C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

NO.: 500-06-001309-240

BRIAN GLASBERG

Plaintiff

v.

THE TORONTO-DOMINION BANK *ET AL.*

Defendants

DE BENE ESSE MOTION FOR LEAVE TO AMEND THE MOTION FOR AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE QUÉBEC *SECURITIES ACT* AND APPLICATION TO INSTITUTE A CLASS ACTION

TO THE HONOURABLE CATHERINE PICHÉ, S.C.J., SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, AS DESIGNATED JUDGE FOR THIS INSTANCE, THE PLAINTIFF BRIAN GLASBERG RESPECTFULLY SUBMITS THE FOLLOWING:

I - INTRODUCTION

1. On May 27, 2024, the Plaintiff filed a *Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* (the "**Motion for Authorization**") against The Toronto-Dominion Bank ("**TD**"), Bharat B. Masrani, Kelvin Vi Luan Tran, and Riaz Ahmed, as appears from the Court record.

2. The Plaintiff now seeks leave to amend the Motion for Authorization to:

   a) Allege facts discovered since the filing of the Motion for Authorization; and

   b) Clarify some of the allegations in the Motion for Authorization.

3. The proposed amendments are laid out in the draft *Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* (the "**Amended Motion for Authorization**"), communicated herewith as **Exhibit R-1**.

4. The proposed amendments are relevant. They will not unduly delay the proceedings. They are not contrary to the interests of justice. And they will not result in an entirely new application having no connection with the original one.

II - CONTEXT

5. The Motion for Authorization seeks to obtain leave from this Court to institute a class action pursuant to (a) section 225.4 of the Québec *Securities Act*, chapter V-1.1, and (b) article 574 CCP.

6. The Plaintiff's recourse stems from the Defendants' misrepresentations, including their misleading statements concerning TD's alleged compliance with anti-money laundering (AML) standards and their management of TD's reputational risk, business risk, and other risks.

7. The Plaintiff pleads that the price of TD's securities was artificially inflated during the class period as a result of the Defendants' misrepresentations and plummeted when the Defendants publicly corrected them. This putative class action seeks compensation for the resulting damages for all class members.

III - GROUNDS FOR LEAVE TO AMEND

A- Recently Discovered Facts

8. Several new relevant facts have come to light since the filing of the Motion for Authorization, including TD's guilty pleas on October 10, 2024 to criminal charges laid by several regulators in the United States for (a) conspiring to fail to maintain an AML program that complies with the *Bank Secrecy Act*, (b) failing to file accurate Currency Transaction Reports, and (c) laundering money, the whole during the class period, as well as related information revealed in the wake of these guilty pleas, as further described in the Amended Motion for Authorization, Exhibit R-1, and the exhibits in support thereof.

9. These new revelations had an impact on the class period, which the Plaintiff seeks leave to extend from March 2, 2021 to October 10, 2024.

10. It is in the interests of justice and of the putative class members that these facts be added in the Motion for Authorization.

11. The Plaintiff therefore seeks this Honourable Court's permission to amend the Motion for Authorization and file the Amended Motion for Authorization, Exhibit R-1.

B- Clarification of Allegations

12. The Plaintiff also seeks permission to make certain amendments set forth in the Amended Motion for Authorization in order to refine and complete his extant allegations.

13. Once again, the amendments sought are in the interests of the putative class members and in the interests of justice.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT this De Bene Esse *Application for Leave to Amend the Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action*;

AUTHORIZE the amendments laid out in the *Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* attached hereto, and the filing of said proceeding;

RENDER any other order that it considers useful or necessary to safeguard the rights of the putative class members and of the parties;

THE WHOLE without costs, save in the event of contestation.

MONTRÉAL, this 15th day of October, 2024

(s) Faguy & Co.

FAGUY & CO. BARRISTERS & SOLICITORS INC.
Attorneys for the Plaintiff
Mtre Elizabeth Meloche (emeloche@faguyco.com) /
Mtre Shawn K. Faguy (sfaguy@faguyco.com)
329 de la Commune Street West, Suite 200
Montréal, Québec, H2Y 2E1, Canada
Telephone: (514) 285-8100
Fax: (514) 285-8050

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NO.: 500-06-001309-240

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Plaintiff

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THE TORONTO-DOMINION BANK *ET AL.*

Defendants

LIST OF EXHIBITS

Exhibit R-1: Draft *Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* and List of Exhibits.

MONTRÉAL, this 15th day of October, 2024

(s) Faguy & Co.

FAGUY & CO. BARRISTERS & SOLICITORS INC.
Attorneys for the Plaintiff
Mtre Elizabeth Meloche (emeloche@faguyco.com) /
Mtre Shawn K. Faguy (sfaguy@faguyco.com)
329 de la Commune Street West, Suite 200
Montréal, Québec, H2Y 2E1, Canada
Telephone: (514) 285-8100
Fax: (514) 285-8050

NOTICE OF PRESENTATION

TO: Mtre Sylvie Rodrigue
Mtre Christopher Richter
Mtre Karl Boulanger
TORYS LLP
1, Place Ville Marie, Suite 2880
Montréal, Québec
H3B 4R4
Telephone: 514-868-5600
Fax: 514-868-5700
Email: crichter@torys.com; kboulanger@torys.com; srodrigue@torys.com; notifications-mtl@torys.com
Attorneys for the Defendants

In the event of contestation, **TAKE NOTICE** that this De Bene Esse *Application for Leave to Amend the Motion for Authorization* shall be presented for adjudication before the Honourable Catherine Piché, S.C.J., at a time and place to be determined by the Court, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal (Québec), H2Y 1B6, or by any electronic means determined by the Court.

GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, this 15th day of October, 2024

(s) Faguy & Co.

FAGUY & CO. BARRISTERS & SOLICITORS INC.
Attorneys for the Plaintiff
Mtre Elizabeth Meloche (emeloche@faguyco.com) /
Mtre Shawn K. Faguy (sfaguy@faguyco.com)
329 de la Commune Street West, Suite 200
Montréal, Québec, H2Y 2E1, Canada
Telephone: (514) 285-8100
Fax: (514) 285-8050

(Class Action)
SUPERIOR COURT
Province of Québec
District of Montréal
Nº: 500-06-001309-240

BRIAN GLASBERG

Plaintiff

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THE TORONTO-DOMINION BANK *ET AL.*

Defendants

MOTION FOR LEAVE TO AMEND THE MOTION FOR AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE QUÉBEC SECURITIES ACT AND APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION

ORIGINAL

FAGUY & CO.
BARRISTERS & SOLICITORS INC.
Mtre Elizabeth Meloche
Mtre Shawn K. Faguy
329 de la Commune Street W, S. 200
Montréal, Québec H2Y 2E1
Telephone: (514) 285-8100
Telecopier: (514) 285-8050
emeloche@faguyco.com
sfaguy@faguyco.com

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PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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NO.: 500-06-001309-240

BRIAN GLASBERG

Plaintiff

v.

