

## **EXCEL TEXEL ACTION SETTLEMENT SCHEME**

### **Excel Texel Pty Ltd & anor v Frank Cullity Wilson**

Federal Court of Australia, Proceeding NSD1983/2017

#### **BACKGROUND**

- A. This Settlement Scheme establishes a procedure for distributing the Settlement Sum to be paid by Frank Cullity Wilson pursuant to a settlement of the Proceeding approved by the Court.
- B. This Settlement Scheme does not become operative until Settlement Approval occurs and is to be read in conjunction with the Deed.
- C. The Settlement Scheme provides for the following major steps:
  - (a) Gadens will be appointed as Administrator of the Settlement Scheme.
  - (b) The Administrator will provide a Preliminary Notice to each Group Member listing the trading and other data pertaining to them and will provide an opportunity for Group Members to notify of any alterations, amendments or objections to that data prior to the distribution out of the Settlement Fund.
  - (c) The Administrator will finalise the Claimant Database and use it to calculate the entitlement of each Group Member to a distribution out of the Settlement Fund.
  - (d) The Administrator will notify Group Members of the calculation of their entitlement by way of an Assessment Notice and give them an opportunity to notify any objections to it.
  - (e) Interest earned on the amount in the Settlement Fund will be applied, in the first instance, to the extent necessary for payment of Administration Costs and the Applicant's Reimbursement Payment.
  - (f) The Administrator may at any time deduct money from the Settlement Fund for the purpose of providing for or discharging tax liabilities in respect of the Settlement Fund and this Settlement Distribution Scheme as set out in clause 6.4 below.
  - (g) Prior to any distribution to Group Members, the Administrator will deduct the Applicant's Costs, the Applicant's Reimbursement Payment, the Funding Commission, and any Administration Costs as approved by the Court from the Settlement Fund, leaving the Net Settlement Sum.
  - (h) From the Net Settlement Sum, the Administrator distribute the entitlements of Group Members in accordance with the Loss Assessment Formula.

## OPERATIVE CLAUSES:

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### 1. Interpretation

- 1.1 In this Settlement Scheme, the following terms have the meanings defined (clause references are references to the clauses of this document unless otherwise specified):

**Act** means the *Federal Court of Australia Act 1976* (Cth).

**Administrator** means Gadens acting as the Court appointed administrator of the Settlement Scheme.

**Administration Costs** means the payment of any costs and disbursements incurred in connection with the administration of the Settlement Scheme, insofar as such costs are not included in the Applicant's Costs and Disbursements in the amount of \$[amount] (as approved by the Court).

**Applicants** means Excel Texel Pty Ltd and Andrew Wyma.

**Applicants' Costs** means the legal costs and disbursements incurred by or on behalf of the Applicants in conducting the Proceeding, the related proceeding *Excel Texel Pty Ltd & ors v Certain Underwriters at Lloyd's London Subscribing to Policy Number B0507N16FA15350 & ors* (NSWD733/2020) obtaining approval of the settlement, including the costs of defending any appeals from the approval, on a solicitor/client basis, as approved by the Court, in the amount of [amount] (which for the avoidance of doubt includes legal costs and disbursements paid by the Funder and unbilled costs payable to Gadens).

**Applicants' Reimbursement Payment** means an amount by way of compensation and reimbursement for time and expenditure reasonably incurred by the Applicants in a representative capacity in bringing and maintaining the Proceeding in the interests of Group Members, in the amount of \$10,000 each (as approved by the Court).

**Assessment** means the value of a Group Member's Claim and an estimated distribution under this Settlement Scheme calculated by applying the Loss Assessment Formula to that Group Member's Claim Data.

**Assessment Notice** means the notice by the Administrator to each Group Member notifying them of:

- (a) the Claim Data relating to that Group Member;
- (b) the Administrator's reasonable estimate of that Group Member's expected distribution under the Settlement Scheme;
- (c) the terms of clauses 4.3 and 4.4 below; and
- (d) the availability and terms of the Review.

