermediate Purchaser Fund** means the portion of the Settlement Amounts plus accrued interest available to compensate Intermediate Purchasers as determined in accordance with paragraph 48.
- (o) **Methionine Purchases** means purchases of Methionine made by a particular Upstream Purchaser in Canada during the Class Period, less any rebates, delivery or shipping charges, taxes, or other forms of discount and excluding any

purchases of Methionine that were released as part of the U.S. Litigation or a private settlement.

- (p) ***Second Level Purchaser*** means a person or entity in Canada, who purchased Methionine in Canada during the Class Period directly from a Distributor.
- (q) ***Settlement Website*** means the website ([www.vitaminsclassaction.com](http://www.vitaminsclassaction.com)) created and maintained for the purposes of this Distribution Protocol.
- (r) ***Summary Claim*** means the form that an Upstream Purchaser, who agrees with the Defendant information must complete in order to be eligible for compensation under this Distribution Protocol.
- (s) ***Upstream Purchasers*** means Direct Purchasers, Distributors and Second Level Purchasers.
- (t) ***Upstream Purchaser Fund*** means that portion of the Settlement Amounts plus accrued interest available to compensate eligible Upstream Purchasers, as determined in accordance with section 42.

#### **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

- 7. In fulfilling its duties and responsibilities, the Claims Administrator shall develop, implement and operate an administration system, utilizing web-based technology and other electronic systems wherever practical.
- 8. The Claims Administrator's duties and responsibilities shall include the following:
  - (a) providing mailed notices to the members of the Settlement Classes as required pursuant to the Settlement Agreements;
  - (b) recording, analyzing and reporting in respect of opt-outs;
  - (c) receiving the Settling Defendants' customer information, including names, addresses, and sales information;
  - (d) training and instructing personnel as required for the performance of its duties in a commercially reasonable manner;
  - (e) providing the hardware, software solutions and other resources necessary for an electronic web-based bilingual claims processing centre to function in a commercially reasonable manner;
  - (f) developing, implementing and operating electronic web-based systems and procedures for receiving, processing and evaluating claims of Upstream Purchasers, including making all necessary inquiries to determine the validity of such claims;
  - (g) making a timely decision in respect of a claim of an Upstream Purchaser and notifying the Upstream Purchaser of the decision promptly thereafter;

- (h) arranging payment to eligible Upstream Purchasers out of the Upstream Purchaser Fund in a timely fashion after the distribution is authorized by the Courts in accordance with section 38;
- (i) dedicating sufficient personnel to communicate with Settlement Class Members in either English or French as the Settlement Class Member elects;
- (j) using its best efforts to ensure that its personnel provide timely, helpful and supportive assistance to Settlement Class Members in completing the claims process and to persons seeking to determine whether they are Settlement Class Members;
- (k) submitting required materials, including written submissions, with respect to its decision to the court-appointed referee for all appeals;
- (l) distributing, monitoring, reporting, and auditing the distribution of the *cy pres* awards from the Intermediate Purchaser Fund and the Consumer Fund;
- (m) arranging payments of Class Counsel Fees and Administration Expenses;
- (n) maintaining a database, in an easy to understand format, with all information necessary to permit the Courts to evaluate the progress of the administration from time to time;
- (o) reporting to Class Counsel, the Defendants and the Courts respecting claims received and administered, Class Counsel Fees and Administration Expenses;
- (p) cash management and audit control;
- (q) preparing and submitting such financial statements, reports and records as directed by the Courts; and
- (r) fulfilling any tax reporting and arranging payments required arising from the Settlement Amounts, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amounts shall be paid from the Settlement Amounts.

## **THE CLAIMS PROCESS FOR UPSTREAM PURCHASERS**

### **General**

9. The Claims Administrator shall, in accordance with the Settlement Agreements and subject to the terms and conditions set out herein, determine the eligibility of Upstream Purchasers making a claim and distribute the Upstream Purchaser Fund to Upstream Purchasers eligible for compensation.
10. The Claims Administrator may deal with Upstream Purchasers by means other than electronically, as it determines practical. However, in all cases, the information acquired about Upstream Purchasers shall be entered into the Database.