THE TORONTO-DOMINION BANK *ET AL.*

Defendants

AMENDED MOTION FOR AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE QUÉBEC *SECURITIES ACT* AND APPLICATION TO INSTITUTE A CLASS ACTION

IN SUPPORT OF HIS AMENDED MOTION FOR AUTHORIZATION PURSUANT TO THE QUÉBEC *SECURITIES ACT* AND HIS APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION, THE PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:

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I. DEFINITIONS

1. In addition to the terms that are defined elsewhere herein and within the *Securities Act*, CQLR C V-1.1, the following terms have the following meanings:

a) "**AIF**" means Annual Information Form;

b) "**AMF**" means *Autorité des marchés financiers*;

c) "**AML**" means anti-money laundering;

d) "**Bank**" or "**TD**" means The Toronto-Dominion Bank, or, as the context may require, its parent company, subsidiaries, and affiliates;

d.1) "**Bank Secrecy Act**" means the United States' *Currency and Financial Transactions Reporting Act of 1970*, as amended by Title III of the *USA Patriot Act of 2001* and other legislation;

e) "**Board**" means the board of directors of the defendant The Toronto-Dominion Bank;

f) "**Class**" and "**Class Members**" are comprised of the following, other than the Excluded Persons:

(i) **Primary Market Sub-Class**: All persons and entities who acquired The Toronto-Dominion Bank securities in an Offering on or after March 2, 2021 […], and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024; and

(ii) **Secondary Market Sub-Class**: All persons and entities who acquired The Toronto-Dominion Bank securities on the secondary market on or […] after March 2, 2021, and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024;

g) "**Class Period**" means the period spanning from […] March 2, 2021 to October 10, 2024, inclusively;

h) "**CCP**" means the *Code of Civil Procedure*, CQLR c C-25.01;

i) "**CCQ**" means the *Civil Code of Québec*, CQLR c CCQ-1991;

j) "**Corrective Disclosure(s)**" or "**Public Correction(s)**" means:

1. The Wall Street Journal article dated **May 8, 2023** titled "*Concern Over TD Anti-Money-Laundering Practices Helped Scuttle First Horizon Deal*", communicated herewith as **Exhibit P-21**, and the Bloomberg article dated May 8, 2023 titled "*TD's Transaction Practices Drew Regulatory Scrutiny on Nixed Deal*", communicated herewith as **Exhibit P-22**;

2. TD's Q3 2023 financial report to shareholders for the three and nine-month period ended July 31, 2023, published on **August 24, 2023**, communicated herewith as

Exhibit P-23, and the transcript of TD's August 24, 2023 earnings call, communicated herewith as **Exhibit P-11**;

3. The Capital Forum article titled "*TD Bank/First Horizon: Buyer Knew It Faced a Serious Money-Laundering Probe Months Before Deal Collapsed*", published after the close of trading on **January 8, 2024**, communicated herewith as **Exhibit P-24**;

4. TD's press release entitled "*TD Bank Takes an Initial Provision Related to BSA/AML Matters*", published after the close of trading on **April 30, 2024**, communicated herewith as **Exhibit P-13**;

5. […] News articles released on **May 2, 2024** by, *inter alia*, The Wall Street Journal and The Globe and Mail regarding TD's involvement in a US$653.3 million money laundering scandal, respectively Exhibit P-25 and Exhibit P-26, a National Bank of Canada report titled "*Toronto-Dominion Bank: The AML plot thickens. Worst-case scenarios need reassessing*", communicated herewith as **Exhibit P-27**, and a FINTRAC announcement titled "*FINTRAC imposes an administrative monetary penalty on The Toronto Dominion Bank*", communicated herewith as **Exhibit P-28**, as well as related news reports, Exhibit P-29 *en liasse*;

6. TD's **May 3, 2024** press release titled "*TD addresses media reports about its AML program*", communicated herewith as **Exhibit P-18**; May 3, 2024 articles by the Globe and Mail titled "*How TD Bank got caught up in the global drug war, helping to launder hundreds of millions of dollars*", communicated herewith as **Exhibit P-30**, and by the Canadian Press titled "*TD worst-case scenario more likely after drug money laundering allegations: analyst*", communicated herewith as **Exhibit P-31**, and "*TD penalties expected to be higher on alleged Chinese drug money laundering link: analyst*", communicated herewith as **Exhibit P-14**; and

7. A statement issued by the DOJ on **October 10, 2024** titled "*TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in $1.8B Resolution*", communicated herewith as **Exhibit P-32**; guilty pleas of TD Bank N.A. and its parent company, TD Bank US Holding Company, communicated *en liasse* herewith as **Exhibit P-33**; an October 10, 2024 WSJ article titled "*TD Bank Agrees to $3 Billion in Penalties and Growth Restrictions in U.S. Settlement*", communicated herewith as **Exhibit P-34**; and a CBC News article dated October 10, 2024 titled "*TD Bank fined $3B US after pleading guilty in historic U.S. money-laundering case*", communicated herewith as **Exhibit P-35**;

k) "**DC&P**" means disclosure controls and procedures;

l) "**Defendants**" means, collectively, the Bank and the Individual Defendants;

l.1) "**DRIP**" means TD's Dividend Reinvestment Plan;

l.2) "**DOJ**" means the United States Department of Justice;

l.3) "**EDGAR**" means the means Electronic Data Gathering Analysis and Retrieval, which is the electronic database and filing system created by the SEC, and used by public companies to file documents with the SEC;

m) "**Excluded Persons**" refers to Defendants and, at all relevant times, members of their immediate families, their legal representatives, heirs, successors and/or assigns, directors, officers, subsidiaries, and affiliates;

m.1) "**FinCEN**" means the Financial Crimes Enforcement Network, which is a bureau of the U.S. Department of the Treasury with a mission to safeguard the financial system from illicit use, combat money laundering, and promote national security, as appears from an extract from FinCEN's website, communicated herewith as **Exhibit P-36**;

m.2) "**FINTRAC**" means the Financial Transactions and Reports Analysis Centre of Canada, which is Canada's financial intelligence unit and anti-money laundering and anti-terrorist financing supervisor, with a mandate to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, as appears from an extract from FINTRAC's website, communicated herewith as **Exhibit P-37**;

n) "**ICFR**" means internal control over financial reporting;

o) "**Impugned Statements**" (each being an "Impugned Statement") refers to:

   (i) All periodic disclosures published by the Bank during the Class Period, and related press releases, as further particularized herein;

   (ii) The filing certifications signed by the defendant Masrani as CEO during the Class Period, communicated *en liasse* herewith as **Exhibit P-1**; […]

