

COUR SUPÉRIEURE
(Chambre des actions collectives)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-06-000189-152

DATE : Le 20 octobre 2021

SOUS LA PRÉSIDENTE DE L'HONORABLE CLAUDE BOUCHARD, j.c.s.

CHRISTINE BÉLAND

Demanderesse

c.

BANQUE ROYALE DU CANADA

et

RBC MARCHÉ DES CAPITAUX, SARL

et

BANK OF AMERICA CORPORATION

et

BANK OF AMERICA, N.A.

et

BANQUE D'AMÉRIQUE DU CANADA

et

BANK OF AMERICA, NATIONAL ASSOCIATION

et

BANQUE DE MONTRÉAL

et

BMO FINANCIAL CORP.

et

BMO HARRIS BANK N.A.

et

BMO CAPITAL MARKETS LIMITED

et

THE BANK OF TOKYO MITSUBISHI UFJ LTD.

et

BANQUE DE TOKYO-MITSUBISHI UFJ (CANADA)
et
BARCLAYS BANK PLC
et
BARCLAYS CAPITAL INC.
et
BARCLAYS CAPITAL CANADA INC.
et
GROUPE BNP PARIBAS
et
BNP PARIBAS NORTH AMERICA INC.
et
BNP PARIBAS (CANADA)
et
BNP PARIBAS
et
CITIGROUP, INC.
et
CITIGROUP GLOBAL MARKETS CANADA INC.
et
CITIBANK, N.A.
et
CITIBANQUE CANADA
et
CREDIT SUISSE GROUP AG
et
CREDIT SUISSE SECURITIES (USA) LLC
et
VALEURS MOBILIÈRES CRÉDIT SUISSE (CANADA), INC.
et
CREDIT SUISSE AG
et
BANQUE D'ALLEMAGNE
et
LE GROUPE GOLDMAN SACHS
et
GOLDMAN, SACHS & CO.
et
GOLDMAN SACHS CANADA INC.
et
HSBC HOLDINGS PLC
et
HSBC BANK PLC
et

HSBC NORTH AMERICA HOLDINGS INC.
et
HSBC BANK USA, N.A.
et
BANQUE HSBC CANADA
et
JPMORGAN CHASE & CO.
et
J.P. MORGAN BANK CANADA
et
J.P. MORGAN CANADA
et
BANQUE JPMORGAN CHASE, ASSOCIATION NATIONALE
et
MORGAN STANLEY
et
MORGAN STANLEY CANADA LIMITEE
et
ROYAL BANK OF SCOTLAND GROUP PLC
et
RBS SECURITIES, INC.
et
ROYAL BANK OF SCOTLAND N.V.
et
LA BANQUE RBS PLC
et
SOCIÉTÉ GÉNÉRALE S.A.
et
SOCIÉTÉ GÉNÉRALE
et
SOCIÉTÉ GÉNÉRALE (CANADA)
et
STANDARD CHARTERED PLC
et
LA BANQUE TORONTO-DOMINION
et
TD BANK, N.A.,
et
TD GROUP HOLDINGS, LLC
et
TD BANK USA. N.A.
et
TD SECURITIES LIMITED
et

UBS AG
et
UBS SECURITIES LLC
et
BANQUE UBS (CANADA)

Défenderesses

**JUGEMENT SUR UNE DEMANDE POUR OBTENIR
L'APPROBATION D'UNE TRANSACTION
(ENTENTE TD)**

- [1] **ATTENDU** que les parties sont impliquées dans un litige de la nature d'une action collective;
- [2] **ATTENDU** qu'en date du 7 mai 2021, une entente de règlement a été conclue entre la demanderesse et les défenderesses La Banque Toronto-Dominion, TD Bank, N.A., TD Group US Holdings, LLC, TD Bank USA, N.A. et TD Securities Limited (ci-après « **TD** » ou les « **Défenderesses qui règlent** »), soit l'« **Entente TD** »;
- [3] **ATTENDU** que la demanderesse demande l'approbation de l'Entente TD;
- [4] **CONSIDÉRANT** le jugement rendu le 17 août 2021 par lequel le tribunal a approuvé la forme et le contenu et a ordonné la publication des avis aux membres;
- [5] **CONSIDÉRANT** que les avis aux membres ont été publiés en temps opportun, en français et en anglais;
- [6] **CONSIDÉRANT** l'expiration de l'échéance fixée pour s'opposer à l'Entente TD sans qu'il n'y ait eu d'objection écrite à l'Entente TD;
- [7] **CONSIDÉRANT** que le délai pour s'exclure de l'action collective au Québec est expiré;
- [8] **CONSIDÉRANT** le jugement rendu le 23 septembre 2021 par la Cour supérieure de justice de l'Ontario dans l'affaire *Joseph S. Mancinelli & als. v. Royal Bank of Canada & als.*, dossier de Cour numéro CV-15-536174-00CP;
- [9] **CONSIDÉRANT** l'article 590 du *Code de procédure civile*;
- [10] **CONSIDÉRANT** que la demande a dûment été notifiée au Fonds d'aide aux actions collectives;

[11] **CONSIDÉRANT** les représentations des avocats;

[12] **APRÈS EXAMEN**, il y a lieu de faire droit à la demande de la demanderesse;

POUR CES MOTIFS, LE TRIBUNAL :

[13] **ACCUEILLE** la demande;

[14] **DÉCLARE** qu'au surplus des définitions utilisées ailleurs dans le présent jugement, aux fins du présent jugement, les définitions contenues dans l'Entente TD, jointe comme annexe A au présent jugement, s'appliquent et forment partie intégrante du présent jugement;

[15] **DÉCLARE** qu'en cas de conflit entre le présent jugement et l'Entente TD, le présent jugement prévaudra;

[1] **DÉCLARE** que le présent jugement, incluant l'Entente TD, lie chaque Membre du Groupe visé par le Règlement au Québec, incluant les personnes mineures et celles qui sont inaptes;

[2] **DÉCLARE** que l'Entente TD est équitable, raisonnable et dans le meilleur intérêt des Membres du Groupe visé par le Règlement au Québec et constitue une transaction au sens de l'article 2631 du *Code civil du Québec*;

