SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No : 500-06-000783-163

DATE : August 29, 2017

PRESIDED BY: THE HONOURABLE CHANTAL CHATELAIN, J.S.C.

CELSO CATUCCI

And

NICOLE AUBIN

Applicants

v.

VALEANT PHARMACEUTICALS INTERNATIONAL INC.

And

J. MICHAEL PEARSON

And

HOWARD B. SCHILLER

And

ROBERT L. ROSIELLO

And

ROBERT A. INGRAM

And

RONALD H. FARMER

And

THEO MELAS-KYRIAZI

And

G. MASON MORFIT

And

DR. LAURENCE PAUL

And

ROBERT N. POWER

And

NORMA A. PROVENCIO

And

LLOYD M. SEGAL

And

KATHARINE B. STEVENSON

And

FRED HASSAN

And

COLLEEN GOGGINS

And

ANDERS O. LONNER

And

JEFFREY W. UBBEN

And

PRICEWATERHOUSECOOPERS LLP

And

GOLDMAN, SACHS & CO.

And

GOLDMAN SACHS CANADA INC.

And

DEUTSCHE BANK SECURITIES INC.

And

BARCLAYS CAPITAL INC.

And

HSBC SECURITIES (USA) INC.

And

MITSUBISHI UFJ SECURITIES (USA) INC.

And

DNB MARKETS INC.

And

RBC CAPITAL MARKETS LLC

And

MORGAN STANLEY & CO. LLC

And

SUNTRUST ROBINSON HUMPHREY INC.

And

CITIGROUP GLOBAL MARKETS INC.

And

CIBC WORLD MARKETS CORP.

And

SMBC NIKKO SECURITIES AMERICA INC.

And

TD SECURITIES (USA) LLC

And

J.P. MORGAN SECURITIES LLC

And

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

And

BMO CAPITAL MARKETS CORP.

Respondents

JUDGMENT

(Motion for authorization of a class action pursuant to Article 575 of the *Code of Civil Procedure* and for authorization to bring an action pursuant to section 225.4 of the Quebec *Securities Act*)

TABLE OF CONTENTS

I. INTRODUCTION

[1] Applicants Mr. Celso Catucci and Ms. Nicole Aubin ("**Catucci and Aubin**" or "**Applicants**") want permission of the Court to sue Valeant Pharmaceuticals International Inc. ("**Valeant**") and other Defendants, on their own behalf and on behalf of other investors, for the loss of value of the Valeant securities they held. In their view, the loss of value of Valeant securities is a consequence of misrepresentations respecting Valeant's business and accounting practices for which the Defendants are liable.

[2] The Applicants are thus asking the Court to authorize them to bring an action in damages for misrepresentations in the secondary market under the Quebec *Securities Act*[1] ("***QSA***") and to bring a class action pursuant to the *Code of Civil Procedure* ("***CCP***") which also asserts claims for primary market purchasers (collectively the "**Motion for Authorization**").

[3] The alleged misrepresentations essentially relate to two main subject matters, which, although distinct, are interrelated. First, Valeant's relationship with certain speciality pharmacies, including but not limited to Philidor RX Services LLC ("**Philidor**") and the disclosure of that relationship and the related risks. Second, Valeant's business practices and compliance with financial reporting obligations under the applicable standards.

[4] The following claims are being asserted:

---

[1] CQLR, c. V-1.1.

a) Leave to bring an action in damages for misrepresentations in the secondary market under Title VIII, Chapter II, Division II of the *QSA* ("**leave application under the *QSA***") and, as a corollary, the authorization to bring that action in damages as a class action pursuant to Article 575 *CCP* ("**Division II Claim**");

b) Authorization to bring a class action pursuant to Article 575 *CCP* in relation to a claim in damages for misrepresentations in the primary market under Title VIII, Chapter II, Division I of the *QSA* ("**Division I Claim**"); and

c) Authorization to bring a class action pursuant to Article 575 *CCP* in relation to claims in damages for misrepresentations in the primary market and in the secondary market under Article 1457 of the *Civil Code of Quebec* ("***CCQ***"), which is the general civil liability regime in Quebec ("**the Civil Claim**").

[5] The Motion for Authorization is brought against four groups of defendants:

a) Valeant;

b) Sixteen individual respondents who were, at relevant times, Valeant's directors or officers ("**Individual Defendants**");[2]

c) PricewaterhouseCoopers LLP ("**PwC**") who was Valeant's auditor during the relevant period; and

d) Seventeen underwriters who participated in the distribution of Valeant's securities on the primary market ("**Underwriters**").

(collectively, the "**Defendants**").

[6] The Underwriters are only involved in primary market distribution of shares and notes. Therefore, the claims against them are limited to the primary market claims and exclude the Division II Claim as well as the Civil Claim for misrepresentations in the secondary market.

[7] Subject to that caveat respecting the claims against the Underwriters, the Applicants basically argue that the Defendants are liable for misrepresentations made in the primary and secondary markets. They allege that the misrepresentations were made in Valeant's public disclosure documents as well as in other documents over a period of 2½ years, from February 28, 2013 to October 26, 2015. This is the proposed class period ("**Class Period**").

---

[2] At the authorization hearing, all the Individual Defendants, except Mr. Howard B. Schiller, are represented by the same counsel as Valeant. For the sake of simplicity, except as otherwise specifically indicated, reference to Valeant's arguments in this judgment includes the Individual Defendants, except Mr. Schiller. Also, except as otherwise specifically indicated, reference to the Individual Defendants includes Mr. Schiller.

[8] It bears noting at the outset that on October 26, 2015, pursuant to an article relating to Valeant's business practices and its relationship with Philidor published on October 19, 2015,[3] Valeant publicly announced the establishment an ad hoc committee of independent directors to review and report on these allegations and other matters.

[9] Pursuant to this review, Valeant concluded that *some* of its financial statements contained material misstatements and should no longer be relied upon. As a consequence, on April 29, 2016, Valeant restated some of its audited and unaudited financial statements for previous periods. Being a reporting issuer both in Canada and in the United States, Valeant's restatement was contained in its Annual Report on Form 10-K for the year ended December 31, 2015[4] ("**2015 Form 10-K**").

[10] In the 2015 Form 10-K, Valeant restated its financial statements for the last quarter of 2014 (Q4 2014), its annual financial statements for the year ended December 31, 2014, as well as its financial statements for the first (Q1 2015), second (Q2 2015) and third quarters of 2015 (Q3 2015).[5] Valeant also revised but did not restate its financial statements for the third quarter of 2014 (Q3 2014).

[11] Critically, in view of the restatement of Valeant's financial statements, the Defendants[6] do not oppose the leave application under the *QSA* as well as leave to bring the Division II Claim as a class action, but only for the periods which were restated.[7] This covers the period from February 25, 2015 (which is the date at which the financial statements for Q4 2014 were initially released) to October 26, 2015 (which is the date at which Valeant established the ad hoc committee and which corresponds to the end of the Class Period) ("**Restatement Period**").

[12] The Court agrees that the leave application under the *QSA* as well as leave to bring the Division II Claim as a class action should be authorized for the Restatement Period.

[13] However, the Defendants oppose the Motion for Authorization with respect to all the other claims being asserted, e.g. the Division II Claim for the period preceding the Restatement Period ("**Pre-Restatement Period**"[8]), the Division I Claim and the Civil Claim.

---

3 Exhibit P-54: Southern Investigation Reporting Foundation article entitled "The King's Gambit: Valeant's Big Secret", dated October 19, 2015.

4 Exhibit P-78.

5 The financial statements for the Q2 2015 and the Q3 2015 were restated as they incorporated the 2015 first quarter results.

6 The Underwriters do not take a position on this issue as they are not concerned with the Division II Claim.

7 The Defendants stress that this should not be taken as an admission as to any of the misrepresentations alleged in the Motion for Authorization or that the misrepresentations, if any, relate to material facts. This remains to be argued on the merits of the action.

8 The Pre-Restatement Period spans from February 28, 2013 to February 24, 2015.

[14] For the reasons that follow, the Court finds that the Motion for Authorization should be granted both for the Restatement Period as well as for the Pre-Restatement Period.

II. CONTEXT OF THE PROPOSED CLAIMS

A. Applicants and Proposed Class

[15] On August 28, 2015, Aubin purchased 500 common shares of Valeant on the Toronto Stock Exchange for the benefit of the Aubin Family Trust. Aubin held those Valeant securities until October 21, 2015, when she sold them. She claims to have sustained a loss of $75,448.90 on her investment in Valeant's securities.

[16] On October 19 and 20, 2015, Catucci purchased 330 common shares of Valeant on the Toronto Stock Exchange. Catucci held those securities until October 21, 2015, when he sold them. He claims to have sustained a loss of $6,651.86.

[17] As already indicated, the proposed Class Period spans from February 28, 2013 to October 26, 2015, which corresponds to the period during which the misrepresentations were allegedly made.

[18] The proposed class members are investors who acquired Valeant securities during the Class Period both on the primary and on the secondary market in Canada and elsewhere, other than in the United States, and still held them at any point in time between October 19, 2015 and October 26, 2015.

[19] The Applicants propose the following two sub-classes:[9]

> Primary Market Sub-Class: All persons and entities, wherever they may reside or may be domiciled, who, during the Class Period, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States (but not excluding any claims in respect of Valeant's 4.50% Senior Notes due 2023 offered in March 2015); and
>
> Secondary Market Sub-Class: All persons and entities, wherever they may reside or may be domiciled who, during the Class Period, acquired Valeant's Securities in the secondary market and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States;

---

[9] During the hearing, on April 27, 2017, the initial definition of the proposed class was slightly modified by the Applicants to read as set out in paragraph [19]. The Defendants did not oppose the modifications.

B. Valeant's Relevant Financial Market Activities

[20] Valeant is a global public specialty pharmaceutical and medical device company that develops, manufactures and markets branded, generic and branded-generic pharmaceuticals, over-the-counter products and medical devices. Its products are marketed, directly or indirectly, in over 100 countries.

[21] The company was established in its current form in 2010 as a result of the amalgamation of the California-based Valeant Pharmaceuticals International and the Canadian Biovail Corporation International. It is governed by the British Columbia *Business Corporations Act*, and its legal domicile is the Province of British Columbia. Its corporate headquarter is in Laval, Quebec.

[22] Valeant is a reporting issuer and a responsible issuer in Canada. Valeant's principal securities regulator in Quebec is the Autorité des marchés financiers.

[23] Valeant makes its continuous disclosure in accordance with the United States *Securities Exchange Act of 1934*, using Form 10-K for its annual filings and Form 10-Q for quarterly filings. These forms also serve as its filings required under the Canadian securities regulations.

[24] During the Class Period, Valeant's common shares traded in the secondary securities markets in Canada, the United States and Europe. In Canada, the common shares traded on the Toronto Stock Exchange as well as on the New York Stock Exchange under ticker symbol "VRX".

[25] Shares and notes of Valeant were also distributed on the primary market. Between June 24, 2013 and March 27, 2015, there were four note offerings and two share offerings, by way of which Valeant issued and distributed to the public, in aggregate, approximately US$19 billion worth of its common shares and notes.

[26] Valeant has grown massively based on a business strategy of acquiring other pharmaceutical businesses. During 2009-2015, Valeant completed 21 acquisitions of US$100 million or more. For example, Valeant acquired Medicis Pharmaceutical Corporation ("**Medicis**") in 2012, Bausch & Lomb Holdings Incorporated in 2013, and Salix Pharmaceuticals, Ltd. in 2015.

[27] Of relevance at this point, in 2012, when acquiring Medicis, Valeant discussed of its intention to implement a unique approach borrowed from Medicis to add incremental benefits to its current products. This was to be made through a program called "Alternative Fulfillment Program".[10]

---

[10] Exhibit P-133: Transcript of Valeant Business Update Call on September 4, 2012, titled "Acquisition of Medicis Pharmaceutical Corporation by Valeant Pharmaceuticals International, Inc. Call", p. 5-6.

[28] It is not disputed that by early 2013, the Alternative Fulfillment Program was implemented, although it was still a work in progress.[11]

[29] In early January 2013, Philidor, a specialty pharmacy licensed in several United States, was incorporated. The Applicants allege that it was incorporated with Valeant's support and under its supervision in order to implement Valeant's Alternative Fulfillment Program.

[30] On January 11, 2013, Valeant entered into a distribution agreement with Philidor.

[31] Philidor would, amongst other things, fill prescriptions for some of Valeant drugs, adjudicate the insured pharmacy claims, including reprocessing initially rejected claims, and proactively follow-up with customers for covered product refills. It also participated in the administration of Valeant's Alternative Fulfillment Program.[12]

[32] In furtherance of the distribution agreement with Valeant, Philidor itself developed a network of other speciality pharmacies which included pharmacies covering practically all of the United States.

[33] On December 15, 2014, Valeant and Philidor entered into a purchase option agreement whereby Valeant agreed to an upfront payment to Philidor of US$100 million and acquired the exclusive option to purchase 100% of the equity interest in Philidor at $0.

[34] As of December 2014, Valeant began to threat Philidor as a variable interest entity ("**VIE**") for which it was a primary beneficiary and in which it had a controlling financial interest. Valeant also began recognizing Philidor's sales when the product was dispensed to patients rather than upon delivery to Philidor as it had done prior to that date. Finally, Valeant consolidated Philidor's financial results with its own.

[35] During the summer of 2015, Valeant's shares were trading at more than $340 on the Toronto Stock Exchange. At that time, Valeant had a market capitalization of more than $116 billion, making it the highest-valued company listed on the Toronto Stock Exchange.

---

[11] Exhibit P-135: Transcript of Valeant Conference Call on January 4, 2013, titled "FY 2013 Guidance Call.", p. 12-13 and Exhibit P-138: Transcript of Valeant Conference Call on June 11, 2013, titled "Goldman Sachs Healthcare Conference.", p. 6.

[12] Exhibit P-145: Transcript of Valeant Business Update Call on October 26, 2015, titled "Business Update Call.", p. 4, 6 and 13.

C. October 2015 Events, Establishment of the Ad Hoc Committee and Restatement of Financial Documents

[36] The alleged misrepresentations came to light in the wake of revelations made in October of 2015 about Valeant's business practices through Philidor.

[37] In particular, it was alleged that Philidor engaged into questionable business practices that exposed Valeant to legal and regulatory sanctions. These questionable practices included the manipulation of prescriptions and misrepresentations to physicians and patients to ensure that a Valeant drug would be provided to the patient. It was also reported that Philidor manipulated third-party insurers' electronic reimbursement systems and made submissions of false and improper reimbursement claims in order to improperly receive payment of Valeant drugs.

[38] Of importance, on October 19, 2015, the Southern Reporting Foundation published an article on the relationship between Valeant and Philidor.[13]

[39] On October 21, 2015, Citron Research, a short seller according to Valeant with financial interest in seeing Valeant's stock drop, also published a report addressing Valeant's accounting and disclosure practices in relation to what it described as questionable acquisitions as well as in relation to Philidor. It claimed that Valeant created a network of phantom captive pharmacies through Philidor to book phantom sales or "stuff the channel".[14]

[40] On October 22, 2015, Bronte Capital also published a report questioning Valeant's practices.[15]

[41] On October 26, 2015, in light of these allegations regarding Valeant's practices and relationship with Philidor, the Board of Valeant announced the establishment of an ad hoc committee of the Board to review the allegations and related matters.[16]

[42] The same date, i.e. on October 26, 2015, the Motion for Authorization was filed by Catucci.[17]

---

[13] Exhibit P-54: Southern Investigation Reporting Foundation article entitled "The King's Gambit: Valeant's Big Secret", dated October 19, 2015.