**Claims** means all claims, actions, demands, debts, causes of action, liabilities, allegations, losses, suits or proceedings for damages, equitable relief, compensation, interest and legal and administrative costs, expenses and disbursements (present and future) of any description, debt, restitution, equitable compensation, account, interest, injunction, specific performance, judgments, decisions and orders or any other remedy, whether arising at common law, in equity or under statute or otherwise.

**Claim Data** means the following personal information for each Group Member, as applicable and known:

- (a) name of the Group Member;
- (b) postal address;
- (c) street address;
- (d) If an Australian resident, tax file number;
- (e) email address;
- (f) telephone numbers; and
- (g) trade data for purchases and sales of Quintis Ltd in the Relevant Period.

**Claimant Database** means a database or other records constructed by or on behalf of the Administrator to contain the Claim Data for each Group Member from information supplied by Group Members as part of any registration process ordered by the Court in the Proceeding.

**Court** means the Federal Court of Australia.

**Davis Claims** means those allegations adopted by the Applicants at paragraphs 36A and 36B of the Fifth Further Amended Statement of Claim dated 22 March 2024.

**Deed** means the Deed of Settlement executed on 12 July 2024, between the Applicants, Frank Cullity Wilson, and Ironbark Funding Navy Pty Ltd (a/t for the Ironbark Funding Navy Unit Trust).

**Excel Texel Claims** means those allegations concerning the representations and information pleaded at paragraphs 5 to 36 inclusive of the Fifth Further Amended Statement of Claim dated 22 March 2024.

**Final Assessment** means:

- (a) an Assessment contained in an Assessment Notice which has been deemed to be accepted by a Group Member under clause 4.4;
- (b) an Assessment contained in a Review Determination under clause 5.2; or
- (c) an assessment by the Court under clause 5.3.

**Funder** means Ironbark Funding Navy Pty Ltd (a/t for the Ironbark Funding Navy Unit Trust).

**Funding Commission** means the amount that is payable to the Funder by way of funding commission in the amount of [\$ amount] or such other amount as may be approved by the Court.

**Gadens** means Gadens Lawyers.

**Group Members** means all persons who are identified as group members in Schedule A to the Further Amended Consolidated Originating Application filed on 6 July 2022. For the purposes of this Settlement Scheme, a Group Member includes the Applicant.

**Loss Assessment Formula** means the formula by which losses are calculated as contained in the Schedule to this Settlement Scheme, which is calculated to reflect the value of the Excel

Texel Claims concerning Galderma SA between 26 February 2016 and 10 May 2017 but not otherwise and not the Davis Claims.

**Net Settlement Sum** means the amount of the Settlement Sum after adding the interest on the Settlement Sum earned through the Settlement Fund, and deducting the Project Costs, Applicant's Costs (to the extent it is not covered by Project Costs), the Applicant's Reimbursement Payment, the Funder's entitlement to a commission, after-the-event insurance premium, plus any applicable tax, payable by the Funder, and any Administration Costs.

**Preliminary Notice** means the notice sent to Group Members in accordance with clause 3 of this Settlement Scheme.

**Preliminary Response Date** has the meaning given to it in clause 3.1(b) of this Settlement Scheme.

**Proceeding** means Federal Court of Australia Proceeding No. NSD220 of 2019.

**Relevant Period** means 1 July 2015 to 10 May 2017 inclusive.

**Retainer** means the costs disclosure and agreement between Gadens and the Applicants relating to the Proceeding.

**Review** means the procedure provided in clause 5 for the review by Gadens of an Assessment Notice at a Group Member's request.

**Review Determination** means Gadens' written determination to the Group Member of the calculation and the result of the Review.

**Settlement Approval** means orders from the Court approving the settlement of the Proceeding on the terms set out in the Deed and the Settlement Scheme pursuant to section 33V of the Act and/or any other law.

**Settlement Approval Date** means the date on which Settlement Approval occurs.

**Settlement Fund** means the "Settlement Distribution Fund" as defined in the Deed (maintained by Gadens), which is effectively an interest-bearing account.

**Settlement Scheme** means the terms of this document as approved by the Court, including any Schedules, referred to as the "Settlement Scheme" in the Deed.