[3] **APPROUVE** l'Entente TD conformément à l'article 590 du *Code de procédure civile* et **ORDONNE** qu'elle soit mise en œuvre en conformité avec ses termes;

[4] **DÉCLARE** qu'à compter de la Date d'entrée en vigueur, chaque Partie donnant quittance¹ a quittancé et sera réputée avoir donné une quittance complète, générale et finale aux Parties Quittancées² eu égard aux Réclamations Quittancées³;

[5] **DÉCLARE** qu'à compter de la Date d'entrée en vigueur, chaque Partie donnant quittance ne pourra maintenant ou dans le futur intenter, continuer, maintenir, intervenir ou faire valoir, directement ou indirectement, au Canada ou ailleurs, pour son propre compte ou pour le compte de tout groupe ou de toute autre Personne, toute procédure, cause d'action, réclamation ou demande contre toute Partie Quittancée ou toute autre Personne qui pourrait réclamer une contribution, une indemnité ou toute autre réclamation de toute Partie Quittancée, à l'égard de toute Réclamation Quittancée ou toute autre matière y étant reliée, à l'exception de ce qui suit :

¹ « *Releasors* ».

² « *Releasees* ».

³ « *Released Claims* ».

- a) la continuation des Procédures⁴ contre les Défenderesses qui ne règlent pas⁵ ou tout autre co-conspirateur désigné ou non dans le cadre des Procédures qui n'est pas une Partie Quittancée; ou
- b) si les Procédures ne sont pas autorisées comme action collective à l'égard des Défenderesses qui ne règlent pas, la continuation des réclamations visées par les Procédures sur une base individuelle ou autrement contre les Défenderesses qui ne règlent pas ou tout autre co-conspirateur désigné ou non dans le cadre des Procédures qui n'est pas une Partie Quittancée;

[6] **DÉCLARE** que, par l'Entente TD, la Demanderesse et les Membres du Groupe visé par le Règlement au Québec renoncent expressément au bénéfice de la solidarité envers les Défenderesses qui ne règlent pas, eu égard aux faits, gestes et autres comportements des Parties Quittancées;

[7] **DÉCLARE** que la Demanderesse et les Membres du Groupe visé par le Règlement ne pourront dorénavant réclamer et obtenir que les dommages, y incluant les dommages punitifs, les intérêts et les frais (y compris les frais d'enquête en vertu de l'article 36 de la *Loi sur la concurrence*), attribuables aux ventes ou aux agissements des Défenderesses qui ne règlent pas et/ou autre mesure applicable de la responsabilité proportionnelle des Défenderesses qui ne règlent pas;

[8] **DÉCLARE** que tout recours en garantie ou autre mise en cause pour obtenir une contribution ou une indemnité des Parties Quittancées ou se rapportant aux Réclamations Quittancées sera irrecevable et non avenu dans le cadre des Procédures;

[9] **DÉCLARE** que le droit des Défenderesses qui ne règlent pas d'interroger les Défenderesses qui règlent sera régi par les règles du *Code de procédure civile* et que les Défenderesses qui règlent conservent tous leurs droits de s'opposer à de tels interrogatoires en vertu du *Code de procédure civile*, le cas échéant. En outre, rien dans le présent jugement n'empêche les Défenderesses qui règlent de demander une ordonnance de protection visant à préserver la confidentialité et la protection des renseignements exclusifs concernant les documents à produire et/ou les renseignements obtenus lors d'un interrogatoire. Nonobstant toute disposition du présent jugement, sur toute demande présentée en vertu de ce paragraphe, le Tribunal pourra rendre les ordonnances au sujet des frais de justice et autres modalités qu'il juge appropriées;

[10] **DÉCLARE** que les Défenderesses qui ne règlent pas pourront valablement notifier toute procédure pouvant être requise pour faire valoir leurs droits découlant du paragraphe qui précède aux Défenderesses qui règlent, en notifiant ladite procédure à l'avocat *ad litem* de cette partie, tel qu'il est identifié dans le présent jugement;

⁴ « Proceedings ».

⁵ « Non-Settling Defendants ».

[11] **DÉCLARE** que l'approbation de l'Entente TD et le présent jugement ainsi que tout motif donné par le Tribunal en lien avec l'approbation de l'Entente TD, n'affectent en rien les droits ou les moyens de défense des Défenderesses qui ne règlent pas dans le cadre du présent Recours et, sans limiter la généralité de ce qui précède, ne sauront en aucun cas servir de fondement aux fins d'établir la compétence du Tribunal, les critères d'autorisation (incluant la définition du Groupe) ou l'existence des éléments constitutifs du droit d'action allégué dans le Recours du Québec, à l'encontre des Défenderesses qui ne règlent pas;

[12] **DÉCLARE** qu'aux fins d'administration et d'exécution du présent jugement et de l'Entente TD, cette Cour conservera un rôle de surveillance continue et **CONSTATE** que les Défenderesses qui règlent reconnaissent la compétence de cette Cour uniquement aux fins d'exécution, d'administration et de mise en œuvre de l'Entente TD et du présent jugement et sujet aux termes et conditions prévues dans l'Entente TD et le présent jugement et pour aucun autre objet;

[13] **DÉCLARE** que, à l'exception de ce qui est autrement spécifié, le présent jugement n'affecte en rien les droits ou les réclamations qu'ont ou pourraient avoir les Membres du Groupe visé par le Règlement au Québec dans le cadre du présent Recours contre les Défenderesses qui ne règlent pas ou toute autre partie désignée ou non-désignée dans les Procédures qui n'est pas une Partie Quittancée;

[14] **DÉCLARE** que les Parties Quittancées n'ont aucune responsabilité ou obligation quelconque quant à l'administration de l'Entente TD ou du Protocole de Distribution, incluant la gestion, le placement ou la distribution des sommes détenues dans le Compte en Fidéicommis;

[15] **ORDONNE** que le Montant de l'Entente TD⁶ soit détenu dans le Compte en Fidéicommis par les Avocats en Ontario⁷ au bénéfice des Membres du Groupe visé par le Règlement et qu'après la Date d'entrée en vigueur de l'Entente TD, le Montant de l'Entente TD puisse être utilisé afin de payer les déboursés encourus par les Avocats du Groupe au bénéfice des Membres du Groupe visé par le Règlement dans la poursuite des Procédures contre les Défenderesses qui ne règlent pas. Ce paragraphe ne doit pas être interprété comme affectant les droits de la Demanderesse et des Membres du Groupe visé par le Règlement de réclamer ces déboursés dans le contexte d'une éventuelle condamnation aux frais de justice en leur faveur contre les Défenderesses qui ne règlent pas, ou les droits des Défenderesses qui ne règlent pas de s'opposer à une telle réclamation;

[16] **PREND ACTE** du jugement approuvant l'Entente TD rendu le 23 septembre 2021 par la Cour supérieure de justice de l'Ontario;

⁶ « Settlement Amount ».

