



“**Annexure A**” – Notice of Proposed Settlement and Registration

**GETSWIFT CLASS ACTION**

*Raffaele Webb v GetSwift Limited ACN 604 611 556 and Anor*

**NOTICE OF PROPOSED SETTLEMENT AND REGISTRATION**

This Notice is provided pursuant to Orders made by the Federal Court of Australia on 19 November 2021.

This Notice is an important legal document and you should read it carefully as it concerns your legal rights.

This Notice deals with the following matters:

Section A:	Overview
Section B:	Background
Section C:	Group members
Section D:	What options do group members have?
Section E:	Will Registered Group Members be liable for legal costs?
Section F:	Proposed settlement and Court approval
Section G:	Settlement Distribution
Section H:	Litigation Funding
Section I:	What steps can group members now take?
Section J:	Further information
Annexure A:	[N/A - Annexure A is the complete Notice]
Annexure B:	Your options
Annexure C:	Settlement Formula
Annexure D:	Settlement Sum payments example
Annexure E:	Settlement Sum examples
Annexure F:	Individual Registered Group Member example

**A. OVERVIEW**

1. You have received this Notice because you have been identified as a potential group member in the Federal Court of Australia proceeding *Raffaele Webb v GetSwift Limited ACN 604 611 556 and Anor (NSD580/2018)* (**GetSwift Class Action**).
2. In summary, this Notice provides important information about:
  - a. a conditional settlement that has been reached in the proceeding between the Applicant and the Respondents (GetSwift Limited (**GetSwift**) and Joel Macdonald) to resolve the claims of all group members (**Proposed Settlement**).



The Proposed Settlement is without admission of liability by GetSwift or Mr Macdonald;

- b. what you need to do to share in the Proposed Settlement; and
  - c. how your rights are affected if you neither register for the GetSwift Class Action, nor have opted out.
3. You should read this Notice carefully. Any questions you have concerning the matters contained in this Notice should **not** be directed to the Court. You should instead seek independent legal advice or contact Phi Finney McDonald (for contact details see paragraph 77 of this Notice, below).
4. The Applicant (who brought the action on behalf of himself and group members) is represented by solicitors Phi Finney McDonald, and the class action has been funded by Therium Litigation Finance A IC (IC125471) (**Therium**).
5. The Proposed Settlement requires Court approval to be effective and for monies to be distributed to eligible group members (defined in paragraph C.13 below). The Court must assess whether any class action settlement is fair and reasonable in the interests of group members. The Court has been asked to approve the Proposed Settlement at a hearing to be held on 28 February 2022 (**Settlement Approval Hearing**). You are entitled to attend the hearing if you wish to.
6. **No action is required** if you:
- a. previously registered to participate in the class action during the Court ordered registration process on or before 22 November 2019; and
  - b. **do not** oppose the Proposed Settlement or any aspect of it (including without limitation the amount of legal costs or litigation funding commission proposed to be charged).
7. However, if you:
- a. wish to **register** to share in the Proposed Settlement and did not previously register to participate in the class action during the Court ordered registration process on or before 22 November 2019, you must take the steps outlined in **Section D** of this Notice;
  - b. wish to **oppose** the Proposed Settlement, you must take the steps outlined in **Section I** of this Notice. You can oppose the Proposed Settlement or any aspect of it regardless of whether you have or have not registered to share in the Proposed Settlement, but you can only share in the Proposed Settlement if you register.

## **B. BACKGROUND**

8. The GetSwift Class Action was commenced on 13 April 2018 and alleges that:
- a. GetSwift and Mr Macdonald (its President and Managing Director) engaged in misleading or deceptive conduct, and breached GetSwift's obligations of



continuous disclosure between 24 February 2017 and 19 January 2018 (inclusive) (**Claim Period**);

- b. the conduct of GetSwift and Mr Macdonald caused its securities to trade on the Australian Securities Exchange at artificially inflated prices; and advances a claim that
  - c. persons who purchased GetSwift shares within the Claim Period have suffered compensable loss.
9. The allegations are denied by GetSwift and Mr Macdonald. GetSwift and Mr Macdonald defended the GetSwift Class Action and the Proposed Settlement acknowledges that GetSwift and Mr Macdonald make no admissions as to liability.
10. The detailed allegations made by the Applicant are set out in the Third Further Amended Statement of Claim filed with the Federal Court of Australia on 19 February 2021.
11. Full details of GetSwift's and Mr Macdonald's defences against those allegations are set out in their respective defences filed on 18 March 2021. See Section J of this Notice, below, for details on how to access these documents.

### **C. GROUP MEMBERS**

12. You are receiving this Notice because you have been identified as a potential group member in the GetSwift Class Action.
13. A group member is defined in the Third Further Amended Statement of Claim as someone who:
- a. acquired an interest in fully paid ordinary shares in GetSwift during the Claim Period;
  - b. suffered loss or damage by or resulting from the alleged contravening conduct of GetSwift and Mr Macdonald as described in the Third Further Amended Statement of Claim; and
  - c. are not or were not during the Claim Period:
    - i. directors or officers or a close associate (as defined in section 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of GetSwift; or
    - ii. a related party (as defined in section 228 of the *Corporations Act*) of GetSwift; or
    - iii. a related body corporate (as defined in section 50 of the *Corporations Act*) of GetSwift; or
    - iv. an associated entity (as defined in section 50AAA of the *Corporations Act*) of GetSwift; or
    - v. a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia,



and did not opt out of the GetSwift Class Action in accordance with order 5 of the orders of Justice Lee dated 7 February 2019 (**Group Member**).

#### **D. WHAT OPTIONS DO GROUP MEMBERS HAVE?**

14. Pursuant to the orders of Justice Murphy dated 19 November 2021, Group Members who registered their claims in accordance with order 2 of the orders of Justice Lee dated 1 October 2019, or orders 2 or 3 of the orders made by Justice Lee on 17 December 2019, are deemed to be registered for the purpose of receiving benefit from the settlement of this proceeding (**Deemed Registered Group Members**).
15. If you are a Deemed Registered Group Member, you don't need to do anything further at this stage unless you wish to oppose the Proposed Settlement (see **Section I** of this Notice).
16. Group Members who are not Deemed Registered Group Members have four options:
  - a. **Option A:** register their claim;
  - b. **Option B:** register their claim, but although registering, also oppose the Proposed Settlement or any aspect of it;
  - c. **Option C:** not register their claim and oppose the Proposed Settlement or any aspect of it; or
  - d. **Option D:** do nothing.
17. There are different consequences depending on which option you choose:
  - a. Options A and B above: Any Deemed Registered Group Member, and any Group Member who registers before 4 February 2022, (together, **Registered Group Member**) will be bound by, and share in the Proposed Settlement, if approved by the Court.
  - b. Options C and D above: Any Group Member who does not register (**Unregistered Group Member**) will be bound by the Proposed Settlement if approved by the Court but will not share in the Proposed Settlement. You will be an Unregistered Group Member if you are not a Deemed Registered Group Member and do nothing in response to this Notice.
18. Further information about each option, including how to register and how to oppose the Proposed Settlement, is outlined at **Annexure B** below.
19. If you are not sure whether you are a Registered Group Member, please contact Phi Finney McDonald at [GetSwiftClassAction@phifinney-mcdonald.com](mailto:GetSwiftClassAction@phifinney-mcdonald.com).
20. All Group Members (whether you are a Registered Group Member or an Unregistered Group Member) have the right to be heard at the Settlement Approval Hearing on whether the Proposed Settlement should be approved. See Section I below.



## E. WILL REGISTERED GROUP MEMBERS BE LIABLE FOR LEGAL COSTS?

If the Court determines that the Applicant's legal costs are reasonable, yes.

**However**, legal costs will only be recovered from any settlement payments received, and will not be recovered directly from Registered Group Members: that is, they will not be out of pocket. Further, unless the monies recovered under the proposed settlement is less than \$2.35m, legal and other costs will not exceed 50% of the total amount of settlement payments received (**Settlement Sum**).