   (iii) The filing certifications signed by the defendants Tran and Ahmed as CFO during the Class Period, communicated *en liasse* herewith as **Exhibit P-2**; and

   (iv) Each partial Public Correction emanating from Defendants prior to the end of the Class Period on October 10, 2024, exclusively;

p) "**Individual Defendants**" (each being an "Individual Defendant") means Bharat B. Masrani, Kelvin Vi Luan Tran, and Riaz Ahmed;

q) "**KYC**" means Know Your Customer;

r) "**MD&A**" means the Bank's Management Discussion and Analyses (*rapport de gestion*). Management Discussion and Analyses are a narrative explanation of how a Bank performed during the period covered by the financial statements, and of a Bank's financial condition and future prospects. The MD&A enables readers to assess material changes in the financial condition and operating results of a Bank and must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future;

r.1) "**MIC**" means Management Information Circular;

s) "**NI 51-102**" means the CSA's *National Instrument 51-102—Continuous Disclosure Obligations*, as amended;

t) "**NI 52-109**" means the CSA's *National Instrument 52-109—Certification of Disclosure in Issuers' Annual and Interim Filings*, as amended;

u) "**NI 52-110**" means the CSA's *National Instrument NI 52-110—Audit Committees*, as amended;

v) "**NYSE**" means the New York Stock Exchange;

v.1) "**OCC**" means the Office of the Comptroller of the Currency, an independent bureau of the U.S. Department of the Treasury;

w) "**Offerings**" (each being an "Offering") means the offerings of the Bank's securities during the Class Period including, but not limited to, an offering by way of a prospectus, short form base shelf prospectus, pricing supplement to a short form base shelf prospectus, private placement, or any document issued by TD through which it effects a distribution of its securities as defined in the QSA or other Securities Legislation;

x) "**Q1**", "**Q2**", "**Q3**", and "**Q4**" mean, respectively, the three-month interim period ended January 31, April 30, July 31, and October 31;

y) "**QSA**" means the Québec *Securities Act*, CQLR C V-1.1;

y.1) "**SEC**" means the U.S. Securities and Exchange Commission;

z) "**Securities Legislation**" means, collectively, the QSA; the *Securities Act*, RSO 1990, c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

aa) "**SEDAR**" means the system for electronic document analysis and retrieval of the Canadian Securities Administrators, and includes SEDAR+;

bb) "**TSX**" means the Toronto Stock Exchange; and

cc) "**WSJ**" means The Wall Street Journal.

II. INTRODUCTION

A. Overview of the Proposed Class Action

2. Someone walks into a bank with large bags filled with bundles of cash. He asks the teller to immediately convert this cash into cashier's checks made out to various people or entities, each check for an amount just under the threshold that triggers automatic reporting. He turns around and distributes the cheques to a group of his associates inside the bank, in plain view of the bank's employees. This happens regularly, *for years*, at various TD branches. The cash funneled through the Bank *in a single day* can amount to several millions of dollars. Should this raise a red flag? Would a reasonable investor believe that TD would at least report this behavior as suspicious to regulators, in accordance with its obligations?

3. That is an example of the context in which the Plaintiff asks to be authorized to bring forward the proposed class action.

4. This action seeks to obtain compensation for the losses that he and the Class Members suffered as a result of Defendants' misleading statements concerning TD's compliance with anti-money laundering (AML) laws, regulations, and policies - and their […] failure to properly manage […] TD's reputational risk, business risk, and other risks, despite their representations to the contrary.

5. Throughout the Class Period, Defendants went out of their way to boast the quality of TD's AML controls, and to reassure the market of their commitment to respecting AML regulatory requirements.

6. At times, they categorically denied existing violations of AML regulations.

7. Even when forced to admit TD's deficiencies in this respect, they misrepresented the severity and extent of TD's shortcomings and illegal behavior, as well as the known and expected impact of its AML violations on its financial results and future operations.

7.1 At the end of the Class Period, on October 10, 2024, TD pleaded guilty to criminal charges laid by several regulators in the United States for (a) conspiring to fail to maintain an AML program that complies with the *Bank Secrecy Act*, (b) failing to file accurate Currency Transaction Reports, and (c) laundering money during the Class Period.

7.2 In commenting TD's guilty plea, the United States Attorney General Merrick B. Garland stated that "*By making its services convenient for criminals, TD Bank became one*." He added that "Today, TD Bank also became the largest bank in U.S. history to plead guilty to Bank Secrecy Act program failures, and the first US bank in history to plead guilty to conspiracy to commit money laundering. *TD Bank chose profits over compliance with the law* (…)".

8. Defendants' misrepresentations (including by omission) had the effect of artificially inflating the price and value of TD's securities at the time they were purchased by putative Class Members.

9. When the truth came to light through a series of partial Public Corrections […], the price and value of TD's securities materially decreased.

10. […] Billions of dollars of the Bank's market capitalization were wiped out due to Defendants' misrepresentations and violations of applicable standards, and the Plaintiff and putative Class Members suffered significant damages for which they ought to be compensated.

III. THE PARTIES

A. The Plaintiff and the Class He Seeks to Represent

11. The Plaintiff seeks to institute a class action on behalf of the following Class, of which he is a member, other than Excluded Persons:

(i) **Primary Market Sub-Class**: All persons and entities who acquired The Toronto-Dominion Bank securities in an Offering on or after March 2, 2021 […], and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024; and

(ii) **Secondary Market Sub-Class**: All persons and entities who acquired The Toronto-Dominion Bank securities on the secondary market on or […] after March 2, 2021, and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024.

12. During the Class Period, plaintiff Glasberg acquired TD shares on the TSX, and held them until after […] partial Public Corrections, as appears from a copy of Mr. Glasberg's relevant trading statements during the Class Period, communicated herewith as **Exhibit P-20**. […]

13. Mr. Glasberg purchased these shares at an inflated price due to the misrepresentations, thereby suffering a loss.

14. He relied on Defendants' Impugned Statements to make his investment decisions. More specifically, [h]e believed Defendants' representations to the market though the filings of TD's core and non-core documents and that Defendants' statements were complete and accurate. He believed that TD was complying with all applicable laws and regulations in the conduct of its business affairs and appropriately managing its reputational and other risks as Defendants falsely represented, *inter alia*, in TD's MD&As throughout the Class Period […]. He continuously monitored TD's news releases regarding its performance and significant events that would affect TD's share price and his investment decisions. He would not have acquired TD securities had he known it was fostering, fomenting and/or turning a blind eye to an environment allowing and encouraging money laundering and illegal activity.

15. He suffered monetary damages as the direct, immediate, and foreseeable result of Defendants' misrepresentations and omissions.

