

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**HEIKE EATON, HARLAN LIGHT, DOUGLAS ALEXANDER
and WILLIAM BARRETT, as Representative Plaintiffs**

Plaintiffs

- and -

H M S FINANCIAL INC., et al

Defendants

NOTICE OF MOTION
(Certification)

TAKE NOTICE that an application will be made on behalf of the representative Plaintiffs, on behalf of themselves and all other members of a class having a claim against the Defendants, in Chambers, at the Courthouse, 611 - 4th Street SW, in the City of Calgary, in the Province of Alberta, on Monday, the 23rd day of April, 2007, at the hour of 10:00 o'clock in the forenoon, or so soon thereafter as counsel may be heard for an Order of this Honourable Court that:

1. This action be certified as a class proceeding against the Defendants.
2. The Plaintiff Class be comprised of all individuals, other than the Defendants, who have invested money with the Defendants and suffered losses.
3. The Plaintiff, Douglas Alexander, be appointed as a Representative Plaintiff for the Plaintiff Class, and the Plaintiff, William Barrett, be appointed as a Representative Plaintiff for the non-resident subclass.

4. The nature of the claims asserted on behalf of the Plaintiff Class against the Defendants is for fraudulent misrepresentation, negligent misrepresentation, breach of trust and fiduciary duty or knowing assistance or participation in the same, unjust enrichment, conspiracy, conversion, and breaches of the *Criminal Code of Canada*, *Competition Act* and *Securities Act*.

5. The relief sought on behalf of the Plaintiff Class is:

- (a) Damages in the amount of \$100,000,000.00.
- (b) Loss of investment opportunity in an amount to be proven at trial.
- (c) As against the Director Defendants, Lawyers and Accountants, a declaration that assets held by these Defendants are subject to a trust and an Order directing that the Plaintiff Investors have equitable title to them.
- (d) A declaration that the Director Defendants, Lawyers and Defreitas were unjustly enriched by the sum of \$100,000,000.00 and an Order tracing said funds.
- (e) A declaration that the HMS Scheme constituted a fraud pursuant to the *Criminal Code of Canada* and was carried out in violation of the *Securities Act*.
- (f) A declaration that the Plaintiff is entitled to "Norwich"-type relief including but not limited to pre-discovery relief such as attachment and preservation Orders, injunctions, Orders requiring tracing of funds, and other relief the Court may see fit to grant.
- (g) A declaration that the Plaintiff is entitled to relief pursuant to Alberta's *Civil Enforcement Act*, including, but not limited to, attachment Orders, Orders enjoining Defendants from disposing of assets, and other relief the Court may see fit to grant.
- (h) A declaration that the Plaintiff is entitled to relief and damages pursuant to the equitable jurisdiction of this Honourable Court and the Court's inherent ability to control its own processes.

- (i) Interest pursuant to the *Judgment Interest Act*.
- (j) Punitive and aggravated damages in the amount of \$10,000,000.00.
- (k) Costs on a solicitor and client basis.
- (l) Such further and other relief as this Honourable Court finds just.

6. The common issues to be determined in this class proceeding are:

- (a) Was the HMS Scheme, as defined in paragraph 2 of the Amended Amended Statement of Claim, a fraudulent high yield or Ponzi scheme?
- (b) If the answer to (a) is yes, did the Defendants, or any of them, engage in fraudulent misrepresentation by representing to members of the Plaintiff Class that the HMS Scheme was a legitimate investment program?
- (c) Alternatively, if the answer to (a) is yes, did the Defendants, or any of them, engage in negligent misrepresentation by representing to members of the Plaintiff Class that the HMS Scheme was a legitimate investment program?
- (d) Further, or alternatively, did the Defendants, or any of them, convert investment funds of the Plaintiff Class to their personal benefit?
- (e) Further, or alternatively, did the Defendants, or any of them, engage in a conspiracy to defraud the Plaintiff Class by representing to them that the HMS Scheme was a legitimate investment program?
- (f) Did Garth Bailey, or any of the other Defendant Lawyers, act as counsel or trustee for members of the Plaintiff Class by purporting, or allowing others to purport, that he, or they, held bonds or other valuable securities in trust for the representative Plaintiffs and other class members, which he, or they, would realize upon in the event of default in payment under the HMS Scheme on the basis of irrevocable instructions from HMS or others?