**Settlement Sum** means the (a) the sum of \$13.5 million inclusive of legal costs, expenses, disbursements, any funding commission and interest referred to in the Deed; together with (b) any amounts approved to be distributed under this Settlement Scheme from the "Settlement Sum" held in Court as defined in the Settlement Deed approved by order 1 of the orders of the Federal Court of 1 July 2022 (being the settlement with Quintis Ltd).

**Shares** mean an interest in Quintis Ltd securities.

- 1.2 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) the singular includes the plural, and the converse also applies;
  - (b) a gender includes all genders;
  - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
  - (e) a reference to dollars and \$ is to Australian currency;
  - (f) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed or this Settlement Scheme.
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## **2. Scheme Administrator**

- 2.1 The Settlement Fund shall be administered and applied by Gadens as Administrator. Gadens as Administrator, at its discretion, may utilise the services of any persons employed by it, barristers, accounting experts, other experts, or any other service provider in administering the Settlement Fund in accordance with this Settlement Scheme.
- 2.2 In acting as Administrator (including any incidental functions), Gadens' obligation is to do so properly on behalf of the Group Members as a whole. Neither Gadens nor any person employed by it will act as the lawyer for any individual Group Member (or sub-group of Group Members) in relation to his, her or its claim under the Settlement Scheme.
- 2.3 Following Settlement Approval and the transfer of the entirety of the Settlement Sum into the Settlement Fund in accordance with clause 2 of the Deed, the Administrator shall hold the monies in the Settlement Fund subject to and in accordance with the terms of this Settlement Scheme and the Deed.
- 2.4 Notwithstanding anything elsewhere contained in this Settlement Scheme, the Administrator may at its sole discretion and at any time correct any error, slip or omission occurring in the course of the administration of the Settlement Scheme.
- 2.5 Where the Applicant or a Group Member is a Group Member by virtue of acts done on their behalf, by a trustee, investment manager, responsible entity or agent, the Administrator may rely on any information, instruction or declarations provided by that trustee, investment manager, responsible entity or agent as if it has been provided by the Applicant or that Group Member itself.

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3. **Confirmation of Claim Data**

- 3.1 As soon as practicable after the Settlement Approval Date, the Administrator will cause a **Preliminary Notice** to be given to each Group Member, which will contain:
- (a) details of their Claim Data held in the Claimant Database;
  - (b) a request for the Group Member to give notice to the Administrator, or as otherwise directed by the Administrator, by a particular date (**Preliminary Response Date**) of no less than 7 days from the date that the Preliminary Notice is given as to whether any of the Claim Data set out in the Notice is inaccurate, together with documentation that proves the inaccuracy being notified;
  - (c) a request for the Group Member to provide bank account information to the Administrator, or as otherwise directed by the Administrator, to enable electronic payment of entitlements from the Settlement Fund to be made; and
  - (d) a request for the Group Member to provide a tax file number (if applicable) as well as a street address, or any other information required for tax withholding purposes.
- 3.2 If by the Preliminary Response Date (or such longer period as the Administrator considers in its absolute discretion to be warranted), no notification has been received from a Group Member that the Claim Data listed in their Preliminary Notice is inaccurate, the Claim Data set out in the Preliminary Notice will be deemed correct and complete.
- 3.3 If by the Preliminary Response Date (or such longer period as the Administrator considers in its absolute discretion to be warranted), notification is received from a Group Member that the Claim Data set out in the Preliminary Notice is inaccurate, the Administrator will:
- (a) consider the notification and the supporting documentation supplied as proof for such inaccuracy, and if based on the information provided to the Administrator, in its sole discretion it deems appropriate, the Administrator will cause changes to be made to the Claim Data held on the Claimant Database pertaining to that Group Member; and
  - (b) either notify the Group Member of its updated Claim Data as determined and made by the Administrator or otherwise of the Administrator's determination that no alternations to the Claim Data held on the Claimant Database are warranted.
- 3.4 A determination by the Administrator under clause 3.3(b) is final and binding, save that prior to the expiry of 14 days after notice is given of the determination, the Group Member has liberty to apply to the Court for the Court to review such determination at that Group Member's cost. Any application to the Court in respect of this aspect of the Settlement Scheme must be served by the Group Member on the Administrator.