This is because Phi Finney McDonald and Therium have agreed that, once the Settlement Sum exceeds about \$2.35m, at least 50% is guaranteed to go to Registered Group Members (**50% Costs Cap**).

Phi Finney McDonald considers that it is reasonably likely that the total Settlement Sum will exceed \$2.35m.

If the total Settlement Sum is less than \$2.35m, it would almost certainly be because GetSwift's parent company GetSwift Technologies Limited (BC 1250648) (**GTL**) and GetSwift become insolvent and/or were wound up during 2021, 2022 or 2023, and the available assets for distribution to the settlement were less than \$0.85m

In that scenario, neither Therium nor Phi Finney McDonald would recover any amounts from the Settlement Sum.

21. The Applicant's liability for legal costs and out of pocket expenses are funded by Therium or carried by Phi Finney McDonald on a No Win, No Fee basis, and will be recovered by Therium and Phi Finney McDonald from the total Settlement Sum only if the Court approves the Proposed Settlement and makes an order for those costs to be recovered. If the Court approves the Proposed Settlement, the Applicant will seek an order that the legal costs and out of pocket expenses be paid out of the total amount recovered for all Registered Group Members, subject to the 50% Costs Cap referred to above.
22. The Federal Court of Australia will assess the legal costs and out of pocket expenses incurred in the proceeding and make a reimbursement order for only an amount that the Court determines is reasonable.



## F. PROPOSED SETTLEMENT AND COURT APPROVAL

### **Summary of Proposed Settlement**

The Proposed Settlement is not for a fixed amount. Instead, it is for:

- a) a modest upfront payment of \$1.5m; and
- b) three further payments in FY22, FY23, and FY24 based on capital raised by GTL or the revenue generated by GetSwift in those years,

thus, the total amount of the Settlement Sum is uncertain.

In Phi Finney McDonald's opinion, the amount likely to be recovered under the Proposed Settlement is likely to be substantially below the real value of the case, having regard to the strength of the evidence on liability.

It is likely that, absent reductions in legal costs and litigation funding commission entitlements, the Proposed Settlement will not be sufficient to cover those costs. However, in those circumstances Phi Finney McDonald and Therium have agreed to substantially reduce their legal costs and commission entitlements to ensure that Group Members receive at least 50% of the Settlement Sum overall.

In summary, the Applicant and Phi Finney McDonald support Court approval of the Proposed Settlement because they consider it to be a good outcome for Group Members in all the circumstances. That is so because, notwithstanding the view that the case is strong on liability and likely to succeed, the cash position of GetSwift and GTL is very poor and there is only a modest amount left having regard to the ongoing costs of the business.

### **Why is there a Proposed Settlement in the case?**

GetSwift, GTL and Mr Joel Macdonald do not have sufficient assets to make a meaningful contribution to a settlement, and Phi Finney McDonald understands that there is no insurance policy from which it is considered that there are likely to be funds available in relation to the GetSwift Class Action. A trial is very expensive for all parties and would have cost GetSwift and Mr Macdonald more money and increased the Applicant's legal costs.

If the Applicant were to completely succeed at trial, which Phi Finney McDonald considers to be likely, there is a high risk that GetSwift and Mr Macdonald would not have the funds available to meet an award of damages, and that Registered Group Members would receive no damages, or an amount less than that which they may receive under the Proposed Settlement.



23. As at 30 June 2021, GTL held USD\$7,276,107 in cash and cash equivalents (approx. AUD\$9.77m as at 4 November 2021, USD:AUD currency exchange rate of 1 to 1.345). In December 2020, when deciding to approve GetSwift's application to delist from the Australian Securities Exchange (**ASX**) and redomicile in Canada, Justice Farrell of the Federal Court referred to "[t]he rate of [GetSwift's] cash burn over the past three years and the likelihood of its continuation having regard to GetSwift's most recent Appendix 4C disclosure to ASX and the decline in its cash reserves" (paragraph 119(b) of *In the matter of GetSwift Limited (No 2)* [2020] FCA 1733).
24. In GTL's 2020/2021 financial statements, the independent auditor's report stated, "a material uncertainty exists that may cast significant doubt on the Company's ability to continue as a going concern." A "going concern" is an accounting term which means that a company has the financial resources available to continue to operate indefinitely. Accordingly, there is concern that GTL may not have the financial resources to continue to operate.
25. As part of the settlement negotiations which resulted in the Proposed Settlement, Mr Macdonald provided the Applicant with confidential material establishing his limited financial resources. On the basis of that material, Phi Finney McDonald considers that Mr Macdonald currently has very little capacity to make any meaningful payment of compensation to Group Members in the GetSwift Class Action. Under the terms of the Proposed Settlement, Mr Macdonald will submit confidential material to this effect to the Court to consider as part of the overall reasonableness of the Proposed Settlement.
26. Under the terms of the Proposed Settlement, GetSwift, Mr Macdonald and GTL will pay, without admission of liability, an amount to be calculated in accordance with paragraph 31 below, inclusive of legal costs, expenses and disbursements, any funding commission and interest.
27. On 10 November 2021, after the Proposed Settlement was reached, the Federal Court delivered judgment (**ASIC Judgment**) in the proceeding commenced against GetSwift by the Australian Securities and Investments Commission (**ASIC Proceeding**). The ASIC Proceeding was commenced on 22 February 2019, after the GetSwift Class Action, and made similar allegations as made in the GetSwift Class Action.
28. In summary, the Court found that:
  - a. GetSwift was liable for numerous contraventions of the continuous disclosure obligations of the Corporations Act and numerous instances of misleading or deceptive conduct under the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
  - b. Messrs Hunter, Macdonald and Eagle (each of whom were directors of the company) were knowingly concerned in numerous of GetSwift's contraventions of the continuous disclosure obligations of the Corporations Act and thereby themselves contravened the Corporations Act.
  - c. Messrs Hunter and Macdonald were also liable for engaging in misleading and deceptive conduct on numerous occasions.



- d. Each of Mr Hunter, Mr Macdonald and Mr Eagle failed to exercise their powers and discharge their duties as directors with the care and diligence required in contravention of the Corporations Act.
29. The Court's decision is limited to issues of liability and does not include pecuniary penalties against any of the parties or orders disqualifying Messrs Hunter, Macdonald or Eagle from being a director of an Australian company. A further hearing will take place in relation to those issues. It is unknown whether GetSwift will appeal the judgment. The timeframe for any appeal will start to run once final orders are made.
30. Phi Finney McDonald is of the view that the ASIC Judgment affects the GetSwift Class Action, and the Proposed Settlement, in the following ways:
- having regard to the fact that the Court found that GetSwift and Mr Macdonald engaged in contraventions in respect of most (but not all) of the customer contracts and ASX announcements the subject of the Applicant's allegations in the Getswift Class Action, Phi Finney McDonald considers that the ASIC Judgment makes it more likely that, had the GetSwift Class Action run to trial, the Applicant's case would have been successful either in whole or in part against both GetSwift and Mr Macdonald; however
  - as outlined above, a key factor that has influenced the terms of the Proposed Settlement is the relatively low cash position of GetSwift, GTL, GTL's other subsidiaries and Mr Macdonald. As the ASIC Judgment does not improve the cash position of those parties, and may in fact worsen it through the imposition of a financial penalty, Phi Finney McDonald considers that the ASIC Judgment does not improve the prospects of the Applicant and Group Members in fact recovering a greater amount of damages or compensation from those parties pursuant to any judgment delivered in the GetSwift Class Action; and
  - depending on the nature and extent of any penalties ultimately imposed by the Court on the defendants in the ASIC Proceeding (and any other Court orders arising from the ASIC Judgment), it may become more difficult for GetSwift and GTL to continue as a going concern (this general risk is discussed above in 24). If these entities can no longer continue as a going concern, this may impact on the amount that Group Members will ultimately recover under the Proposed Settlement, or would be able to recover pursuant to any award of damages to Group Members if the GetSwift Class Action were instead to proceed to trial and judgment.