- (g) Did any of the Lawyers, Accountants, or Financial Institutions, or any other Defendants, owe fiduciary duties and obligations or trust obligations to the members of the Plaintiff Class? If so, did they breach those duties?
- (h) Did the Financial Institutions knowingly assist or participate in a fraudulent breach of trust or fiduciary duties by one or more of the Defendants?
- (i) Were the Defendants involved in transactions with the Financial Institutions which constituted suspicious transactions? If so, did the Financial Institutions have a duty to make reasonable investigations? If so, did the Financial Institutions discharge that duty to make reasonable investigations? If not, what were the likely consequences of the Financial Institutions' failure to make such reasonable investigations?
- (j) Did the Financial Institutions, or any of them, owe a duty to members of the Plaintiff Class to report the suspicious transactions engaged in by the Defendants to the appropriate authorities? If so, did the Financial Institutions, or any of them, breach that duty? If so, did that breach contribute to the losses suffered by the members of the Plaintiff Class?
- (k) Have any of the Defendants been unjustly enriched at the expense of the Plaintiff Class in the absence of any juristic reason for the enrichment?
- (l) If the answer to (k) is yes, are the members of the Plaintiff Class entitled to restitution or repayment of monies from these Defendants? Alternatively, are the members of the Plaintiff Class entitled to a constructive trust?
- (m) Did the Defendants, or any of them, violate any of the provisions of any or all of the *Competition Act*, R.S.C. 1985, c. C-34, the *Securities Act*, R.S.A. 2000, c. S-4; or the *Criminal Code of Canada*, R.S.C. 1985, c. C-46?
- (n) If the answer to (m) is yes, does this mean that the "investment" contracts entered into by the representative Plaintiffs and other class members are

“void”? Alternatively, do the members of the Plaintiff Class have a cause of action for damages as a result of any such statutory breaches?

- (o) Are the members of the Plaintiff Class entitled to damages against the Defendants as more fully particularized in the Amended Amended Statement of Claim?
- (p) Are the members of the Plaintiff Class entitled to an accounting and/or tracing of all monies received by the Defendants pursuant to the HMS Scheme?
- (q) Are the members of the Plaintiff Class entitled to punitive and/or aggravated damages?
- (r) Should interest be assessed on all amounts found to be owing by the Defendants pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1?

7. Upon certification of this action as a class proceeding, a notice in the form attached to this application as Schedule “A” shall be sent by ordinary mail to the last known address of all members of the Plaintiff Class, as reflected on the records of the Defendants, which notice shall, upon further direction of this Court, establish a time within which members of the Plaintiff Class may opt-out of the proceedings or non-resident Albertans opt-in to the proceedings.

8. The Defendants shall pay the cost associated with the giving of notice to the Plaintiff Class members by ordinary mail, or by any other means as may be directed by the Court.

9. The plan for the proceeding, in the form attached to this Application as Schedule “B”, be approved.

10. The parties shall be at liberty to apply to determine the form of notice to be given to Plaintiff Class members, the timing of delivery of that notice, the form of the opt-in/opt-out notice and deadlines regarding the same, and to amend any certification Order.

AND FURTHER TAKE NOTICE that the grounds upon which this application shall be made include:

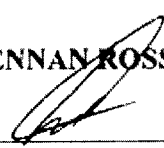
1. The pleadings disclose a cause of action.
2. There is an identifiable class of 2 or more persons.
3. The claims of the members of the Plaintiff Class raise common issues.
4. A class proceeding would be the preferable procedure for the resolution of the common issues.
5. The Representative Plaintiffs:
 - (a) will fairly represent the interests of the Plaintiff Class;
 - (b) have produced a plan for the proceeding that sets out a workable method of advancing the proceedings on behalf of the Plaintiff Class and of notifying Plaintiff Class members of the proceeding; and
 - (c) do not have, on the common issues, an interest that is in conflict with the interest of other class members.