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**4. Assessment of Individual Claims and Provision of Assessment Notices**

- 4.1 As soon as practicable after the confirmation of the Claim Data as provided for in clause 3 above, the Administrator will cause the calculation of the Assessment for each Group Member using the Claim Data on the Claimant Database.
- 4.2 As soon as practicable after the Assessment for each Group Member is calculated, the Administrator will cause an Assessment Notice to be given to each Group Member.
- 4.3 If the Group Member notifies the Administrator, or any other person nominated by the Administrator, of any error, slip or omission, the Administrator may correct the Assessment Notice prior to the distribution in accordance with clause 8 of this Settlement Scheme.
- 4.4 The accuracy of an Assessment Notice shall be deemed to be accepted by a Group Member, and shall be the Final Assessment under this Settlement Scheme, unless the Group Member, within 14 days of the date of the Assessment Notice being given, delivers to the Administrator or to any other person nominated by the Administrator, a written request for a Review together with copies of all documents on which the Group Member relies for the purposes of the Review, including any statement of reasons for seeking the Review.

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**5. Requests for Review**

- 5.1 If a Group Member requests a review of an Assessment Notice in accordance with clause 4.4, the Administrator may give a notice in writing, directing the Group Member to submit such further documentation in support of the Review as the Administrator considers appropriate, and such documentation must be submitted within 14 days of the date of this written notice being given, failing which the request for Review shall be deemed never to have been made and the accuracy of the Assessment Notice shall be deemed to be accepted by the Group Member.
- 5.2 Gadens shall, within 14 days of the later of the receipt of the request for the Review under clause 4.4 or the date that further documentation was received under clause 5.1 above:
- (a) if it determines in its absolute discretion to be necessary, cause another calculation process to be carried out in order to calculate the value of the Group Member's Claim according to the methodology for an Assessment; and/or
  - (b) notify the Group Member of the Review Determination; and/or
  - (c) make any necessary incidental or consequential amendments to any other notice to any and all affected Group Members.
- 5.3 A Review Determination under clause 5.2 is final and binding and shall be the Final Assessment under the Scheme, save that, prior to the expiry of 14 days after notice is given of the Review Determination, the Group Member has liberty to apply to the Court for the Court to review the Review Determination at that Group Member's cost. Any application to the Court in respect of this aspect of the Settlement Scheme must be served by the Group Member on the Administrator.

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**6. Application of interest and Order of Payments**

- 6.1 To the extent necessary, the interest earned on the Settlement Fund will be applied to payment of Administration Costs and the Applicant's Reimbursement Payment if and to the extent that

the Administration Costs and the Applicant's Reimbursement Payment are approved by the Court.

6.2 As soon as practicable after the Settlement Approval Date and:

- (a) if an appeal is not lodged in respect of the Settlement Approval, the expiry of 49 days from the Settlement Approval Date, or
- (b) if an appeal is lodged and the ultimate outcome of the appeal is that this Settlement Scheme is approved, the date of the ultimate outcome of the appeal,

the Administrator shall:

- (c) pay the Funding Commission to the Funder, as approved by the Court;
- (d) then pay the portion of the Applicants' Legal Costs paid by the Funder to the Funder, as approved by the Court;
- (e) then pay the portion of the Applicants' Legal Costs not paid by the Funder to Gadens, as approved by the Court;
- (f) then pay the Administration Costs incurred or to be incurred by the Administrator as approved by the Court, to the Administrator;
- (g) then pay the Applicant's Reimbursement Payment to the Applicants, as approved by the Court;
- (h) then, once all Group Members have a Final Assessment, all Review Determinations under clause 5.2 have been completed, any applications to the Court pursuant to clause 5.3 have been determined by the Court or otherwise disposed of, the Administrator shall thereafter commence distribution of payments to Group Members in accordance with clause 8.

6.3 If the aggregate of the total amount of interest earned on the Settlement Fund and the amount of the Settlement Fund exceeds the Administration Costs and the Applicant's Reimbursement Payment, such residual interest will be distributed to Group Members in the proportion that their Assessments consists of when compared to the Net Settlement Sum distributed in accordance with clause 8.