[14] Exhibit P-55: Citron Research article entitled "Valeant: Could this be the Pharmaceutical Enron?", dated October 21, 2015.

[15] Exhibit P-56: Bronte Capital article entitled "Somme comment on the Valeant conference call", dated October 22, 2015.

[16] Exhibit P-145: Transcript of Valeant Business Update Call on October 26, 2015 and Exhibit P-148: Valeant press release titled "Valeant Pharmaceuticals Confirms Appropriateness of Accounting, Appoints Ad Hoc Board Committee to Review Philidor," dated October 26, 2015.

[17] The Motion was amended on March 2, 2016, July 15, 2016 and April 5, 2017. On March 2, 2016, Applicant Aubin and numerous respondents were added as parties.

[43] On October 30, 2015, Valeant issued a press release announcing that it was terminating its relationship and severing all ties with Philidor.[18]

[44] On February 22, 2016, based on the work of the ad hoc committee, Valeant preliminarily determined that approximately US$58 million in net revenues relating to sales to Philidor during the second half of 2014 should not have been recognized upon delivery of products to Philidor. The sales should rather have been recognized when delivered to patients.[19]

[45] On March 21, 2016, Valeant provided an accounting and financial reporting update. The update states that Valeant's previously issued financial statements for the Restatement Period "should no longer be relied upon due to the misstatements".

[46] Valeant also announced that it had identified material weaknesses in its disclosure controls and procedures ("**DC&P**") and its internal control over financial reporting ("**ICFR**"). Namely, the ad hoc committee identified certain concerns regarding the "tone at the top of the organization"[20] and non-standard revenue transactions, particularly at or near quarter ends.[21]

[47] That announcement covers Valeant's (i) audited financial statements for the year ended, and unaudited financial statements for the quarter ended December 31, 2014 and (ii) its unaudited financial statements included in its 2015 Form 10-Q quarterly report:[22]

> On March 21, 2016, management of the Company, the Audit and Risk Committee (the "**Committee**") and the Board concluded that the Company's audited financial statements for the year ended, and unaudited financial statements for the quarter ended, December 31, 2014 included in the Company's Annual Report on Form 10- K and the unaudited financial statements included in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015 should no longer be relied upon due to the misstatements described below. In addition, due to the fact that the first quarter 2015 results are included within the financial results for the six-month period included in the Quarterly Report on Form 10-Q for the period ended June 30, 2015 and the financial results for the nine-month period included in the Quarterly

---

18 Exhibit P-150: Valeant press release titled "Valeant to Terminate Relationship with Philidor", dated October 30, 2015.

19 Exhibit P-153: Valeant press release titled "Valeant Ad Hoc Committee has Made Substantial Progress in Its Review of Philidor and Related Accounting Matters", dated February 22, 2016.

20 "Tone at the top" is a term used in the context of internal control and describes the ethical climate in the corporation which is created by its management, board of directors, and the audit committee. Appropriate "tone at the top" is a necessary condition for an effective internal control system (both ICFR and DC&P). See the Elitzur Report, defined *supra*, at note 36.

21 Exhibit P-74: Valeant Material Change Report dated March 21, 2016.

22 Exhibit P-74: Valeant Material Change Report dated March 21, 2016.

> Report on Form 10-Q for the period ended September 30, 2015, management, the Committee and the Board have concluded that the financial statements for such six-month and nine-month periods reflected in those Quarterly Reports should no longer be relied upon.

[48] On April 5, 2016, Valeant issued a press release indicating that the ad hoc committee had completed its review and that it had not identified any issue beyond what had already been disclosed:[23]

> Robert Ingram, chairman of the board and chair of the Ad Hoc Committee stated, "We appreciate the efforts of the Ad Hoc Committee and its independent advisors over the past five months. After conducting more than 70 interviews and reviewing over one million documents, the Ad Hoc Committee has not identified any additional items requiring restatements beyond those matters previously disclosed…."

[49] On April 29, 2016, Valeant issued its 2015 Form 10-K, restating its previously released financial statements for the Restatement Period.[24]

[50] As part of the restatement of its financial statements, Valeant acknowledged that there were misstatements regarding revenue recognition, Generally Accepted Accounting Principles ("**GAAP**") compliance and the efficacy of its internal controls (DC&P and ICFR) as of December 2014 and until December 2015. The scope of the misstatements was not limited to the relationship with Philidor.

[51] Valeant admits that the problems identified included (a) the tone at the top of the organization and (b) the occurrence of non-standard revenue transactions during this period.

[52] As a result, revenues were reduced by approximately US$58 million and diluted earnings for the year ended December 31, 2014 by approximately US$33 million and US$0.09 per share.

[53] Valeant also indicated that "the improper conduct of the Company's former Chief Financial Officer [individual Defendant Howard B. Schiller] and former Corporate Controller, which resulted in the provision of incorrect information to the ARC and the Company's independent registered public accounting firm, contributed to the misstatement of financial results".

---

[23] Exhibit P-155: Valeant press release titled "Valeant Ad Hoc Committee Announces Completion of Its Review of Philidor and Related Accounting Matters", dated April 5, 2016.

[24] Exhibit P-78: Valeant Annual Report on Form 10-K for the year ended December 31, 2015, filed on SEDAR on April 29, 2016, see explanatory note and p. 79-80.

[54] Valeant Annual Report on Form 10-K for the year ended December 31, 2015 notably states the following with respect to the Restatement background and its internal controls:

> Restatement Background
>
> On October 26, 2015, in light of allegations regarding the Company's relationship with the Philidor Rx Services, LLC ("Philidor") pharmacy network, the Company's Board of Directors (the "Board") established an ad hoc committee of independent directors of the Board (the "Ad Hoc Committee") to review these allegations and related matters (the "AHC Review"). The scope of the review conducted by the Ad Hoc Committee was subsequently broadened to encompass other areas of potential concern, unrelated to Philidor, raised during the course of the review. […] On February 22, 2016, the Company announced that, based on the work of the Ad Hoc Committee, as well as additional work and analysis performed by the Company, the Company had preliminarily identified certain revenue on sales transactions to Philidor during the second half of 2014, prior to the Company entering into a purchase option to acquire Philidor, that should have been recognized when product was dispensed to patients rather than on delivery to Philidor.
>
> On March 21, 2016, management of the Company, the ARC and the Board concluded that the Company's audited financial statements for the year ended, and unaudited financial information for the quarter ended, December 31, 2014 included in the Company's Annual Report on Form 10-K for the year ended December 31, 2014 and the unaudited financial statements for the quarter ended March 31, 2015 included in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015 should no longer be relied upon due to the misstatements and other qualitative factors described below. In addition, due to the fact that the first quarter 2015 results are included within the financial statements for the six-month period ended June 30, 2015 included in the Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 and the financial statements for the nine-month period ended September 30, 2015 included in the Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, management, the ARC and the Board also concluded that the financial statements for such six-month and nine-month periods reflected in those Quarterly Reports should no longer be relied upon. This determination was based on the AHC Review and additional work and analysis performed by the Company. Based on this work, the Company determined that the earnings impact of certain revenue transactions should have been recognized at a later date than when originally recognized.
>
> As previously disclosed, on December 15, 2014, the Company entered into a purchase option agreement with Philidor and its members in which

the Company received an exclusive option to acquire 100% of the equity interest in Philidor, and as of which time Philidor was consolidated with the Company for accounting purposes as a variable interest entity for which the Company was the primary beneficiary. Prior to consolidation, revenue on sales to Philidor was recognized by the Company on a sell-in basis (i.e., recorded when the Company delivered product to Philidor). In connection with the work of the Ad Hoc Committee, the Company determined that certain sales transactions for deliveries to Philidor in the second half of 2014 leading up to the execution of the purchase option agreement were not executed in the normal course of business under applicable accounting standards and included actions taken by the Company (including fulfillment of unusually large orders with extended payment terms and increased pricing, an emphasis on delivering product prior to the execution of the purchase option agreement and seeking and filling a substitute order of equivalent value for an unavailable product) in contemplation of the purchase option agreement. As a result of these actions, revenue for certain transactions completed prior to entry into the purchase option agreement should have been recognized on a sell-through basis (i.e., record revenue when Philidor dispensed the products to patients) rather than incorrectly recognized on the sell-in basis utilized by the Company. Additionally, related to these and certain earlier transactions, the Company has now concluded that collectability was not reasonably assured at the time the revenue was originally recognized, and, thus, these transactions should have been recognized at a later date (when collectability was reasonably assured which the Company determined coincides with when the inventory is sold through to the end customer) instead of on a sell-in basis. Following the consolidation of Philidor on the date of entry into the purchase option agreement, the Company began recognizing revenue as Philidor dispensed product to patients.

[…]

Internal Control Over Financial Reporting and Disclosure Controls and Procedures

Based on the results of the AHC Review, the Company's review of its financial records, and other work completed by management, the Company and the ARC have concluded that material weaknesses in the Company's internal control over financial reporting existed that contributed to the material misstatements in the consolidated financial statements described above. These material weaknesses relate to the tone at the top of the organization and the accounting and disclosure for non-standard revenue transactions particularly at or near quarter ends. The improper conduct of the Company’s former Chief Financial Officer and former Corporate Controller, which resulted in the provision of incorrect information to the ARC and the Company’s independent registered public accounting firm, contributed to the misstatement of

> financial results. In addition, as part of this assessment of internal control over financial reporting, the Company has determined that the tone at the top of the organization, with its performance-based environment, in which challenging targets were set and achieving those targets was a key performance expectation, may have been a contributing factor resulting in the Company's improper revenue recognition and the conduct described above.
>
> (Our emphasis)

D. Alleged Misrepresentations

[55] The misrepresentations in the secondary market are alleged to have been made by way of statements in public disclosures documents and reiterated in press releases as further described below. The misrepresentations in the primary market are alleged to have been made by way of two prospectuses and four offering memoranda.

[56] The alleged misrepresentations can be grouped under the following five categories:

a) Failure to disclose relationships with specialty pharmacies and related risks (including misrepresentations regarding Valeant's robust organic growth);

b) Misrepresentations regarding GAAP compliance;

c) Misrepresentations regarding the efficacy of Valeant's internal controls (Disclosure Controls and Procedures ("DC&P") and internal controls over financial reporting ("ICFR"));

d) Misrepresentations regarding ethical business conduct of Valeant and Valeant's directors, officers and employees; and

e) Reiteration of the misrepresentations in press releases.

[57] Essentially, it is alleged that Valeant and the other Defendants made misrepresentations or failed to provide adequate disclosure in financial statements and in other public disclosure documents related to Valeant's business practises, including its relationship with "specialty pharmacies", its relationships with and its conduct of business through them, or the impact of its relationships on its business.

[58] The Motion for Authorization defines specialty pharmacies as being Valeant's network of mail-order including, but not limited to, Philidor, with which Valeant purportedly had undisclosed relationships during the Class Period and through which it implemented an alternative sales channel and its Alternative Fulfillment Program for Valeant's products. The purpose of the Alternative Fulfilment Program was to bolster Valeant's financial performance by improving both sales volumes and profitability of Valeant's products.

[59] According to the Motion for Authorization, specialty pharmacies, including Philidor, were first established in early 2013 with Valeant's participation and under its control.

[60] Over the course of the Class Period, the specialty pharmacies would have rapidly expanded to include pharmacies operating across the United States and purportedly generating hundreds of millions of dollars in revenue for Valeant.

[61] The specialty pharmacies would ensure that Valeant's products were dispensed to patients, despite the availability of generic and other competitive drugs at lower costs.

[62] In doing so, Valeant would have artificially improved its operational results over the course of the Class Period.

[63] As a result of the alleged misrepresentations by Valeant and by the other Defendants, Applicants plead that the public price or value of Valeant's securities was artificially inflated and further that the price or value of these securities plummeted in the aftermath of the revelations regarding Valeant's operations. They seek significant damages assessed in the tens of billions of dollars.

E. Other Proceedings

[64] Applicants allege that several investigations have commenced into Valeant's business practices, including investigations by the United States authorities and Senate. The Court does not have the details of these investigations and no inference can be drawn therefrom.

[65] Also, on November 16, 2016, a criminal complaint was filed in the Federal Court of the Southern District of New York against Mr. Gary Tanner and Mr. Andrew Davenport.[25]

[66] They are charged with fraud and conspiracy in connection with Philidor for the period of December 2012 to September 2015.

[67] Mr. Tanner was Valeant's Executive Director of Commercial Analytics and Senior Director for Valeant's "Access Solutions Team". He was notably in charge of Valeant's Alternative Fulfillment Program. Mr. Davenport was the Chief Executive Officer of Philidor.

[68] The Court is mindful that the allegations set out in the criminal complaint have not been proven in Court.

---

[25] Exhibit P-203: Criminal complaint filed against Mr. Gary Tanner and Mr. Andrew Davenport dated November 16, 2016.

[69] Finally, proposed class action and securities proceedings have also been filed by other putative representative plaintiffs elsewhere in the United States, as well as in Ontario and in British Columbia.

[70] In the United States, on June 24, 2016, a Consolidated Complaint for Violations of the Federal Securities Laws was filed with the United States District Court for the District of New Jersey in the matter of *In re Valeant Pharmaceuticals International, Inc. Securities Litigation*.[26] The proposed class action "is brought on behalf of purchasers of Valeant equity securities and senior notes between January 4, 2013 and March 15, 2016 inclusive [...]."[27]

[71] In Canada, pending the present decision, the other Canadian proposed class actions have been suspended. Indeed, on September 15, 2016, Justice Perell of the Ontario Superior Court of Justice issued a direction wherein he consolidated class actions lodged against the Defendants in British Columbia and Ontario into a single proceeding in Ontario and ordered a temporary stay of proceedings pending a further order from the Ontario Superior Court or the determination of this Court on the present Motion for Authorization.

F. Defendants other than Valeant

1. Underwriters

[72] The Underwriters are involved in the primary offerings of securities.

[73] They are initial purchasers in respect of two offerings of common shares of Valeant allegedly made through prospectuses[28] ("**Offerings of common shares**") and four offerings of debt securities made through offering memoranda ("**Offerings of notes**"):

a) An offering of common shares completed in or around June 2013 (the "**June 2013 Common Share Offering**");

b) An offering of debt securities completed in or around July 2013 (the "**July 2013 Note Offering**");

c) An offering of debt securities completed in or around December 2013 (the "**December 2013 Note Offering**");

d) An offering of debt securities completed in or around January 2015 (the

---

[26] Exhibit P-170: Consolidated Complaint for Violations of the Federal Securities Laws, *In re Valeant Pharmaceuticals International, Inc Securities Litigation*, United States District Court District of New Jersey, Case No. 3:15-cv-07658.

[27] The present Motion for Authorization excludes claims in respect of Valeant's securities acquired in the United States.

[28] The Defendants contest that the March 2015 Common Share Offering was made with a prospectus. This argument is addressed below.

"**January 2015 Note Offering**");

e) An offering of debt securities completed in or around March 2015 (the "**March 2015 Note Offering**"); and

f) An offering of common shares completed in or around March 2015 (the "**March 2015 Common Share Offering**").

[74] The six offerings are collectively referred to as the "**Offerings**".

[75] The Applicants allege that the Underwriters sold Valeant's securities to the investors and helped it raise billions of dollars in offerings conducted on the basis of false and misleading offering documents.

[76] Applicants claim that in so doing, the Underwriters violated their professional obligations and contravened their statutory and civil law duties owed to the class members.