⁷ « Ontario Counsel ».

[17] **PREND ACTE** de l'engagement de la Demanderesse et des Avocats du Groupe, dans l'éventualité où l'Entente TD était résolue selon ses termes à l'égard des Défenderesses qui règlent, de se désister des conclusions du présent jugement et de ne présenter ni poursuivre aucune démarche visant à obtenir l'autorisation d'exercer une action collective aux fins de l'Entente TD ou sur la base de celle-ci ou visant à faire approuver l'Entente TD. Dans l'éventualité où l'Entente TD était résolue ou faisait autrement défaut d'entrer en vigueur, les Défenderesses qui règlent ne seront pas réputées avoir reconnu la compétence du Tribunal;

[18] **DÉCLARE** que par le présent jugement, le présent dossier est réglé hors Cour et sans frais contre les Défenderesses qui règlent;

[19] **DÉCLARE** que le protocole de distribution remodifié, approuvé par le tribunal le 17 août 2021, régira l'administration de l'Entente TD et **PREND ACTE** du jugement rendu à cet effet le 23 septembre 2021 par la Cour supérieure de justice de l'Ontario;

[20] **ORDONNE** aux parties de rendre compte de façon diligente de l'exécution du présent jugement et **INDIQUE** que le tribunal demeure saisi de l'exécution de l'Entente TD jusqu'à ce qu'il ait rendu un jugement de clôture;

[21] **LE TOUT** sans frais de justice.



CLAUDE BOUCHARD, j.c.s.

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Date d'audience : 19 octobre 2021

Annexe A : Entente TD

**CANADIAN FOREX CLASS ACTION NATIONAL SETTLEMENT – AMENDED
AGREEMENT**

Made as of May 7, 2021

Between

**JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI
CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS
THE TRUSTEES OF THE LABOURERS’ PENSION FUND OF CENTRAL AND
EASTERN CANADA and CHRISTINE BÉLAND**

(the “**Plaintiffs**”)

and

**TORONTO DOMINION BANK, TD BANK, N.A., TD GROUP US HOLDINGS, LLC, TD
BANK USA, N.A., and TD SECURITIES LIMITED (the “**Settling Defendants**”)**

CANADIAN FOREX CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

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CANADIAN FOREX CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

RECITALS

- A. WHEREAS the Proceedings were commenced by the Ontario Plaintiffs in Ontario and the Quebec Petitioner in Quebec;
- B. WHEREAS the Ontario Action was certified as against the Non-Settling Defendants and the Settling Defendants;
- C. WHEREAS the Ontario Court ordered the Non-Settling Defendants and Settling Defendants to pay costs of the certification motion;
- D. WHEREAS Class Counsel has received the TD Certification Costs from the Settling Defendants and deposited the TD Certification Costs into the Trust Account;
- E. WHEREAS Settlement Class Members were provided an opportunity to opt-out of the Proceedings, the deadline for Settlement Class Members to opt-out of the Proceedings has passed, and there was one (1) opt-out from the Proceedings;
- F. WHEREAS the Proceedings allege, among other things, that the Settling Defendants and others participated in an unlawful conspiracy, contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34, the common law and/or the civil law, to, among other things: (i) fix, raise, maintain, stabilize, increase, control, or enhance unreasonably the price of currency purchased in the FX Market; (ii) fix, maintain, control, prevent, lessen, eliminate, or unduly lessen the supply of foreign currencies on the FX Market; (iii) fix, maintain, increase, control, or enhance unreasonably prices of FX Instruments; (iv) limit unduly the supply or dealing of FX Instruments, or fix, maintain, control or lessen the supply of FX Instruments; (v) prevent or lessen, unduly, competition in the purchase, sale or supply of FX Instruments or to otherwise restrain or injure competition unduly of FX Instruments; (vi) fix, maintain, increase, control or unreasonably enhance the bid/ask spreads for various currency pairs; and/or (vii) fix, maintain, increase, control, unreasonably enhance prices or manipulate FX Benchmark Rates;
- G. WHEREAS the Settling Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by the Ontario Plaintiffs and the Quebec Petitioner in the Proceedings, including any and all allegations that the Plaintiffs and/or the Settlement Class members have suffered any harm or damage whatsoever, and all claims and allegations of

wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Proceedings, or otherwise;

H. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;

I. WHEREAS the Plaintiffs and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Proceedings, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Settlement Classes to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Settling Defendants under this Settlement Agreement are obtained for the Settlement Classes; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the classes they seek to represent;

J. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Classes in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

K. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceedings;

L. WHEREAS counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

M. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both

individually and on behalf of the classes the Plaintiffs seek to represent, subject to approval of the Courts;

N. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

O. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants in the Proceedings;

P. WHEREAS the Parties consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

Q. WHEREAS the Plaintiffs assert that they are adequate class representatives for the classes they seek to represent and will seek to be appointed representative plaintiffs in their respective Proceedings; and

R. WHEREAS the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court and second through the Quebec Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario Action be settled and dismissed with prejudice as to the Settling Defendants only, and the Quebec Action be declared settled out of court as against the Settling Defendants, all without costs as to the Plaintiffs, the classes they seek to

represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) **Class Counsel** means Ontario Counsel and Quebec Counsel.
- (3) **Class Counsel Disbursements** include the disbursements, administration expenses, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (4) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (5) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of currency purchased in the FX Market?
- (6) **Courts** means the Ontario Court and Quebec Court.
- (7) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (8) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants.
- (9) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Courts.