6.4 For the avoidance of doubt, the Administrator may deduct monies from the Settlement Fund at any time, and in such manner as the Administrator reasonably determines, for the purpose of providing for or discharging, any tax obligations that may or will arise, or have arisen, in respect of the Settlement Fund and this Settlement Scheme, including prior to any distribution of any monies from the Settlement Fund to any Group Members.

6.5 (a) If the Administrator considers that the process of conducting Review Determinations under clause 5.2 and any applications to the Court pursuant to clause 5.3 would result in distributions under clause 6.2 being delayed by an unreasonable period of time, the Administrator may make interim distributions in accordance with clause 6.3, provided that the Administrator is reasonably satisfied that following such interim distributions the Administrator will retain in the Settlement Fund sufficient funds to accommodate the outcome of such Review Determinations under clause 5.2 and any applications to the Court pursuant to clause 5.3 (including any consequential



adjustments to distributions already made), and any other amounts required to be paid by the Administrator, including under clause 6.4.

- (b) For the avoidance of doubt, the Administrator may make an interim payment under this clause in respect of Funding Commission.

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**7. Notification of Funder Payments from Group Members**

- 7.1 At least 14 days before any distribution to Group Members, the Administrator shall notify the Funder of:
  - (a) the intended date of the distribution; and
  - (b) the Final Assessment of each Group Member in accordance with clause 8 below.
- 7.2 The Administrator shall be bound for all purposes at law, in equity or otherwise, to pay the Funding Commission to the Funder and reimburse it for paying the Project Costs (as approved by the Court).
- 7.3 The Administrator is immune from any demand, claim, suit or liability at law, in equity or under statute, made or incurred by any Group Member in respect of any loss or damage arising as a result of any payment made by the Administrator to the Funder in accordance with any obligation arising under the Settlement Scheme.

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**8. Distribution**

- 8.1 No distribution to Group Members shall be made from the Settlement Fund until the Final Assessment of every Group Member has been determined and the Administration Costs have been paid in full.
- 8.2 Once the payments in sub-clauses 6.2(c) to 6.2(g) have been made, the Net Settlement Sum (including net of any deductions arising from the Funding Commission) shall be distributed to Group Members in accordance with their Final Assessment and this clause as soon as is practicable.
- 8.3 The Administrator may, at his discretion, deduct from the amount of a Group Member's distribution any transaction charge paid or payable by the Administrator in respect of an electronic transfer of a distribution amount paid or payable to that Group Member, where that Group Member has requested that payment be effected by electronic transfer to an account outside of Australia.
- 8.4 If after the final distribution of the Settlement Fund to Group Members:
  - (a) any amount remains or is held in the Settlement Fund, such as further interest amounts accrued prior to the final distribution but received after the final distribution; or
  - (b) any cheque remains un-presented for a period of 90 days;the amount shall be distributed pro rata among the Group Members, subject to clause 8.5.

- 8.5 At the Administrator's absolute discretion, the following amounts required to be distributed under clause 8.4 may instead be paid to the Starlight Children's Foundation Australia:
- (a) if the total amount to be distributed is less than \$5,000, the total amount; or
  - (b) if the amount to be distributed to any individual Group Member is less than \$100, that amount.

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**9. Immunity from Claims and Indemnities**

- 9.1 The completion of distributions made pursuant to clause 8 (including distributions made by cheques that remain un-presented for 90 days) shall satisfy all Claims made by Group Members and the Applicant in the Proceeding.
- 9.2 To the extent that the Administrator engages the services of the Funder for the purpose of administering the Settlement Fund in accordance with this Settlement Scheme, the Funder will have no liability to the Administrator or any Group Member who does not receive a distribution or receives a distribution in an incorrect amount arising from any:
- (a) failure of a Group Member to correct its Claim Data recorded on the Claimant Database in accordance with the Settlement Scheme;
  - (b) incorrect or otherwise incomplete information provided by or on behalf of a Group Member, including any Claim Data;
  - (c) failure of a Group Member to notify of an update to its contact details listed on the Claimant Database;
  - (d) failure by a Group Member to request a correction/recalculation of the estimation of compensation entitlements in accordance with the Settlement Scheme; and/or
  - (e) error or omission made by the Administrator.
- 9.3 The Administrator (and for the avoidance of doubt, any persons employed by it) shall be indemnified from the Settlement Fund in respect of taxation or any other liability attaching to the sums standing from time to time in any account or otherwise arising from or attaching to the exercise of the function of the Administrator.
- 9.4 The Administrator (and for the avoidance of doubt, any persons employed by it) in discharging any function, or exercising any power or discretion, conferred by this Settlement Scheme, shall not be liable to the Applicant or any Group Member for any loss to the Applicant or any Group Member, unless such loss has been caused by fraud on the part of the Administrator or any person employed by it.
- 9.5 Each Group Member is responsible for obtaining their own taxation advice.
- 9.6 The Administrator will not, and is not required to, provide or obtain any taxation advice or taxation rulings (class, public or private) concerning any taxation potentially payable by Group Members in respect of settlement distributions.