#### **How much will the Settlement Sum under the Proposed Settlement be?**

Unlike most other shareholder class action settlements, the exact amount of the Settlement Sum is unknown. This is because it depends on the financial performance of GTL over the next three years.

Whatever the amount of the Settlement Sum, if it exceeds more than about \$2.35m, Registered Group Members are guaranteed to receive at least 50% (see **Section G** below for more detail).





## PROPOSED SETTLEMENT SUMMARY

31. In summary, the Settlement Sum will include:
- a. An upfront payment of AUD\$1.5m, to be paid in full by January 2022; and
  - b. subsequent payments in financial years 2022, 2023 and 2024 (**Fundraising Term**) equalling either:
    - i. 8% of GTL's funds raised by way of capital raising in each of those financial years; or
    - ii. if no funds are raised by GTL in a particular financial year, 5% of GTL's (and its subsidiaries') total revenue from contracts with customers in that financial year.
32. Accordingly, the total Settlement Sum to be distributed to Registered Group Members will depend on the amount of funds raised by GTL, and/or its revenue performance, during the Fundraising Term.
33. A copy of the full settlement formula, including details of the market capitalisation levels that trigger a requirement for GTL to conduct a capital raising, is contained in **Annexure C**.
34. **Annexure D** contains an example which is intended to illustrate how the settlement formula operates. It is not indicative of the total Settlement Sum.

## COURT APPROVAL

35. If the Proposed Settlement is not approved by the Court, the GetSwift Class Action will continue and there will be no distribution of compensation to Registered Group Members unless and until the Applicant is successful in the proceeding or a further settlement is reached.
36. The Proposed Settlement includes covenants and releases that are commonly agreed in class action settlements. If approved by the Court, Registered and Unregistered Group Members (other than any person who filed an opt out notice) will:
- a. have all claims against GetSwift and Mr Macdonald finally resolved; and
  - b. be barred from making any further claims against GetSwift or its related parties (including related bodies corporate and GetSwift's past or present directors and officers) or Mr Macdonald which relate to the subject matter of the GetSwift Class Action (which includes the facts and circumstances giving rise to the allegations described in the Third Further Amended Statement of Claim or any previous versions of the pleadings filed by the Applicant).
37. At the Settlement Approval Hearing, the Applicant will seek orders from the Court to approve a proposed Settlement Distribution Scheme which will establish how Registered Group Members' entitlements are to be calculated and the process to distribute the Settlement Sum as efficiently as possible. This is explained further in **Section G** below.



## G. SETTLEMENT DISTRIBUTION

### Summary of Proposed Settlement distribution

#### Order of payments

Paragraphs 41 to 46 outline the order and timing of distribution of the Settlement Sum. The Settlement Sum will be paid in various instalments in FY22, FY23 and FY24.

#### Legal costs and commission entitlements

Paragraphs 47 to 58 outline the legal costs and commission entitlements that Phi Finney McDonald and Therium will ask the Court to approve and why.

#### Loss assessment formula

Paragraphs 59 to 66 outline how the value of Registered Group Members' claims both in total, and individually, will be calculated. **Annexures E** and **F** contain worked examples of how the Settlement Sum will be calculated in total and at an individual Registered Group Member level.

38. The Court must approve a proposed "Settlement Distribution Scheme" which outlines the process by which the Settlement Sum is proposed to be distributed. This will include a confidential schedule containing a "Loss Assessment Formula" which details how each Registered Group Member's entitlement will be calculated.
39. If the Court approves the Proposed Settlement, Phi Finney McDonald (or such other Administrator that is appointed by the Court) will be appointed as the Administrator of the proposed Settlement Distribution Scheme, and trustees in relation to the Settlement Sum. Under Court supervision, the Administrator will be obliged to act impartially and will no longer act as lawyers for the Applicant.
40. Group Members can request a copy of the proposed Settlement Distribution Scheme including relevant confidential schedules, from any time after 14 January 2022, by:
  - a. contacting the Applicant's solicitors by email at [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com); and
  - b. signing and returning a confidentiality undertaking which will be sent to you in response to your request for a copy of the Settlement Distribution Scheme.



## ORDER OF PAYMENTS

### **What percentage of the Settlement Sum will Registered Group Members receive?**

The proposed Settlement Distribution Scheme guarantees that Registered Group Members receive at least 50% of the Settlement Sum once the Settlement Sum exceeds about \$2.35m. If the Settlement Sum is less than \$2.35m, Registered Group Members will receive less than 50% in accordance with the order of payments set out below.

The rest of the Settlement Sum will be distributed to AmTrust Europe Limited (**AmTrust**), Therium, Phi Finney McDonald and the Applicant for their work on the case and expenses paid as outlined below.

41. The following order of payments from the Settlement Sum is proposed under the proposed Settlement Distribution Scheme, which is subject to Court approval.
42. From the initial Settlement Sum payment of AUD\$1.5m:
  - a. **First**, AmTrust will be paid AUD\$1,167,390 for the contingent component of the insurance premium which Therium is required to pay in exchange for AmTrust providing adverse costs insurance. Therium took out this insurance policy so that it could guarantee to the Applicant that it would meet any adverse costs order made against the Applicant in the proceeding. An adverse costs order is an order that a party in a proceeding pay another party's legal costs if their case is unsuccessful.
  - b. **Second**, the Applicant, Mr Webb, will be reimbursed approximately AUD\$5,350 for his expenses in undertaking this action on behalf of himself and Group Members.
43. From the remaining AUD\$327,260 rolled over from the initial Settlement Sum payment above, and all subsequent Settlement Sum payments:
  - a. **Third**, the next AUD\$1,172,740 collected (being the combined value of 42(a) and (b) above) will go to Registered Group Members, in order to bring payments to Registered Group Members up to 50% of all Settlement Sum payments received at that point;
  - b. **Fourth**, further payments are distributed as follows:
    - i. at least 50% to Registered Group Members; and
    - ii. subject to (i) above, the balance to Phi Finney McDonald and Therium to reimburse them for any Court-approved legal and other costs, until those amounts are paid in full;



- c. **Fifth**, once all approved legal and other costs are paid in full, then any further payments are distributed as follows:
- i. at least 50% to Registered Group Members; and
  - ii. subject to (i) above, an amount payable to Therium as commission equalling 20% of the Settlement Sum after all deductions for Court-approved legal and other costs. This amount is equivalent to 25% of the total amount paid to Registered Group Members from the Settlement Sum.

**When will Registered Group Members receive compensation?**

If the Settlement Sum is above \$1,172,740 (as at 43 above), payments will be distributed to Registered Group Members shortly after each year of the Fundraising Term.

44. There will be no distribution following receipt of the initial payment of AUD\$1.5m in January 2022 (see subparagraphs 42 (a) and (b) above).
45. The Settlement Sum will be distributed to Registered Group Members pursuant to paragraph 43 in three rounds, being:
- a. shortly after 31 August 2022 (after the first year of the Fundraising Term);
  - b. shortly after 31 August 2023 (after the second year of the Fundraising Term); and
  - c. shortly after 31 August 2024 (after the third year of the Fundraising Term).
46. Where a Registered Group Member is due to receive \$100 or less in any of the first two rounds, that amount will be rolled over to the next distribution round. Where an amount is rolled over, a Registered Group Member will receive all amounts outstanding as a single payment in the subsequent distribution round. This is to reduce the fees payable on distributing the Settlement Sum.

**LEGAL COSTS AND COMMISSION ENTITLEMENTS**

**What percentage of the Settlement Sum will Phi Finney McDonald and Therium receive?**

Under the proposed Settlement Distribution Scheme, Phi Finney McDonald and Therium will not receive more than 50% of the Settlement Sum for their legal and other costs and commission entitlements once the Settlement Sum exceeds about \$2.35m.