11. If subsequent to filing a claim, an Upstream Purchaser enters into a private settlement with a Defendant(s), the Upstream Purchaser must notify the Claims Administrator in writing immediately and provide to the Claims Administrator the information required in section 19(c) below.
12. The failure by an Upstream Purchaser to provide the Claims Administrator with the required information relating to compensation received as part of the U.S. Litigation or a private settlement will disentitle the Upstream Purchaser from compensation.
13. All signed Claim Summaries and other required information must be postmarked, faxed, emailed, or uploaded to the Database no later than the Claims Filing Deadline for the Upstream Purchaser to be eligible for compensation from the Upstream Purchaser Fund.

#### **Database**

14. The Database shall include:
  - (a) name, address and purchase data provided by the Defendants;
  - (b) information provided by the Defendants about claims filed in the U.S. Litigation, including any compensation received in the U.S. Litigation;
  - (c) information provided by the Defendants about any private settlements entered into by the Upstream Purchaser with the Defendants, including any compensation received;
  - (d) name, address and purchase data, and supporting documents, provided by Upstream Purchasers as part of the administration of the Vitamins Settlement;
  - (e) name, address and purchase data and supporting documents, provided by Upstream Purchasers as part of the claims process;
  - (f) information provided by the Upstream Purchaser about compensation received and/or releases granted as part of the U.S. Litigation or a private settlement; and
  - (g) any other information that might be useful in the claims administration process.
15. The Claims Administrator shall cause the information in Database to be posted and accessible at the Settlement Website.
16. The Settlement Website shall contain information in respect of each Upstream Purchaser identified by the Defendants or who registers on the Settlement Website in accordance with section 25 below.
17. All information posted on the Settlement Website about a particular Upstream Purchaser shall be accessible only to that Upstream Purchaser. The Upstream Purchaser will be provided with a personal user identification name and password that will permit the Upstream Purchaser to access such information.

### **Summary Claim**

18. The Summary Claim shall contain the following information as provided by the Defendants:
  - (a) the Upstream Purchaser's name, address and aggregate purchase information with respect to each Defendant; and
  - (b) whether the Upstream Purchaser has received compensation as part of the U.S. Litigation or a private settlement, the amount of such compensation, and the scope of the release provided by the Upstream Purchaser.

### **Detailed Claim**

19. The Detailed Claim must require the following information:
  - (a) a statement by the Upstream Purchaser of the dollar value of his or her Methionine Purchases. This must exclude any Methionine Purchases in relation to which the Upstream Purchaser received compensation and/or granted a release as part of the U.S. Litigation or a private settlement;
  - (b) proof of the Upstream Purchaser's Methionine Purchases. This may include invoices, receipts, delivery slips, etc. If the Upstream Purchaser is unable to provide proof of purchase or if providing proof of purchase is impractical, the Upstream Purchaser may submit to the Claims Administrator such other objective verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an affidavit from the Upstream Purchaser stating the steps taken by the Upstream Purchaser to obtain proof of purchase and the responses, if any, to those steps; and
  - (c) disclose any Methionine Purchases in relation to which the Upstream Purchaser received compensation and/or granted a release as part of the U.S. Litigation or a private settlement.

### **Upstream Purchasers Identified by the Defendants**

20. The Claims Administrator shall provide to each Upstream Purchaser identified by the Defendants, in writing, by e-mail or regular mail, his, her or its personal user identification name and password to permit that person access to the Database.
21. If the Upstream Purchaser agrees with the information contained in the Database concerning his, her or its claim, the Upstream Purchaser need only print a copy of the Summary Claim, execute the Summary Claim, and submit the executed Summary Claim postmarked, faxed, emailed, or uploaded to the Database no later than the Claims Filing Deadline.
22. If the Upstream Purchaser does not agree with the information contained in the Database concerning his, her or its claim and/or wants to claim for additional Methionine Purchases, the Upstream Purchaser must complete the Detailed Claim. After completing the Detailed Claim, the Upstream Purchaser must print a copy of the Detailed Claim, execute the Detailed Claim, and submit the executed Detailed Claim

postmarked, faxed, emailed, or uploaded to the Database no later than the Claims Filing Deadline.