- (10) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.
- (11) **Final Orders** means the later of a final judgment pronounced by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (12) **FX** means foreign exchange.
- (13) **FX Benchmark Rates** means any FX benchmark, fixing or reference rate, including without limitation (i) the WM/Reuters fixing rates, including the 4:00 p.m. London closing spot rate; (ii) the European Central Bank FX reference rates, including the ECB rate set at 1:15 p.m. London time; and (iii) the Chicago Mercantile Exchange ("CME") daily settlement rates, including the rate set at 2:00 p.m. Central Time.
- (14) **FX Exchange-Traded Instruments** means any and all FX Instruments that were listed for trading through an exchange, including, but not limited to, FX futures contracts and options on FX futures contracts.
- (15) **FX Instruments** means all instruments traded in the FX Market, including FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts and options on FX futures contracts.
- (16) **FX Market** means the market for the exchange of currencies, FX Trading, transactions in FX Instruments and/or FX Exchange-Traded Instruments.
- (17) **FX Trading** means the trading or exchange of currencies or FX Instruments, regardless of the manner in which such trading occurs or is undertaken, or a decision to withhold bids and offers with respect to FX Instruments.
- (18) **Investment Vehicles** means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates

may act as an investment advisor, but of which a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest.

(19) ***Non-Settling Defendant*** means a Defendant that is not: (i) the Settling Defendants; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Date of Execution.

(20) ***Ontario Action*** means the Ontario Action as defined in Schedule A.

(21) ***Ontario Counsel*** means Koskie Minsky LLP, Sotos LLP, Siskinds LLP, and Camp Fiorante Matthews Mogerman LLP.

(22) ***Ontario Court*** means the Ontario Superior Court of Justice.

(23) ***Ontario Plaintiffs*** means Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos, and Jack Oliveira in their capacity as The Trustees of the Labourers' Pension Fund of Central and Eastern Canada.

(24) ***Ontario Settlement Class*** means the settlement class in respect of the Ontario Action as defined in Schedule A.

(25) ***Other Actions*** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(26) ***Parties*** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(27) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(28) ***Plaintiffs*** means the Ontario Plaintiffs and the Quebec Petitioner.

- (29) ***Proceedings*** means the Ontario Action and the Quebec Action as defined in Schedule A. For greater certainty, the Plaintiffs are not advancing any “last look” claims, as that term is used in the definition of “Released Claims” below, within the Proceedings.
- (30) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court or Quebec Court, as applicable, would have apportioned to the Releasees.
- (31) ***Quebec Action*** means the Quebec Action as defined in Schedule A.
- (32) ***Quebec Counsel*** means Siskinds Desmeules s.e.n.c.r.l.
- (33) ***Quebec Court*** means the Superior Court of Quebec.
- (34) ***Quebec Petitioner*** means Christine Béland.
- (35) ***Quebec Settlement Class*** means the settlement class in respect of the Quebec Action as defined in Schedule A.
- (36) ***Quebec Settlement Class Member*** means a member of the Quebec Settlement Class.
- (37) ***Released Claims*** mean any and all manner of claims, including “Unknown Claims,” as defined below, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, lawyers’ fees, disgorgement, restitution and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several, and solidarily in the Province of Quebec), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Proceedings, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to: (i) communications related to FX Instruments, FX Trading, or FX Benchmark Rates, between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Proceedings through chat rooms, instant messages, email, or other means; (ii) agreements,

arrangements, or understandings related to FX Instruments, FX Trading, or FX Benchmark Rates, between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Proceedings through chat rooms, instant messages, email, or other means; (iii) the sharing or exchange of customer information between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Proceedings including but not limited to customer identity, trading patterns, transactions, net positions or orders, stop losses or barrier options, pricing, or spreads related to FX Instruments, FX Trading, or FX Benchmark Rates; (iv) the establishment, calculation, manipulation, or use of the WM/Reuters fixing rates, including the 4:00 p.m. London closing spot rates, and trading that may impact such rates; (v) the establishment, calculation, manipulation, or use of the European Central Bank FX reference rates, including the ECB rate set at 1:15 p.m. London time; (vi) the establishment, calculation, manipulation, or use of the CME daily settlement rates; (vii) the establishment, calculation, manipulation, or use of any other FX Benchmark Rates, including benchmark fixing rates, benchmark settlement rates, or benchmark reference rates; (viii) the establishment, calculation, communication, manipulation, or use of the price, spread, or rate of any FX Instrument or FX Exchange-Traded Instrument; and (ix) the sharing or exchange of customer information or confidential information in the possession of a Released Party between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Proceedings related to the establishment, calculation, manipulation, or use of any FX price, spread, or rate.

(38) ***Released Party*** or ***Released Parties*** means Releasees.

(39) ***Releasees*** means, jointly and severally (solidarily in the Province of Quebec), individually and collectively, the Settling Defendants and each of their past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(40) ***Releasors*** means, jointly and severally (solidarily in the Province of Quebec), individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

(41) ***Settled Defendants*** means:

- (a) Bank of America Corporation, Bank of America, N.A., Bank of America Canada, and Bank of America National Association;
- (b) The Bank of Tokyo Mitsubishi UFJ, Ltd. and Bank of Tokyo-Mitsubishi UFJ (Canada);
- (c) Barclays Bank PLC, Barclays Capital Inc. and Barclays Capital Canada Inc.;
- (d) BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas (Canada), and BNP Paribas;
- (e) Citigroup, Inc., Citibank, N.A., Citibank Canada, and Citigroup Global Markets Canada Inc.;
- (f) The Goldman Sachs Group, Inc., Goldman, Sachs & Co., and Goldman Sachs Canada Inc.;
- (g) HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Bank Canada;
- (h) JPMorgan Chase & Co., J.P. Morgan Bank Canada, J.P. Morgan Canada, and JPMorgan Chase Bank National Association;
- (i) The Royal Bank of Scotland Group plc, RBS Securities Inc., The Royal Bank of Scotland N.V., and The Royal Bank of Scotland plc;
- (j) Société Générale S.A., Société Générale (Canada) and Société Générale;
- (k) Standard Chartered Bank, which was incorrectly named as a Defendant in the Proceedings as “Standard Chartered plc”;
- (l) UBS AG, UBS Securities LLC and UBS Bank (Canada);
- (m) Morgan Stanley;
- (n) Bank of Montreal, BMO Financial Corp., BMO Harris Bank N.A., and BMO Capital Markets Limited; and

