

**NOTICE OF CERTIFICATION FOR SETTLEMENT PURPOSES,  
SETTLEMENT APPROVAL AND CLAIMS PROCESS  
IN THE CHOCOLATE PRODUCTS CLASS ACTION LITIGATION**

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.**

**TO: All Persons in Canada who, between February 1, 2001 and December 31, 2008, purchased Cadbury, Hershey, Mars or Nestlé chocolate confectionary products (“Chocolate Products”) in Canada.**

**I. BACKGROUND**

Class proceedings lawsuits were brought across Canada on behalf of purchasers of Chocolate Products in Canada between February 1, 2001 and December 31, 2008 alleging that Cadbury Adams Canada Inc. (“Cadbury Adams”), Cadbury Schweppes plc, Mars Canada Inc. formerly known as Effem Inc. (“Mars Canada”), Mars, Incorporated, Hershey Canada Inc. (“Hershey Canada”), The Hershey Company, Nestlé Canada Inc. (“Nestlé Canada”), Nestlé S.A., and ITWAL Limited (“ITWAL”) conspired to fix prices for Chocolate Products in Canada or engaged in price maintenance (collectively, the “Alleged Claims”). With the exception of ITWAL, the Defendants are manufacturers of Chocolate Products (the “Manufacturing Defendants”). ITWAL operates a retail and foodservice wholesale distribution network and was a major purchaser and distributor of Chocolate Products during the relevant period.

**II. COURT APPROVED CLASS ACTION SETTLEMENTS**

Settlements have been achieved that resolve the litigation in its entirety.

Mars Canada and Nestlé Canada have entered into separate settlements to resolve the Alleged Claims and litigation against them and their related entities. Neither Mars Canada nor Nestlé Canada admit any wrongdoing or liability, and the settlements represent resolution of disputed claims. Under the terms of the settlements, Mars Canada has agreed to pay \$3.2 million and Nestlé Canada has agreed to pay \$9 million for the benefit of the Settlement Class in exchange for a full release of the Alleged Claims against them and their respective related entities, including Mars Incorporated and Nestlé S.A.

The litigation was certified/authorized as against Mars Canada and Nestlé Canada for settlement purposes and the Mars Canada and Nestlé Canada settlements were approved by the Ontario, British Columbia and Quebec Courts as being fair, reasonable and in the best interests of Settlement Class Members. Class proceedings commenced in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador have been dismissed. Residents of all provinces except B.C. and Quebec are members of the class certified in Ontario, and eligible to participate in the distribution of the settlement funds as set out below. Residents of B.C. and Quebec are members of the classes certified in those provinces and are likewise eligible to participate in the distribution of the settlement funds.

Previous settlements were reached with Cadbury Adams, ITWAL, and Hershey Canada, which resolved the Alleged Claims against them and their related entities, including Cadbury Holdings Limited (successor to Cadbury Schweppes plc) and The Hershey Company. Those settlements

were approved by the Ontario, British Columbia and Quebec Courts. Under the terms of the Cadbury settlement, Cadbury Adams paid \$5.7 million for the benefit of Settlement Class Members. Under the terms of the ITWAL settlement, ITWAL assigned to the Settlement Class any and all claims that it may have against the other Defendants in relation to the Alleged Claims. Under the terms of the Hershey Canada settlement, Hershey Canada paid \$5.3 million for the benefit of Settlement Class Members.

After deduction of court approved legal and other expenses, the settlement funds are being held in trust for the benefit of Settlement Class Members and will be distributed as indicated below.

### **III. DISTRIBUTION OF THE SETTLEMENT FUNDS**

The Ontario, British Columbia and Quebec Courts approved a protocol for distributing the Cadbury Adams, Hershey Canada, Mars Canada, and Nestlé Canada settlement funds, plus accrued interest, less court approved legal fees and other expenses (the “Net Settlement Amounts”). The Net Settlement Amounts equal approximately \$17.3 million. Payments to Quebec Settlement Class Members are also subject to deductions payable to the Fonds d’aide aux recours collectifs, calculated in accordance with the governing regulations. A copy of the distribution protocol (the “Protocol”) is available at [www.chocolateclassaction.com](http://www.chocolateclassaction.com).

The Protocol was prepared taking into account the information provided by the Defendants regarding sales and prices of Chocolate Products. It is Plaintiffs’ counsel’s view that the case for liability was strongest during the October 1, 2005 to September 30, 2007 period, and therefore the settlement amounts were based on Chocolate Product sales during that period. Specifically, the Defendants (other than ITWAL) each made a settlement payment which reflects a percentage of Chocolate Product sales made during the October 2005 to September 2007 period. Payment of benefits to the Settlement Class is consistent with this approach.

The distribution is based on an expert economic opinion regarding the extent to which the alleged overcharges were paid by the different types of buyers of Chocolate Products, as well as a mediation process conducted by Plaintiffs’ counsel before an experienced class action judge. As a result of that process, it was determined that 90% of the Net Settlement Amount should be allocated for direct compensation to Settlement Class Members. The remaining 10% is allocated for indirect compensation to Settlement Class Members. If surplus monies remain after all eligible Settlement Class Members have been paid direct compensation, such surplus monies will be allocated as indirect compensation to Settlement Class Members.