AND FURTHER TAKE NOTICE that the Applicants will rely upon the Affidavit of Douglas Alexander, sworn January 10, 2007; the Affidavit of William Barrett, sworn December 18, 2006; the Affidavit of Janice Walburger, sworn September 22, 2005, filed June 19, 2006; and the Affidavit of Janice Walburger sworn January 11, 2007; the *Class Proceedings Act*, S.A. 2003, c. C-16.5; and such further and other material as counsel may advise and this Honourable Court permit.

DATED at the City of Calgary, in the Province of Alberta, this 15th day of
January, 2007.

McLENNAN ROSS LLP

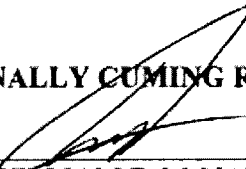
Per: :



GRAHAM McLENNAN and
STUART W. CHAMBERS,
Class Counsel

McNALLY CUMING RAYMAKER

Per: _____


WILLIAM E. McNALLY and
CRAIG G. GILLESPIE,
Class Counsel

TO: CLERK OF THE COURT

AND TO: Attached Schedule of Defence Counsel

SCHEDULE "A"

Action No. 0501 08152

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**HEIKE EATON, HARLAN LIGHT, DOUGLAS ALEXANDER
and WILLIAM BARRETT, as Representative Plaintiffs**

Plaintiffs

- and -

H M S FINANCIAL INC., et al

Defendants

NOTICE OF REPRESENTATIVE ACTION

TO: Persons, other than the Defendants, who have invested money with the Defendants and suffered losses. For further certainty, the Defendants named in this action are: H M S Financial Inc., Skyward Management Inc., Garth S. Bailey, Garth S. Bailey Professional Corporation, 990137 Alberta Ltd., 1037149 Alberta Ltd., Operating As Cedar Management, 1053382 Alberta Inc., 1070199 Alberta Ltd., 1079373 Alberta Ltd., 993638 Alberta Ltd., A-Z Investment Group, Abba Resources Unlimited, Academy Financial Inc., Academy Financial Planners & Consultants Inc., Ailanthus International Inc., Altruistic Holdings Ltd., Aspire Group International Realty Inc., Bailey & Dawes LLC, Bogner Industries Ltd. a.k.a. Bogner Industries Inc., B.P. Fritz Consulting Inc., Canadian Imperial Bank Of Commerce, The Carpenter's Shop Corporation, Casselman MCS Financial Inc., Cedar Pointe Consulting Group Inc., Chase Forbes Trust Ltd., CLJ Consulting LLC, Commonwealth Marketing Group Ltd., Community Credit Union Ltd., Companions Inc., The Dakota Corporation, Dana I. Carlson, Datas Consulting, Defreitas & Associates, Diverse Equities Inc., Ethan Equities Inc., First National Bank of San Diego, Five Continents Consulting, Five Continents Consulting Corporation, Fowlks & Snyder LLP, Global Trustees (NZ) Limited, Warren Goss, Graceful Beneficence, Guessworks, Guessworks Foundation, The Hillpro Group Inc., Horizon Bank International Limited, Horizon Fiduciary Inc., HSBC Bank Canada, In House Counsel Cameron Campbell, International Investments Inc., Johnny's Own Ltd., Kamikey Services Inc., Kelso Enterprises Inc., Kirby Audit Services Inc., Kingdom Advisors, Klass "A" Strategies Inc., Labalta Ltd., Law Office of Richard E. Fowlks, Legal Structures Inc., Linden Village Inn, Lindenhall Limited, Lindenhall Pty Ltd., M & M Computer Consulting, M & M Investments 101 Ltd., Maritime LLC, McCarthy Tétrault LLP, McCullough Financial Corporation, Merchant Law Group, Michael Grosh