2. Individual Defendants

[77] The Individual Defendants were Valeant's officers and/or directors during either the entire period or various periods at the time of the various alleged misrepresentations.[29]

[78] The Applicants allege that in such capacity, the Individual Defendants oversaw the preparation and reporting of Valeant's disclosures to the market and knew or should have known of the alleged misrepresentations.

[79] They also allege that the Individual Defendants authorized, permitted or acquiesced to the release of the documents which contained the alleged misrepresentations.

3. PwC

[80] PwC was Valeant's independent auditor during the Class Period.

[81] It was engaged to audit Valeant consolidated annual financial statements and ICFR for fiscal years ended December 31, 2012 through December 31, 2014. During the Class Period, PwC issued the following clean and unqualified audit reports:

a) For the year 2012, issued on February 25, 2013;[30]

b) For the year 2013, issued on February 28, 2014;[31] and

---

29 Motion for Authorization, par. 30-47.
30 Exhibit P-3.
31 Exhibit P-17.

c) For the year 2014, issued on February 25, 2015.[32]

[82] In addition to its audits of Valeant's consolidated financial statements and its internal controls, PwC was also engaged to perform reviews of interim financial statements for the quarters ending March 31, 2013 through September 30, 2015 in relation to Valeant's Offerings. PwC did not issue any reports in connection with any of Valeant's interim financial filings.

[83] Applicants allege that PwC improperly attested to the veracity of Valeant's financial information in its audit of Valeant for each of the fiscal years 2012, 2013 and 2014. More particularly, they allege that in each of these audit reports, PwC made the following false and misleading representations to Valeant's shareholders:

a) That it had performed its audits in compliance with the applicable Auditors' Professional Standards, namely the standards established by the United States Public Company Accounting Oversight Board ("**PCAOB**");[33]

b) That the accompanying consolidated balance sheets and related consolidated financial statements of Valeant and its subsidiaries complied with GAAP; and

c) That Valeant maintained, in all material respects, effective internal controls over financial reporting.

[84] Applicants plead that in so doing, PwC violated the professional obligations applicable to its engagements with Valeant and that it contravened its statutory and civil law duties owed to the class members.

G. Expert Reports

[85] Although the Motion for Authorization is not intended to be a trial on the merits, the parties filed extensive contradictory expert reports in support of their respective positions on the Motion.

[86] Applicants rely on the opinions of Mr. Torchio,[34] Dr. Schondelmeyer,[35] Professor Elitzur[36] and Mr. Mintzer.[37]

---

32 Exhibit P-31.

33 PwC admits that under the PCAOB standards, it is required to obtain reasonable assurance about whether (i) a company's financial statements, prepared by company management, are free of material misstatement; and (ii) whether the company has maintained effective ICFR in all material respects. However, PwC adds that although reasonable assurance is a high level of assurance, PCAOB standards recognize that absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. The standards recognize that, for this reason, an audit conducted in accordance with PCAOB standards may not detect a material weakness in ICFR or a material misstatement to the financial statements.

34 Exhibit P-207: Expert report of Mr. Frank C. Torchio dated July 21, 2016 ("**Torchio Report**").

[87] Defendants challenge these opinions. They rely on the reports of Mr. Dowad[38] and Mr. Kolins.[39]

[88] Except for Mr. Torchio and Dr. Schondelmeyer, all the experts were cross-examined out of court and the transcripts of their examination were filed in the court record.

[89] As readily acknowledged by all the parties, the expert reports put forward by the Defendants as well as any cross-examination referring to these reports are being considered by the Court solely for the purposes of the leave application under the *QSA*, and not for the purposes of the authorization to bring a class action under the *CCP*.

[90] Indeed, an application for authorization to bring a class action under the *CCP* can only be contested orally and the Court will only consider relevant evidence if it is filed with the prior authorization of the Court in accordance with Article 574 of the *CCP*. No such request was made with respect to the Defendants' expert reports.

1. Mr. Torchio

[91] Mr. Torchio holds an MBA in Finance and Economics and is a consultant in financial valuations and financial-economic analysis.

[92] The purpose of the Torchio Report is to establish that the market in Canada for Valeant's common stock was efficient over the Class Period.

[93] Based on the Torchio Report, the Applicants allege that the variation in the price of Valeant's securities during the Class Period reflected all relevant publicly available information, including the alleged misrepresentations and the corresponding corrective disclosures.

2. Dr. Schondelmeyer

[94] Dr. Schondelmeyer is proffered as an expert in pharmaceutical management, economics and public policy in the United States.

---

35 Exhibit P-206: Expert report of Dr. Stephen Schondelmeyer dated July 25, 2016 ("**Schondelmeyer Report**").

36 Exhibits P-204 and P-210: Expert report of Professor Ramy Elitzur dated July 29, 2016 ("**Elitzur Report**") and reply expert report of Professor Ramy Elitzur dated February 21, 2017 ("**Reply Elitzur Report**") (together, "**Elitzur Reports**").

37 Exhibits P-205 and P-209: Expert report of Mr. Andrew Mintzer dated July 29, 2016 ("**Mintzer Report**") and reply expert report of Mr. Andrew Mintzer dated February 21, 2017 ("**Reply Mintzer Report**") (collectively, "**Mintzer Reports**").

38 Expert report of Mr. Philip J. Dowad, CPA, dated January 27, 2017 (Revised March 14, 2017) ("**Dowad Report**"). The Dowad Report is put forward by Valeant.

39 Expert report of Mr. Wayne A. Kolins, CPA, dated January 27, 2017 ("**Kolins Report**"). The Kolins Report is put forward by PwC.

[95] He was asked to explain relevant aspects of the regulatory and business environment in which Philidor and its affiliated pharmacies were alleged to be operating. He was also asked to explain whether the alleged conduct of Philidor and its affiliated pharmacies could give rise to regulatory, business, or other consequences to Valeant, Philidor or the other pharmacies affiliated with them.

[96] Dr. Schondelmeyer opines that the alleged improper conduct of Philidor may have resulted in violations of law and regulations and that Valeant may have violated the applicable laws, regulations and business contracts and practices in place within the U.S. pharmaceutical industry.

[97] Dr. Schondelmeyer also focuses on the risks to Valeant and its business arising from its relationships with Philidor. He believes that Valeant's relationships with and its conduct of business through Philidor and the other specialty pharmacies exposed Valeant to regulatory, economic and business risks that should have been disclosed.

[98] He summarizes his opinion as follows:

> 21. In my opinion the assumed conduct may implicate, and be contrary to, various regulations, rules, laws, practices, guidelines, or other relevant concepts or principles and that are applicable to the pharmaceutical market in the United States. These various regulations include federal food and drug laws, state pharmacy practice acts, state consumer protection regulations, false claims regulations, and other forms of regulation. Also, certain provisions of commercial contractual obligations in the pharmaceutical market may have been breached by the assumed facts and related conduct. The nature of the consequences, or potential consequences, of the conduct of Valeant, Philidor, and Philidor's affiliated pharmacies is described in my opinions.

3. Professor Elitzur

[99] Professor Elitzur is proffered as an expert on accounting, auditing and related matters.

[100] Professor Elitzur was asked (i) to describe what accounting principles and standards applied to Valeant relating to its financial reporting obligations during the Class Period, (ii) what was the purpose and role of Valeant's internal controls under the applicable accounting principles, (iii) whether Valeant maintained effective internal controls and (iv) whether any weaknesses in the internal controls were material from an accounting point of view.

[101] In addition, Professor Elitzur's was also asked whether Valeant's financial statements complied with the applicable accounting principles.

[102] Professor Elitzur also opined as to what were the professional standards and obligations applicable to PwC in conducting its audits and other engagements with Valeant. Finally, he was asked whether PwC complied with these standards and obligations.

[103] Professor Elitzur describes as follows the two internal controls that are important for financial reporting and auditing:

a) ICFR are intended to provide reasonable assurance of the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP; and

b) DC&P aim at ensuring that material information is fully and timely disclosed.

[104] He concludes that there were material weaknesses with respect to both of these internal controls for the entire Class Period, including the Pre-Restatement Period.

[105] In his opinion, problems such as those disclosed by Valeant in respect of the Restatement Period, namely tone at the top weaknesses, are necessarily long-term issues and, therefore, they must have existed in the Pre-Restatement Period.

[106] He also finds that Valeant's financial statements during the Class Period did not comply with the applicable accounting principles.

[107] With respect to PwC, he believes that PwC failed to comply with the applicable professional standards in stating in its audit reports released during the Class Period that Valeant's financial statements were compliant with the applicable accounting principles and that Valeant's ICFR and DC&P were effective.

[108] To arrive at his conclusions, Professor Elitzur conducted certain analytical tests. In his view, these tests indicate that it was “highly likely” that improper revenue recognition practices existed at Valeant prior to the Restatement Period.

[109] Professor Elitzur describes as follows the analytical tests that he conducted:

> 44. To examine whether there were accounting problems that the ICFR and DC&P systems did not detect and bring to the surface, and whether they started prior to 2014, I have conducted some analytical tests (shown in Exhibit E - Analytical Tests of Valeant's Accounting Practices). <u>These analytical tests included comparison of Valeant's metrics with comparable companies from the pharmaceutical industry. Furthermore, I tested whether these metrics were worse during the 2012-2105 period than the previous period, thus, indicating problems with the ICFR and DC&P from 2012 and on.</u> The results of these analytical tests support the claim that the reporting and disclosure problems existed from 2012 to 2015 and, hence, the ICFR and DC&P systems failed as they have not brought

them to the surface. The metrics and analytical tools that I used for this report were as follows:

(1) Analysis of Days Receivable Outstanding in Valeant vs Industry average from 2008 to the third quarter in 2015. The purpose of these test is to analyze whether the average period that it took Valeant to collect its receivables is consistent with the industry. As such, this test would help determine whether Valeant was recognizing lower quality revenues than the industry, i.e., revenues that are collected over a longer period than the industry benchmark.

(2) Analysis of the ratio of accounts receivable to sales in Valeant vs. comparable companies from the pharmaceutical industry from 2008 to the third quarter in 2015. The purpose of this test is to examine whether Valeant was recognizing revenues of lower quality than the industry, measured by higher receivables proportion of these sales relative to the industry. Low quality revenues serve as an indicator of dubious revenue recognition policies.

(3) Running the Beneish Manipulation Index in Valeant annually from 2012 to 2014. The Beneish Manipulation Index is based on Beneish (1999) where the author came up with a statistical algorithm to test the likelihood of earning manipulation. The test is made up of eight indices that are weighted to create an aggregate score, which, in turn, translates to the probability of manipulation. The first index, the Days Receivable Index is the element in the Beneish manipulation Index that relates to possible revenue manipulations, especially when coupled with the fourth index, the Sales Growth Index. When both of these indices are close to 1, or above 1, they indicate that sales are growing explosively but receivables grow even more.

(4) Statistical analysis of the ratio of accounts receivable to sales in Valeant average from 2008 to the third quarter in 2015. The purpose of this test is to refine the analysis of the ratio of accounts receivable to sales, as described in (2) above, and to determine whether statistically the ratio has significantly increased in 2012-2015 relative to 2008-2011, which would indicate worsening of the quality of revenues and, hence, dubious revenue recognition policies in Valeant, during the Class Period relative to the previous one.

(5) Further analysis of the question in 44(4) above to examine whether the correlation between sales and accounts receivable has significantly increased in 2012-2015 relative to 2008-2011.

(6) Statistical analysis of whether the informational content of the earnings reported by Valeant has declined in the period of 2012-2015 relative to 2008-2011, which would indicate whether there was a decline

> in the quality of reporting and disclosure in Valeant during the Class period relative to the one before.

[110] For the instant purposes, the tests Professor Elitzur performed can be summarized as follows:

a) First, he identified four comparable companies for which he calculated an "industry average" for two metrics, e.g. Days Receivables Outstanding (Days Sales Outstanding) and Average Accounts Receivable to Sales Ratio;

b) Second, he compared the industry average to Valeant's results for these two same metrics; and

c) Third, using mostly two indices of the Beneish Manipulation Index (the "**Beneish M-Index**"),[40] he tested the likelihood of revenue manipulation.

[111] Professor Elitzur also studied a sample group of 70 companies in which accounting misrepresentations were detected. He found that those representations occurred over the course of a minimum period of three years and a maximum period of 13 years. He concludes that accounting misrepresentation is by nature a multi-period phenomenon.

[112] After conducting these tests, Professor Elitzur arrived at the conclusion that there existed weaknesses in the internal controls and that they existed or probably existed during the Pre-Restatement Period. He adds that PwC should have uncovered them.

[113] Finally, Professor Elitzur is of the view that the accounting misrepresentations at issue are material, based notably on the significant market reaction to the revelations of October 2015.

4. Mr. Mintzer

[114] Mr. Mintzer is proffered as an expert in audit practice. He provides his opinion in regards to the violations of accounting and auditing standards for the Class Period, including during the Pre-Restatement Period.

[115] The Applicants stress that Mr. Mintzer's opinions are based only on public information and that they are necessarily preliminary, and subject to his review of Valeant's and PwC's books and records after discoveries have occurred, as the case may be.

---

[40] The Beneish M-Index is a statistical model that uses various financial ratios (or indices) and which is intended as a screening device for investment professionals, to help them manage the risks of investing in companies that have similar characteristics of other companies that have engaged in earnings manipulation. See "The Detection of Earnings Manipulation", by Messod D. Beneish, dated January 2004, Exhibit 10 of Professor Elitzur' cross-examination.

[116] With respect to the Pre-Restatement Period, Mr. Mintzer opinion is succinct.

[117] He basically states that :

> 124. Certain additional evidence indicates or tends to indicate that PwC may have violated other PCAOB Standards during its Audits and interim reviews of Valeant's financial statements issued during the Class Period. This evidence further indicates or tends to indicate that any subsequent consent by PwC to the reissuance of its "clean" audit opinions within certain of Valeant's common shares and debt securities offerings during the Class Period was improper under PCAOB Standards.

[118] Mr. Mintzer's conclusion in that regard rests on the following opinions:

a) In his view, certain evidence indicates that the consolidation of Philidor may have been required prior to December 2014. In turn, this suggests a potential PwC failure to sufficiently understand Valeant and its operations and that PwC failed to properly consider all relevant, available audit evidence.

   This alleged failure is related to the GAAP requirement to consolidate variable interest entities ("**VIE**") in which a reporting entity maintains a controlling financial interest.[41]

   Notwithstanding the fact that Valeant entered into a purchase option agreement with Philidor to acquire 100% of the equity interest in Philidor only in December 2014, Mr. Mintzer is of the view that Valeant had knowledge that it held a viable interest in Philidor prior to the executed option and that PwC should have properly ascertained that fact.

b) Concurrent with the Restatement, Valeant also disclosed that it had engaged in certain practices which increased distributor inventory levels above targets in Poland and Russia. The result of such practices is that it increased current period sales at the expense of future sales. It is not disputed that such practices are often associated with financial misstatements known as "channel stuffing".

   Mr. Mintzer if of the view that the previously undisclosed channel stuffing related practices in Russia and Poland may indicate PwC's failure to properly respond to evidence audit and interim review risks that Valeant's financial statements contained material omissions.

c) According to analytics performed by Mr. Mintzer, there is evidence that Valeant understated during the Class Period its provisions for its

---

[41] Mr. Mintzer explains that "A reporting entity with a controlling financial interest in a variable interest entity ("VIE") which consolidates the VIE is referred to as the "primary beneficiary." Mintzer Report, par. 127.

estimated cash discounts, allowances, returns, rebates, and chargebacks, as well as distribution fees paid to certain of its wholesale customers.

Mr. Mintzer states that the understatement of the provision indicated a heightened risk that Valeant's revenues could be overstated.