16. He seeks authorization to bring an action pursuant to s. 225.4 QSA, and, if necessary, pursuant to the corresponding provisions in the Securities Legislation, as well as the status of representative of the Class to institute a class action pursuant to s. 574 of the CCP based on the civil liability regimes established under the QSA and the CCQ.

B. Defendants

(i) TD

17. The [d]efendant TD is a legal person incorporated pursuant to the *Bank Act*, S.C. 1991, c. 46, as more fully appears from TD's Québec Enterprise registration, communicated herewith as **Exhibit P-3**.

18. TD provides, *inter alia*, retail banking services at branches and online, across Québec, the rest of Canada, the United States, and elsewhere around the world. TD offers a broad range of banking services to individuals, businesses, financial institutions, governments, and multinational corporations.

19. By assets, [i]t is the second largest bank in Canada and […] the six largest ban[k] in North America […].

19.1 It has over 1,100 retail branches and 15 million customers throughout Canada, and is subject to oversight by several Canadian regulators, including the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

19.2 TD also has a significant presence in the United States, with more than 1,100 locations throughout the Northeast, Mid-Atlantic, Metro D.C., the Carolinas and Florida, and over 9.9 million U.S. customers. It is therefore also subject to regulation and oversight by the U.S. Department of Justice (DOJ), and by various U.S. regulators, including the Financial Crimes

Enforcement Network (FinCEN) and the Office of the Comptroller of the Currency (OCC).

19.3 At all relevant times, in both Canada and the United States (in addition to other jurisdictions in which TD conducted business), regulators required TD to implement effective and rigorous controls, policies, and procedures to detect and prevent money laundering. In fact, the pressure put on financial institutions in this regard even increased significantly leading up to the beginning of the Class Period. For instance, the *Anti-Money Laundering Act of 2020*, enacted by the U.S. Congress on January 1, 2021, increased penalties and sanctions for banks with inadequate AML controls, and made it easier for U.S. regulatory agencies to penalize banks, as Defendants knew or ought to have known.

19.4 Defendants represented to investors that, by the start of the Class Period, TD complied with all AML requirements and operated effectively to prevent money laundering, leading investors to believe that it had rectified its past deficiencies and was no longer facilitating high profile incidents of massive money laundering, especially those that should have been detected by the most basic AML controls.

20. TD's shares are publicly traded and listed on the TSX under the ticker symbol "TD", as well as the NYSE under the ticker symbol "TD:US".

21. It is a reporting issuer in Québec, under the purview of the AMF.

22. As such, it is required to issue and file with the AMF and SEDAR, *inter alia*:

(i) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP;

(ii) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP;

(iii) contemporaneously with each of the above, an MD&A of each of the above financial statements; and

(iv) within 90 days of the end of the fiscal year, an AIF, including material information about the Bank and its business at a point in time in the context of its historical and possible future development.

22.1 Similar documents must be filed by TD on EDGAR.

22.2 All of these core documents filed by the Defendants during the Class Period, as well as additional non-core documents discussed herein, misrepresented TD's compliance with AML standards and the Defendants' related risk management and exposure.

(ii) The Individual Defendants

23. Defendant Masrani has served as TD's President and Chief Executive Officer (CEO) since November 1, 2014, and as director of TD since April 2014. He held this position throughout the Class Period. That said, after taking full responsibility for Defendants' failures described herein, he announced in September 2024 that he will be stepping down in 2025, as appears, *inter alia*, from the CBC News article dated October 10, 2024 titled "*TD Bank fined $3B US after pleading guilty in historic U.S. money-laundering case*", Exhibit P-35.

24. Defendants Tran and Ahmed served as TD's Chief Financial Officers (CFO) during the Class Period. Riaz Ahmed was TD's CFO from the start of the Class Period until September 2021, and Kelvin Vi Luan Tran, from that point forward.

25. As directors and/or officers of TD at the time of the release of the Impugned Statements, the Individual Defendants authorized, permitted, acquiesced, or failed to prevent their release.

26. More particularly, they made statements, or caused documents to be released, containing misrepresentations (including omissions); they certified that TD had effective internal controls over financial reporting, and that TD's core documents released during the Class Period were free of misrepresentations (Exhibits P-1 and P-2), whereas they knew or should have known that this was incorrect.

27. As director of the Bank during the Class Period, Mr. Masrani had the responsibility of overseeing: (a) the quality and reporting of TD's core documents; (b) the quality and function of the Bank's internal controls; (c) compliance with laws, regulations and guidelines; (d) governance; and (e) the adequate flow of information to the Board.

28. While they were in function, the Individual Defendants filed certificates attesting to the accuracy the information contained in the Impugned Statements contained in TD's core documents, as appears from the certificates, Exhibits P-1 and P-2 (*en liasse*).

IV. FACTS GIVING RISE TO THE […] PROPOSED CLASS ACTION

A. Defendants' Misrepresentations Regarding the Quality of TD's AML Controls

29. Throughout the Class Period, Defendants touted TD's ability and commitment to comply with all applicable AML regulatory requirements.

30. For example, […] [i]n TD's management proxy circular, […] a core document published on the first day of the Class Period, on March 2, 2021, they emphasized that TD oversaw the "*ongoing effectiveness*" of its AML program:

> REPORT OF THE AUDIT COMMITTEE (…)
>
> The audit committee is responsible for supervising the quality and integrity of the bank's financial reporting, which includes overseeing the integrity of the bank's financial controls and the effectiveness of the internal and external audit functions, and compliance requirements. (…)
>
> Anti-Money Laundering/Terrorist Financing: [The Audit Committee] Oversaw the execution and **ongoing effectiveness of the anti-money laundering**/anti-terrorist financing/economic sanctions/**anti-bribery and anti corruption program** (**AML program**), **including the related risk assessment** (…)
>
> ETHICAL BUSINESS CONDUCT
>
> As a responsible business enterprise and corporate citizen, the bank is committed to conducting its affairs to the highest standards of ethics, integrity, honesty, fairness, and professionalism. (…)
>
> Code of Conduct and Ethics
>
> The Code applies at all levels of the organization, from major decisions made by the

> board, to day-to-day business transactions. The Code has been filed with securities regulators on www.sedar.com and www.sec.gov, and is also available to shareholders at www.td.com/governance/other_policies.jsp or by contacting TD Shareholder Relations via the contact information on page 107 of this circular.
>
> The Code establishes the standards that govern the way directors and employees deal with each other, as well as with shareholders, customers, governments, regulators, suppliers, competitors, the media and the public at large. Within this framework, all directors, officers and employees are expected to exercise good judgment and be accountable for their actions. All directors and employees are required to review and complete training on the contents of the Code and attest to their ongoing compliance with the Code annually.
>
> **The corporate governance committee** annually reviews the Code and **oversees monitoring compliance with the Code** (…)
>
> [Emphasis added]

as appears from a copy of TD's management proxy circular published on SEDAR on March 2, 2021, and reaffirmed yearly in TD's Management Information Circulars (MICs) throughout the Class Period, TD's 2022, 2023, and 2024 MICs, all of which are communicated herewith *en liasse* as **Exhibit P-4**.