Phi Finney McDonald and Therium will absorb any shortfall if 50% of the Settlement Sum is insufficient to cover their legal and other costs and commission entitlements. In other words, rather than take more than 50% from Registered Group Members, Phi Finney McDonald and Therium will cap their recovery to ensure a sufficient return to group members.

By way of example, if the Settlement Sum is only \$10m, Phi Finney McDonald and Therium will only receive \$5m. This is less than the costs paid to date, discussed below.

#### *Phi Finney McDonald*

47. Phi Finney McDonald will apply to the Court to approve approximately AU\$7,826,723 as fair and reasonable legal costs having regard to the opinion of an independent expert costs assessor. The Court may approve an amount for legal costs which is different to this estimate.
48. If appointed as Administrator, Phi Finney McDonald will also seek costs for administering the Settlement Distribution Scheme estimated at approximately AU\$229,552.95.
49. The legal costs incurred in conducting the GetSwift Class Action reflects the complexity and duration of the proceeding. When the proceeding was commenced in April 2018, Phi Finney McDonald estimated total costs of AUD\$4.67m (**Original Estimate**). Although the Proposed Settlement was reached in the GetSwift Class Action before a trial was heard, by the time the Proposed Settlement was reached the Applicant had completed almost all legal work necessary for the trial to commence.
50. In addition, the following disputes arose which Phi Finney McDonald did not expect and fall outside the scope of the Original Estimate:
  - a. the conduct of competing applicants who unsuccessfully appealed to the Full Court of Federal Court and (in respect of one of them) then to the High Court of Australia, seeking to overturn Justice Lee's decision to award carriage of the GetSwift Class Action to Mr Webb (approximately \$336,500 in costs);
  - b. the Respondents' applications seeking orders that Justice Lee not hear and determine the GetSwift Class Action, because of his role in case managing and determining the proceeding commenced by the Australian Securities and Investments Commission (**ASIC**) against GetSwift (**ASIC Proceeding**), and appeal of Justice Lee's decision not to disqualify himself from determining the GetSwift Class Action (approximately \$118,773.85 in costs);
  - c. GetSwift's application to redomicile its company to Canada (approximately \$273,000 in costs);
  - d. the Applicant's application seeking orders that GetSwift notify the Applicant of any material change in its asset position, prompted by the progressive



deterioration of GetSwift's financial position over the life of the proceeding (approximately \$187,000 in costs).

51. Other matters which have resulted in additional legal costs relative to the Original Estimate include:
- a. a dispute between the Applicant and a competing applicant with respect to whether it was appropriate for the competing applicant's lawyers to contact group members to discuss opting out of the class action, requiring the Applicant to seek a restraining order. This restraining order was granted by Justice Lee but overturned by the Full Court of the Federal Court on appeal by the competing applicant;
  - b. the commencement of the ASIC Proceeding, and work for and arising from the concurrent case management of the GetSwift Class Action and the ASIC Proceeding. In particular, this resulted in various Court hearings regarding the manner in which the two proceedings would be conducted either concurrently or consecutively;
  - c. the global COVID-19 pandemic and the interstate travel restrictions between Victoria and NSW, and the decision of the Court to conduct the GetSwift Class Action trial (which at the relevant time was scheduled to commence in September 2020) in person rather than digitally. This resulted in the Applicant being required to brief new senior and junior counsel to appear at that trial. After this step had occurred, at significant expense, on application by the Respondents, the September 2020 trial date was vacated;
  - d. the nature of the Applicant's allegations against the Respondents in the GetSwift Class Action changed considerably over the course of the class action, including having regard to evidence that became available through the production of the Respondent's documents and additionally through the ASIC Proceeding, and the defence to the ASIC Proceeding mounted by GetSwift and its relevant directors. This resulted in a series of extensive amendments to the Applicant's pleaded claim;
  - e. the Applicant engaged the Respondents in four separate rounds of settlement negotiations, the first three of which were unsuccessful. The Original Estimate had assumed only one to two rounds of settlement negotiations between the parties;
  - f. the Original Estimate assumed that the Applicant would file two reports from two independent experts as evidence, including short replies to any expert reports filed on behalf of the Respondents. While the Applicant did retain two independent experts, each was ultimately required to file four reports, comprising initial reports, supplementary reports responding to amendments to the Applicant's allegations as summarised at (d) above, reply reports responding to the reports filed on behalf of the Respondents, and "joint reports" whereby each expert prepared a further report in collaboration with the equivalent expert retained on behalf of the Respondents;
  - g. the cost of conducting a registration of Registered Group Members' claims in late 2020 was greater than assumed in the Original Estimate, primarily reflecting that a greater proportion of Registered Group Member claims were comprised of



“retail investor” claims than is typical for shareholder class actions. This resulted in increased Group Member contact with Phi Finney McDonald as a large number of Group Members sought personal advice regarding the GetSwift Class Action and required assistance with the registration of their claims and the provision of necessary supporting information.

52. A costs assessor appointed by the Court at the commencement of the GetSwift Class Action has assessed at regular intervals Phi Finney McDonald’s legal costs incurred up to 31 December 2020. To the extent that a small amount of the legal costs incurred up to that point were found not to be reasonable, Therium was reimbursed for any amounts it had paid in respect of those legal costs, and Phi Finney McDonald will not seek to recover those costs from the Settlement Sum.
53. Having regard to the 50% Costs Cap guarantee, Phi Finney McDonald considers that there is a reasonable risk that the Settlement Sum may ultimately be insufficient to cover all of its legal costs.

#### *Therium*

54. Therium will ask the Court to approve other litigation costs of approximately AU\$659,130, principally relating to the payment of premiums for adverse costs insurance and three deeds of indemnity provided to the Respondents by way of security for costs.
55. Therium will also seek approval to receive a funding commission payment of an amount equal to 20% of the Settlement Sum after deducting the total Court-approved amount of legal and other costs. This is explained further at paragraphs 67 - 69 below.
56. Therium will seek the percentage commission as opposed to a multiple of 2.8 times the pre-resolution expenses because the funding terms allow Therium to recover the lesser amount. A commission payment of an amount equal to 20% of the Settlement Sum will most likely be less than a commission amount calculated on a multiple of 2.8 times pre-resolution expenses.
57. Any commission payment to Therium will only be made if all other amounts are paid in full from the Settlement Sum, and subject to the 50% Costs Cap guarantee. This means the Settlement Sum needs to reach approximately \$20m before any commission is payable.
58. Phi Finney McDonald considers that there is a reasonable risk that Settlement Sum will ultimately be insufficient to result in any commission payable to Therium.

#### LOSS ASSESSMENT FORMULA

**What is the total value of all Registered Group Members’ claims and how is it calculated?**

The value will depend on how many Registered Group Members there are and whether the Applicant’s or GetSwift’s expert evidence is applied to the value of GetSwift shares during the Claim Period.