In his view, PwC should have detected the understatement of the provisions and this presents evidence of a possible failure by PwC to comply with PCAOB standards.

5. Mr. Dowad

[119] Mr. Dowad is proffered as an audit expert.

[120] His report is put forward by Valeant and is intended to respond to the Elitzur Reports regarding financial disclosures by Valeant, including whether Professor Elitzur's tests and analyses are supportive of his opinions as to the existence of the alleged weaknesses and misrepresentations regarding the effectiveness of Valeant's internal controls and GAAP-compliance, including for the Pre-Restatement Period.

[121] He was asked to answer the three following questions:

> (1) Do the analyses set out in Appendix "E" to Professor Elitzur's report support his conclusions that it was highly likely that:
>
> > (a) Valeant had ineffective internal controls over financial reporting ("ICFR") and ineffective disclosure controls and procedures ("DCP");
> >
> > and
> >
> > (b) Valeant's financial statements did not comply with the applicable accounting principles, throughout the proposed Class Period? ("Question 1")
>
> (2) Do you agree with Professor Elitzur that, because Valeant disclosed that ICFR and DCP were not effective as of December 31, 2015, it was highly likely that ICFR and DCP must also not have been effective throughout the proposed Class Period? ("Question 2")
>
> (3) In your opinion, does Professor Elitzur's report support his conclusion that Valeant had material or undisclosed or unconsolidated Variable Interest Entities ("VIEs") throughout the proposed Class Period? ("Question 3")

[122] Mr. Dowad responds negatively to each of these three questions.

[123] With respect to the analysis conducted by Professor Elitzur, Mr. Dowad is of the view that the selection of a control group of "comparable" companies against which Professor Elitzur compared Valeant's results is inadequate.

[124] According to Mr. Dowad, Professor Elitzur failed to identify and explain the criteria he took into account in selecting his comparator group.

[125] Mr. Dowad also criticizes the reliability of the tests conducted by Professor Elitzur since the results could be skewed by the acquisitions conducted by Valeant during the Class Period.

[126] With respect to the use of the Beneish M-Index more specifically, Mr. Dowad remarks that Professor Elitzur failed to consider any of the limitations of that model.

[127] Also, Mr. Dowad performed his own calculations, first using the same comparator group as Professor Elitzur and then adding three additional companies which he identified as relevant comparators. Mr. Dowad concludes that throughout the relevant period, Valeant's manipulation indices are not out of line with other industry participants.

6. Mr. Kolins

[128] Mr. Kolins is proffered as an audit expert.

[129] His report is put forward by PwC and is intended to respond to the Mintzer Report and the Elitzur Reports regarding whether the issues that were the subject of the restatement existed during the Pre-Restatement Period and whether PwC should have detected them. The Kolins Report does not address the Restatement Period.

[130] With respect to the Elitzur Reports, Mr. Kolins disagrees with Professor Elitzur's opinion that one can infer from the facts disclosed by Valeant in 2016 that PwC's audit was not conducted in accordance with applicable professional standards for the years ended December 31, 2012 and 2013.

[131] In its argument outline, PwC summarizes as follows Mr. Kolins' opinion regarding Professor Elitzur's report :

> 156. Mr. Kolins' opinion regarding Prof. Elitzur's theory about PwC's Pre-Restatement Period can be summarized as follows:
>
> (i) Prof. Elitzur's theory that tone at the top problems are necessarily long term suffers from a number of fundamental flaws and cannot be used to evidence tone at the top problems at Valeant in the Pre-Restatement Period; and,
>
> (ii) even if Prof. Elitzur's theory could be used in this fashion for this purpose, this does not lead to the conclusion that PwC fell below

> PCAOB standards in conducting its audits of Valeant for the 2012 and 2013 years.[42]

[132] Mr. Kolins affirms that Professor Elitzur failed to provide any actual evidence that the tone at the top problems at Valeant existed during the 2012 and 2013 fiscal years.

[133] With respect to Mr. Mintzer, Mr. Kolins notably criticizes his view that the consolidation of Philidor as a VIE may have been required prior to December 2014.

[134] Mr. Kolins explains that GAAP pertaining to VIEs is extremely complex, requires professional judgment and that simply because a company has a variable interest in an entity does not mean that the company must consolidate the VIE.

[135] With respect to Mr. Mintzer's opinion respecting the consequences of the disclosure of channel stuffing practices in Russia and Poland, Mr. Kolins basically responds that the assertions of Mr. Mintzer are unsupported:[43]

> 27. Mr. Mintzer fails to support his assertion that the risks relating to what he characterizes as "potential channel stuffing related practices in Russia and Poland" were "evident" audit and interim review risks and that PwC did not assess those "evident" risks. Significantly, Mr. Mintzer fails to demonstrate whether those practices also relate to the Pre-Restatement Period.

[136] Finally, Mr. Kolins also refutes Mr. Mintzer's opinion respecting the evidence of a risk relating to Valeant's product sales reserves or provisions. In that respect, he believes that the analytics on which Mr. Mintzer relies are questionable because he failed to normalize the data used and, also, because he used aggregate amounts.[44]

III. AUTHORIZATION TO BRING AN ACTION FOR DAMAGES UNDER DIVISION II OF THE *QSA*

A. The Claims Being Asserted Under Division II

[137] The advantage to a claimant in bringing an action in damages under Division II of the *QSA*, as opposed to a claim brought under the general civil liability regime, is significant. Indeed, unlike claims under Article 1457 *CCQ*, the *QSA* establishes two rebuttable presumptions:

a) Reliance on the false or misleading information is presumed; and

b) It is presumed that the loss of value of security is due to the corrective disclosure of the misrepresentation.

---

42 Kolins Report, par. 16-20.
43 Kolins Report, par. 24 and 84-87.
44 Kolins Report, par. 79-82.

[138] Under sections 225.17-225.27 and 225.30 *QSA*, both presumptions can be rebutted.

[139] It bears reiterating that the claims being asserted under Division II cover misrepresentations in the secondary market and are directed at all Defendant except the Underwriters since the involvement of the Underwriters is limited to the primary market distributions.

[140] The authorization under the *QSA* is therefore sought in relation to the following Defendants:

a) Valeant;

b) The Individual Defendants; and

c) PwC.

[141] As previously indicated, Division II deals with misrepresentations in the secondary market:

> 225.2. This division applies to any person who acquires or disposes of a security of a reporting issuer or of any issuer closely connected to Québec whose securities are publicly traded.
>
> However, this division does not apply to a person that subscribes for or acquires a security during the period of a distribution of securities made with a prospectus or, unless otherwise provided by regulation, under a prospectus exemption granted by this Act, a regulation made under this Act or a decision of the Authority; nor does it apply to a person that acquires or disposes of a security in connection with or pursuant to a take-over bid or issuer bid, unless otherwise provided by regulation, or to a person that makes any other transaction determined by regulation.
>
> (Our emphasis)

[142] Division II creates various categories of claims concerning misrepresentations in the secondary market, namely:

a) Claims concerning misrepresentations in documents (s. 225.8);

b) Claims concerning misrepresentations made in public oral statements (ss. 225.9 and 225.10); and

c) Claims concerning the failure to make timely disclosure of a material change (s. 225.11).

[143] Here, the Applicants only assert claims pursuant to section 225.8 *QSA* for misrepresentations in documents.

[144] Section 225.8 *QSA* provides in which circumstances such a claim may be brought against the issuer, its directors, its officers or an expert:

> 225.8. A person that acquires or disposes of an issuer's security during the period between the time when the issuer or a mandatary or other representative of the issuer released a document containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against
>
> (1) the issuer, each director of the issuer at the time the document was released, and each officer of the issuer who authorized, permitted or acquiesced in the release of the document;
>
> […]
>
> (3) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document and, if the document was released by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document.
>
> (Our emphasis)

[145] Although liability is contested, it is not disputed that PwC is an expert within the meaning of sections 225.8(3) and 225.3 *QSA*.

[146] There can only be an objectionable misrepresentation (which includes an omission) if it relates to a material fact. Section 5 *QSA* defines the notions of "misrepresentation" and "material fact" as follows:

> "misrepresentation" means any misleading information on a material fact as well as any pure and simple omission of a material fact;
>
> "material fact" means a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued;

[147] The documents at issue which allegedly contained misrepresentations are both core documents as well as non-core documents of Valeant. Section 225.3 *QSA* defines what constitutes a "core document" and a "non-core document" for the purposes of Division II:

> 225.3. In this division, unless the context indicates otherwise,
>
> "core document" means a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors'

> circular, a rights offering circular, management's discussion and analysis, an annual information form, a proxy solicitation circular, the issuer's annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;
>
> "document" means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;
>
> […]

[148] The distinction between what constitutes a core document and a non-core document is important because section 225.13 *QSA* sets out two different standards with respect to Applicants' burden of proof and available defences depending on the type of document that contains the alleged misrepresentations.

[149] Once a misrepresentation is shown to exist in a "core document", the burden shifts to the Defendants to prove they are not liable for that misrepresentation. However, if the misrepresentation is contained in a "non-core document", the following additional burden falls upon the Applicants as against Valeant and the Individual Defendants:

> 225.13. For the purposes of sections 225.8 to 225.10, unless the defendant is an expert or the misrepresentation was contained in a core document, the plaintiff must prove that the defendant
>
> (1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
>
> (2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.
>
> (Our emphasis)

[150] Pursuant to section 225.4 *QSA*, an action for damages under Division II may only be brought with prior authorization of the Court.

B. The Test for Authorization under Division II

[151] Section 225.4 *QSA* sets out the applicable test for the authorization to bring an action in damages under the *QSA* for violations of disclosure obligations in the secondary market:

> 225.4. No action for damages may be brought under this division without the prior authorization of the court.
>
> The request for authorization must state the facts giving rise to the action. It must be filed together with the projected statement of claim and be served by bailiff to the parties concerned, with a notice of at least 10 days of the date of presentation.
>
> The court grants authorization if it deems that the action is in good faith and there is a reasonable possibility that it will be resolved in favour of the plaintiff.
>
> (Our emphasis)

[152] The Applicants must therefore satisfy a two-prong test in order to obtain authorization to institute an action pursuant to section 225.4 *QSA*:

a) That they are acting in good faith; and

b) That there is a reasonable possibility that the action will be resolved in their favour.

[153] As explained by the Supreme Court of Canada in *Theratechnologies inc. v. 121851 Canada inc.,*[45] to prove a reasonable possibility that the action will be resolved in their favour, the Applicants must offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim.

[154] The purpose of this screening mechanism is to "protect reporting issuers from unsubstantiated strike suits and costly unmeritorious litigation".

[155] The Supreme Court also confirmed that the standard applicable to the screening mechanism under the *QSA* is higher than the threshold to authorize a class action under the *CCP* which has been recognized to be very low.[46]

[156] However, although the Court must undertake a reasoned consideration of the evidence to determine whether the applicable threshold under the *QSA* is satisfied, the test for authorization under the *QSA* remains a screening mechanism and the threshold to be crossed is necessarily below the threshold of the balance of probabilities.

---

45 *Theratechnologies inc. v. 121851 Canada inc.*, 2015 SCC 18, par. 38-39 ("***Theratechnologies****").*

46 *Theratechnologies*, *supra*, note 45, par. 36.

[157] The screening mechanism is not intended to be a mini-trial. It does not require a full analysis of the evidence. It does not decide issues on the merits:[47]

> [38] In my view, as Belobaba J. suggested in *Ironworkers*, the threshold should be more than a "speed bump" (para. 39), and the courts must undertake a reasoned consideration of the evidence to ensure that the action has some merit. In other words, to promote the legislative objective of a robust deterrent screening mechanism so that cases without merit are prevented from proceeding, the threshold requires that there be a reasonable or realistic chance that the action will succeed.
>
> [39] A case with a reasonable possibility of success requires the claimant to offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim. This approach, in my view, best realizes the legislative intent of the screening mechanism: to ensure that cases with little chance of success — and the time and expense they impose — are avoided. I agree with the Court of Appeal, however, that the authorization stage under s. 225.4 should not be treated as a mini-trial. A full analysis of the evidence is unnecessary. If the goal of the screening mechanism is to prevent costly strike suits and litigation with little chance of success, it follows that the evidentiary requirements should not be so onerous as to essentially replicate the demands of a trial. To impose such a requirement would undermine the objective of the screening mechanism, which is to protect reporting issuers from unsubstantiated strike suits and costly unmeritorious litigation. What is required is sufficient evidence to persuade the court that there is a reasonable possibility that the action will be resolved in the claimant's favour.
>
> (Our emphasis)

[158] The *QSA* is silent as to the evidence which can legally be submitted at this stage to allow the Court to engage in the required screening mechanism. In contrast, the Ontario *Securities Act,*[48] which describes the authorization threshold in a language which is similar to the language in the *QSA*, specifically provides at section 138.8 (2) and (3) for the filing of competing affidavit evidence and for cross-examination on that evidence:

> 138.8 (1) No action may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,
>
> (a) the action is being brought in good faith; and

---

47 *Theratechnologies*, *supra*, note 45, par. 38-39.

48 *Securities Act*, RSO 1990, c. S.5, section 138.8.

> (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.
>
> (2) Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.
>
> (3) The maker of such an affidavit may be examined on it in accordance with the rules of court.
>
> (Our emphasis)

[159] In an obiter statement in *Canadian Imperial Bank of Commerce v. Green*, Justice Côté acknowledged that there *may* be differences in the records that need to be produced in support of a leave application in Quebec and Ontario under the applicable securities acts in each province.[49] She did not expand on the nature of these differences.

[160] In the instant case, the Applicants filed 218 exhibits and six expert reports. The Defendants filed two responding expert reports. Most of the experts were cross-examined out of court and the transcripts of their examination were also filed, with additional exhibits. In addition, under the *CCP* regime for authorizing a class action, the Court authorized the Defendants to examine the Applicants out of court and the Underwriters were authorized to file four exhibits.

[161] The material filed in this case exceeds 12,000 pages.

[162] The Court doubts that this is what the legislator had in mind when he established the screening mechanism in the *QSA*.

[163] Simply adopting the model applicable in Ontario without further reflection as to the particularities of Quebec law seems at odds with other legislative choices made in Quebec, namely with respect to the differences as to the extent of evidence which can be filed for the purposes of authorizing (in Quebec) or certifying (in Ontario) a class action.

[164] However, that being said, the Court was left here with little alternatives in that respect. This is only the second case in Quebec to proceed on a motion for authorization under the *QSA* (the first being *Theratechnologies*) and all the parties agreed and proceeded assuming that they were entitled to file and rely on extensive evidence in support of the motion under the *QSA*.

---

[49] *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60, par. 123.

[165] The Court therefore undertook a reasoned consideration of all the evidence proffered by all parties to determine whether the proposed action has some merit, in keeping, however, with the nature and the goal of the screening mechanism at issue.

C. Challenges to the Applicants' Expert Reports

[166] The Defendants ask the Court to set aside or, alternatively, to give no weight to the expert reports of Dr. Schondelmeyer, Professor Elitzur and Mr. Mintzer filed by Applicants.

1. Dr. Schondelmeyer

[167] The Defendants did not file any expert evidence in response to the Schondelmeyer Report. Also, Dr. Schondelmeyer was not cross-examined.

[168] However, the Defendants plead that his opinion is qualified and insufficient as it rests on alleged facts which are not proven and since it only states that Philidor and Valeant *may* have violated the applicable laws, regulations and business contracts and practices in the United States.