- (o) any Defendant that executes its own settlement agreement before or after the execution of the Settlement Agreement, which settlement agreement is finally approved by the necessary Courts.
- (42) ***Settlement Agreement*** means this agreement, including the recitals and schedules.
- (43) ***Settlement Amount*** means four million five hundred thousand Canadian dollars (CAD \$4,500,000).
- (44) ***Settlement Class*** or ***Settlement Classes*** means in respect of each Proceeding, the settlement class defined in Schedule A.
- (45) ***Settlement Class Member*** means a member of a Settlement Class.
- (46) ***Settling Defendants*** means Toronto Dominion Bank, TD Bank, N.A., TD Group US Holdings, LLC (also sometimes erroneously referred to as TD Group Holdings LLC), TD Bank USA, N.A., and TD Securities Limited.
- (47) ***Settling Defendants' Claims*** means claims, including Unknown Claims as defined below, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Proceedings.
- (48) ***TD Certification Costs*** means CAD\$175,000 paid by the Settling Defendants towards the costs of the Ontario certification motion.
- (49) ***Trust Account*** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Ontario Counsel or the claims administrator, once appointed, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.
- (50) ***Unknown Claims*** means any and all Released Claims against the Releasees which Releasors do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Settling Defendants' Claims against Releasors which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasors or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasors and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or

believes to be true with respect to the subject matter of the Released Claims and Settling Defendants' Claims. Nevertheless, the Plaintiffs and the Releasees shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled and released, any and all Released Claims and Settling Defendants' Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiffs and the Releasees acknowledge, and Settlement Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Settling Defendants' Claims was separately bargained for and was a key element of the Settlement Agreement.

(51) ***U.S. Litigation*** means the class action proceeding, in which certain Defendants are named as parties, currently pending in the United States District Court for the Southern District of New York known as *In Re: Foreign Exchange Benchmark Rate Antitrust Litigation*, ECF Case No. 1:13-cv-07789-LGS.

(52) ***U.S. Settlement Agreement*** includes any executed stipulation and agreement of settlement reached with any Settling Defendants in the U.S. Litigation.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their reasonable best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Ontario Action as against the Settling Defendants and a prompt, complete notice of settlement out of court of the Quebec Action as against the Settling Defendants.

2.2 Motions Seeking Approval of Notice and Certification or Authorization

(1) The Plaintiffs shall file motions before the Courts, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 11.1(1) and certifying or authorizing the Proceedings for settlement purposes. The Plaintiffs shall make best efforts to file

the aforementioned motions before the Quebec Court no later than thirty (30) days after the Ontario Court has granted an order approving the notices described in Section 11.1(1) and certifying the Ontario Action as a class proceeding for settlement purposes.

(2) The Ontario order approving the notices described in Section 11.1(1) and certifying the Ontario Action as a class proceeding for settlement purposes shall be substantially in the form attached as Schedule B. The Quebec order approving the notices described in Section 11.1(1) and authorizing the Quebec Action for settlement purposes shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order attached as Schedule B.

2.3 Motions Seeking Approval of the Settlement

(1) The Plaintiffs shall file motions before the Courts for orders certifying or authorizing the Settlement Class and approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(1) have been granted; and
- (b) the notices described in Section 11.1(1) have been published.

(2) The Ontario order seeking approval of this Settlement Agreement shall be substantially in the form attached as Schedule C. The Quebec order seeking approval of this Settlement Agreement shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order.

(3) The Plaintiffs can elect to request that the Courts hold joint hearings seeking certification or authorization and approval of this Settlement Agreement pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not oppose any such request.

(4) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax

returns and financial statements), pursuant to regulatory requirements as necessary to give effect to its terms, or as otherwise required by law.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Plaintiffs have agreed to credit the TD Certification Costs, which were previously received and deposited in the Trust Account, against the Settlement Amount.

(2) Within thirty (30) days of the orders by the Courts approving the notices described in Section 11.1(1) and certifying or authorizing the Proceedings for settlement purposes, the Settling Defendants shall pay the outstanding balance of the Settlement Amount (CAD\$4,325,000) to Class Counsel for deposit into the Trust Account.

(3) Payment of the amount specified in paragraph 3.1(2) shall be made by wire transfer. At least thirty (30) days prior to the amount specified in paragraph 3.1(2) becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(4) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(5) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs.

(6) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings, including, but not limited to, legal fees, judicial costs or costs of notice.

(7) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

(9) The Claims Administrator shall pay the Fonds d'aide aux actions collectives (Class Action Fund) the amount owed pursuant to the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives Chapter F-3.2.0.1.1, r. 2, with regard to the Quebec Action. This amount shall be paid out of the Settlement Amount after the conclusion of the Court approved Distribution Protocol.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Classes. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise (less interest earned on the TD Certification Costs) shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

SECTION 4- COOPERATION

4.1 Extent of Cooperation

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Settling Defendants agree to provide the cooperation set out in this section of the Settlement Agreement, provided, however, that the Settling Defendants shall not be required to provide cooperation: (i) in violation of any law, including without limiting

the generality of the foregoing, any privacy, bank secrecy and other laws, regulations, and policies of Ontario, Quebec or any other Canadian or foreign jurisdiction, or in contravention of the terms of any protective order in the U.S. Litigation or similar order(s) in the Proceedings or an instruction or directive to the contrary from the United States Department of Justice (“DOJ”) or any other regulatory authority or governmental body in Canada, the United States, the United Kingdom or any other jurisdiction; or (ii) with regard to conduct outside the scope of the Released Claims.