Professional Corporation, Mountain Star Capital Corp., Mountain View Credit Union Limited, NDX Development LLC, Numa Ltd., Oxyoke Farms Ltd., Paget Capital Ltd., Paradise Bay Holdings Inc., Phoenix Global Resources Ltd., Pine Grove Management Inc., William H. Randall, RLM Consulting LLC, Sellars Financial Inc., Talisman Financial Investments Inc., Tamika Enterprises Inc., Thor Empire Trust, Titania Consulting Inc., TJ Kelly Inc., TNRJ Investments, Tools of the Carpenter, Trans Max Technologies Inc., Triple-SSS Holdings Inc., Tyrolia Foundation, Vitron Consulting Inc., Zinger Brothers Holdings, Zurich Ventures Inc., A. Gary Young, Guy Bailey, Jr., Alfred Barnfield, Connie Bartel, Robert Bartel, Victor Bauman, Mylo Berstad, Nancy Buford, Cameron Campbell, Rick Childers, Blaine A. Cisna, Kevin Coombes, Ellen Kate Covey, Douglas A. Cowan, Margaret Dart, Stanley Defreitas, Don Dickerson, Eugene Leroy Duce, Arnold Dyck, Juan Exposito, Alfredo Farpon, Ray Fisher, Jack Folsom, Jim Folsom, Richard E. Fowlks, Barie Fritz, Crystal Anne Fyn, Phyllis Fyn, Robert E. Fyn a.k.a. Colonel Fyn, Allan A. Gray, Michael Grosh, David Guess, Neil Guess, Kendra Haskett, Arnold Henry, David Henry, Gord Hiebert, Samuel Higgins, Winston Indarsingh, Wayne Johnson, Terry Kelly, Barbara L. King, Arthur Klassen, Edwin Knott, Ruby Leachman, George Lennox, William Lenz, Daniel Lescamela, Willie Lichtner, Lucia Ling, Barbara Lockhart, Ron Lowrie, Don MacGillivray, Danny R. MacNaughton, Norma A. MacNaughton, Peter Manousos, John Manousos, Michael McCullough, William McGrath, Dave Miller, Mohan Maharaj, Rosendo Mendez, Peter Mergenthaler, Peter Mol, Brad Mooney, Peter Morrisseau, Tom Oldridge, Roy Overton, Gertrude M. Prete, Donald Rabby, Amin Ramji, Bilkish Ramji, Stan W. Remin, Thomas N. Riner Jr., Jeffrey Robinson, Katherine Rodrigue-Bailey, Daniel Romero, John Romero, Orest Rusnak, Arie Schalk, Randall Seabrook, Claude Seguin, Robert J. Sellars, William Serediuk, Peter L. Sheridan, Janet Stark, Murray Stark a.k.a. Harold Murray Stark a.k.a. Murray H. Stark, Delmer Strobel, Verna Strobel, Cheryl Taylor, Milton Teibe, Robert F. Terborg, Enrique Toscano a.k.a. Chico Toscano, Lee-Anna Toscano, Henk Ujiterlinde, Wilma Ujiterlinde, Heather Vance, Christine Williams, William A. Williamson a.k.a. Bill Williamson, John W. Willock, Margaret Wright, Stan Wright, Claude Zinger, John Doe, Richard Doe and XYZ Corp.

Please read this notice carefully in its entirety. This notice relates to the certification of a Class Action. If you are a Class Member, this notice contains important information about your rights described below.

If you are a Member of the Class, an Alberta resident and you do not opt-out, you will be bound by the determination of the common issues as decided by the Court.

If you opt-out, you will not be able to participate in any monetary recovery whether by way of judgment or settlement.

If you are a Member of the Class and not an Alberta resident, then you must opt-in to the Class Action to participate in the Class Action, be bound by its determination, and participate in any monetary recovery.

This Notice has been sent to you in accordance with the Order of the Alberta Court of Queen's Bench.

Forms

Forms which need to be completed by Alberta residents who wish to opt-out, or non-Alberta residents who wish to opt-in to the Class proceedings, may be found at the following website, www.mcnallycuming.com.