[169] The Court does not agree. As pleaded by the Applicants, an expert opinion can rely on hearsay of facts to be proven at a later date. Also, the opinion of Dr. Schondelmeyer is not intended to be definitive, but merely intends to show that the Applicants' action "has some merit," in accordance with the applicable legal standard set out in *Theratechnologies.*[50]

2. Professor Elitzur

[170] With respect to Professor Elitzur's opinions, the Defendants argue the following:

a) He has limited experience as a practising auditor and has never been qualified by a court as an expert;

b) He lacks the impartiality and objectivity required of every expert witness because of his previous publications and public statements regarding Valeant;

c) He failed to disclose the details of many of the calculations, including any statistical tests, he performed to arrive at his conclusions; and

d) The analytical tests on which he relies are unsuitable for the opinions he expresses and, in any event, he performed those tests incorrectly.

[171] The Court believes that the arguments summarized in a) and b) above are insufficient at this stage to set aside Professor Elitzur's opinions.

---

[50] *Theratechnologies*, *supra*, note 45, par. 39.

[172] More particularly, based on the written record, the Tribunal is not convinced at this stage that Professor Elitzur is not qualified or that he has adopted the role of an advocate for the Applicants as argued by the Defendants. The limited evidence available to the Court is rather to the contrary.

[173] Further, there is no evidence to support the assertions of the Defendants that the facts of this case resemble the facts in *Gould v. Western Coal Corp.* In that case, the trial judge found as a matter of fact that the expert had "engaged in blatant advocacy, making exaggerated, inflammatory and pejorative comments and innuendos, which were argument rather than evidence".[51]

[174] The Tribunal also rejects the argument summarized in c) above claiming that Professor Elitzur failed to disclose the details of his calculations. The Tribunal notes that he was extensively cross-examined and that the Defendants were provided with the opportunity to seek all the details they required. But, more importantly, Mr. Dowad, Valeant's expert, indicates in his report that subject to some inconsistencies which do not seem to be material, he was able to replicate Professor Elitzur's analyses with the use of publicly available data.

[175] With respect to the argument summarized in d) above as to whether the analytical tests on which Professor Elitzur relies upon are suitable for the opinions he expresses and whether he performed those tests correctly, the Defendants' criticism boil down to the following elements.

[176] First, the Defendants claim that the comparable group of four companies to which Professor Elitzur compares Valeant's results for two metrics is not a valid average as it includes companies which Professor Elitzur admits to being objectionable in the same manner as other companies which he decided to exclude from his comparator group. Although this argument deserves to be more fully analyzed on the merits, at this stage, the Defendants' argument in this respect does not suffice to set aside the Elitzur Report.

[177] Second, the Defendants argue that Professor Elitzur's opinion should also be given no weight because he relies on the analytical tests he performed for a purpose for which they are not suited. Defendants notably point to the fact that the Beneish M-Index is being used for a novel purpose.[52]

[178] However, in the Court's view, the fact that the Beneish M-Index has never been reported to have been used in a court proceeding to establish the likelihood of improper revenue recognition practices or defective internal controls does not necessarily lead to the conclusion that it could not be recognized for such purposes, more particularly if used in conjunction with other indicators. This is a matter for trial and, at this stage, the

---

51 *Gould v. Western Coal Corp.*, 2012 ONSC 5184, par. 89.

52 *R. v. Mohan*, [1994] 2 SCR 9, at p. 37; R. v. J.-L.J., 2000 SCC 51, par. 35-36 and 50.

Court is satisfied that there is some evidence that the Beneish M-Index may be reliable and useful.

[179] Third, the Defendants submit that Professor Elitzur did not properly perform the analytical tests in question. They notably argue that the calculations of Professor Elitzur respecting the two metrics used to compare Valeant's results to those of the industry, e.g. the Days Receivables Outstanding (Days Sales Outstanding) and Average Accounts Receivable to Sales Ratio, are unreliable because he would have omitted to take into account acquisitions made by Valeant and the comparator group during the Class Period.

[180] However, at this point, the evidence rather suggests that taking into account these acquisitions would have improved Valeant's numbers, which further supports the conclusions of Professor Elitzur.

[181] Although the Defendants mount a strong argument with respect to whether the analytical tests on which Professor Elitzur relies upon are suitable for the opinions he expresses, the Court concludes that it is faced with credible contradictory evidence in that regard.

[182] Considering the subject matter of the expert reports filed here by the parties, the Motion for Authorization does not appear to be the proper venue to determine which expert is right and which is wrong.

[183] Also, the Elitzur Report should be taken as a whole, alongside with the entirety of the evidence submitted by the Applicants in support of the Motion for Authorization. The microscopic approach taken by the Defendants in reply to the Elitzur Report is incompatible with the nature of the authorization stage.

3. Mr. Mintzer

[184] The Defendants argue that Mr. Mintzer's opinions that the issues that were the subject of the restatement also impacted the Pre-Restatement Period are solely based on speculation and conjecture.

[185] They argue that Mr. Mintzer's unsupported and limited opinions in respect of the Pre-Restatement Period are not sufficient to meet the reasonable possibility of success threshold.

[186] The Court disagrees. His expert evidence, as described above, even if challenged by that of Mr. Kolins, is sufficiently credible at this stage. Again, the battle of the experts is a matter better left to be decided at trial and not at this stage.

D. Whether the Test for Authorization Under Division II Has Been Met

1. The Action Has Been Brought in Good Faith

[187] No Defendant has contested the Applicants' good faith in bringing the Motion for Authorization.

[188] Based on the evidence and the record, the Court is also satisfied that the Applicants have met the good faith requirement of the applicable test.

2. Reasonable Possibility that the Action Will be Resolved in Favour of the Applicants

[189] As previously indicated, the Applicants allege the following misrepresentations by the Defendants:

a) Failure to disclose relationships with specialty pharmacies and related risks (including misrepresentations regarding Valeant's robust organic growth);

b) Misrepresentations regarding Generally Accepted Accounting Principles ("**GAAP**") compliance;

c) Misrepresentations regarding the efficacy of Valeant's internal controls (Disclosure Controls and Procedures ("**DC&P**") and internal controls over financial reporting ("**ICFR**"));

d) Misrepresentations regarding ethical business conduct of Valeant and Valeant's directors, officers and employees; and

e) Reiteration of the misrepresentations in press releases.

[190] The Court will deal in turn with each of these proposed claims.

[191] But firstly, the Court reiterates that although they intend to defend on the merits of the action, at this stage, Valeant and PwC do not contest that the Applicants meet the "reasonable possibility of success" criteria with respect to the alleged misrepresentations made during the Restatement Period.

[192] The debate between the parties with respect to the authorization under Division II thus focuses essentially on whether authorization should be granted for the Pre-Restatement Period.

[193] As previously indicated, pursuant to section 225.8 *QSA*, the elements of the cause of action of Applicants' claim in damages in relation to core documents under the *QSA* notably requires them to show that:

a) A core document contains a misrepresentation;

b) The misrepresentation was publicly corrected; and

c) They acquired or disposed of the issuer's security during the period between the time when the issuer released a document containing a misrepresentation and the time when it was publicly corrected.

[194] With respect to non-core documents, the Applicants have an additional burden as against Valeant and the Individual Defendants as set out at section 225.13 *QSA*:

> 225.13. For the purposes of sections 225.8 to 225.10, unless the defendant is an expert or the misrepresentation was contained in a core document, the plaintiff must prove that the defendant
>
> (1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
>
> (2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

[195] For the purposes of this Motion for Authorization, the Court agrees with Applicants that each of Valeant's annual information forms ("**AIF**"), financial statements, management discussion and analysis ("**MD&As**"), prospectuses and offering memoranda issued during the Class Period is a "core document" within the meaning of the *QSA*. Press releases and public oral statements, however, are non-core documents.

a) Failure to Disclose Relationships with Specialty Pharmacies and Related Risks (Including Misrepresentations Regarding Valeant's Robust Organic Growth)

[196] It is not disputed that during the Class Period, Valeant had relationships with and conducted business through specialty pharmacies such as Philidor.

[197] According to the Applicants, the facts and circumstances relating to those relationships constituted material information that Valeant was required by law to disclose, but failed to. The Applicants also allege that Valeant failed to disclose the specific and identifiable risks to which it was exposed as a result of its relationships with specialty pharmacies.

[198] In addition, they argue that Valeant's misinformation about the robustness of its "organic growth rates" and the sustainability of its business are linked to its failure to disclose its relationships with specialty pharmacies and the related risks. Organic growth rates, also called "same store sales", was a non-GAAP financial measure devised by Valeant which served to illustrate the growth in Valeant's individual business

units that were held and operated under its management for one year or more. In other words, it intended to show how Valeant could grow its business from the inside, and not only from acquisitions.

[199] Through the restatement, Valeant acknowledged that it had improperly recognized certain revenues derived from its relationships with specialty pharmacies.

[200] At this early stage, the Court finds that the evidence suggests that Valeant was exposed to regulatory, economic and business risks due to its relationships with Philidor and other specialty pharmacies, which risks were not disclosed.[53]

[201] The evidence also suggests that Valeant's information about its financial performance and organic growth rates resulted, at least in part, from its relationships with specialty pharmacies.

[202] Valeant apparently built its relationships with specialty pharmacies through Philidor, which was incorporated in January 2013 in order to implement Valeant's Alternative Fulfillment Program. That program was put in motion in 2012 as Medicis was being acquired. Therefore, there is also at least *some* evidence to suggest that the situation prevailed during the entire Class Period, and not only during the Restatement Period.

[203] Accordingly, at this point, the Court believes that there is a reasonable possibility that the Applicants can successfully establish, on the merits of the action, that in failing to disclose its relationships with specialty pharmacies and the associated risks, Valeant misrepresented material facts which ought to have been disclosed.

b) Misrepresentations Regarding GAAP Compliance

[204] It is not disputed that during the Class Period, Valeant stated in its disclosure documents that its audited and interim financial statements were GAAP-compliant.

[205] Valeant's audited financial statements for the years 2012, 2013 and 2014, issued during the Class Period, were also accompanied by PwC's audit reports. The audit reports state that Valeant's financial statements were GAAP-compliant.[54]

[206] There is no issue that these representations were inaccurate for the Restatement Period. The issue is whether there is also evidence of such misrepresentations for the Pre-Restatement Period.

---

53 See in particular the Schondelmeyer Report.

54 Exhibits P-3, P-17 and P-31.

[207] The Applicants claim that there is evidence of such misrepresentations for the Pre-Restatement Period and that the misrepresentations were material. They notably rely on the Elitzur Reports and the Mintzer Report to support their assertion.

[208] The Defendants strongly contest the opinions of the Applicants' experts and rely on their own experts in this regard.

[209] As indicated above, at this stage, the Court is faced with a conflict between the experts which should more aptly be decided on the merits of the action. On the face of the Applicants' expert reports and notwithstanding the contestation mounted by the Defendants, the Court believes that the Applicants have established a reasonable possibility of success at trial on the misrepresentations regarding GAAP compliance for the entire Class Period.

c) Misrepresentations Regarding the Efficacy of Valeant's Internal Controls (Disclosure Controls and Procedures ("DC&P") and Internal Controls over Financial Reporting ("ICFR"))

[210] As explained in the Elitzur Report, "internal control is the system of checks and balances within a company, which is crucial for insuring the integrity of financial statements. Consequently, material weaknesses in the internal control system would cast doubts on the entire financial reporting system and its outputs […]".[55]

[211] Valeant admits that rules and regulations of the SEC require Valeant to maintain effective DC&P and ICFR at all times. Valeant also acknowledges that as a SEC registrant, it is required to have its independent auditor report on the effectiveness of its ICFR.

[212] It is not disputed that during the Class Period, Valeant represented that its internal controls were effective. These representations were notably found in the management certifications which accompanied Valeant's quarterly and annual disclosures.

[213] Also, PwC's audit reports which accompanied Valeant's audited financial statements for the years 2012, 2013 and 2014, issued during the Class Period, stated that Valeant maintained effective internal controls.[56]

[214] There is no issue that these representations were inaccurate for the Restatement Period. The issue is whether there is also some evidence of such misrepresentations for the Pre-Restatement Period and whether the misrepresentations were material.

---

55 Elitzur Report, par. 10.
56 Exhibits P-3, P-17 and P-31.

[215] On the one hand, the Defendants plead that since the obligation to report on the effectiveness of DC&P and ICFR requires the exercise of judgment on a continuous basis and in a changing environment, it cannot be assumed that because internal controls were ineffective for a certain period of time that they were also ineffective over another period.

[216] On the other hand, the Applicants claim that there is evidence that the internal controls of Valeant were ineffective during the entire Class Period, including the Pre-Restatement Period. Again, they notably rely on Elitzur Reports and the Mintzer Report to support that assertion.

[217] As with the misrepresentations regarding GAAP compliance, the Court if of the view that the Applicants have met their burden and have established a reasonable possibility of success at trial on the misrepresentations regarding the efficacy of Valeant's internal controls for the entire Class Period.

d) Misrepresentations Regarding Ethical Business Conduct of Valeant and Valeant's Directors, Officers and Employees

[218] During the Class Period, Valeant maintained written Standards of Business Conduct (the "**Standards**") applicable to Valeant's directors, officers and employees as well as a Code of Ethics for the CEO and Senior Finance Executives (the "**Code of Ethics**").

[219] The Standards and the Code of Ethics are referred to in the following terms in Valeant's management information circular dated April 9, 2015:[57]

> Standards of Business Conduct (including the Code of Ethics for CEO and Senior Financial Executives)
>
> The Board has adopted a written code of business conduct and ethics entitled the Standards of Business Conduct (the "Standards") for our Directors, officers and employees that sets out the Board's expectations for the conduct of such persons in their dealings on behalf of the Company.
>
> Employees, officers and Directors are required to maintain an understanding of, and ensure that they comply with, the Standards. Supervisors are responsible for maintaining awareness of the Standards and for reporting any deviations to management. In addition, the Standards require the Company to conduct regular audits to test compliance with the Standards. Subject to Board approval, responsibility for the establishment and periodic update and review of the Standards

[57] Exhibit P-33.

> falls within the mandate of the Audit and Risk Committee. Employees, officers and Directors are required to immediately report violations of the Standards to their supervisors, our human resources department, our Chief Compliance Officer or our General Counsel. The Board has established reporting procedures in order to encourage employees, officers and Directors to raise concerns regarding matters addressed by the Standards on a confidential basis free from discrimination, retaliation or harassment. Employees and officers who violate the standards may face disciplinary actions, including dismissal. The Board is not aware of any breach of the Standards by any Director or officer during the period from January 1, 2014 through the date hereof.
>
> Code of Ethics
>
> We also have a Code of Ethics for the CEO and Senior Finance Executives (the "Code"), which is designed to deter wrongdoing and promote (i) honest and ethical conduct in the practice of financial management, (ii) full, fair, accurate, timely and understandable disclosure, and (iii) compliance with all applicable laws and regulations. Violations of the Code are reported to the Chief Compliance Officer. Failure to observe the terms of the Code may result in disciplinary action, including dismissal. The Board is not aware of any breach of the Code by the CEO or any Senior Finance Executive during the period from January 1, 2014 through the date hereof.

[220] However, the Applicants argue that during the Class Period Valeant misrepresented in their public disclosure documents that Valeant, its directors, officers and employees complied with the Standards and the Code of Ethics.[58]

[221] More particularly, the Motion for Authorization states that :

> 189. Valeant's directors, officers and employees violated the above policies in their dealings with and in conducting Valeant's business through, Specialty Pharmacies, including Philidor;
>
> 190. Valeant's directors, officers and employees further violated these policies by failing to disclose material information regarding the circumstances of Valeant's relationships with Specialty Pharmacies as required by the *Quebec Securities Act* and other securities law;

[222] At the hearing, Valeant confirmed that it did not contest that the Applicants had met the reasonable possibility of success threshold regarding these alleged misrepresentations, but only for the Restatement Period.