23. Changes to an Upstream Purchaser's information must be recorded in the Database.
24. If the Upstream Purchaser does not have internet access, the Upstream Purchaser can request that hard copies of the Summary Claim and Detailed Claim be sent by mail to him, her or it. The completed Summary Claim or the Detailed Claim, as appropriate, must be postmarked, faxed or emailed no later than the Claims Filing Deadline.

### **Upstream Purchasers Not Identified by the Defendants**

25. An Upstream Purchaser, who is not identified by the Defendants, must register on the Settlement Website. Upon registering, the Upstream Purchaser will be asked to select a personal user identification name and password.
26. After receiving a personal user identification name and password, the Upstream Purchaser must complete a Detailed Claim. After completing the Detailed Claim, the Upstream Purchaser must print a copy of the Detailed Claim, execute the Detailed Claim, and submit the executed Detailed Claim postmarked, faxed, emailed, or uploaded on the Database no later than the Claims Filing Deadline.
27. If the Upstream Purchaser does not have internet access, the Upstream Purchaser can request that a hard copy of the Detailed Claim be sent by regular mail to him, her or it. The completed Detailed Claim must be postmarked, faxed or emailed no later than the Claims Filing Deadline.

### **Technical Deficiencies**

28. If, during claims processing, the Claims Administrator finds that technical deficiencies exist in an Upstream Purchaser's Summary Claim, Detailed Claim or other required information, the Claims Administrator shall notify the Upstream Purchaser, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Upstream Purchaser thirty (30) days from the date 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 Upstream Purchaser to resubmit the claim, provided the Upstream Purchaser is able to meet the Claims Filing Deadline and other requirements set forth herein.
29. Technical deficiencies shall not include missing the Claims Filing Deadline. In no event shall the Claims Administrator accept claims postmarked, faxed, emailed, or uploaded to the Settlement Website after the Claim Filing Deadline.

### **Claims Administrator's Decision**

30. In respect of each Upstream Purchaser who has filed a claim in accordance with paragraphs 21, 22, 24, 26, and 27, as applicable, the Claims Administrator shall:
  - (a) decide whether the Upstream Purchaser is eligible to participate in the distribution of the Upstream Purchaser Fund in accordance with the Settlement Agreements, orders of the Courts and/or this Distribution Protocol;



- (b) verify the Upstream Purchaser's Methionine Purchases;
  - (c) verify that the Upstream Purchaser has not already received compensation and/or released the Methionine Purchases as part of a claim filed in the U.S. Litigation or a private settlement; and
  - (d) make a determination of the Upstream Purchaser's Eligible Methionine Purchases.
31. The Claims Administrator shall send to the Upstream Purchaser, by email or regular mail, a decision as to the approval or rejection of the Upstream Purchaser's claim and the determination of the Upstream Purchaser's Eligible Methionine Purchases (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the claim of the Upstream Purchaser, the Claims Administrator shall include in the Decision Notice its grounds for rejecting all or part the claim.
32. The Claims Administrator's decision will be binding upon the Upstream Purchaser, subject to the Upstream Purchaser's right to review, as outlined in paragraphs 33 to 36 below.