59. As outlined in **Section B** above, the Applicant alleged in the GetSwift Class Action that, because of the conduct of the Respondents, Group Members paid more (“an inflated price”) for their GetSwift shares than they would have otherwise paid. The Respondents denied this allegation.
60. To determine the price that the Applicant alleges would have otherwise been paid, the Applicant engaged the services of a Forensic Economist, Dr Ramsey Zein, to produce what is referred to as an “inflation series”. That inflation series estimates the amount of inflation in the price of GetSwift shares for each day during the Claim Period and will be used to determine the compensation Registered Group Members will receive out of the Settlement Sum.
61. Accordingly, the Applicant will calculate a Registered Group Member’s loss using the total amount of inflation paid on shares purchased during the Claim Period (**Claim Shares**). This loss will be offset by the amount of inflation received on Claim Shares sold during the Claim Period (for the purpose of identifying sales of Claim Shares during the Claim Period, individual sale transactions are matched against purchase transactions on a “last-in-first-out” basis).
62. In defending the GetSwift Class Action, the Respondents engaged the services of another Forensic Economist, Dr Sanjay Unni. Dr Unni prepared a report finding that GetSwift shares were not inflated at all during the Claim Period, and accordingly that Group Members did not suffer any compensable loss as a result of their acquisition of GetSwift shares.
63. The final number of Registered Group Members is currently unknown, because Group Members may continue to register until 4 February 2022 (see **Section D** above). Therefore, the value of all Registered Group Members’ claims cannot be calculated at this point in time.
64. However, by way of example only, the share trades of currently Registered Group Members can be used to illustrate the calculation of return to Registered Group Members on either Forensic Economist’s view:
- a. Applying Dr Zein’s inflation series results in a total loss of approximately \$32,600,000 in respect of the claims of currently Registered Group Members. Applying Federal Court interest (calculated as at 1 November 2021) to this amount brings the total registered claims value to **\$38,844,743.11**.
  - b. Applying Dr Unni’s findings results in a total registered claims value of **\$0**.
65. Please refer to **Annexure E** for examples which illustrate the potential impact on the value of Registered Group Members’ claims in Settlement Sum scenarios of \$4m, \$8m, \$16m and \$22m, using the number of currently Registered Group Members as an example. It is important to note that the number of Registered Group Members is likely to increase as more Group Members register their claims before 4 February 2022.





### **How is the value of each Registered Group Member's claim calculated?**

This value will vary for individual Registered Group Members and depend on a number of factors including the calculation of the total value of all Registered Group Members' claims above, as well as type of trades in GetSwift shares and when those transactions occurred during the Claim Period.

66. The amount of compensation to be paid to each Registered Group Member under the Settlement Distribution Scheme will depend on a number of factors, such as:
- a. the number of shares purchased during the Claim Period, and the date of purchase;
  - b. whether any of those shares were sold during the Claim Period, and the date of sale;
  - c. the overall losses of all Registered Group Members sharing in the Proposed Settlement; and
  - d. the value of the settlement payments made during the Fundraising Term.

For these reasons, it is impossible to state how much compensation each Registered Group Member will receive at this point in time. However, a hypothetical example is contained in **Annexure F** which may be used to assist Group Members to understand the assessment process. It is important to note that the number of Registered Group Members, and therefore the total claim value, is likely to increase as more Group Members register their claims before 4 February 2022.

### **H. LITIGATION FUNDING**

67. Therium provided litigation funding for the Applicant's prosecution of the GetSwift Class Action on behalf of the Applicant and Group Members.
68. Under this arrangement, Therium:
- a. indemnified the Applicant against any Adverse Costs Orders; and
  - b. paid legal costs and other costs incurred in prosecuting the proceeding, including the cost of solicitors, barristers, and independent experts together with the upfront cost of securing adverse costs insurance and the deeds of indemnity provided as security for costs.
69. At the Settlement Approval Hearing, Therium will seek an order providing for payment of a commission amount being 20% of the Settlement Sum after deducting the total Court-approved amount of legal and other costs.
70. Any such commission payment to Therium is subject to the 50% Costs Cap.



## I. WHAT STEPS CAN GROUP MEMBERS NOW TAKE?

71. **Section D** above and Annexure B below detail the steps Group Members need to take in order to register. Registration is one of the 4 options set out in D.16 above.
72. If you already are or become a Registered Group Member and you wish to support the settlement, there is nothing more you need to do. If you are or become a Registered Group Member you will be kept informed about further developments in the Court approval process. You are encouraged to refrain from contacting Phi Finney McDonald unnecessarily, in order to keep costs to a minimum.
73. If you wish to **oppose** the Proposed Settlement, or any aspect of it, then you **must**:
- a. by no later than 4 February 2022, fill in the form entitled 'Notice of Objection to Proposed Settlement' attached to this Notice of Proposed Settlement and Registration and (which can be obtained in word format from Phi Finney McDonald upon request), duly execute it, file it with the Court and serve it on Phi Finney McDonald by sending it by email to:
    - i. [EA.MurphyJ@fedcourt.gov.au](mailto:EA.MurphyJ@fedcourt.gov.au); **and**
    - ii. [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).
  - b. by no later than 8 February 2022, send any evidence and written submissions you wish to rely on in support of the Notice of Objection to the Court and PFM by email (see above emails).
74. You can oppose the Proposed Settlement regardless of whether you are a Registered Group Member or an Unregistered Group Member. However, if you are not, or do not become, a Registered Group Member and the Proposed Settlement is approved despite your opposition, you may not be able to share in the Proposed Settlement. If you wish to oppose the Proposed Settlement but still share in the Proposed Settlement if your opposition fails, you should become a Registered Group Member.
75. You **may** attend the Settlement Approval Hearing to explain the basis of your objection to the Judge if you wish to do so. If you do not attend, then the Court will give consideration to your objection and to the approval of the settlement in your absence. You may wish to seek independent legal advice in relation to opposing the settlement.
76. The Settlement Approval Hearing will take place at **10.15am on 28 February 2022** in the New South Wales Registry of the Federal Court of Australia located at **Law Courts Building, 184 Phillip St, Queens Square, Sydney NSW 2000**. You are entitled to attend the hearing if you wish to. Due to the coronavirus, a hearing may not happen in a courtroom where people come along in person, and if you want to attend, you may be provided instead with a video link or telephone link.

## J. FURTHER INFORMATION

77. Copies of relevant documents, including this Notice of Registration and Proposed Settlement, Third Further Amended Statement of Claim, and the Defences may be obtained by:
- a. requesting them by email to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com); or



- b. inspecting them at <http://phifinneymcdonald.com/actions/getswift-class-action/>; or
78. If you need further information about the Proposed Settlement, please contact Phi Finney McDonald by email to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).



## NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

No. NSD580 of 2018

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### **Raffaele Webb**

Applicant

### **GetSwift Limited ACN 604 611 556 and another**

Respondents

Complete this form if you wish to submit an objection to the Proposed Settlement.

If you do **NOT** wish to object to the Proposed Settlement, you do **NOT** need to return this form.

**Please note** that if you submit a Notice of Objection to Proposed Settlement, your name and your specific circumstances (including transaction details and grounds of objection) may be read out in Court and/or referred to in orders and/or judgments of the Federal Court.

Your Notice of Objection will be considered by the Court when it is determining whether or not to approve the Proposed Settlement.

If you wish to object to the Proposed Settlement, or any aspect of it, your Notice of Objection must be received by the Court by 4 February 2022 and any evidence/submissions in support received by 8 February 2022.

Any Notice of Objection received after this deadline will not be considered by the Court when it is determining whether or not to approve the Proposed Settlement.

To: The Federal Court of Australia, by email to [EA.MurphyJ@fedcourt.gov.au](mailto:EA.MurphyJ@fedcourt.gov.au)  
cc: Phi Finney McDonald, by email to [GetSwiftClassAction@phifinneycdonald.com](mailto:GetSwiftClassAction@phifinneycdonald.com)

The person identified below gives notice pursuant to paragraph 15 of the orders of the Court made on 19 November 2021 that the person is a Group Member in the GetSwift Class Action and **OBJECTS** to the Proposed Settlement of this proceeding, for the reasons outlined.



#### A. DETAILS OF OBJECTOR

- I am a Registered Group Member (see paragraph D.17.a of the Notice of Registration and Proposed Settlement); or
- I am an Unregistered Group Member (see paragraph D.17.b of the Notice of Registration and Proposed Settlement)

Name	
ACN/ABN [ <i>if company</i> ]	
Person completing this form	
Capacity [ <i>e.g., individual, partnership, trustee/agent</i> ]	
Registered or Unregistered Group Member	
Claimant ID [ <i>if a Registered Group Member</i> ]	
Telephone	
Email	
Postal address	

#### B. RELEVANT TRANSACTIONAL INFORMATION

If you are an Unregistered Group Member (see paragraph D.17.b of the Notice of Registration and Proposed Settlement), you are required to provide the following information. Further, you are required to provide documentary evidence from a third party (e.g. contract notes or transaction receipts) in support of each acquisition and disposal of GetSwift securities during the period 24 February 2017 and 19 January 2018 (inclusive).