31. Similarly, TD's Q4 2020 MD&A, also a core document published on SEDAR on March 2, 2021 (included in Exhibit P-8), highlighted that TD's Global AML department was "*responsible for the oversight of TD's regulatory compliance with AML (…) and broader prudential risk management across the Bank (…) so that money laundering (…) risks are* ***appropriately identified and mitigated***" [Emphasis added].

31.1 Defendants misleadingly added that the Bank's management had performed an evaluation and concluded that TD's "disclosure controls and procedures" and "internal control over financial reporting" were "*effective*" throughout the Class Period.

31.2 Defendants further represented in this MD&A that TD's "risk culture starts with the "tone at the top" set by the Board, Chief Executive Officer (CEO), and the Senior Executive Team (SET)" and that "[t]he Bank's Code of Conduct and Ethics guides employees and Directors to make decisions that meet the highest standards of integrity, professionalism, and ethical behaviour", the whole as appears from TD's MD&A included in its 2020 annual report, and as repeated consistently throughout the Class Period in TD's 2021, 2022, and 2023 annual reports, communicated herewith *en liasse* as **Exhibit P-5**.

32. Significantly, TD's Code of Conduct explicitly affirms that:

> Money Laundering – **TD is committed to taking all reasonable and appropriate steps to detect and deter persons engaged in money laundering from utilizing TD products or services to do so**. Making the proceeds of criminal activity appear as if they came from legitimate sources is a criminal offence, and so is knowingly failing to report transactions or activities where it is suspected they relate to money laundering.
>
> We must not knowingly initiate or be party to money laundering and must promptly report suspected money laundering situations in accordance with the TD Bank Group Enterprise Anti-Money Laundering and Anti-Terrorist Financing Policy and the escalation procedures established for our business or region.
>
> [Emphasis added]

as appears from a copy of TD's Code of Conduct published on SEDAR on February 1, 2022, February 13, 2023, and February 5, 2024, as well as on EDGAR during the Class Period, […] communicated herewith *en liasse* as **Exhibit P-6**.

33. In March 2021, Defendants also posted TD's "AML Statement" on its website – which they would post again during the Class Period. This statement vaunted TD's AML program, which Defendants claimed allowed TD to detect and deter money laundering, and listed the actions TD supposedly took to address any concerns in this regard. Specifically, the AML Statement claimed that TD's commitment to combatting money laundering was "formalized" through the Bank's "enterprise-wide Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF)" program that was "designed to detect and report suspected money laundering and terrorist financing and activity." The AML Statement further claimed that the Bank ensured "[o]ngoing monitoring to detect and report suspicious transactions or activities" and conducted "[i]ndependent testing of AML, ATF and sanctions control effectiveness", as appears from a copy of TD's AML Statements dated March 2021, 2022, […] 2023, and 2024, communicated herewith *en liasse* as **Exhibit P-7**.

34. These statements were repeated throughout the Class Period, as appears, for example, from TD's AIFs, which reiterate that TD's Audit Committee monitors the "ongoing effectiveness" of the Bank's AML program, designed so that TD is in compliance with the applicable laws, regulations, and TD policies:

> The Committee shall **oversee and monitor the** establishment, maintenance and **ongoing effectiveness of the** Anti-Money Laundering / Anti-Terrorist Financing / Economic Sanctions / Anti-Bribery and Anti-Corruption Program ("**AML Program**") **that is designed so that the Bank is in compliance with the laws and regulations that apply to it as well as its own policies** (…)
>
> [Emphasis added]

as appears from a copy of TD's 2021, 2022, and 2023 AIFs, communicated *en liasse* herewith as **Exhibit P-38**.

34.1 Similar representations were also reiterated, for instance, in […] TD's interim MD&As throughout the Class Period, communicated *en liasse* herewith as **Exhibit P-8**.

35. Defendants' representations led reasonable investors to believe that TD was committed to complying with all applicable AML legislations, regulations, and policies, and had effective controls in place to ensure said compliance. At the very least, they led to believe that TD would catch the most basic red flags, textbook scenarios of money laundering, repeated countless times over many years, and would report suspicious activities to the authorities, in accordance with its obligations.

36. Unfortunately for Class Members, Defendants did not act in accordance with their misleading representations.

B. Public Correction […]

37. What Class Members would painfully find out as the Class Period progressed is that TD was, in reality, the object of numerous regulatory investigations, and it faced sanctions due to its repeated violations of AML obligations. The truth would be revealed through a series of seven partial Public Corrections.

(i) Partial Public Correction No. 1: May 8, 2023

38. […] [I]n 2023, after having assured the market for months that TD was in compliance with all applicable AML obligations, and after touting that it expected its 13.4-billion U.S. deal to acquire U.S. bank First Horizon Corp. to be approved by regulators, Defendants were forced to admit that the deal had fallen through due to TD's inadequate AML practices. The evolution of Defendants' disclosures in this regard is troublesome. Despite knowing that TD was the object of AML-related regulatory investigations, Defendants categorically denied it when prompted by analysist and media outlets to confirm. Even after U.S. regulators refused to authorize TD's merger with Horizon, Defendants remained extremely vague as to the causes of this refusal, claiming that it was due to some "uncertainty". It took months, and revelations by the media, for Defendants to finally admit that U.S. regulators had not approved the merger because of TD's repeated failures to report suspicious money laundering activities. After misleading the market for months, Defendants were forced to add that penalties were under way, as appears from a copy of a Globe & Mail article entitled "*TD Bank faces stiff penalty from FinTRAC for faulty controls to prevent money laundering*" dated January 26, 2024, communicated herewith as **Exhibit P-9**.

38.1 The first partial Public Correction of Defendants' misrepresentations relating to TD's supposed compliance with AML standards and associated risk-management occurred on May 8, 2023. The Wall Street Journal (WSJ) then published a report stating, for the first time since the beginning of the Class Period, that TD's AML practices were highly inadequate – so much so that it would scuttle the transaction pursuant to which TD was to acquire First Horizon Bank, which was significant for TD's expansion plans in the U.S.:

> Toronto-Dominion Bank's **handling of suspicious customer transactions** was behind regulators' refusal to bless the Canadian lender's $13.4 billion bid to buy First Horizon (…).
>
> The banks called off the proposed union Thursday, citing uncertainty over whether and when they could receive regulatory approvals, without being more specific. The **reluctance by the Office of the Comptroller of the Currency and the Federal Reserve** to give TD a clean bill of health on its **anti-money-laundering practices proved to be the biggest obstacle** (…).
>
> The regulators' concerns stemmed from **the way TD handled unusual transactions** in recent years, **and the speed at which some of them were brought to the attention of U.S. authorities** (…)
>
> TD agreed to buy First Horizon in February 2022 for $25 a share, in a deal that would have created one of the six-largest U.S. lenders. (…)
>
> Financial-services lawyers said it is unusual for U.S. regulators to block bank mergers outright. (…)
>
> [Emphasis added]

as appears from the WSJ report dated May 8, 2023 titled "*Concern Over TD Anti-Money-Laundering Practices Helped Scuttle First Horizon Deal*", Exhibit P-21.