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**10. Supervision by the Court**

- 10.1 The Administrator may refer any issues arising in relation to the Settlement Scheme to the Court for determination.
- 10.2 Any costs incurred in any such referral to the Court made by the Administrator shall be deemed to be a part of the Administration Costs, and the Administrator shall be indemnified from the Settlement Fund for such costs.
- 10.3 The Administrator may refer any issue as set out in clause 10.1 above by correspondence addressed to the Associate of the Justice of the Court supervising the administration of this Settlement Scheme, and save where the Court following such correspondence requires otherwise, the Administrator need not give notice of such reference to the Applicant or any Group Members.

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**11. Notice**

- 11.1 Any notice or document to be given (or delivered) pursuant to the Settlement Scheme shall be deemed to be given (or delivered) and received for all purposes associated with this Settlement Scheme if it is:
- (a) addressed to the person to whom it is to be given; and
  - (b) either:
    - (1) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Group Member, the most recent postal address recorded in the Claimant Database);
    - (2) sent by fax to that person's fax number (being, in respect of any Group Member, the most recent fax number recorded in the Claimant Database) and the machine from which it is sent produces a report that states that it was sent in full; or
    - (3) sent by email to that person's email address (being, in respect of any Group Member, the most recent email address recorded in the Claimant Database) and a server through which it is transmitted produces a report that states that the email has been sent to the inbox of the specified email address.
- 11.2 A notice or document that complies with clause 11.1 will be deemed to have been given (or delivered) and received:
- (a) if it was sent by mail to an addressee in Australia, two (2) clear business days after being sent;
  - (b) if it is sent by mail to an addressee overseas, five (5) clear business days after being sent;
  - (c) if it is delivered or sent by fax, at the time stated on the report that is produced by the machine from which it is sent; and
  - (d) if it is sent by email, at the time it is sent.

11.3 Where a Group Member is not a natural person and where one person has been nominated as the contact in respect of several Group Members, it is sufficient for the purpose of giving notice that any of the provisions of clause 11.1 are complied with in relation to that nominated person.

11.4 The Administrator's address and email address shall be as set out below unless and until the Administrator notifies the sender otherwise:

Attention:

Excel Texel Class Action

Gadens Lawyers

Level 29, 8 Chifley Square, Sydney NSW 2000

Email: [Martin.VanAardt@gadens.com](mailto:Martin.VanAardt@gadens.com)

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12. **Time**

12.1 The time for doing any act or thing under the Settlement Scheme may be extended by the Administrator in its absolute discretion or by an order of the Court.

**SCHEDULE**  
**LOSS ASSESSMENT FORMULA**

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1. **Definitions**

- 1.1 All terms defined in the Settlement Scheme also apply to this Schedule.

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2. **Introduction**

- 2.1 This document sets out how each Group Member's distribution from the Net Settlement Sum (net of any deductions pursuant to clause 6.4 of the Settlement Scheme) is calculated.

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3. **Assumptions**

- 3.1 The calculation of each Group Member's Assessment and Final Assessment will proceed on the following general assumptions:

- (a) loss is suffered by the Group Member at the time of acquisition of Shares in the Relevant Period (any such Shares acquired by a Group Member during the Relevant Period being **Claim Shares**);
- (b) Claim Shares traded at an inflated price during the Relevant Period;
- (c) the level of share inflation, and thus the measure of loss in acquiring Claim Shares, is calculated by reference to an inflation series representing daily inflation attributable to the Claims (**Inflation Series**); and
- (d) the proceeds of selling Claim Shares in the Relevant Period (i.e., Claim Shares acquired and sold during the Relevant Period) may mitigate loss suffered by that Group Member, noting that such Claim Shares may carry share inflation in their sale price, as they did when first acquired, albeit that the level of share inflation may not necessarily correspond.