Purpose of this Notice

This Notice is being provided to you because certain records indicated you may be a person who invested monies with the Defendants, and suffered a loss. The purpose of this Notice is to inform you that the Alberta Court of Queen's Bench has ordered that this lawsuit may proceed as a Representative Action on behalf of all persons who invested money with the Defendants and suffered losses.

Class Definition

Class Members are all persons, except for the Defendants, who have invested money with the Defendants and have suffered losses (**Class Members**).

Class Counsel estimates that there are approximately one thousand people who are Class Members.

Description of the Proceedings

On June 2, 2005, an action was commenced against the Defendants surrounding the operation of an investment scheme commonly known as "HMS". It is alleged that the HMS investment scheme was not a legitimate investment activity and in fact constituted an illegal Ponzi scheme.

The Plaintiffs allege that the illegal Ponzi scheme operated by HMS and the other Defendants caused losses to the Class Members of approximately \$100,000,000.00.

The Plaintiffs claim damages against the Defendants in the amount of \$100,000,000.00 alleging the Defendants were involved in the operation of this illegal Ponzi scheme.

Common Issues

The Court of Queen's Bench of Alberta has determined that there will be a common issue trial to determine the following issues:

- a. Was the HMS Scheme, as defined in paragraph 2 of the Amended Amended Statement of Claim, a fraudulent high yield or Ponzi scheme?
- b. If the answer to (a) is yes, did the Defendants, or any of them, engage in fraudulent misrepresentation by representing to members of the Plaintiff Class that the HMS Scheme was a legitimate investment program?
- c. Alternatively, if the answer to (a) is yes, did the Defendants, or any of them, engage in negligent misrepresentation by representing to members of the Plaintiff Class that the HMS Scheme was a legitimate investment program?

- d. Further, or alternatively, did the Defendants, or any of them, convert investment funds of the Plaintiff Class to their personal benefit?
- e. Further, or alternatively, did the Defendants, or any of them, engage in a conspiracy to defraud the Plaintiff Class by representing to them that the HMS Scheme was a legitimate investment program?
- f. Did Garth Bailey, or any of the other Defendant Lawyers, act as counsel or trustee for members of the Plaintiff Class by purporting, or allowing others to purport, that he, or they, held bonds or other valuable securities in trust for the representative Plaintiffs and other class members, which he, or they, would realize upon in the event of default in payment under the HMS Scheme on the basis of irrevocable instructions from HMS or others?
- g. Did any of the Lawyers, Accountants, or Financial Institutions, or any other Defendants, owe fiduciary duties and obligations or trust obligations to the members of the Plaintiff Class? If so, did they breach those duties?
- h. Did the Financial Institutions knowingly assist or participate in a fraudulent breach of trust or fiduciary duties by one or more of the Defendants?
- i. Were the Defendants involved in transactions with the Financial Institutions which constituted suspicious transactions? If so, did the Financial Institutions have a duty to make reasonable investigations? If so, did the Financial Institutions discharge that duty to make reasonable investigations? If not, what were the likely consequences of the Financial Institutions' failure to make such reasonable investigations?
- j. Did the Financial Institutions, or any of them, owe a duty to members of the Plaintiff Class to report the suspicious transactions engaged in by the Defendants to the appropriate authorities? If so, did the Financial Institutions, or any of them, breach that duty? If so, did that breach contribute to the losses suffered by the members of the Plaintiff Class?
- k. Have any of the Defendants been unjustly enriched at the expense of the Plaintiff Class in the absence of any juristic reason for the enrichment?
- l. If the answer to (k) is yes, are the members of the Plaintiff Class entitled to restitution or repayment of monies from these Defendants? Alternatively, are the members of the Plaintiff Class entitled to a constructive trust?
- m. Did the Defendants, or any of them, violate any of the provisions of any or all of the Competition Act, R.S.C. 1985, c. C-34; the Securities Act, R.S.A. 2000, c. S-4; or the Criminal Code of Canada, R.S.C. 1985, c. C-46?
- n. If the answer to (m) is yes, does this mean that the "investment" contracts entered into by the representative Plaintiffs and other class members are "void"? Alternatively, do the members of the Plaintiff Class have a cause of action for damages as a result of any such statutory breaches?
- o. Are the members of the Plaintiff Class entitled to damages against the Defendants as more fully particularized in the Amended Amended Statement

of Claim?