---

[58] Motion for authorization, par. 183-190.

[223] Otherwise, it pleads that the Applicants have failed to particularize their allegations and that they did not point to specific individuals or specific conduct which could substantiate their assertion.

[224] Yet, in the context of the restatement of its financial statements, Valeant itself recognized that certain of its senior management engaged in improper conduct and admitted to "tone at the top" internal control weaknesses. These weaknesses resulted, in part, in the improper disclosures and financial reporting which in turn lead to the restatement.

[225] In the Court's view, the allegations of the Applicants with respect to the alleged misrepresentations regarding ethical business conduct are intrinsically related to the other alleged misrepresentations discussed above and the same conclusion should apply.

[226] The Applicants have thus satisfied their burden as to the reasonable possibility of success with respect to these alleged misrepresentations for the entire Class Period.

e) Misrepresentations in the Press Releases

[227] As previously indicated, press releases are non-core documents under the *QSA*.

[228] On the merits of the action, with respect to non-core documents, in addition to establishing the constitutive elements of the cause of action under section 225.8 *QSA*, the Applicants will therefore also need to satisfy the conditions of section 225.13 *QSA* and establish that Valeant and the Individual Defendants:

> (1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
>
> (2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

[229] All the press releases[59] targeted by the Applicants as containing misrepresentations are press releases that accompanied the publication of disclosure documents such as the publication of annual or quarterly financial results. The alleged misrepresentations in the press releases principally relate to Valeant's disclosures regarding its organic growth rates during the Class Period and the sustainability of its business.

---

[59] Exhibits P-1, P-6, P-9, P-12, P-15, P-20, P-23, P-26, P-29, P-34, P-37 and P-40;

[230] The Court is satisfied that the Applicants have met their burden at this stage with respect to the press releases and have established a reasonable possibility of success at trial on the alleged misrepresentations contained in the press releases.

f) Proposed Action against the Individual Defendants

[231] Subject to the applicable defences, pursuant to section 225.8(1) *QSA*, Valeant's directors are liable for any document that contains a misrepresentation released when they held that position. For their part, the officers are liable if they authorized, permitted or acquiesced in the release of a document containing a misrepresentation.

[232] Here, it is alleged that all of the Individual Defendants, other than Rosiello, were members of Valeant's Board of Directors at various times during the Class Period. It is further alleged that Rosiello was an Officer of Valeant from July 2015 through the end of the Class Period.

[233] In the circumstances, in accordance with the findings of the Court above, there is also a reasonable possibility that the action against the Individual Defendants will be resolved in favour of the Applicants for the relevant periods.

g) Proposed Action against PwC

[234] As against PwC, the claim of the Applicants is being asserted under section 225.8(3) *QSA* in respect of the annual disclosure documents of Valeant, the prospectuses and the offering memoranda in relation to the Offerings.

[235] Subject to the applicable defences, pursuant to section 225.8(3) *QSA*, PwC is liable in its capacity of an expert whose report, statement or opinion were included, summarized or quoted from, with its written consent, in the documents of the issuers containing the alleged misrepresentations discussed above.

[236] PwC argues that the Court should not authorize the Division II Claim against it for the Pre-Restatement Period because the allegations in that regard are based solely on unsubstantiated conjecture extrapolated from the Restatement Period.

[237] It is true that Philidor did not exist until January 2013 and that there appears to be little basis upon which to criticize Valeant's 2012 financial statements (which were issued on February 25, 2013) on account of the Philidor issue.

[238] However, that being said, the allegations against PwC are not limited to the Philidor issue but also cover other potential misrepresentations and failures by PwC in relation to Valeant's financial disclosure documents.

[239] For the reasons explained above, the Court believes that the expert evidence relied upon by the Applicants is sufficient to meet their burden at this stage for the entire Class Period.

[240] More particularly, the clash of opinions between, on the one hand, Professor Elitzur and Mr. Mintzer and, on the other hand, Mr. Kolins as to whether the weaknesses relating to Valeant's financial statements and its internal controls existed in the Pre-Restatement Period and whether PwC should have detected these problems is a matter better left to be decided at trial and not on the Motion for Authorization.

[241] Suffice it to say that at this point, based on the applicable standard, the Court finds that there is a reasonable possibility that the Division II Claim against PwC could be resolved in favour of the Applicants for the entire Class Period.

3. Conclusion as to whether the Test for Authorization under Division II has been Met

[242] In sum, as to whether the test for authorization under the *QSA* has been met, the Applicants have established that the action is brought in good faith and that there is a reasonable possibility that they will succeed at trial.

[243] Having met the test prescribed under Division II, the Applicants are thus granted leave under the *QSA* to pursue secondary market liability claims against the Defendants, except the Underwriters who are not concerned with the Division II Claim.

[244] The Court will now deal with the request to pursue that claim as well as other claims by way of class action under the *CCP*.

IV. AUTHORIZATION TO BRING A CLASS ACTION UNDER THE *CCP*

A. The Test for Authorization under the *CCP*

[245] For the class action to be authorized, the Applicants bear the burden of demonstrating that the four conditions set out in Article 575 *CCP* are satisfied:

> 575. The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that
>
> (1) the claims of the members of the class raise identical, similar or related issues of law or fact;
>
> (2) the facts alleged appear to justify the conclusions sought;
>
> (3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part

> in judicial proceedings on behalf of others or for consolidation of proceedings; and
>
> (4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

[246] As repeatedly outlined in the case law, because of the nature of the class action authorization process, the role of the motion judge is limited at this stage:[60]

> [34] […] In clear terms, particularly since its decision in *Infineon*, the Supreme Court has repeatedly emphasized that the judge's function at the authorization stage is only one of filtering out untenable claims. The Court stressed that the law does not impose an onerous burden on the person seeking authorization. "He or she need only establish a 'prima facie case' or an 'arguable case'", wrote LeBel and Wagner JJ. in *Vivendi*, specifying that a motion judge "must not deal with the merits of the case, as they are to be considered only after the motion for authorization is granted".

[247] The Court will address each of the criteria of Article 575 *CCP* in turn, starting with the second criteria since this is the logical order systematically applied by the case law.

B. Whether the Facts Alleged Appear to Justify the Conclusions Sought (Article 575(2) *CCP*)

[248] This criterion is sometimes referred to as the "good colour of right" test, although it differs significantly from the "good colour of right" standard applicable in the common law provinces for the certification of a class action.

[249] It is well established that in applying this criterion, the Court must take as true the allegations of the Motion for Authorization, provided that they are accompanied by *some* evidence to form an arguable case. Vague, general or imprecise assertions should not be taken as true. Furthermore, any review of evidence pertaining to issues on the merits should be left for trial:[61]

> [67] At the authorization stage, the facts alleged in the applicant's motion are assumed to be true. The applicant's burden at this stage is to establish an arguable case, although the factual allegations cannot be [translation] "vague, general [or] imprecise" (see *Harmegnies v. Toyota Canada inc.*, 2008 QCCA 380 (CanLII), at para. 44).

---

60 *Sibiga v. Fido Solutions inc.*, 2016 QCCA 1299, par. 34; *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59; *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1.

61 *Infineon Technologies AG v. Option consommateurs*, *supra*, note 60, par. 67-68 and 134.

> [68] Any review of the merits of the case should properly be left for the trial, at which time the appropriate procedures can be followed to adduce evidence and weigh it on the standard of the balance of probabilities. […]
>
> [134] On their own, these bare allegations would be insufficient to meet the threshold requirement of an arguable case. Although that threshold is a relatively low bar, mere assertions are insufficient without some form of factual underpinning. As we mentioned above, an applicant's allegations of fact are assumed to be true. But they must be accompanied by some evidence to form an arguable case. The respondent has provided evidence, limited though it may be, in support of its assertions, namely the exhibits attesting to the existence of a price-fixing conspiracy and to the international impact of that conspiracy, which had been felt in the United States and Europe. At the authorization stage, the apparent international impact of the appellants' alleged anti-competitive conduct is sufficient to support an inference that the members of the group did, arguably, suffer the alleged injury.

[250] As previously indicated, the Applicants raise the following causes of action against the Defendants:

a) Statutory right of action for misrepresentation in secondary market disclosures (Division II Claim) as against all Defendants except the Underwriters;

b) Statutory right of action for misrepresentation in primary market disclosures (Division I Claim) as against all Defendants; and

c) Civil Claim under Article 1457 *CCQ* as against all Defendants.

[251] In addition to the allegations summarized in paragraphs [20] to [54] above, the following allegations in the Motion for Authorization are to be taken as true at this stage:

a) Valeant is a reporting issuer in Quebec and is closely and significantly connected to Quebec for the purposes of Title VIII, Chapter II, Division II of the *QSA*;

b) The Individual Defendants were all directors or officers of Valeant at relevant times of the release of the documents purporting to have contained misrepresentations and they authorized, permitted or acquiesced in the release of these documents;

c) With respect to the documents being Valeant's press releases, Valeant and the Individual Defendants knew, at the time that each of such documents was released, that the press release contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time;

d) PwC acted as an expert of Valeant at the relevant time;

e) PwC consented to the inclusion of its opinion or audited reports, which contained the alleged misrepresentations, in the annual disclosure documents of Valeant, the Offering Memoranda and the Prospectuses; and

f) The Underwriters acted as dealers under contract to Valeant to distribute the securities issued in the Offerings.

1. Statutory Right of Action for Misrepresentation in Secondary Market Disclosures (Division II Claim)

[252] In support of their motion for authorization to bring as a class action the Division II Claim, the Applicants essentially restate all of their arguments relating to their request for authorization to bring an action for damages under Division II of the *QSA*.

[253] The Applicants argue that insofar as the Court authorizes them to bring a Division II Claim, they also necessarily satisfy the good colour of right criteria for leave to bring that claim as a class action.

[254] The Court agrees. The burden under section 225.4 *QSA* is heavier than the one applicable under Article 575(2) *CCP*. Therefore, satisfaction of the former necessarily entails satisfaction of the latter.

[255] As previously indicated, that cause of action is directed against all Defendants except the Underwriters.

2. Statutory Right of Action for Misrepresentation in Primary Market Disclosures (Division I Claim)

[256] That cause of action is asserted on behalf of the Primary Market Sub-Class.

[257] The Applicants argue that the Defendants are liable for misrepresentations in the primary market disclosures documents and rely on the statutory recourse of sections 218 to 221 *QSA*.

[258] More specifically, they claim that the Defendants violated their statutory obligations in the issuance of Valeant's securities offered by way of the Offerings.

[259] As a general rule, under the *QSA*, the distribution of securities to the public is made under a prospectus, unless an exemption applies, including the offering memorandum exemption or the accredited investor exemption. Articles 11, 12 and 43 *QSA* read as follows:

> 11. Every person intending to make a distribution of securities shall prepare a prospectus that shall be subject to a receipt issued by the

> Authority. The application for a receipt must be accompanied with the documents prescribed by regulation.
>
> Notwithstanding the foregoing, in the case of a distribution made by a dealer acting as firm underwriter, the issuer is responsible for preparing the prospectus.
>
> 12. Every person intending to make, from Québec, a distribution of securities to persons established outside Québec shall prepare a prospectus and obtain a receipt therefor from the Authority.
>
> No prospectus is required, however, where the Authority agrees or does not object within 15 days after receiving the information required by regulation.
>
> 43. No prospectus is required where a distribution of securities is made to an accredited investor determined by regulation and the distribution meets the conditions prescribed by regulation.

[260] The available prospectus exemptions are set out in *Regulation 45-106 respecting prospectus and registration exemptions* ("***Regulation 45-106***").[62]

[261] The relevant provisions of the *QSA* respecting claims for misrepresentations in the primary market when a distribution is effected with a prospectus read as follows:

> CHAPTER II
>
> MISREPRESENTATION
>
> DIVISION I
>
> PRIMARY MARKET AND TAKE-OVER OR ISSUER BIDS
>
> 217. A person who has subscribed for or acquired securities in a distribution effected with a prospectus containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.
>
> The defendant may defeat the application only if it is proved that the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.
>
> 218. The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed, from its officers or directors, the dealer under contract to the issuer or holder whose securities were distributed and any person who is required to sign an

---

62 *Regulation 45-106 respecting prospectus and registration exemptions*, CQLR c V-1.1, r 21.

> attestation in the prospectus, in accordance with the conditions prescribed by regulation.
>
> […]

[262] As against PwC, the cause of action relied upon is set out in section 219 *QSA*:

> 219. The plaintiff may also claim damages from the expert whose opinion, containing a misrepresentation, appeared, with his consent, in the prospectus.

[263] Pursuant to 221 *QSA*, the rights of action under sections 217 to 219 may also be exercised if a misrepresentation is contained in an offering memorandum prescribed by regulation:

> 221. Rights of action established under sections 217 to 219 may also be exercised if a misrepresentation is contained in
>
> (1) the information incorporated by reference in the simplified prospectus;
>
> (2) the offering memorandum prescribed by regulation;
>
> (3) any other document authorized by the Authority for use in lieu of a prospectus.
>
> (Our emphasis)

[264] Of note, pursuant to section 225.02 *QSA*, Applicants need not prove reliance in order to succeed on their claim:

> 225.0.2. The plaintiff is not required to prove that the plaintiff relied on the document containing a misrepresentation when the plaintiff subscribed for, acquired or disposed of a security.

[265] To avoid liability, the Defendants need to establish the defences mentioned in section 220 *QSA*:

> 220. The defendant in an action provided for in sections 218 and 219 is liable for damages unless it is proved that
>
> (1) he acted with prudence and diligence, except in an action brought against the issuer or the holder whose securities were distributed, or that
>
> (2) the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

[266] Defendants submit that the Applicants do not satisfy the good colour of right criteria with respect to the Division I Claim. They raise the following arguments:

a) The four Offering memoranda were not "prescribed by regulation" and section 221 *QSA* only creates a cause of action where an offering memorandum is prescribed by regulation;

b) With respect to the second Offering of common shares made in March 2015, there was no prospectus and sections 217-219 *QSA* only create a cause of action for damages in respect of misrepresentations in a prospectus; and

c) The Applicants do not have a valid personal cause of action since they have never acquired any Valeant's securities on the primary market.

[267] PwC also pleads that the Applicants have not established that PwC's opinion appeared in the prospectuses and the offering memoranda with its consent as required by section 219 *QSA.* That argument is a red herring according to the Court. Being Valeant's auditors, there is some credible evidence at this stage to support the allegation of the Applicants that PwC consented to the use of its reports in the prospectuses and the offering memoranda.

[268] The Court will now turn to the other arguments raised by Defendants.

a) Whether the Offering Memoranda were "Prescribed by Regulation"

[269] Section 221 *QSA* creates a cause of action for a misrepresentation that is made in an offering memorandum that is "prescribed by regulation".

> 221. Rights of action established under sections 217 to 219 may also be exercised if a misrepresentation is contained in
>
> […]
>
> (2) the offering memorandum prescribed by regulation;
>
> (Our emphasis)

[270] Although it is not disputed that there were offering memoranda relating to the four Note Offerings, the Defendants claim that these offering memoranda were not *"prescribed by regulation"* within the meaning of the *QSA*.

[271] Rather, the offering memoranda at issue would have been provided voluntarily to accredited investors pursuant to the prospectus exemption under *Regulation 45-106*, the regulation governing exemptions from the prospectus requirement under the *QSA*

for the distribution of securities. *Regulation 45-106* is a complex piece of regulation of over 200 pages.