#### **Compensation of Consumers**

“Consumers” mean Settlement Class Members who purchased Chocolate Products not for commercial resale and would include, for example, persons purchasing Chocolate Products for personal consumption or on behalf of sports teams, schools, and other non-profit organizations for non-commercial resale, and commercial entities purchasing Chocolate Products for their own use or for promotional use and not for resale. As there are many difficulties associated with proving Chocolate Product purchases for personal consumption several years ago and issuing payments in respect of very small claims, not all Consumers will be eligible for direct compensation. Only Consumers who can establish purchases of Chocolate Products in excess of \$1,000 during the October 2005 to September 2007 period will be eligible for direct compensation. Consumers can file claims in respect of the collective Chocolate Product

purchases of spouses and/or children residing in the same household. Consumers not eligible for direct compensation will be compensated indirectly through distribution to designated non-profit organizations whose purposes generally benefit Consumers.

Direct Compensation payable to eligible Consumers will be calculated as follows:

- where Chocolate Products purchases are not supported by proof of purchase, 1.875% of the Consumers' eligible Chocolate Products purchases, to a maximum of \$50 per Consumer; and
- where Chocolate Product purchases are supported by proof of purchase, 2.625% of the Consumers' eligible Chocolate Products purchases.

If the total amount payable in respect of valid claims by Consumers exceeds 75% of the amount available for direct compensation to Settlement Class Members, the settlement benefits payable to eligible Consumers will be reduced pro-rata.

### **Compensation of Commercial Purchasers**

A "Direct Commercial Purchaser" means a Settlement Class Member in respect of purchases of Chocolate Products directly from a Manufacturing Defendant by the Settlement Class Member (including purchases by or on behalf of entities owned by the Settlement Class Member) for direct commercial resale to Consumers.

An "Intermediary Commercial Purchaser" means a Settlement Class Member in respect of purchases of Chocolate Products (either directly from a Manufacturing Defendant or indirectly from an entity other than a Manufacturing Defendant) by the Settlement Class Member for commercial resale to entities other than Consumers (including by the Settlement Class Member for resale to its affiliates, licensees and/or franchisees).

A "Secondary Commercial Purchaser" means a Settlement Class Member in respect of purchases of Chocolate Products from an entity other than a Manufacturing Defendant by the Settlement Class Member (including purchases from the Settlement Class Member's own affiliates, franchisor or licensor) for direct commercial resale to Consumers.

Direct compensation payable to eligible Commercial Purchasers will be calculated as follows:

- 0.875% of the Direct Commercial Purchaser's eligible Chocolate Products purchases;
- 0.175% of the Intermediary Commercial Purchaser's eligible Chocolate Products purchases; and
- 0.7% of the Secondary Commercial Purchaser's eligible Chocolate Products purchases.

If the total amount payable in respect of valid claims by Commercial Purchasers exceeds the amount available for direct compensation to Settlement Class Members, the settlement benefits payable to eligible Commercial Purchasers will be reduced pro-rata.

### **Indirect Compensation to Settlement Class Members**

Taking into account the many difficulties associated with proving Chocolate Product purchases several years ago and issuing payments in respect of very small claims, not all Settlement Class Members will be eligible for direct compensation. Settlement Class Members not eligible for direct compensation will be compensated indirectly through *cy pres* distributions to the following organizations, which will use the monies to fund programs and initiatives across Canada related to competition in the Canadian marketplace and consumer education and advocacy.

The initial 10% of the Net Settlement Amounts allocated for *cy pres* distribution will be allocated as follows:

- an initial deduction will be made in respect of deductions payable to the Fonds d'aide aux recours collectifs, calculated in accordance with the governing regulations;
- \$300,000 will be distributed to the Consumers Association of Canada. Consumers Association of Canada is a non-profit organization that advocates for consumers rights and interests, and educates consumers on marketplace issues;
- \$450,000 will be distributed to the Public Interest Advocacy Centre. Public Interest Advocacy Centre is a charitable organization that provides legal advice, representation, research and advocacy on a non-profit basis to groups and individuals who are representative of public interests concerns. Some of its works have focused on matters relating to consumer protection and redress, and competition law and policy; and
- any remaining amounts will be distributed equally to the following organizations: Phelps Centre for the Study of Government and Business (University of British Columbia); Centre for Interuniversity Research and Analysis of Organizations ("CIRANO"); and Rotman Institute for International Business (University of Toronto). The monies received by these organizations will be used to, among other things, organize conferences and seminars to discuss matters relating to competition law and policy, develop curriculum relating to competition law and policy, and research issues relating to competition law and policy.

Any amounts remaining after all eligible Settlement Class Members have been paid direct compensation, after the appropriate deductions payable to the Fonds d'aide aux recours collectifs, will be distributed 50% to the Public Interest Advocacy Centre and 50% to be divided equally between the Phelps Centre, CIRANO, and the Rotman Institute.