- p. Are the members of the Plaintiff Class entitled to an accounting and/or tracing of all monies received by the Defendants pursuant to the HMS Scheme?
- q. Are the members of the Plaintiff Class entitled to punitive and/or aggravated damages?
- r. Should interest be assessed on all amounts found to be owing by the Defendants pursuant to the Judgment Interest Act, R.S.A. 2000, c. J-1?

Rights of the Class Members

If you are a Class Member, you may receive the benefit of and will be bound by the terms of any judgment the Court issues in the Class Proceedings.

If you are a Class Member, and **a resident of Alberta**, you have the following options:

- 1. You may await the outcome of the proceedings, following which you may be entitled to the benefit of any settlement or judgment. If you choose this option, you will remain a Class Member and, subject to proving your loss, you will share in the proceeds of any settlement or judgment.
- 2. You may elect to opt-out of the Class. **If you opt-out of the Class, you will not participate in any settlement or judgment and you will not receive the benefits of any settlement or judgment.** However, you will also not be bound by any settlement with or judgment against the Defendants and your claim, if any, will remain unaffected. If you wish to opt-out of the Class, you must mail or deliver a written request for exclusion in the appropriate Opt-Out Form by no later than _____. Opt-Out Forms may be downloaded from the website www.mcnallycuming.com or may be obtained by phoning 1-800-682-2480.

If you are a Class Member, and **a non-resident of the Province of Alberta**, you have the following options:

- 1. You may do nothing, in which case you will not receive any benefit of the Class Proceedings and will not participate in the benefit of any settlement or judgment in the proceedings.
- 2. Class Members will have until no later than _____ to opt-in to the Class Proceeding by completing an Opt-In Form and provide it to Class Counsel either by e-mail at www.mcnallycuming.com, or by faxing to fax number 1-800-682-2480, or by ordinary mail or delivery to: Margaret Ferner at McNally Cuming Raymaker, Barristers & Solicitors, 1500, 635 - 8th Avenue SW, Calgary, Alberta T2P 3M3.

Financial Consequences of the Class Proceeding

Alberta resident Class Members will be entitled to the benefit of a successful judgment of the Court or settlement on the common issues. Class Members who opt-out of the Class will not benefit from any successful judgment or settlement.

Non-Alberta resident Class Members need to opt-in to participate in the benefit of a successful judgment of the Court or settlement on the common issues.

No Class Member will be responsible for Plaintiff Class Counsel's legal fees or disbursements unless money is recovered in a settlement or judgment.

If the claims of the Class are dismissed against some or all of the Defendants, then those Defendants may seek to recover their legal costs of defending the claims against the Representative Plaintiff but not against Class Members.

Legal Fees and Disbursements

The Representative Plaintiffs have entered into a contingency fee agreement with Class Counsel. Subject to Court approval, Class Counsel will seek a fee of 33.33% of any amount recovered or, alternatively, a multiplier of 4x the hourly rate of Class Counsel accumulated over the course of the Class Proceedings, whichever is the greater, plus disbursements, plus applicable GST.

Disclosure Consequences of the Class Proceeding

Class Members will be deemed to have consented to the disclosure by Plaintiff Class Counsel to Defendants' Counsel of all information relating to their respective claim. The information will go to the Defendants' Counsel for use in the litigation or settlement, but cannot by law be used outside the litigation.

Further Information

Class Counsel in this matter is:

McNally Cuming Raymaker
Barristers & Solicitors
1500, 635 - 8th Ave SW
Calgary, Alberta T2P 3M3

Phone: (403) 571-0555
Toll Free: 1-800-682-2480
Fax: (403) 232-8818

Website: www.mcnallycuming.com
E-mail: bmcnally@mcnallycuming.com

Class Members who wish to obtain more information about the representative action should contact Margaret Ferner mferner@mcnallycuming.com at McNally Cuming Raymaker.