(2) All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

(3) Subject to the other terms in this Settlement Agreement, the Settling Defendants agree:

- (a) upon at least 30 days’ advance written notice being given by Class Counsel to the Settling Defendants of the date scheduled for the first examination for discovery of any Defendant, within 180 days after such examination date, to provide to Class Counsel reasonably available transaction data for transactions in FX Instruments traded in the FX Market in Canada, excluding instruments traded on any exchange or on any electronic trading platforms that occurred between January 1, 2003 and December 31, 2013, that involved the Settling Defendants and Ontario Settlement Class Members which shall be compiled and produced in a form mutually acceptable to the Parties; and
- (b) within ninety (90) days after the Effective Date or at a time mutually agreed upon by the Parties, to use reasonable efforts to provide to Class Counsel electronic copies of any “documents” (as defined in Rule 30.01 of the *Ontario Rules of Civil Procedure*) that the Settling Defendants have provided to their external counsel in the Ontario Action, Stockwoods LLP, between the date of commencement of the Ontario Action to the Date of Execution that is relevant to the issues between the Settlement Class Members and the Non-Settling Defendants in the Proceedings, as defined by the pleadings on the Date of Execution, including but not limited to transaction data, electronic communications, contracts, policies, and reports, provided that the scope of these documentary productions shall not exceed the scope of what would have been producible in the Ontario Action had the Settling Defendants remained parties thereto.

(4) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to produce at trial or through acceptable affidavits for use at trial, a representative qualified to establish for admission into evidence any of the Settling Defendants' documents provided as cooperation pursuant to Section 4 1(3)(b) of this Settlement Agreement, but only to the extent that such documents are admissible as business records under s. 29 or 30 of the *Canada Evidence Act* (or equivalent provision of provincial legislation), and provided that resort to a live witness shall be only permitted after Class Counsel has used best efforts to establish the authenticity and admissibility of documents for use at trial without a live witness.

(5) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal, processing or disclosure of any documents or information, which would violate the law, including without limiting the generality of the foregoing, any privacy, bank secrecy and other laws, regulations, and policies of Ontario, Quebec or any other Canadian or foreign jurisdiction.

(6) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any documents or information prepared by or for counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, instruction or policy, rule or law of Ontario, Quebec or any other Canadian or foreign jurisdiction, or subject to any privilege, including solicitor-client, litigation, attorney work product, settlement, common-interest or joint defence privilege, or any other privilege, doctrine or law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

(7) If any documents protected by any privilege, including solicitor-client, litigation, attorney work product, settlement, common-interest or joint defence privilege, or any other privilege, doctrine or law, and/or any privacy law or other rule or law of Ontario, Quebec or any other Canadian or foreign jurisdiction, are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the

express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(8) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate shall cease at the date of final judgments in the Proceedings against all Defendants.

(9) The provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees or their current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(10) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement.

(11) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is the desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

(12) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.

(13) The Settling Defendants make no representation regarding, and shall bear no liability with respect to, the accuracy of, or that they have, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

4.2 Limits on Use of Documents

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are publicly available. The Plaintiffs and Class Counsel agree they shall not disclose the documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, and acknowledge that they are bound by the deemed undertaking and Rule 30.1 of the *Rules of Civil Procedure* and the equivalent rules in other Provinces, except to the extent that the documents or information are publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality and security of such documents and information, and of any work product of Class Counsel that discloses such documents and information. Class Counsel shall treat any documents received from the Settling Defendants as highly confidential. The Settling Defendant's obligations with respect to cooperation, including the timing and substance of cooperation, shall be subject to such limitations as are ordered by the Court.

(2) If, in the course of the Proceedings, the Plaintiffs, the Settlement Classes or Class Counsel, acting reasonably, conclude that it is reasonably necessary to disclose or provide information or documents obtained from the Settling Defendants which are not otherwise publicly available, or to file such information or documents in the Proceedings, and such disclosure is not otherwise prohibited by this Settlement Agreement, then the Plaintiffs, the Settlement Classes or Class Counsel shall provide the Settling Defendants with an advance written description of the documents or information to be disclosed or provided at least sixty (60) days in advance of the proposed disclosure, in order that the Settling Defendants may obtain a confidentiality order, or take such other steps as they deem necessary, to protect their interests in respect of such information or documents being disclosed or produced. In the event the Settling Defendants take such steps, the Plaintiffs, the Settlement Classes and Class Counsel shall not oppose reasonable positions taken by the Settling Defendants.

(3) In the event that a Person applies for an order requiring the Plaintiffs, the Settlement Classes or Class Counsel to disclose or produce any documents or other information provided by the Settling Defendants as cooperation under this Settlement Agreement, Class Counsel shall

notify the Settling Defendants of such application promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for, consent to, or make submissions in support of such an application for disclosure or production.

SECTION 5 - OPTING-OUT

5.1 Opt-Outs

- (1) Opt-out rights were provided in earlier settlements in these Proceedings involving other Settled Defendants. The opt-out deadline expired on December 5, 2016, pursuant to orders of the Ontario and Quebec Courts. No further right to opt-out of the Proceedings will be provided.
- (2) With respect to any potential Settlement Class Member who validly opted-out from the Proceedings, the Settling Defendants reserve all of their legal rights and defences.
- (3) The Plaintiffs through their respective Class Counsel expressly waived their right to opt-out of the Proceedings.
- (4) The Plaintiffs and Ontario Counsel acknowledge and confirm that Ontario Counsel provided to the Settling Defendants a report containing the names of each Person who has validly and timely opted out of the Proceedings, the reason for the opt out, if known, and a summary of the information delivered by the Person pursuant to the applicable opt out provision.

SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (1) The Plaintiffs and the Settling Defendants shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of the date on which:
 - (a) any Court declines to certify or authorize the Proceedings for the purposes of the Settlement Agreement;
 - (b) any Court declines to dismiss or declines to declare settled out of court the Proceedings against the Settling Defendants;

- (c) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (d) any Court approves this Settlement Agreement in a materially modified form;
 - (e) any Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as Schedule C; or
 - (f) any orders approving this Settlement Agreement made by the Ontario Court or the Quebec Court do not become Final Orders.
- (2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
- (3) Any order, ruling or determination made by any Court with respect to:
- (a) Class Counsel Fees or Class Counsel Disbursements; or
 - (b) the Distribution Protocol,

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
- (a) no motion to certify the Ontario Action or authorize the Quebec Action as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) in respect of the Quebec Action, the Parties undertake to agree to withdraw from the conclusions of any judgment authorizing the Quebec Action for settlement purposes or approving this Settlement Agreement and the Parties shall be estopped from asserting any effect from any such judgment;

- (c) in respect of the Ontario Action, any order certifying the Ontario Action as class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (d) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any other litigation; and
- (e) within ten (10) days of such termination having occurred, Class Counsel shall return or destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide counsel to the Settling Defendants with a written certification by Class Counsel of such return or destruction within ten (10) days of such termination having occurred. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

6.3 Return of Settlement Amount Following Termination

- (1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance

with its terms, shall return to the Settling Defendants the amount the Settling Defendants have paid to Class Counsel (but not the TD Certification Costs and any interest thereon), plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 11.1(1), and any costs of translation required by Section 15.12, such costs in total not to exceed fifty thousand Canadian dollars (CAD \$50,000).

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1, and 9.2, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1, 9.2, and 11.1(2) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Proceedings against the Settling Defendants; and (ii) any and all Released Claims as against all Released Parties.

(2) Upon the Effective Date, subject to Section 7.3, each of the Releasers: (i) shall be deemed to have, and by operation of the Final Orders, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Released Parties, regardless of whether such Releaser executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

7.2 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasors shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Ontario Action is decertified or the Quebec Action is not authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed alleged co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Proceedings

(1) Upon the Effective Date, the Ontario Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Action shall be declared settled out of Court with prejudice and without costs against the Settling Defendants.

7.5 Releases a Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 - CLAIMS AGAINST OTHER ENTITIES

8.1 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

8.2 Ontario Bar Order

(1) Class Counsel shall seek bar orders from the Ontario Court providing for the following:

- (a) to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, or otherwise, by any Non-Settling Defendant, any named or unnamed alleged co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed alleged co-conspirator that is not a Releasee or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
- (b) if the Ontario Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise,
 - (i) the Ontario Plaintiffs and Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Ontario Plaintiffs and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only claims for damages (including punitive damages, if any), restitutionary awards, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and
 - (iii) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceedings, whether or not the Releasees remain in the Proceedings or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceedings and shall not be binding on the Releasees in any other proceeding;
- (c) a Non-Settling Defendant may, on motion to the Ontario Court, determined as if the Settling Defendants remained party to the Ontario Action, and on at least ten (10) days' notice to Counsel for the Settling Defendants, seek Orders for the following:
 - (i) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure* (Ontario);

- (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
- (d) the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to Section 8.2(1)(c). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of information obtained from discovery in accordance with Section 8.2(1)(c). Notwithstanding any provision in the Ontario order approving this Settlement Agreement, on any motion brought pursuant to Section 8.2(1)(c), the Ontario Court, as applicable, may make such orders as to costs and other terms as it considers appropriate;
- (e) a Non-Settling Defendant may serve the motion(s) referred to in Section 8.2(1)(c) on the Settling Defendants by service on counsel for the Settling Defendants in the Ontario Action;
- (f) to the extent that such an order is granted pursuant to Section 8.2(1)(c) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s); and
- (g) the Settling Defendants shall retain and reserve all rights to oppose any motion by Non-Settling Defendants to seek discovery from the Settling Defendants.
- (2) The Parties acknowledge that the bar orders shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

8.3 Quebec Waiver or Renunciation of Solidarity Order

(1) Class Counsel shall seek a waiver or renunciation of solidarity from the Quebec Court providing for the following:

- (a) the Quebec Petitioner and the Quebec Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- (b) the Quebec Petitioner and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of Proportionate Liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

(2) The Parties acknowledge that the waiver or renunciation of solidarity shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the order contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 9 - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further,

whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed alleged co-conspirators that are not Releasees or, if the Ontario Action is decertified or the Quebec Action is not authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed alleged co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

(2) Section 9.3(1) shall be inoperative to the extent that it is inconsistent with BC Class Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

(3) The Parties agree that the certification or authorization of the Proceedings against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

(4) The Settling Defendants retain all of their objections, arguments, and defences with respect to class certification or authorization, and reserve all rights to contest class certification or authorization, if the settlement set forth in this Settlement Agreement does not receive the Court's approval, if the Courts' approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close. The Parties acknowledge that there has been no stipulation to any classes or certification or authorization of any classes for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Courts' final approval, if the Courts' approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, this agreement as to certification or authorization of the Settlement Classes becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification or authorization of the Settlement Classes, or in support of an argument for certifying or authorizing a class for any purpose related to the Proceedings.

SECTION 11 - NOTICE TO SETTLEMENT CLASSES

11.1 Notices Required

- (1) The proposed Settlement Classes shall be given a single notice of hearings at which the Courts will be asked to approve the Settlement Agreement and Class Counsel Fees.
- (2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes shall be given notice of such event.

11.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.
- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

SECTION 12- ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

- (1) The Administration Protocol and Plan of Dissemination in this proceeding were approved by the Order of Justice Perell dated July 4, 2018 and the Judgment of the Quebec Court dated August 24, 2018, and amended by the Order of Justice Perell, dated August 1, 2019 and the Judgment of the Quebec Court dated August 23, 2019. Any further amendment to these protocols shall be determined by the Courts on motions brought by Class Counsel on notice to the Settling Defendants.

SECTION 13 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

13.1 Distribution Protocol

- (1) The Distribution Protocol was approved by the Order of Justice Perell dated July 4, 2018 and the Judgment of the Quebec Court dated August 24, 2018, and amended by the Orders of

Justice Perell, dated August 1, 2019 and November 26, 2020 and the Judgment of the Quebec Court dated August 23, 2019. Any further motions to amend the Distribution Protocol will be brought by Class Counsel on notice to the Settling Defendants.