#### **Review of the Claims Administrator's Decision**

33. Upstream Purchasers shall be granted thirty (30) days from the date the Decision Notice is sent to them pursuant to paragraph 31 to appeal the rejection (in whole or in part) of their claims. Such appeals will be on the basis of written submissions, supported only by the documentation provided to the Claims Administrator by the Claims Filing Deadline. Notwithstanding, the court-appointed referee can, at his or her sole discretion, require the Upstream Purchaser and Claims Administrator to participate in a conference call in respect of the appeal.
34. Appeals will be determined by a court-appointed referee. The referee's decision is final and binding and shall not be subject to any further appeal or review whatsoever.
35. The Claims Administrator must provide to the referee a copy of the Decision Notice and any other information that might be reasonably useful to the referee in its determination of the appeal, and make written submissions to the referee, as is reasonably necessary.
36. The refusal of the Claims Administrator to accept a Summary Claim or Detailed Claim postmarked, faxed, emailed or uploaded to the Database after the Claims Filing Deadline is not grounds for appeal.

#### **THE DISTRIBUTION PROCESS**

37. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall, by motion, report to the Courts the name, address and proposed amount of the distribution for each Upstream Purchaser entitled to receive a distribution (the "Distribution List").
38. No distribution to eligible Upstream Purchasers shall be made by the Claims Administrator from the Upstream Purchaser Fund until authorized by the Courts.

39. Interim distribution may be made to eligible Upstream Purchasers from the Upstream Purchaser Fund if authorized by the Courts.
40. The Claims Administrator shall make arrangements to pay approved claims from the Upstream Purchaser Fund as expeditiously as possible after the distribution is authorized by the Courts. Payments will be made by cheque.
41. After final distribution of the Settlement Amounts, the Claims Administrator shall report to the Courts as so directed.

#### **SETTLEMENT BENEFITS AVAILABLE TO UPSTREAM PURCHASERS**

42. The compensation available in the Upstream Purchaser Fund shall be equal to:
  - (a) 100% of the methionine fund created in the Vitamins Settlement, plus accrued interest less (a) applicable taxes, (b) proportionate costs of notice, and (c) costs of administering the Settlement Agreements; and
  - (b) 82% of the Novus and Degussa Settlement Amounts plus accrued interest less (a) proportionate Class Counsel Fees, disbursements and taxes, (b) proportionate costs of notice, (c) costs of administering the Settlement Agreements, and (d) obligations by Quebec Class Members to the Fonds d'Aide.
43. Subject to the provisions herein, Upstream Purchasers who satisfy the eligibility requirements outlined herein shall be entitled to compensation, to be calculated by the Claims Administrator, in the following manner:
  - (a) A Direct Purchaser shall be paid 12% of his, her or its Eligible Methionine Purchases.
  - (b) A Second Level Purchaser shall be paid 10% of his, her or its Eligible Methionine Purchases.
  - (c) A Distributor shall be paid 1% of his, her or its Eligible Methionine Purchases.
44. If the total amount of valid claims on the Upstream Purchaser Fund exceeds the amount available for distribution for the Upstream Purchaser Fund, the payments to eligible Upstream Purchasers shall be reduced pro-rata.
45. The Claims Administrator shall not pay compensation under a Settlement Agreement to an Upstream Purchaser who has opted out of that Settlement Agreement. The time period for opting out of the Vitamins Settlement has expired and therefore there is no right to opt-out with respect to Aventis/Rhone-Poulenc, any Upstream Purchaser who filed a claim under the Vitamins Settlement is not permitted to opt-out of the Novus and Degussa settlements.
46. If after all approved payments are made to the Upstream Purchasers, there remains monies in the Upstream Purchaser Fund by virtue of the failure of Upstream Purchasers to cash the cheques received as compensation for their claims within six months of the

mailing of the cheques to the Upstream Purchaser, or otherwise, the monies remaining in the Upstream Purchaser Fund shall be added to the Consumer Fund.

### **SETTLEMENT BENEFITS AVAILABLE TO DOWNSTREAM PURCHASERS**

47. Recognizing the difficulty of accurately identifying the amount of overcharge, if any, actually borne by any given Downstream Purchaser, and recognizing the related difficulties in directly compensating Downstream Purchasers, compensation for Downstream Purchasers will be paid out through a distribution to Cy Pres Organizations that operate for the general benefit of Downstream Purchasers.