### **IV. CLAIMING DIRECT COMPENSATION**

To be eligible for direct compensation, Settlement Class Members must file a properly completed claim, together with the required supporting documents, no later than December 15, 2013. Claims that are not made within the deadline will not be eligible for compensation. Consumers are only eligible for direct compensation if they can establish purchases of Chocolate

Products in excess of \$1,000 during the October 2005 to September 2007 period. As explained below, **Consumer claims can be made without any receipts or other documents**, but such claims are capped at \$50.

Claims must be filed using the online claims process at [www.chocolateclassaction.com](http://www.chocolateclassaction.com). If you do not have Internet access, but wish to file a claim, please contact the claims administrator at 1-866-432-5534. Claimants cannot use third-party claims services to file claims.

As part of the claims process, Commercial Purchasers will be required to prove their Chocolate Product purchases. Where possible, Commercial Purchasers will be able to rely on the Defendants' sales records as proof of their Chocolate Product purchases. Recognizing that many Consumers will not have retained proof of purchase, Consumers are permitted to file claims in respect of Chocolate Product purchases that are not supported by proof of purchase. In such circumstances, Consumers will be required to provide an estimate of the value of their Chocolate Products purchases and the basis for that estimate. As well, the value of Consumer claims not supported by proof of purchase is limited to a maximum of \$50. Settlement Class Members will be required to declare the truth of the information provided with the claim under the penalty of perjury.

The courts have appointed NPT RicePoint Class Action Services (an independent third-party) to receive and review claims, make determinations in respect of entitlement to direct payment of settlement benefits, and issue payments to eligible Consumers and Commercial Purchasers.

Questions regarding the claims process should be directed to NPT RicePoint Class Action Services at 1-866-432-5534 or [chocolate@nptricepoint.com](mailto:chocolate@nptricepoint.com).

## **V. OPTING OUT**

An opportunity to opt out of (or exclude oneself from) these proceedings was provided in connection with the Cadbury and ITWAL settlements. The deadline for opting out of the proceedings passed and no one opted out. As a result, all Settlement Class Members are bound by the terms of the settlement agreements, including the full releases.

## **VI. CLASS COUNSEL**

The law firms of Siskinds<sup>LLP</sup> and Sutts, Strosberg<sup>LLP</sup> represent Settlement Class Members in Ontario, and in provinces other than British Columbia or Quebec, as well as corporations of more than 50 employees in Quebec. Siskinds<sup>LLP</sup> can be reached toll free at 1-800-461-6166 ext. 2446, by email at [charles.wright@siskinds.com](mailto:charles.wright@siskinds.com), or by mail at 680 Waterloo Street, London, ON, N6A 3V8, Attention: Charles Wright. Sutts, Strosberg<sup>LLP</sup> can be reached toll free at 1-800-229-5323 ext. 8296, by email at [chocolateclassaction@strosbergco.com](mailto:chocolateclassaction@strosbergco.com), or by mail at 600-251 Goyeau Street, Windsor, ON, N9A 6V4, Attention: Heather Rumble Peterson.

The law firms of Camp Fiorante Matthews Mogerman and Branch MacMaster LLP represent Settlement Class Members in British Columbia. Camp Fiorante Matthews Mogerman can be reached at 604-689-7555, by email at [smatthews@cfmlawyers.ca](mailto:smatthews@cfmlawyers.ca), or by mail at 400 – 856 Homer Street, Vancouver, BC, V6B 2W5, Attention: Sharon Matthews. Branch MacMaster LLP can be reached at 604-654-2966, by email at [lbrasil@branmac.com](mailto:lbrasil@branmac.com), or by mail at 1410-777 Hornby Street, Vancouver, BC, V6Z 1S4, Attention: Luciana Brasil.

The law firm of Siskinds Desmeules s.e.n.c.r.l. represents individuals and corporations of 50 or less employees who are Settlement Class Members in Quebec. Siskinds Desmeules s.e.n.c.r.l. can be reached at 418-694-2009, by email at [simon.hebert@siskindsdesmeules.com](mailto:simon.hebert@siskindsdesmeules.com), or by mail at Les promenades du Vieux-Quebec, 43 rue De Buade, bureau 320, Quebec City, QC, G1R 4A2, Attention: Me Simon Hébert.

## **VII. QUESTIONS**

More information about the settlements and the claims process is available online at [www.chocolateclassaction.com](http://www.chocolateclassaction.com), by email at [chocolate@nptricepoint.com](mailto:chocolate@nptricepoint.com) or by calling toll-free 1-866-432-5534. QUESTIONS SHOULD NOT BE DIRECTED TO THE COURTS.

## **VIII. INTERPRETATION**

This notice contains a summary of some of the terms of the Settlement Agreements and the Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreements (including the appendices) and/or the Protocol, the terms of the Settlement Agreements and/or Protocol shall prevail.

This notice has been authorized by the Ontario, British Columbia, and Quebec Courts.