If you are a Registered Group Member (see paragraph D.17.a of the Notice of Registration and Proposed Settlement), you are **not** required to provide the following information. Please proceed to Sections C, D and E below.

HIN/SRN under which GetSwift securities were traded	
Number of GetSwift securities held as at close of trade on 23 February 2017	
Total number of GetSwift securities acquired by the objector during the period 24	



February 2017 and 19 January 2018 (inclusive)	
Total number of GetSwift securities disposed of by the objector during the period 24 February 2017 and 19 January 2018 (inclusive))	

**C. ATTENDANCE AT HEARING AT 10.15am on 28 February 2022**

I do not intend to appear, but wish for my submissions to be considered in my absence

I intend to appear before the Court at the hearing at [time and date]

[please tick one]

If you intend to appear, please complete the following:

I will appear on my own behalf

I will be represented by a lawyer:.....

[please tick one if you intend to appear]

**D. NOTICE OF OPT OUT**

If you are a Registered Group Member, please proceed to Section E below.

If you are an Unregistered Group Member, did you receive a copy of the Notice of Opt Out provided to Group Members in accordance with the orders of Justice Lee dated 7 February 2019?

Yes, I received a copy of the Notice of Opt Out

No, I did not receive a copy of the Notice of Opt Out

[please tick one]

If yes, you must include at Section E below the reasons why you elected not to opt out of the GetSwift Class Action.

**E. GROUND(S) OF OBJECTION**

Please state the reasons in support of your objections to the Proposed Settlement [set out in the space below any submissions you wish to make, attach additional pages if necessary]:



--

**E. EXECUTION OF NOTICE**

If you are completing the Notice of Objection as or on behalf of an individual shareholder you must sign and have your signature witnessed.

If you are completing the Notice of Objection on behalf of a company with a sole director or as the sole trustee, the sole director or sole trustee must sign and have their signatures witnessed.

If you are completing the Notice of Objection on behalf of a company or trust (with more than one director or trustee), two directors of the company, a director and a company secretary of the company, or two trustees must sign. A witness signature is not required.

By signing below, I confirm that the information I have provided in this form is true, complete and correct:

Signed:	
Name	
Position	
Date	
Witness Signature	
Name of Witness	

Second signature:	
Name	
Position	
Date	
Witness Signature	
Name of Witness	



## “Annexure B” – Your Options

### **Options for Unregistered Group Members**

#### ***Option A – Register to participate in the Proposed Settlement***

If you wish to be entitled to share in the Proposed Settlement, you must complete the online Group Member Registration Form which is accessible at [www.phifinneymcdonald.com/gsw](http://www.phifinneymcdonald.com/gsw) by the deadline specified below.

In completing the Group Member Registration Form, it is important to note the following

- Once your completed Group Member Registration Form is received by PFM you will become a Registered Group Member.
- The information and documents you provide will be used by PFM.
- If you are unable to access the online registration website, please email PFM at [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).

**Registrations must be completed and submitted before 4 February 2022.**

Registrations received after this time may not be accepted by the Court, with the result being that you will be treated as having not responded to this notice (see Option B below).

#### ***Option B – Register to participate but oppose the Proposed Settlement***

You can register to participate in the Proposed Settlement **but also** oppose the Proposed Settlement.

If you wish to oppose the Proposed Settlement, or any aspect of it, but still share in the Proposed Settlement if your opposition fails, you must:

1. become a Registered Group Member by submitting a “Group Member Registration Form” in accordance with Option A above; **and**
2. **by no later than 4 February 2022;**
  - a. fill in the form entitled ‘Notice of Objection to Proposed Settlement’ (**Notice of Objection**) attached to this Notice of Proposed Settlement and Registration;
  - b. duly execute the Notice of Objection;
  - c. file the Notice of Objection with the Court by emailing it to [EA.MurphyJ@fedcourt.gov.au](mailto:EA.MurphyJ@fedcourt.gov.au); and
  - d. serve it on PFM by emailing it to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).





3. **by no later than 8 February 2022**, send any evidence and written submissions you wish to rely on in support of the Notice of Objection to:
  - a. the Court by email to EA.MurphyJ@fedcourt.gov.au; and
  - b. PFM by email to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).

Any Notice of Objection received after 4 February 2022 may not be accepted by the Court.

***Option C – Not register to participate and oppose the Proposed Settlement***

If you are currently an Unregistered Group Member and you do nothing, that is you do not register by submitting the “Group Member Registration Form” in accordance with Option A above you will remain an Unregistered Group Member and **WILL NOT**, without the leave of the Court, be permitted to seek any benefit pursuant the Proposed Settlement of the GetSwift Class Action.

If you are an Unregistered Group Member, you may still oppose the Proposed Settlement. However, if you remain an Unregistered Group Member and the Proposed Settlement is approved despite your opposition, you may not be able to share in the Proposed Settlement.

If you wish to oppose the Proposed Settlement while remaining an Unregistered Group Member, you **must**:

1. **by no later than 4 February 2022**:
  - a. fill in the form entitled ‘Notice of Objection to Proposed Settlement’ (**Notice of Objection**) attached to this Notice of Proposed Settlement and Registration;
  - b. duly execute the Notice of Objection;
  - c. file the Notice of Objection with the Court by emailing it to EA.MurphyJ@fedcourt.gov.au]; and
  - d. serve it on PFM by emailing it to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).
2. **by no later than 8 February 2022**, send any evidence and written submissions you wish to rely on in support of the Notice of Objection to:
  - c. the Court by email to EA.MurphyJ@fedcourt.gov.au; and
  - d. PFM by email to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).



***Option D – Not respond to this notice***

If you are not a Deemed Registered Group Member and you do nothing, that is you do not register by submitting the “Group Member Registration Form” in accordance with Option A above, you will remain an Unregistered Group Member and **WILL NOT**, without the leave of the Court, be permitted to seek any benefit pursuant the Proposed Settlement of the GetSwift Class Action.

If you remain an Unregistered Group Member and the Court approves the Proposed Settlement, you will not be able to sue on the same claim in any other proceedings.



## “Annexure C” – Settlement Formula

A detailed breakdown of the **Settlement Sum** is as follows:

1. A first settlement payment of AU\$1.5m, to be paid in instalments as follows:
  - a. AU\$500,000 within 7 days of 19 August 2021;
  - b. AU\$500,000 due by 7 October 2021; and
  - c. AU\$500,000 due by 7 January 2022.
2. During the Fundraising Term, settlement payments equalling 8% of any funds raised by GTL by way of capital raising, with each such amount to be paid within 6 weeks of the amount being collected by GTL.
3. During the Fundraising Term, GTL is required to raise capital equivalent to 10% to 20% of its pre-raising market capitalisation at the point in time that:
  - a. it first hits any of the following market capitalisation levels (in Canadian Dollars (**CAD**)):
    - i. \$100m;
    - ii. \$250m;
    - iii. \$400m; and
  - b. the market capitalisation remains at the level in subparagraph 3.a.i – iii (as applicable) on average for 4 weeks following the date of first hit that market capitalisation.
4. In any of the three 12-month periods comprising the Fundraising Term, if no funds are raised by capital raising:
  - a. the Respondents and/or GTL will be required to make a settlement payment equal to 5% of the GTL Group’s revenue from contracts with customers (**revenue**) during the 12-month period ending on the most recent quarterly reporting date prior to the conclusion of the relevant 12-month period (**revenue percentage**) within 4 weeks of expiry of the period; however
  - b. if subparagraph 4.a. applies in respect of the first year of the Fundraising Term, the required settlement payment under subparagraph 4.a. will not be payable until the conclusion of the second year of the Fundraising Term.