13.2 No Responsibility for Administration or Fees

(1) The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

(1) The Settling Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

(2) Class Counsel shall pay the costs of the notices required by Section 11.1 and any costs of translation required by Section 15.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.

(3) Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

(4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(5) The Settling Defendants shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

SECTION 15 - MISCELLANEOUS

15.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the Ontario Court and/or such other courts as may be required by the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to the matters affecting the Quebec Action shall be determined by the Ontario Court and matters specifically affecting the Quebec Action shall be determined by the Quebec Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

15.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

15.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

15.4 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

- (1) Subject to the rights of the Settling Defendants to contest personal jurisdiction if this Settlement Agreement is terminated or the Effective Date does not occur, each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties to that Proceeding and the Class Counsel Fees in that Proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court with which it shares jurisdiction over that matter.
- (3) Notwithstanding Sections 15.5(1) and 15.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes only and for no other purpose. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the Quebec Action shall be determined by the Ontario Court.

15.6 Governing Law

- (1) Subject to Section 15.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (2) Notwithstanding Section 15.6(1), for matters relating specifically to the Quebec Action, the Quebec Court shall apply the law of the Province of Quebec.

15.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or

representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

15.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all of the Parties, and any such modification or amendment must be approved by the Court(s) with jurisdiction over the matter to which the amendment relates.

15.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

15.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

15.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé*

que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Transaction

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

15.14 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

15.15 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

15.16 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms

of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

15.17 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

15.18 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Charles M. Wright
SISKINDS LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8
Tel: 519.672.2121
Fax: 519.672.6065
Email: charles.wright@siskinds.com

Reidar Mogerman and David Jones
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MOGERMAN
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Tel: 604.689.7555
Fax: 604.689.7554
Email: rmogerman@cfmlawyers.ca
djones@cfmlawyers.ca

Kirk M. Baert
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David Sterns
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Caroline Perrault
SISKINDS DESMEULES s.e.n.c.r.l.
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43 rue Buade, bureau 320
Quebec City, QC G1R 4A2
Tel: 418.694.2009
Fax: 418.694.0281
Email: caroline.perrault@siskindsdesmeules.com

For the Settling Defendants:

Paul Le Vay, Brendan van Niejenhuis, and
Stephen Aylward
STOCKWOODS LLP
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Tel: 416-869-5300
Fax: 416-360-8877
Email: paullv@stockwoods.ca
brendanvn@stockwoods.ca
stephena@stockwoods.ca

Paule Hamelin
GOWLING WLG
3700-1, Place Ville Marie
Montréal, PQ H3B 3P4
Tel : 514-878-9641
Fax : 514-878-1450
Email : paule.hamelin@gowlingwlg.com

15.19 Date of Execution

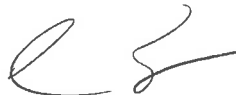
- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA on their own behalf and on behalf of the Ontario Settlement Class, by their counsel:

Name of Authorized Signatory:

Louis Sokolov

Signature of Authorized Signatory:



Sotos LLP
Ontario Counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

Koskie Minsky LLP
Ontario Counsel

For the Settling Defendants:

Paul Le Vay, Brendan van Niejenhuis, and
Stephen Aylward
STOCKWOODS LLP
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Tel: 416-869-5300
Fax: 416-360-8877
Email: paullv@stockwoods.ca
brendanvn@stockwoods.ca
stephena@stockwoods.ca

Paule Hamelin
GOWLING WLG
3700-1, Place Ville Marie
Montréal, PQ H3B 3P4
Tel : 514-878-9641
Fax : 514-878-1450
Email : paule.hamelin@gowlingwlg.com

15.19 Date of Execution

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS, AND JACK OLIVEIRA IN THEIR CAPACITY AS THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA on their own behalf and on behalf of the Ontario Settlement Class, by their counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Sotos LLP
Ontario Counsel

Name of Authorized Signatory:

Kirk Baert

Signature of Authorized Signatory:

p.p. _____
Koskie Minsky LLP
Ontario Counsel

Name of Authorized Signatory:

Bridget Moran

Signature of Authorized Signatory:

Bridget Moran
Siskinds LLP
Ontario Counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

Camp Fiorante Matthews Mogerman LLP
Ontario Counsel

CHRISTINE BÉLAND on her own behalf and on behalf of the Quebec Settlement Class, by her counsel:

Name of Authorized Signatory:

Karim Diallo

Signature of Authorized Signatory:

p.p. *Bridget Moran*
Siskinds Desmeules s.e.n.c.r.l.
Quebec Counsel

TORONTO DOMINION BANK, TD BANK, N.A., TD GROUP US HOLDINGS, LLC, TD BANK USA, N.A., AND TD SECURITIES LIMITED, by their counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Stockwoods LLP


Name of Authorized Signatory:

Signature of Authorized Signatory:

Siskinds I.J.P
Ontario Counsel

Name of Authorized Signatory:

Reidar Mogerman



Signature of Authorized Signatory:

Camp Fiorante Matthews Mogerman LLP
Ontario Counsel

CHRISTINE BÉLAND on her own behalf and on behalf of the Quebec Settlement Class, by her counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Siskinds Desmeules s.e.n.c.r.l.
Quebec Counsel

TORONTO DOMINION BANK, TD BANK, N.A., TD GROUP US HOLDINGS, LLC, TD BANK USA, N.A., AND TD SECURITIES LIMITED, by their counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Stockwoods LLP

Name of Authorized Signatory:

Signature of Authorized Signatory:

Siskinds LLP
Ontario Counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

Camp Fiorante Matthews Mogerman LLP
Ontario Counsel

CHRISTINE BÉLAND on her own behalf and on behalf of the Quebec Settlement Class, by her counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:


Siskinds Desmeules s.e.n.c.r.l.
Quebec Counsel

TORONTO DOMINION BANK, TD BANK, N.A., TD GROUP US HOLDINGS, LLC, TD BANK USA, N.A., AND TD SECURITIES LIMITED, by their counsel:

Name of Authorized Signatory:

Paul Le Vay

Signature of Authorized Signatory:


Stockwoods LLP