38.2 Bloomberg confirmed this information that same day in an article titled "*TD's Transaction Practices Drew Regulatory Scrutiny on Nixed Deal*", Exhibit P-22.

39. […] The market reacted significantly to this news. For example, on the TSX, TD's shares

dropped 2.35% on May 8 and 9, 2023, as appears from an extract from the TMX Money website showing TD's share price history on the TSX during the Class Period, communicated herewith as **Exhibit P-39**.

(ii) Partial Public Correction No. 2: August 24, 2023

40. On August 2[4], 2023, prior to the opening of the markets, TD disclosed, for the first time, that "it expected fines and other non-monetary penalties stemming from probes by U.S. regulators and law-enforcement agencies, including the Department of Justice, related to its compliance practices." […]

40.1 More particularly, in TD's Q3 2023 financial report to shareholders, Defendants revealed that:

> **The Bank has been responding to formal and informal inquiries from regulatory authorities and law enforcement concerning its Bank Secrecy Act/anti-money laundering compliance program**, both generally and in connection with specific clients, counterparties or incidents in the US, including in connection with an **investigation by the United States Department of Justice**. The Bank is cooperating with such authorities and is pursuing efforts to enhance its Bank Secrecy Act/anti-money laundering compliance program. While the ultimate outcomes of these inquiries and investigations are unknown at this time, **the Bank anticipates monetary and/or non-monetary penalties to be imposed.**
>
> [Emphasis added]

as appears from page 79 of TD's Q3 2023 financial report to shareholders, Exhibit P-23.

41. Defendant Masrani provided additional color during the Bank's third-quarter earnings call on August 2[4], 2023, when analysts sought clarity as to the extent of TD's AML problems. Specifically, Masrani stated that the Bank was "pursuing efforts to enhance" its risk management controls and "working hard to enhance our programs," and noted that additional expenses would be required to fix them and bring them up to regulators' standards, but he refused to quantify what those expenses would be. Instead, his colleague Mr. Salom noted generally that expenses were up 9.8% from the prior quarter and up 24% year-over-year in part because of investments in "governance and control," and that TD Bank was "investing in a number of different areas to strengthen the foundation of [its] U.S. franchise", as appears from the transcript of TD's August 2[4], 2023 earnings call, […] Exhibit P-11.

41.1 Although this partial Public Correction did not fully inform the public of the magnitude of the expected monetary penalties, nor disclose that TD's AML programs were so flawed that they would likely cost TD billions of dollars in fines and redress costs, nor reveal the impact these failures would have on TD's future business in the U.S. and in Canada, the market nevertheless reacted significantly. For instance, TD's share price on the TSX lost 3.23% of its value on August 24, 2023, as appears from TD's relevant price history on the TSX, Exhibit P-39.

(iii) Partial Public Correction No. 3: January 8, 2024

42. On January 8, 2024, Capitol Forum posted an article titled "*TD Bank/First Horizon: Buyer Knew It Faced a Serious Money-Laundering Probe Months Before Deal Collapsed*", Exhibit P-24.

43. This third partial Public Correction revealed important facts concerning (a) the inefficacy of TD's AML processes and TD's violations of AML standards, (b) Defendants' knowledge of

these issues and of the related criminal and regulatory investigations, and (c) provided a glimpse into the potential severity of the consequences of TD's AML deficiencies. […]

44. More specifically, Capitol Forum informed investors, *inter alia*, that:

   a. TD executives knew, by November 2022, that "*multiple federal law enforcement agencies had found such serious lapses in anti-money laundering (AML) controls that US regulators might reject the [First Horizon] merger*". These executives were informed in a series of private meetings with senior members of the OCC and the Federal Reserve that their respective investigations had revealed serious AML deficiencies in TD's practices and that the DOJ had begun a formal investigation into TD's U.S. securities law violations;

   b. In October 2022, "*a former TD Bank branch employee in New Jersey* [Nunez-Flores] *was charged with helping launder millions of dollars in illegal drug sales since early 2022*" for the Columbian cartel, in exchange for bribes. The nature of the activities conducted by Nunez-Florez "*should have immediately set off alarms at TD*";

   c. TD had "*systemic problems*" and "*regulators have determined that the company's failings go back many years*"; and

   d. By implication, these issues raised a significant risk not only for TD's First Horizon deal, but also for TD's business prospects in general, including its expansion plans in the U.S. […]

45. The market's reaction to this additional public correction was swift and pronounced. TD's share price on the TSX lost 4.4% in one day between Monday, January 8, 2024, and Tuesday, January 9, 2024. By Friday, January 12, 2024, it had lost over 7%, wiping out billions of dollars in market capitalization in just four days, as appears from TD's share price history on the TSX during the Class Period, Exhibit P-39. […]

45.1 The Capital Forum article was discussed by numerous news outlets in the days following January 8, 2024, including, *inter alia*, by the Global and Mail, which published, on January 9, 2024, an article titled "*TD Bank executives knew about U.S. probe six months before disclosing it, report reveals*", communicated herewith as **Exhibit P-40**.

46. But Defendants still had not informed the market of the severity of TD's failures, nor of the extent of the potential consequences faced by TD, despite their obligation to provide TD's securityholders with an accurate reflection of TD's affairs.

[…]

(iv) Partial Public Correction No. 4: April 30, 2024

47. […] [A]fter the close of trading on April 30, 2024, […] TD posted a press release entitled "*TD Bank Takes an Initial Provision Related to BSA/AML Matters*", […] Exhibit P-13.

48. Defendants thereby disclosed, *inter alia*, that they had "taken an **initial** provision of US$450M in connection with discussions with **one** of its U.S. regulators, related to previously disclosed regulatory and law enforcement investigations of TD's U.S. Bank Secrecy Act (BSA)/anti-money laundering (AML) program." "The Bank's regulatory and law enforcement discussions with three U.S. regulators and the Department of Justice are ongoing. The Bank anticipates additional monetary penalties. This provision does not reflect the final aggregate amount of

potential monetary penalties or any non-monetary penalties, which are unknown and not reliably estimable at this time."