5. Subject to subparagraph 6 below, during any of the three 12-month periods comprising the Fundraising Term, for any capital raising undertaken by GTL where the amount of funds raised is less than 20% of GTL's pre-raising market capitalisation, then:
  - a. the Respondents and/or GTL will be required to make a settlement payment calculated on the same revenue percentage basis as clause 4 above within 4 weeks of expiry of the relevant 12-month period; however
  - b. the amount payable will be discounted based on the amount of funds raised applying the following formula:
    - i. the revenue percentage payable will be the percentage equivalent to 25% of the percentage amount by which the relevant capital raising is less than 20% of GTL's market capitalisation; such that (by way of example);
    - ii. if the capital raising is 10% of GTL's market capitalisation, the revenue percentage payable is 2.5%; whereas
    - iii. if the capital raising is 15% of GTL's market capitalisation, the revenue percentage payable is 1.25%.
6. If GTL conducts more than one capital raising during any of the 3 twelve-month periods comprising the Fundraising Term, then for the purpose of the calculation of any revenue percentage settlement payment for that period, the two or more capital raisings will be treated as one capital raising. For instance, if:
  - a. GTL conducted two capital raisings during a single 12-month period for amounts of 5% and 10% of GTL's market capitalisation at the relevant times;
  - b. GTL's market capitalisation was CAD200m at the time of the first capital raising and CAD250m at the time of the second capital raising; and
  - c. this resulted in raisings of CAD10m and CAD25m respectively; then
  - d. the weighted average revenue payment would be calculated premised on the extent to which CAD35m (the combined amount raised) fell short of being 20% of CAD225m (the weighted average market capitalisation); and
  - e. the relevant percentage per subparagraph 6.d would be about 15.5%, such that the revenue percentage payment for that 12-month period would be a single payment of about 1.11% of annual revenue.
7. All payments are to be made in Australian dollars. The rate of exchange to be used in calculating the amount of currency equivalent in Australian dollars is the closing exchange rate reported in The Australian Financial Review on the preceding Business Day before payment is made.



## “Annexure D” – Settlement Sum payments example

### **EXAMPLE: Settlement Sum payments**

As outlined in the Notice above, the Settlement Sum will comprise (i) the upfront payment of \$1.5m, and (ii) subsequent payments which are a proportion of funds GTL raises by capital raising, or revenue from GTL’s customer contracts, or a combination of both. By way of example in relation to the subsequent payments:

#### FY22 (2022 Financial Year)

If GTL’s market capitalisation reaches Canadian Dollar (**CAD**) \$100m on 1 May 2022 and remains at that level on average for four weeks, then an obligation to raise capital from investors equivalent to 10-20% of CAD\$100m is triggered. If GTL raises 20% of CAD\$100m (CAD\$20m), then the obligation to pay 8% of this figure (**CAD\$1.6m**) as part of the Settlement Sum is triggered.

#### FY23 (2023 Financial Year)

If GTL’s market capitalisation level does not trigger a required capital raise and GTL does not otherwise raise capital, then GTL is required to pay 5% of its revenue from customer contracts. If it receives CAD\$18m in revenue from customer contracts, then GTL would be obliged to pay **CAD\$0.9m** as part of the Settlement.

#### FY24 (2024 Financial Year)

If GTL’s market capitalisation reaches CAD\$250m on 1 January 2024 and remains at that level on average for four weeks, then the obligation to raise 10-20% of CAD\$250m is triggered. If GTL raises 10% of CAD\$250m (CAD\$25m), then it will be required to pay 8% of this figure (**CAD\$2m**) as part of the Settlement Sum.

In addition, because in this example GTL raised 10% rather than 20% of CAD\$250m, it is also obliged to pay a further amount as part of the Settlement Sum calculated by reference to its revenue performance. If GTL receives CAD\$18m in revenue from customer contracts, then it will be required to pay an additional 2.5% of this figure (**CAD\$450K**) as part of the Settlement Sum.

#### TOTAL SETTLEMENT SUM

Under the above scenario, which is illustrative only, the total Settlement Sum would be AUD\$1.5m plus CAD\$4.95m. As at 4 November 2021 the CAD:AUD currency exchange rate was 1 to 1.08. If that exchange rate applied at the times that the various CAD amounts in this scenario are paid by the Respondents, then the total Settlement Sum in Australian dollars would be \$6,846,000 (being AUD\$1.5m, plus CAD\$4.95m x 1.08: AUD\$5,346,000).



In accordance with the 50% Costs Cap guarantee, group members would be guaranteed to receive at least \$2,673,000.



## “Annexure E” – Settlement Sum examples

### EXAMPLE 1: AUD\$4m total Settlement Sum

#### = AUD\$2m for Registered Group Members

If the Settlement Sum is \$4m, split as follows:

1. Upfront payment of \$1.5m
2. FY22 payment of \$1m
3. FY23 payment of \$1m
4. FY24 payment of \$0.5m

---

1. from the initial Settlement Sum payment of \$1.5m:

- **\$1,167,390** would go to AmTrust as payment for the contingent component of the insurance premium;
- **\$5,350** would go to the Applicant for his expenses in undertaking this action;

---

2. then, from the remaining \$327,260 rolled over from the initial Settlement Sum payment above, and the FY22 payment of \$1m, totalling \$1,327,260:

- **\$1,250,000** would go to Registered Group Members, being an amount equal to the combined value of the payments to AmTrust and the Applicant from the initial Settlement Sum payment (\$1,172,740), together with 50% of the remaining \$154,520 (\$77,260);
- **\$77,260** would go to Therium and Phi Finney McDonald for legal and other costs, being the remaining 50% of \$154,520;

---

3. then, from the FY23 payment of \$1m:

- **\$500,000** (50%) would go to Registered Group Members;
- **\$500,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs;

---

4. then, from the FY24 payment of \$0.5m:

- **\$250,000** (50%) would go to Registered Group Members; and
- **\$250,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs.



Therefore:

**The total payments to Registered Group Members in 1 to 4 above would be \$2m.**

**Assuming the total value of claims is \$38,844,743.11 (including interest) as above, then this would represent the following impacts to Registered Group Members' claims:**

- **a \$36,844,743.11 (or 94.85%) discount according to the Applicant's Forensic Economist; and**
- **an increase of \$2m according to the Respondent's Forensic Economist.**

**The total payments to Therium and Phi Finney McDonald in 1 to 4 above would be \$1,994,650.**

**Assuming the Court approves \$7,826,723 in Phi Finney McDonald's legal costs, \$229,552.95 in administration costs, \$659,130 in Therium's litigation costs and \$1,167,390 in contingent insurance costs, totalling \$9,882,796, this would represent a 79.82% discount to Phi Finney McDonald and Therium's recovery of legal and other costs. Therium would not receive any commission payment in this scenario.**

**The total payment to the Applicant for his expenses claim would be \$5,350.**

### **EXAMPLE 2: AUD\$8m total Settlement Sum**

**= AUD\$4m for Registered Group Members**

If the Settlement Sum is \$8m, split as follows:

1. Upfront payment of \$1.5m
2. FY22 payment of \$3m
3. FY23 payment of \$2m
4. FY24 payment of \$1.5m

1. from the initial Settlement Sum payment of \$1.5m:

- **\$1,167,390** would go to AmTrust as payment for the contingent component of the insurance premium;
- **\$5,350** would go to the Applicant for his expenses in undertaking this action;



---

2. then, from the remaining \$327,260 rolled over from the initial Settlement Sum payment above, and the FY22 payment of \$3m, totalling \$3,327,260:

- **\$2,250,000** would go to Registered Group Members, being an amount equal to the combined value of the payments to AmTrust and the Applicant from the initial Settlement Sum payment (\$1,172,740), together with 50% of the remaining \$2,154,520 (\$1,077,260);
- **\$1,077,260** would go to Therium and Phi Finney McDonald for legal and other costs, being the remaining 50% of \$2,154,520;

---

3. then, from the FY23 payment of \$2m:

- **\$1,000,000** (50%) would go to Registered Group Members;
- **\$1,000,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs;

---

4. then, from the FY24 payment of \$1.5m:

- **\$750,000** (50%) would go to Registered Group Members; and
- **\$750,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs.