[272] According to Defendants, an offering memorandum would be "prescribed by regulation" within the meaning of section 221 *QSA* only if it was delivered under section 2.9 of *Regulation 45-106* which further expands on prospectus requirements.

[273] In other words, the Defendants plead that because the offering memorandum was provided voluntarily, it is necessarily not "prescribed by regulation".

[274] The Court cannot accept that argument at face value at the authorization stage. Namely, the Court notes that article 221 *QSA* does not use the expression "required by regulation", but rather the expression "prescribed by legislation" or, in French, "prévue par règlement".

[275] Whether the Defendants are right to submit that section 221 *QSA* shows a clear intent to exclude offering memorandum provided voluntarily is a matter better left for the merits of the action.

[276] Considering the low standard applicable at this stage, the Court is satisfied that there is at a minimum "some evidence" to establish an appearance of right with respect to the Offering memoranda.[63]

b) Whether the March 2015 Common Share Offering was made with a Prospectus

[277] With respect to the March 2015 Common Share Offering, the Defendants argue that sections 217-219 *QSA* only create a cause of action in respect of a distribution effected with a prospectus containing a misrepresentation.

[278] According to the Defendants, although that offering was made through a prospectus, there was no prospectus *within* the meaning of the *QSA* with respect to that offering. Rather, they argue that any distribution of shares outside the United States was pursuant to the "accredited investor exemption" and does not give rise to a statutory cause of action under the *QSA*.

[279] They add that pursuant to the March 2015 Common Share Offering, no securities in that offering were distributed in Canada and that the distribution outside of Canada[64] was done by way of an exemption to the prospectus requirement.

[280] The Prospectus Supplement dated March 17, 2015 relating to that offering states:[65]

---

63 *Infineon Technologies AG v. Option consommateurs*, *supra*, note 60, par. 149-150.

64 Other than in the United States which are not covered by the proposed class action.

> Although the Common Shares have been registered under the U.S. Securities Act of 1933, as amended, the Common Shares have not been qualified for distribution by prospectus under the securities laws of any province or territory of Canada, and sales of the Common Shares outside Canada are being made pursuant to an exemption from the prospectus requirements of Canadian securities laws. Investors seeking to purchase Common Shares will be required to deliver a signed representation letter. See "Requirements of the Offering" beginning on page S-iv of this prospectus supplement.
>
> (Our emphasis)

[281] Notwithstanding the exemption from the prospectus requirements of Canadian securities laws, the question remains as to whether the prospectus which was in fact used in relation to the March 2015 Common Share Offering is a prospectus *within* the meaning of the *QSA* which can give rise to the cause of action set out at sections 217-219 *QSA*.

[282] The Defendants may be right in the final outcome, but, again, considering the low standard applicable at this stage, the Court is satisfied that there is at a minimum "some evidence" to establish an appearance of right with respect to the March 2015 Common Share Offering.[66]

[283] Although the arguments of the Defendants are appealing, at the authorization stage, the Court must refrain from making a decision on the merits of the case, even more so when the argument is based in evidence.

[284] It will be incumbent on the Applicants, on the merit of the action and on a full record, to show that their argument must prevail.

c) Whether the fact that Applicants did not Acquire Securities on the Primary Market is a bar

[285] It is not disputed that the Applicants did not acquire any Valeant securities on the primary market. Therefore, they do not themselves have a cause of action with respect to primary market distribution and would not themselves be members of the proposed Primary Market Sub-Class or have a direct cause of action against the Underwriters.

[286] As a consequence, the Defendants argue that the Applicants do not meet the condition of Article 575(2) *CCP* with respect to misrepresentations in the primary market. The Defendants raise the same argument in support of their position that the criteria of Article 575(3) and 575(4) are also not satisfied.

---

65 Exhibit P-50 : Prospectus Supplement dated March 17, 2015.

66 *Infineon Technologies AG v. Option consommateurs*, *supra*, note 60, par. 149-150.

[287] The Court disagrees that the fact that the Applicants did not acquire securities on the primary market is a bar to authorizing the proposed class action with respect to the Division I Claim.

[288] Rather, it would be ineffective and contrary to the goals underlying the class action regime, which include judicial economy, access to justice and deterrence, to carve out the proposed class as suggested by the Defendants.[67]

[289] In essence, the proposed class action is intended to cover all persons who acquired Valeant securities during the Class Period.

[290] The simple truth is that no matter whether the securities were acquired on the primary or on the secondary market, all proposed class members acquired securities during the Class Period and the alleged misrepresentations are essentially rooted in the same factual background. The distinction in the statutory provisions of the *QSA* between the primary and secondary market claims are not sufficient to obviate the fact that the main question that lies at the heart of the litigation relates to the legal characterization of the alleged representations.

[291] The fact that two sub-classes exist, one for those who acquired the securities in an Offering and the other for those who acquired the securities in the secondary market, does not transform the class action into two distinct class actions.

[292] Contrary to the assertions of the Defendants, and more particularly the Underwriters, the questions of facts and law raised are very similar as regards the primary and the secondary market.

[293] The Court believes that it would be inappropriate to artificially divide the proposed class action into two distinct actions, one relating to the primary market and the other relating to the secondary market.

[294] As recently confirmed by the Court of Appeal, the possibility of a representative not having the interest to represent a particular sub-class does not in itself justify rejecting a motion for authorization:[68]

> [120] Chose certaine, la possibilité qu'un représentant n'ait pas l'intérêt voulu pour représenter un sous-groupe en particulier ne justifiait pas à elle seule de rejeter l'ensemble de la demande de Copibec.
>
> [121] En somme, je suis d'avis qu'au stade de l'autorisation, Copibec et les mis en cause partagent avec l'ensemble des membres du groupe l'essentiel des fondements juridiques de l'action collective envisagée. Je

---

67 *Bank of Montreal v. Marcotte*, 2014 SCC 55, par. 31-33.

68 *Société québécoise de gestion collective des droits de reproduction (Copibec) v. Université Laval*, 2017 QCCA 199, par. 120-121.

> considère aussi qu'en cas de difficulté portant sur des questions périphériques rattachées à la représentativité, il était préférable pour le juge de laisser le soin de décider de ces questions à une étape ultérieure du déroulement de l'action judiciaire.

d) Conclusion Respecting the Division I Claim

[295] For the reasons set out above, the Court finds that the facts alleged appear to justify the conclusions sought with respect to the cause of action pertaining to the statutory right of action for misrepresentations in primary market disclosures.

3. Civil Claim under Article 1457 *CCQ*

[296] The Civil Claim is asserted on behalf of both the primary and secondary market sub-classes. It is directed at all Defendants, except that the claim on behalf of the Secondary Market Sub-Class excludes the Underwriters.

[297] The requisite elements for a claim in damages based on Article 1457 *CCQ* are the following: (i) fault, (ii) injury and (iii) causal link.

a) Sufficiency of the Allegations to Support the Claim against the Individual Defendants

[298] The Defendants argue that the Applicants have failed to allege facts with sufficient particularity to support a civil liability claim against them, in particular that they would have committed a fault.

[299] The Court disagrees. Indeed, the allegations of the Motion covers all three constitutive elements of this cause of action.

[300] First, the Applicants allege that the Defendants covered by this cause of action committed faults in violation of their general private law duty of diligence owed to the members of the class.

[301] More specifically, the Applicants allege that the Defendants failed to abide by the rules of conduct incumbent on them in the circumstances of their relationships with the members of the class as well as the transactions in which they acted, at law and as reasonably required from them.

[302] The discussion above further informs the alleged failures of each group of Defendants respecting their obligations in relation to Valeant's reporting requirements and their liability for the alleged misrepresentations.

[303] Second, the Applicants add that the Defendants' fault caused injury to the members of the class in the nature of significant monetary damages and losses. They specifically allege causality notably at paragraph 253 of the Motion for Authorization:

> 253. As a result of the Defendants' conduct and their misrepresentations in Valeant's disclosure documents, Valeant's securities traded at artificially inflated prices during the Class Period and the Class acquired those securities at prices that were inflated and did not reflect their true value. When the truth began to emerge, the market price or value of Valeant's plummeted, causing significant losses and damages to the Plaintiffs and the Class;

[304] The Applicants conclude that the Defendants are bound to compensate these losses.

[305] Whether or not the Applicants will be able to prove their allegations at trial is not to be decided at this point.

b) Whether the fact that Applicants did not Acquire Securities on the Primary Market is a bar

[306] For the reasons already set out above with respect to the Division I Claim, the Court finds that the fact that the Applicants did not acquire securities on the primary market is not a bar to the satisfaction of the Article 575(2) criteria with respect to the Civil Claim.

c) Whether a Claim can properly be Asserted against the Directors or Officers

[307] Individual Defendant Howard B. Schiller argues that he cannot be properly sued because when a director or officer causes an injury to the corporation through his fault, he can be sued by the corporation which he injured but not by the stockholders whose securities were indirectly affected as a result.

[308] In support of his argument, he notably relies on the matter of *Groupe d'action d'investisseurs dans Biosyntech v. Tsang*,[69] which confirms that a damage by ricochet is not recoverable under Quebec law because it is not a direct damage.

[309] However, Mr. Schiller's argument is ill-founded because the claim against the Individual Defendants here is not based on the loss that they may have caused to the corporation, but on the loss that they have allegedly caused directly to the class members through their own fault. The fact that the class members may be "victims by

---

[69] *Groupe d'action d'investisseurs dans Biosyntech v. Tsang*, 2016 QCCA 1923.

ricochet" does not prevent them from having sustained a direct damage in the circumstances of this case.

[310] In fact, relying on *Infineon,*[70] the Court of Appeal in *Biosyntech* specifically acknowledged "that a victim by ricochet has a recourse as long as the damage claimed is not by ricochet, i.e. it is direct." The Court of Appeal also offered insight as to what would constitute direct damages suffered by a shareholder which is distinct from the damage suffered by the corporation. The Court of Appeal endorsed the example given by the first judge as to what would constitute a direct damage suffered by a shareholder pursuant to the acts of a director. That example applies perfectly to this case:[71]

> [31] […] The Supreme Court has since confirmed in *Infineon* that *a victim by ricochet has a recourse as long as the damage claimed is not by ricochet, i.e. it is direct*. Appellants (or other shareholders of the class) have admitted, in the proceedings before the Superior Court sitting in bankruptcy and insolvency, that the damages claimed are by ricochet.
>
> [31] Another example of direct damage suffered by a shareholder resulting from the acts of a director was described by the judge as the hypothetical case of the shareholder who purchases his shares based on the negligent or fraudulent misrepresentation of directors. Such a scenario causes the shareholder to have parted with his money to buy worthless shares and thus, suffers harm independent from the company giving rise to a good cause of action against directors for damages directly suffered by the shareholder.…
>
> (Our emphasis)

C. Whether the Claims Raise Identical, Similar or Related Issues of Law or Fact (Article 575(1) *CCP*)

[311] In *Sibiga v. Fido Solutions inc.*, Justice Kasirer summarized the applicable test as follows:[72]

> [122] In *Vivendi*, LeBel and Wagner JJ. proposed a "flexible" approach to article 1003(a) according to which the identification of one common question would be sufficient. Their Lordships recognized that variation might exist within the class and that this was not a bar to meeting the common question requirement. Drawing on decided cases in Quebec, they wrote:

---

70 *Infineon Technologies AG v. Option consommateurs*, *supra*, note 60.

71 *Groupe d'action d'investisseurs dans Biosyntech v. Tsang*, *supra*, note 69, par. 30-31.

72 *Sibiga v. Fido Solutions inc.*, *supra*, note 60, par. 122; *Infineon Technologies AG v. Option consommateurs*, *supra*, note 60, par. 60 and 72-73; *Vivendi Canada Inc. v. Dell'Aniello*, *supra*, note 60, par. 41-47, 53, 55 and 57-58.

> [58] […] To meet the commonality requirement of art. 1003(a) C.C.P., the applicant must show that an aspect of the case lends itself to a collective decision and that once a decision has been reached on that aspect, the parties will have resolved a not insignificant portion of the dispute. […] All that is needed in order to meet the requirement of art. 1003(a) C.C.P. is therefore that there be an identical, related or similar question of law or fact, unless that question would play only an insignificant role in the outcome of the class action. It is not necessary that the question make a complete resolution of the case possible.

[312] In *Vivendi Canada Inc. v. Dell'Aniello*, the Supreme Court of Canada also cautioned about importing in Quebec the commonality requirement applicable in the common law provinces because of the significant distinctions between the two legal regimes:[73]

> [53] Although the expression "common issues" is frequently used by Quebec judges and authors, its content is not exactly the same as that of the expression "identical, similar or related questions of law or fact". It would be difficult to argue that a question that is merely "related" or "similar" could always meet the "common issue" requirement of the common law provinces. The test that applies in Quebec law therefore seems to be less stringent. Because of the differences in the wording of the applicable legislation, the case law on class actions from the common law provinces is not determinative where the application of the criterion of art. 1003(a) is concerned.
>
> [54] In addition, it can be seen from the Quebec courts' interpretation of art. 1003(a) C.C.P. that their approach to the commonality requirement has often been broader and more flexible than the one taken in the common law provinces. The Quebec courts propose a flexible approach to the common interest that must exist among the group's members: P.-C. Lafond, *Le recours collectif comme voie d'accès à la justice pour les consommateurs* (1996), at p. 408.

1. Statutory Right of Action for Misrepresentation in Secondary Market Disclosures (Division II Claim)

[313] With respect to the statutory right of action for misrepresentation in secondary market disclosures (Division II Claim), the Defendants do not dispute that the criterion of Article 575(1) *CCP* is met.

[314] The Court agrees.

---

[73] *Vivendi Canada Inc. v. Dell'Aniello*, *supra*, note 60, par. 53-54.

2. Statutory Right of Action for Misrepresentation in Primary Market Disclosures (Division I Claim)

[315] The Defendants' arguments respecting the commonality criteria focus on the Civil Claim. To the extent, however, that these arguments are also applicable to the application for authorization to institute a class action in relation to the Division I Claim, the Court applies here the reasoning and decision explained in the next section which are equally applicable for the Division I Claim.

3. Civil Claim under Article 1457 *CCQ*

[316] With respect to the Civil Claim, Valeant does not dispute that the question of whether any Defendant committed a fault by violating a duty of diligence owed to any member of the class in respect of any alleged misrepresentation raises common issues of law and fact.

[317] This alone suffices for the criteria of Article 575(1) *CCP* to be met. Indeed, an answer to that question will have a significant impact on one or multiple aspects of the legal syllogisms advanced by the Applicants and will significantly advance the claim for the benefit of the entire class.

[318] However, Valeant asks the Court not to identify as common issues of law and fact to be decided at trial the questions relating to causality and damages as well as the issue of ultimate liability.

[319] Valeant argues that there is an absence of commonality with respect to causality, which necessarily entails, in its view, the absence of commonality respecting the Defendants' ultimate liability for damages.

[320] According to Valeant, the Court should thus not allow the questions of causality, damages and ultimate liability to be assessed collectively, but rather leave the question of whether these issues can be assessed collectively to be determined by the trial judge.

[321] In support of its argument, Valeant argues that Canadian courts have decisively rejected the application in Canada of the "efficient market theory" or the "fraud-on-the-market theory" which are used in the United States to create a rebuttable presumption of reliance.[74] According to Valeant, reliance, and thus causality as well as Defendants'

---

[74] *Basic Inc. v. Levinson*, 485 U.S. 224 (S.C.) 1988, p. 241-242; *Carom v. Bre-X Minerals Ltd.*, [1998] O.J. No. 4496 (Ont. S.C.), par. 40; *Green v. Canadian Imperial Bank of Commerce*, 2012 ONSC 3637, par. 600, conf'd by *Green v. Canadian Imperial Bank of Commerce*, 2014 ONCA 90, par. 99, in turn conf'd by *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60; *Coffin v. Atlantic Power Corp.*, 2015 ONSC 3686, par. 138.

ultimate liability, and damages will need to be proven individually in this case for each member of the class.