49. In TD's press release, Exhibit P-13, Defendants admit that "TD's AML program was insufficient to effectively monitor, detect, report, and respond to suspicious activity."

50. These revelations caused another drop in the price of TD's securities, which would continue to plummet as information came to light over the next few days, as appears, *inter alia*, from TD's share price history on the TSX during the Class Period, Exhibit P-39. […]

51. The market had been kept in the dark and was not prepared for the gravity of what it learned between April 30, 2024 and May 3, 2024, in terms of the severity of TD's AML violations and their impact.

(v) Partial Public Correction No. 5 of May 2, 2024 and Related Matters

52. The facts giving rise to TD's initial provision of US$450M were also revealed at that time, and give pause, to say the least.

53. On May 2, 2024, [p]utative Class Members learned […] that TD's US$450M initial provision was required because TD was being sanctioned for having failed to report very obvious suspicious activities leading to the laundering of approximately US$653,000,000 of fentanyl drug money between 2016 and 2021, as appears, *inter alia*, from the WSJ article published on May 2, 2024 titled "*TD Bank Probe Tied to Laundering of Illicit Fentanyl Profits*", communicated herewith as **Exhibit P-25**.

53.1 The WSJ rightfully highlighted that "While TD disclosed a Justice Department probe into its anti-money-laundering practices last year [the August 24, 2023 partial Public Correction No. 2], the focus on money laundering related to illegal drug sales hasn't been previously reported".

53.2 The WSJ article went on to state that:

> A Justice Department investigation into TD Bank 's internal controls focuses on how Chinese crime groups and drug traffickers used the Canadian lender to launder money from U.S. fentanyl sales.
>
> The investigation was launched after agents uncovered an operation in New York and New Jersey that laundered hundreds of millions of dollars in proceeds from illicit narcotics through TD and other banks, according to court documents and people familiar with the matter. In that case and at least one other, prosecutors also allege the criminals bribed TD employees. (…)
>
> The bank said Tuesday that in addition to the Justice probe, it is the subject of three other anti-money-laundering investigations in the U.S. TD set aside $450million to resolve one of those inquiries and said it expects additional penalties. On Thursday, a Canadian banking regulator fined TD the equivalent of [US] $6.7million for failing to file suspicious activity reports and document risks related to money laundering and terrorist activity, among other things.
>
> **The issues have already stalled TD's ambitious expansion plans**. (…)
>
> The probe stems in part from a criminal case into an operation that laundered at least $653 million in proceeds from illicit narcotics, according to court documents. Federal prosecutors in New Jersey in 2021 unsealed a complaint charging Da Ying Sze, who

> went by "David," with coordinating the money-laundering scheme. Sze pleaded guilty to charges related to the money-laundering conspiracy in 2022. The U.S. Attorney's Office in New Jersey declined to comment.
>
> In 2021, agents from the Drug Enforcement Administration and Internal Revenue Service's criminal investigations unit tailed suspected participants in the money-laundering operation through the streets of Flushing, Queens, and observed them taking large bags of cash into bank after bank. The suspects operated across multiple financial institutions, often using accounts under the name of small local businesses.
>
> **As the investigation evolved, prosecutors came to focus on the money launderers' use of one bank in particular, identified in court documents as "Financial Institution No. 1."**
>
> **That institution was TD**, people familiar with the matter said. (…)
>
> [Emphasis added]

53.2 The Globe and Mail article dated May 2, 2024 titled "*U.S. probe of TD Bank tied to US$653-million money-laundering and drug-trafficking case*", communicated herewith as **Exhibit P-26**, also revealed the connection between TD and the laundering of drug-trafficking money, commenting that this was a "revelation that *finally* sheds light on American regulators' decision to block TD's multibillion-dollar U.S. acquisition a year ago." It adds, *inter alia*, that:

> Uncertainty about the probe has dogged Canada's second-largest lender, which is bracing for heavy penalties amid **investor pressure to disclose more about the investigations it's facing**. The nature of the violation puts an end to **one of the biggest mysteries on Bay Street** but will continue to raise further questions about the bank's future prospects in the United States and its leadership. (…)
>
> The U.S. Drug Enforcement Agency (DEA) also said the operation contributed to the "high number of overdose fatalities across the country." (…)
>
> To charge Mr. Sze, the DEA conducted extensive surveillance and found large sums of money being deposited in multiple financial institutions. In a criminal complaint, law enforcement agencies said they tracked Mr. Sze to multiple branches of a single financial institution, referred to as "FI-1." That institution is TD, according to a source.
>
> [Emphasis added]

53.3 It was not until these May 2, 2024 partial public corrections that TD's shareholders were informed by the media (not by the Bank) that "Financial Institution No. 1" was, in fact, TD.

54. According to media reports and Court documents in the […] Sze criminal file, for six years, individuals brought large bags filled with bundles of cash to the Bank, and immediately asked the teller to convert the bundles into cashier's checks made out to various people or entities, for an amount just under the automatic reporting limit.

55. As appears from the criminal complaint in *USA* v. *Da Zing Sze*, a copy of which is communicated herewith as **Exhibit P-15**, the same individuals could repeat this process in several TD branches in one day, and thereby funnel millions of dollars in a single day. At times, they repeated the same process very shortly thereafter.

56. The accounts in which these funds were deposited (and withdrawn) were those of small businesses that one would not expect to deposit such large amounts of cash, such as small

sewing companies. These businesses did not have store fronts or websites, and had all disclosed the same address: a warehouse in Queens, as appears from the criminal complaint, Exhibit P-15, and the video, Exhibit P-10.

57. The members of the drug money laundering group did not even seem to be trying to hide their suspicious activities. The criminal complaint, Exhibit P-15, to which there was a guilty plea, communicated as **Exhibit P-16**, states that the group members would walk in together at the Bank, deposit large amounts of cash, immediately withdraw millions of dollars in cashier's checks, and then distribute them amongst themselves within the bank, in plain view.

58. The Bank has a responsibility to notice when it is being exploited, and to report any suspicious activity, especially when TD has vaunted its commitment to AML compliance for years.

59. A reasonable investor would have understood TD's representations throughout the Class Period as ensuring, at the very least, the most elementary compliance with its obligations in light of such egregious facts.