3.2 **'Last-in, First-out'**

- (a) The Loss Assessment Formula proceeds on the assumption that Claim Shares sold by a Group Member during the Relevant Period are sold from holdings of shares the Group Member purchased most recently in the claim period. This is known as the 'Last-in, First-out' approach (**LIFO**). Specifically, LIFO:
  - (1) assumes that when a person sells a parcel of Claim Shares from a larger holding of such Shares, the Claim Shares so sold are those which the person purchased last, or most recently;
  - (2) means that where a Group Member has Shares at the commencement of the Relevant Period (**Opening Balance Shares**), and then makes purchases of Claim Shares during the Relevant Period, any subsequent sales of Shares

during the Relevant Period are in the first instance presumed to be sales of any shares the Group Member has purchased, in reverse consecutive order;

- (3) means that if the Group Member's holding of Claim Shares is exhausted by sales occurring during the Relevant Period, then this method assumes that further sales are sales of Opening Balance Shares; and
- (4) means that if the Group Member then makes further purchases of Claim Shares, then any subsequent sales during the Relevant Period are, again, presumed to be sales of those Claim Shares in reverse consecutive order.

### 3.3 Relevant Period losses and gains

- (a) In the Inflation Series, a Group Member may have sold Claim Shares during the Relevant Period in circumstances where the level of share price inflation was higher at the time of acquisition of the Claim Shares than it was at the time of sale. In those circumstances, the Group Member would have incurred a loss from a sale in those circumstances (**Relevant Period Loss**).
- (b) Similarly, in respect of the Inflation Series, it is also possible that a Group Member may have sold Claim Shares during the Relevant Period in circumstances where the level of share price inflation was higher at the time of the sale of the Claim Shares than it was at the time of acquisition. In those circumstances, the Group Member would have incurred a gain from a sale in those circumstances (**Relevant Period Gain**).
- (c) Having regard to 3.3(a) and (b) above, the Loss Assessment Formula includes any Relevant Period Loss and Relevant Period Gain when assessing loss in accordance with the Inflation Series.

### 3.4 Inflation

- (a) The Inflation Series details the inflation of the Share Price, resulting in the inflation in dollar terms set out in the table below in the applicable periods:

Start Date	End Date	Inflation
26 February 2016	6 April 2016	\$0.31
7 April 2016	4 May 2016	\$0.28
5 May 2016	30 November 2016	\$0.27
1 December 2016	9 May 2017	\$0.36

### 3.5 Treatment of different claims

- (a) In order to reflect the legal strengths of the different claims based on the available evidence and ensure fairness between Group Members, the Inflation Series above is calculated to reflect the Excel Texel Claims concerning Galderma SA between 26 February 2016 and 10 May 2017 only.

- (b) This means the Inflation Series does not include any inflation in dollar terms for:
- (1) Shares purchased by Group Members in the period from 1 July 2015 to 25 February 2016;
  - (2) the Excel Texel Claims concerning Shanghai Richer Link; or
  - (3) the Davis Claims.

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4. **Formula for Calculating the Assessment**

4.1 Each Group Member's Assessment is calculated using the following formula:

$$\text{Assessment} = (\text{Group Member Loss} / \text{Total Group Members' Loss})$$

4.2 **Group Member Loss** is calculated by the following formula applied to the Claim Data, subject to the Assumptions set out in clause 3 of this Schedule above:

$$\text{Group Member Loss} = N1 \times P - Nbs \times S$$

where **N1** is the number of shares purchased in the Period, **P** is the inflation per share at the time of purchase, **Nbs** is the number of shares purchased and subsequently sold in the Relevant Period, and **S** is the inflation per share at the time of sale.

4.3 **Total Group Members' Loss** is the aggregate of all Group Members' Loss.