---

Therefore:

**The total payments to Registered Group Members in 1 to 4 above would be \$4m.**

**Assuming the total value of claims is \$38,844,743.11 (including interest) as above, then this would represent the following impacts to Registered Group Members' claims:**

- **a \$34,844,743.11 (or 89.70%) discount according to the Applicant's Forensic Economist; and**
- **an increase of \$4m according to the Respondent's Forensic Economist.**

**The payments to Therium and Phi Finney McDonald in 1 to 4 above would be \$3,994,650.**

**Assuming the Court approves \$7,826,723 in Phi Finney McDonald's legal costs, \$229,552.95 in administration costs, \$659,130 in Therium's litigation costs and \$1,167,390 in contingent insurance costs, totalling \$9,882,796, this would**



represent a 59.58% discount to Phi Finney McDonald and Therium. Therium would not receive any commission payment in this scenario.

The total payment to the Applicant for his expenses claim would be \$5,350.

### EXAMPLE 3: AUD\$16m total Settlement Sum

= AUD\$8m for Registered Group Members

If the Settlement Sum is \$16m, split as follows:

1. Upfront payment of \$1.5m
2. FY22 payment of \$5m
3. FY23 payment of \$5m
4. FY24 payment of \$4.5m

1. from the initial Settlement Sum payment of \$1.5m:

- **\$1,167,390** would go to AmTrust as payment for the contingent component of the insurance premium;
- **\$5,350** would go to the Applicant for his expenses in undertaking this action;

2. then, from the remaining \$327,260 rolled over from the initial Settlement Sum payment above, and the FY22 payment of \$5m, totalling \$5,327,260:

- **\$3,250,000** would go to Registered Group Members, being an amount equal to the combined value of the payments to AmTrust and the Applicant from the initial Settlement Sum payment (\$1,172,740), together with 50% of the remaining \$4,154,520 (\$2,077,260);
- **\$2,077,260** would go to Therium and Phi Finney McDonald for legal and other costs, being the remaining 50% of \$4,154,520;

3. then, from the FY23 payment of \$5m:

- **\$2,500,000** (50%) would go to Registered Group Members;
- **\$2,500,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs;

4. then, from the FY24 payment of \$4.5m:



- **\$2,250,000** (50%) would go to Registered Group Members; and
- **\$2,250,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs.

Therefore:

**The total payments to Registered Group Members in 1 to 4 above would be \$8m.**

**Assuming the total value of claims is \$38,844,743.11 (including interest) as above, then this would represent the following impacts to Registered Group Members' claims:**

- **a \$30,844,743.11 (or 79.41%) discount according to the Applicant's Forensic Economist; and**
- **an increase of \$8m according to the Respondent's Forensic Economist.**

**The total payments to Therium and Phi Finney McDonald in 1 to 4 above would be \$7,994,650.**

**Assuming the Court approves \$7,826,723 in Phi Finney McDonald's legal costs, \$229,552.95 in administration costs, \$659,130 in Therium's litigation costs and \$1,167,390 in contingent insurance costs, totalling \$9,882,796, this would represent a 19.11% discount to Phi Finney McDonald and Therium. Therium would not receive any commission payment in this scenario.**

**The total payment to the Applicant for his expenses claim would be \$5,350.**

#### **EXAMPLE 4: AUD\$22m total Settlement Sum**

**= AUD\$11.98m for Registered Group Members**

If the Settlement Sum is \$22m, split as follows:

1. Upfront payment of \$1.5m
2. FY22 payment of \$7m
3. FY23 payment of \$7m
4. FY24 payment of \$6.5m

1. from the initial Settlement Sum payment of \$1.5m:

- **\$1,167,390** would go to AmTrust as payment for the contingent component of the insurance premium;
- **\$5,350** would go to the Applicant for his expenses in undertaking this action;

2. then, from the remaining \$327,260 rolled over from the initial Settlement Sum payment above, and FY22 payment of \$7m, totalling \$7,327,260:

- **\$4,250,000** would go to Registered Group Members, being an amount equal to the combined value of the payments to AmTrust and the Applicant from the initial Settlement Sum payment (\$1,172,740), together with 50% of the remaining \$6,154,520 (\$3,077,260);
- **\$3,077,260** would go to Therium and Phi Finney McDonald for legal and other costs, being the remaining 50% of \$6,154,520;

3. then, from the FY23 payment of \$7m:

- **\$3,500,000** (50%) would go to Registered Group Members;
- **\$3,500,000** (50%) would go to Therium and Phi Finney McDonald for legal and other costs;

4. then, from the FY24 payment of \$6.5m:

- **\$4,139,483.24** would go to Registered Group Members, being 50% of the FY24 payment, and 80% of the remaining settlement sum following the full payment of legal costs; and
- **\$2,360,516.76** would go to Phi Finney McDonald and Therium, which includes a commission payment to Therium equal to 10.47% of the total amounts paid to Registered Group Members under this scenario.

Therefore:

**The total payments to Registered Group Members in 1 to 4 above would be \$11,000,000.**

**Assuming the total value of claims is \$38,844,743.11 as above, then this would represent the following impacts to Registered Group Members' claims:**

- **a \$27,844,743.11 (or 69.39%) discount according to the Applicant's Forensic Economist; and**
- **an increase of \$11,000,000 according to the Respondent's Forensic Economist.**



**The total payment to Therium and Phi Finney McDonald in 1 and 4 above would \$10,994,650.**

**Assuming the Court approves \$7,826,723 in Phi Finney McDonald's legal costs, \$229,552.95 in administration costs, \$659,130 in Therium's litigation costs and \$1,167,390 in contingent insurance costs, totalling \$9,882,796, this would represent full payment of legal costs to Phi Finney McDonald and a commission payment to Therium of \$1.151m for its litigation funding commission.**

**The total payment to the Applicant for his expenses claim would be \$5,350.**



## “Annexure F” – Individual Registered Group Member example

### EXAMPLE

This example adopts the circumstances in Example 1 of Annexure D, that is:

- the total value of all Registered Group Members’ claims, before interest, is \$32,600,000; and
- the settlement payment to all Registered Group Members is \$2m.

The next step is to determine the value of the individual loss by applying the inflation series prepared by Dr Zein. If:

1. you purchased 50,000 shares on 3 April 2017 for \$0.49 each, totalling \$24,500;
2. the inflation series assessed the above share price as being inflated by \$0.026 per share;
3. you didn’t sell any GetSwift shares for the remainder of the Claim Period; and
4. you are a Registered Group Member,

your individual loss, excluding interest, would be = **\$1,300** (50,000 shares x \$0.026 inflation per share).

The next step is to determine the individual loss as a percentage of the total value of all Registered Group Members’ claims. If:

5. the total value of all Registered Group Members’ claims (excluding interest) is \$32,600,000; and
6. your individual loss (excluding interest) is \$1,300 as above,

then your loss would constitute 0.00399% of all Registered Group Members’ claims (1,300 / 32,600,000).

The next step is to apply your percentage of all Registered Group Members’ claims to the settlement payment to all Registered Group Members. If:

7. the settlement payment to all Registered Group Members is \$2m; and
8. your percentage of all Registered Group Members’ claims is 0.00399%,

then your settlement distribution would be approximately **\$79.75** (\$2,000,000 x 0.00399%).