SCHEDULE "B"

PLAINTIFFS' PROPOSED LITIGATION PLAN

CLASS PROCEEDINGS AGAINST THE HMS FINANCIAL INC. ET AL. DEFENDANTS

This plan is filed pursuant to s. 5 (1) (e) (ii) of the *Class Proceedings Act*

A. Communication with Members of the Class

Communication

Upon publication of the Notice of Representative Proceeding, McNally Cuming Raymaker and McLennan Ross ("Class Counsel") will respond to all requests for Opt-Out Forms and Opt-In Forms for non-Alberta residents and maintain a link on the website of McNally Cuming Raymaker showing any public filings and Court Orders, as well as a brief description of the proceeding. If and when settlement or judgment is obtained, Class Counsel will propose a Claims Administration Process for the benefit of Class Members so that claims can be dealt with in an efficient manner.

Database

The Defendants shall make available to Class Counsel all their relevant, material and non-privileged electronic database(s) and will work with Class Counsel to ensure that any information stored on such database(s) can be accessed by Class Counsel, or their agents.

Notification of Certification and the Right to Opt-In/Opt-Out

Notice of Certification and the Right to Opt-In for non-residents or the right for residents to Opt-Out shall be given to the Class in a manner directed by the Court. The Plaintiffs propose that such notices be provided by e-mail wherever e-mail addresses are available for Members of the Class and otherwise by ordinary mail to the last known address of the Class Member. Non-residents will have sixty (60) days from the date of sending the Notice to Opt-In to the Class Action. The Opt-In Form will be on the website maintained by Class Counsel at www.mcnallycuming.com.

The Alberta residents of the Plaintiff Class shall have thirty (30) days to Opt-Out of the Class Action by completing the Opt-Out Form which will be available on Class Counsel's website at www.mcnallycuming.com.

Post-Certification Status Reports

Class Counsel will continue to update their web page dedicated to this proposed class proceeding. The toll-free phone number and an e-mail contact provided on the web page will remain in effect until the class action is finally resolved.

Identification of Class Members

Class Counsel will rely on the records obtained via Court Order from the RCMP's ongoing investigation, as well as the database(s) of the Defendants, in identifying Class members.

B. Conduct of Proceedings

Examination for Discovery of Representative Plaintiffs and Defendants

The representatives for the Defendant groups shall be entitled to examine only the representative Plaintiffs as of right. Class Counsel will examine the Defendants as required, in accordance with the Alberta *Rules of Court*.

Witness Interviews and Experts

At present, it is anticipated that Plaintiffs' Counsel will call one or more Representative Plaintiffs, and/or experts as witnesses at the trial of the common issues, if necessary.

Document Management

All parties shall produce all relevant and material records in their possession in electronic format in a manner agreed to by the parties or, failing agreement, in a manner directed by the Court within 60 days of certification of this action as a class proceeding. Documents obtained by the Plaintiffs from the RCMP shall be shared with Defendants provided they pay the costs of processing and reproducing those documents.

review of the database(s) of the Defendants by an appropriate Claims Administrator and a cheque for any amount determined to be owing. Further details of the Claims Administration Process will be discussed with the Defendants or dealt with by further direction of the Court.

Settlement

Should it appear appropriate, Plaintiffs' Counsel will conduct settlement negotiations with the Defendants from time to time.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**HEIKE ENTICKNAP, HARLAN LIGHT,
DOUGLAS ALEXANDER and WILLIAM
BARRETT, as Representative Plaintiff**

Plaintiffs

- and -

H M S FINANCIAL INC., et al

Defendants

NOTICE OF MOTION

CLERK OF THE COURT

JAN 15 2007

McNally Cuming Raymaker
Barristers & Solicitors
and
McLennan Ross LLP
1600 Stock Exchange Tower
300 - 5th Avenue SW
Calgary AB T2P 3C4

Lawyer: Graham McLennan
Telephone: (403) 543-9120
Fax: (403) 543-9150
File: 251207