[322] The Court does not have to determine at this stage whether causality and damages will in fact be determined collectively or individually. It is true that proving the causal link under the *CCQ* regime in a securities claim is particularly onerous,[75] however, there is ample authority in Quebec to support the view that it may be possible to do so, subject to the evidence to be adduced at trial.[76] Also, without deciding the issue, the Court is of the view that the rejection in Ontario of the "fraud-on-the-market theory" does not necessarily lead to the conclusion that it would not be available in Quebec.

[323] Therefore, for the purposes of the authorization judgment, the Court will identify as common issues of law and fact the questions of causality, damages and ultimate liability. Whether the Applicants will succeed at trial in this respect remains an open question.

[324] With respect to the composition of the class, the Court is likewise satisfied that (i) it is founded on objective criteria; (ii) the criteria have a rational basis; (iii) the definition of the class is not circular or vague; and (iv) it does not depend on and is not conditional to any one of the issues going to the merits of the case.

[325] Therefore, the Court finds that the Applicants have met the commonality criteria of Article 575(1) *CCP*.

D. Whether the Composition of the Class makes it Difficult or Impracticable to Apply the Rules for Mandates or Consolidation of Proceedings (Article 575(3) *CCP*)

[326] To meet the Article 575(3) *CCP* requirement, the Applicants must show, at a minimum, that there is a class, and that the class is of a size that makes the procedural alternatives to class procedure difficult or impracticable.

[327] To determine whether the Applicants have met their burden, the Court must be provided with some information as to the potential size of the group and its essential characteristics.

---

75 The *QSA* regime for secondary market misrepresentations which creates a presumption of causality was established precisely to overcome that difficulty: *Theratechnologies*, *supra*, note 45, par. 28 and 33.

76 *Ménard v. Matteo*, 2011 QCCS 4287, par. 51 and 61-69; *Comité syndical national de retraite Bâtirente inc. v. Société financière Manuvie*, 2011 QCCS 3446, par. 98-99; *Biondi v. Syndicat des cols bleus regroupés de Montréal (SCFP-301)*, 2010 QCCS 4073, par. 131, 136-143, varied on appeal 2013 QCCA 404 although not on the principles.

1. Existence of a Sub-Class for the Secondary Market Claim

[328] According to the Applicants, Valeant issued approximately 334,000,000 shares which are publicly traded worldwide and there are thousands of persons that could be members of the proposed class. It can also easily be assumed that the proposed class members may be located throughout the world.[77]

[329] In this context, with respect to Secondary Market Sub-Class, there is no doubt that it would be difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings. The condition of Article 575(3) *CCP* is thus easily satisfied with respect to the secondary market claim.

2. Existence of a Sub-Class for the Primary Market Claim

[330] With respect to the Primary Market Sub-Class, the Underwriters point to the fact that based on the Court record, there would be 40 purchasers at the most who acquired securities in the Offerings.

[331] The evidence also suggests that most, if not all, of these purchasers still held the securities on October 19, 2015, which is a condition to be part of the proposed class.

[332] However, the identity and coordinates of the Primary Market Sub-Class potential members are not known to the Applicants.

[333] Although the number of members of the sub-class is relatively low, that number is enough for the purposes of a sub-class if one considers the class (which includes both sub-classes) as a whole.

[334] As indicated by Justice Bélanger who writes for the Court of Appeal in *Lambert (Gestion Peggy) v. Écolait ltée*, the number of potential members in a proposed class is only one of the many considerations to be taken into account in determining whether the condition of Article 575(3) is met:[78]

> [57] Je fais miens les propos tenus par Me Yves Lauzon dans Le Grand collectif publié à l'occasion de l'entrée en vigueur du nouveau Code de procédure civile. Celui-ci expose que les facteurs habituellement considérés dans l'analyse de l'article 1003 c) C.p.c., maintenant le troisième paragraphe de 575 C.p.c., sont le nombre estimé de membres, la connaissance par le requérant de leur identité, de leurs coordonnées et de leur situation géographique. Il suggère toutefois que d'autres facteurs peuvent être considérés dont l'impact

---

[77] The proposed class, however, excludes investors who acquired Valeant securities in the United States.

[78] *Lambert (Gestion Peggy) v. Écolait ltée*, 2016 QCCA 659, par. 57.

> direct et déterminant sur la possibilité réelle pour les membres d'ester en justice, l'aspect financier étant un avantage important de l'action collective. Ainsi, le principe de la proportionnalité et une saine administration de la justice peuvent aussi militer en faveur de l'utilisation de l'action collective, malgré un nombre plus restreint de membres, selon les circonstances de l'affaire dont la valeur des réclamations.
>
> (Our emphasis)

[335] Viewing the relevant considerations as a whole, the Court thus finds that the condition of Article 575(3) *CCP* is also met with respect to the Primary Market Sub-Class.

E. Whether the Representative Plaintiffs are Adequate (Article 575(4) *CCP*)

[336] To satisfy this criterion, the representative plaintiffs must be (1) competent, (2) have a sufficient interest in the proposed action, and (3) not be in a conflict of interest with the proposed class members.[79]

[337] As stated by the Supreme Court of Canada in *Infineon*, the ability of a person to adequately represent the proposed class is assessed liberally. The threshold to satisfy this criterion is low:[80]

> [149] Article 1003(d) of the *C.C.P.* provides that "the member to whom the court intends to ascribe the status of representative [must be] in a position to represent the members adequately". In *Le recours collectif comme voie d'accès à la justice pour les consommateurs* (1996), P.-C. Lafond posits that adequate representation requires the consideration of three factors: [translation] ". . . interest in the suit . . ., competence . . . and absence of conflict with the group members . . ." (p. 419). In determining whether these criteria have been met for the purposes of art. 1003(d), the court should interpret them liberally. No proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly.
>
> [150] Even if a conflict of interests can be established, the court should be reluctant to take the extreme action of denying authorization. As Lafond states, at p. 423, [translation] "[i]n the event of a conflict, denying authorization is in our opinion an overly radical step that would harm the absent members, especially given that the judge sitting at the stage of the motion for authorization has the power to ascribe the status of representative to a member other than the applicant or the proposed member." Given that the purpose of the authorization stage is merely to

---

79 *Fortier v. Meubles Léon ltée*, 2014 QCCA 195, par. 141.

80 *Infineon Technologies AG v. Option consommateurs*, *supra*, note 60, par. 149-150.

> screen out frivolous claims, it follows that the purpose of art. 1003(d) cannot be to deny authorization if there is only a possibility of conflict. This position is supported by the case law, as authorization appears to have been denied under art. 1003(d) on the basis of a conflict of interests only where prospective representative plaintiffs had failed to disclose material facts or were undertaking the legal proceedings purely for personal gain. […]

[338] It is not disputed that the Applicants purchased Valeant's securities on the secondary market during the Class Period and endured a financial loss. They have not acquired any Valeant security on the primary market.

[339] Defendants dispute the qualifications of the Applicants as representative plaintiffs for both the primary and secondary market sub-classes and argue that they are not in a position to properly represent class members "as they have failed to take even the most minimal steps with respect to the conduct of this proceeding".[81]

[340] In addition, with respect to the Primary Market Sub-Class, the Defendants argue that the Applicants have no interest in the primary market claim since they have not acquired any security on the primary market and therefore do not have a personal cause of action with respect that claim.

[341] As to whether the Applicants have taken the minimal steps required with respect to the conduct of the proceedings, the Court does not agree with the Defendants. The cases they rely upon are distinguishable and dealt with particular fact situations not present here.[82] Also, in these cases, there were various shortages in the conduct of the proposed representatives, and not merely to the fact that they had not contacted other proposed class members.

[342] Here, the alleged causes of action are complex and they have been advanced diligently and seriously by the Applicants through experienced counsel. Even if the steps taken by the Applicants could be qualified as being minimal, they are sufficient for the purposes of this criterion.[83]

[343] Furthermore, there appears to be no conflict of interest between the Applicants and the other members of the proposed class.

[344] With respect to the primary market claims specifically, the Defendants plead that the Applicants cannot be adequate representatives because they are not members of the Primary Market Sub-Class.

---

81 Valeant's argument outline.

82 *Benizri v. Canada Post Corporation*, 2017 QCCS 908.

83 *Charles v. Boiron Canada inc.*, 2016 QCCA 1716, par. 60-61, application for leave to appeal to the Supreme Court of Canada denied, 2017 CanLII 25785 (CSC).

[345] The Court does not agree. As already stated, the possibility of a representative not having the interest to represent a particular sub-class does not in itself justify rejecting a motion for authorization.[84]

[346] The Court concludes that the condition in Article 575(4) is met.

F. Conclusion on the Authorization to Bring a Class Action under the *CCP*

[347] In sum, the Court finds that the Applicants have met all the authorization requirements prescribed in Article 575 *CCP*. The Applicants are thus authorized to bring a class action against the Defendants.

[348] Finally, considering the absence of any argument respecting the content of the notice to class members and the manner of dissemination of information, that matter will be dealt with at a subsequent hearing upon the request of any party.

FOR THESE REASONS, THE COURT:

[349] **GRANTS** the present motion;

[350] **AUTHORIZES** the bringing of a class action and the bringing of an action pursuant to section 225.4 of the Quebec *Securities Act*[85] ("***QSA***");

[351] **ASCRIBES** the Applicants Mr. Catucci and Ms. Aubin the status of representative of the persons included in the class and sub-classes herein described as:

> Primary Market Sub-Class: All persons and entities, wherever they may reside or may be domiciled, who, during the Class Period, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States (but not excluding any claims in respect of Valeant's 4.50% Senior Notes due 2023 offered in March 2015); and
>
> Secondary Market Sub-Class: All persons and entities, wherever they may reside or may be domiciled who, during the Class Period, acquired Valeant's Securities in the secondary market and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States;

---

84 *Société québécoise de gestion collective des droits de reproduction (Copibec) v. Université Laval*, *supra*, note 68, par. 120-121.

85 CQLR, c. V-1.1.

> Excluded from the class are the Defendants, the Individual Defendants, members of the immediate families of the Individual Defendants, and the directors, officers, subsidiaries, and affiliates of Valeant and its subsidiaries;

[352] **IDENTIFIES** the issues to be dealt with collectively as follows:

a) Did the Impugned Documents (as defined in the present motion) contain one or more misrepresentations within the meaning of the *QSA* or, as applicable, within the meaning of the other Securities Legislation or the laws of another jurisdiction? If so, what documents contained what misrepresentations?

b) Are any of the Defendants, other than the Underwriters (as defined in the present motion), liable to the Secondary Market Sub-Class, or any of the members of the Secondary Market Sub-Class, under Title VIII, Chapter II, Division II of the *QSA* or, as applicable, under the concordant provisions of the other Securities Legislation or the laws of another jurisdiction? If so, what Defendant is liable and to whom?

c) Are any of the Defendants liable to the Primary Market Sub-Class, or any of the members of the Primary Market Sub-Class, under Title VIII, Chapter II, Division I of the *QSA* or, as applicable, under the concordant provisions of the other Securities Legislation or the laws of another jurisdiction? If so, what Defendant is liable and to whom?

d) Did any of the Defendants owe a duty of diligence or care to the Class, or any of the members of the Class, under the general private law of Quebec or, as applicable, under the general private law of another jurisdiction? If so, what Defendant owed a duty of diligence or care and to whom?

e) If some or all of the Defendants owed a duty of diligence or care to the Class, or any of the members of the Class, did any of the Defendants violate such duty of diligence or care and commit a fault under article 1457 of the *Civil Code of Quebec* or, as applicable, a tort or other wrong under the law of another jurisdiction? If so, what Defendant committed a fault, a tort or other wrong and with respect to whom?

f) What damages are sustained by the Applicants and the other members of the Class?

g) Are any of the Defendants liable to the Applicants and the Class, or any of them, for damages? If so, what Defendant is liable, to whom and in what amount?

[353] **IDENTIFIES** the conclusions sought by the class action to be instituted as being the following:

a) **GRANT** this class action on behalf of the Class;

b) **GRANT** the Applicants' action against the Defendants in respect of the rights of action asserted against Defendants under Title VIII, Chapter II, Divisions I and II of the *QSA* and, if necessary, the concordant provisions of the other Securities Legislation, and article 1457 of the *Civil Code of Quebec*;

c) **CONDEMN** the Defendants to pay to the Applicants and the Class compensatory damages for all monetary losses;

d) **ORDER** collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

e) **THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

[354] **ORDERS** the publication of a notice to the class members in accordance with Article 579 of the *Code of Civil Procedure*, pursuant to a further order of the Court, and **ORDERS** Defendants to pay for said publication costs;

[355] **FIXES** the delay for a class member to opt out of the class at 60 days from the date of the publication of the notice to the members and **DECLARES** that all members of the class who have not requested their exclusion from the class in the prescribed delay will be bound by any judgment to be rendered on the class action to be instituted;

[356] **WITH LEGAL COSTS** including the costs related to the publication of the notices to class members.

Chantal Chatelain

CHANTAL CHATELAIN, J.S.C.

Me Shawn Faguy
Me Vincent Doré
FAGUY & CO.
Attorney for the Applicants Celso Catucci and Nicole Aubin

Me Samy Elnemr
SISKINDS MONTRÉAL
Jurisconsult for the Applicants Celso Catucci and Nicole Aubin

Me Michael Robb
Me Sajjad Nematollahi
SISKINDS LLP
Jurisconsult for the Applicants Celso Catucci and Nicole Aubin

Me Peter Jervis
Me Joel Rochon
ROCHON GENOVA
Jurisconsult for the Applicants Celso Catucci and Nicole Aubin

Me Jonathan Ptak
Me Garth Meyers
KOSKIE MINSKY
Jurisconsult for the Applicants Celso Catucci and Nicole Aubin

Me Eli Karp
MORGANTI LEGAL
Jurisconsult for the Applicants Celso Catucci and Nicole Aubin

Me Éric Préfontaine
Me Allan Coleman
Me François Laurin-Pratte
OSLER, HOSKIN & HARCOURT LLP
Attorney for the Respondent Valeant Pharmaceuticals International Inc.

Me Pierre Y. Lefebvre
Me Laura Cooper
Me Sarah Armstrong
Me Noah Boudreau
FASKEN MARTINEAU DUMOULIN
Attorney for the Respondent PricewaterhouseCoopers LLP

Me William McNamara
Me Marie-Ève Gingras
TORYS LAW FIRM LLP
Attorney for the Respondents Goldman Sachs & Co., Goldman Sachs Canada Inc., Deutsche Bank Securities Inc., Barclays Capital Inc., HSBC Securities (USA) Inc., Mitsubishi UFJ Securities (USA) Inc., DNB Markets Inc., RBC Capital Markets LLC, Morgan Stanley & Co. LLC, Suntrust Robinson Humphrey Inc., Citigroup Global Markets Inc., CIBC World Markets Corp., SMBC Nikko Securities America Inc., TD Securities (USA) LLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and BMO Capital Markets Corp.

M^e André Ryan
M^e Shaun E. Finn
BCF LLP
Attorney for the Respondent Howard B. Schiller

M^e Jessica Starck
BENNETT JONES
Jurisconsult for the Respondent Howard B. Schiller

Date of hearing : April 24 to April 28, 2017