### **Intermediate Purchaser Fund**

48. The compensation available in the Intermediate Purchaser Fund shall be equal to 9% of the Novus and Degussa Settlement Amounts plus accrued interest less (a) proportionate Class Counsel Fees, disbursements and taxes, (b) proportionate costs of notice, and (c) obligations by Quebec Class Members to the Fonds d'Aide.
49. The Intermediate Purchaser Fund will be distributed to the following Cy Pres Organizations in the proportions indicated, so long as the Cy Pres Organization complies with the procedures governing cy-pres distribution set out in paragraph 53 of this Distribution Protocol to the satisfaction of the Claims Administrator:
- (a) Chicken Farmers of Canada – 60%
  - (b) Canadian Pork Council – 40%

### **Consumer Fund**

50. The compensation available in the Consumer Fund shall be equal to 9% of the Novus and Degussa Settlement Amounts plus accrued interest less (a) proportionate Class Counsel Fees, disbursements and taxes, (b) proportionate costs of notice, and (c) obligations by Quebec Class Members to the Fonds d'Aide.
51. The Consumer Fund will be distributed equally to the following Cy Pres Organizations, so long as the Cy Pres Organization complies with the procedures governing cy-pres distribution set out in paragraph 53 of this Distribution Protocol to the satisfaction of the Claims Administrator:
- (a) Food Banks Canada
  - (b) Breakfast for Learning

### **Eligibility of Cy Pres Organization**

52. If a Cy Pres Organization does not comply with paragraph 53 of this Distribution Protocol, it will not be eligible to participate in the cy-pres distribution contemplated in this Distribution Protocol and the monies that would have been allocated to that Cy Pres Organization will be distributed by the to the other Cy Pres Organization identified in paragraphs 49 or 51 as appropriate.

53. To be eligible to receive the monies allocated to it under this Distribution Protocol, the Cy Pres Organization must provide a resolution from its Board of Directors agreeing to do the following and, thereafter, act in accordance with the resolution:
- (a) submit to the jurisdiction of the Courts;
  - (b) maintain the monies in a separate account not to be co-mingled with other funds;
  - (c) in the case of a Cy Pres Organization receiving monies from the Intermediate Purchaser Fund, use the monies generally for the benefits of its members;
  - (d) in the case of a Cy Pres Organization receiving monies from the Consumer Fund, use the monies for activities across Canada relating to the general purpose of the organization;
  - (e) report to the Claims Administrator on how the monies have been used;
  - (f) consent to an independent audit in respect of the monies received if requested by the Claims Administrator; and
  - (g) in the event the Courts find it appropriate to so order, reimburse the costs of the independent audit and satisfy any order that it made to rectify its non-compliance with the terms of this Distribution Protocol.

#### **CLASS COUNSEL FEES**

54. The Claims Administrator shall arrange payment of Class Counsel Fees out of the Settlement Amounts in accordance with the provisions of the Settlement Agreements and the orders of the Courts.

#### **CLAIMS ADMINISTRATOR'S FEES**

55. The Claims Administrator's fees shall be paid out of the Settlement Amounts in accordance with the provisions of the Settlement Agreements and the orders of the Courts. However, in no circumstance shall the fees of the Claims Administrator exceed \$150,000.

#### **NO ASSIGNMENT**

56. No amount payable under the Settlement Agreements can be assigned without the written consent of the Claims Administrator.

#### **CONFIDENTIALITY**

57. All information received from the Defendants or the Upstream Purchaser is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act* (PIPEDA) for the purposes of administering the Settlement Agreements, including evaluating the Upstream Purchaser's eligibility status under the Settlement Agreements. The information provided by the Upstream Purchaser is strictly private and confidential and will not be disclosed without the express

written consent of the Upstream Purchaser, except in accordance with the Settlement Agreements and/or orders of the Courts.