60. The red flags that should have been raised by TD were textbook, and listed in the Federal […] Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual, which should be known and used by the Bank:

> **Appendix F: Money Laundering and Terrorist Financing "Red Flags"**
>
> The following are examples of potentially suspicious activities, or "red flags" for both money laundering and terrorist financing. (…) [Banks'] *Management's primary focus should be on reporting suspicious activities, rather than on determining whether the transactions are in fact linked to money laundering*, terrorist financing, or a particular crime. (…)
>
> **Activity Inconsistent with the Customer's Business**
>
> (…)
>
> • A large volume of cashier's checks, money orders, or funds transfers is deposited into, or purchased through, an account when the nature of the accountholder's business would not appear to justify such activity.
>
> • A retail business has dramatically different patterns of currency deposits from similar businesses in the same general location.
>
> • Unusual transfers of funds occur among related accounts or among accounts that involve the same or related principals.
>
> (…)
>
> **Other Unusual or Suspicious Customer Activity** (…)
>
> • Customer purchases a number of cashier's checks, money orders, or traveler's checks for large amounts under a specified threshold.
>
> (…)
>
> • Deposits are structured through multiple branches of the same bank or by groups of people who enter a single branch at the same time.

> • Currency is deposited or withdrawn in amounts just below identification or reporting thresholds.
>
> (…)
>
> • Customer exhibits unusual traffic patterns in the safe deposit box area or unusual use of safe custody accounts. For example, *several individuals arrive together, enter frequently, or carry bags or other containers that could conceal large amounts of currency*, monetary instruments, or small valuable items.
>
> (…)
>
> • Customer has established multiple accounts in various corporate or individual names that lack sufficient business purpose for the account complexities or appear to be an effort to hide the beneficial ownership from the bank. (…)
>
> [Emphasis added]

as appears from a copy of Appendix F: Money Laundering and Terrorist Financing "Red Flags" to the FFIEC BSA/AML Examination Manual, communicated herewith as **Exhibit P-17**.

61. TD missed all of these red flags.

62. Although TD states that it has terminated compromised employee(s) who had facilitated the drug lords' activities, that is not enough. Banks like TD are supposed to have layers of both electronic and human monitoring and protections in place to avoid violations of the sort, as appears from the video, Exhibit P-10.

63. It is not the Bank's role to determine whether money laundering is in fact occurring, but only to report this type of activity through Suspicious Activity Reports, as appears from the FFIEC BSA/AML Examination Manual, Exhibit P-17. TD failed to comply with this obligation.

64. One expert, Matt McGuire from the AML Shop in Canada, emphatically affirms that TD should have been well set up to capture schemes as simple as the one at hand, as appears from the video, Exhibit P-10.

65. Defendants also violated their "know your customer" obligations <u>which involve verifying the identity of customers and beneficial owners of accounts at account opening, checking the purpose of the accounts, and conducting *continuous monitoring* of accounts to identify and report any suspicious transactions. "Know Your Customer" or KYC procedures constitute a first line of defense against illegal money laundering or terrorist financing.</u>

66. In short, TD's failures are inexcusable, and contrary to Defendants' misrepresentations.

<u>66.1</u> <u>In the wake of the May 2, 2024 WSJ disclosure, Exhibit P-25, some analysts increased their estimate of potential fines against TD from US$1B to US$2B, in addition to highlighting the onerous costs required to correct what now appears as much more severe AML deficiencies than what Defendants had previously let on. Some analysts went so far as to predict that incidental costs associated with TD's illegal AML conduct could amount to three times the amount of the fines. The imposition of limitations on TD's future business operations and balance sheet growth also now appeared as a very real and dire possibility, the whole as appears, *inter alia*, from a Canadian Press article entitled "*TD penalties expected to be higher on alleged Chinese drug money laundering link: analyst*", dated May 3, 2024, […] Exhibit P-</u>

14, and a news video "*How a fentanyl crime ring used a Canadian bank to do business | About That*" dated May 21, 2024, Exhibit P-10.

66.2 In particular, on May 2, 2024, a National Bank of Canada analyst, Gabriel Dechaine, published a report titled "*Toronto-Dominion Bank: The AML plot thickens. Worst-case scenarios need reassessing*", Exhibit P-27, which analyzed the implications of the WSJ article for TD's longer-term prospects. The bulletin stated, in part:

> **U.S. regulatory risks could involve more than a simple fine**
>
> Given the severity of the actions outlined in the WSJ article, we believe that TD could not only face a larger than expected fine, but also regulator-imposed limitations on its business activities. First on the fine, the recently announced US$450 mln regulatory provision (discussed in our April 30th Flash) already made the pre-existing $500 mln-$1 bln expected fine range seem far too low. We believe cumulative fines could easily hit $2 bln. Separately, regulators can issue consent orders that impact TD's day-to-day operations and its financial performance. Of note, consent orders can place limits on the bank's balance sheet growth and could inflate the compliance cost burden beyond what TD has already disclosed. Finally, consent orders can impact a bank's operations for many years (see HSBC U.S.A. circa 2010-2022). In our worst-case scenario analysis, we estimate this issue could erode TD's future earnings potential by over $1 bln. In present value dollars, this figure represents 7% of 2024E consensus EPS.
>
> (…)
>
> **Time to re-assess worst-case scenarios tied to TD's AML issues**
>
> Market expectations of the regulatory penalties/fines related to its AML issues have undoubtedly increased. For starters, the bank's recently disclosed US$450 mln provision made expectations of a $500 mln - $1 bln range of outcomes seem low, considering it was booked for only one regulatory investigation. The bank also faces potential penalties from two other regulators, plus the Department of Justice (DoJ), which has a history of imposing much larger fines. As such, we believe that a total penalty amount of $2 bln is realistic. However, fines alone aren't the only financial consideration.
>
> What could potentially be more impactful to financial performance of TD's U.S. operations are the consent orders that may be imposed by its regulators. As the name suggests, consent orders dictate what a bank needs to do (and what it can't do) in order to address deficiencies in risk management, engagement in unsafe or unsound business practices or other infractions identified by regulators. Typically a consent order requires a bank to take actions such as:
>
> 1) Ceasing and desisting unsound/unsafe practices;
>
> 2) Remedial action aimed at addressing said practices;
>
> 3) Restitution or reimbursement for the cost of said practices; and
>
> 4) *Restrict asset growth and/or modify the business model*.
>
> [Bold in original. Italics added.]

66.3 This report also presented a supposed worst-case scenario (which the future would show was not pessimistic enough) of what TD's AML issues entailed: among other things, TD's problems could take five years to resolve and represent a 7% downside to TD's earnings potential.

66.4 This note generated significant interest in the market and was picked up by several media outlets the next day, on May 3, 2024, as discussed below.

66.5 But the above were not the only partial public corrections to occur on May 2, 2024. That same day, the Canadian anti-money laundering regulator FINTRAC issued a news release titled "*FINTRAC imposes an administrative monetary penalty on The Toronto-Dominion Bank*", Exhibit P-28.

66.6 By this announcement, FINTRAC informed the market that, following a compliance examination in 2023, on April 9, 2024, it imposed an administrative monetary penalty on TD in the amount of $9,185,000 for non-compliance with Part 1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its associated Regulations. That is the largest fine ever imposed in Canadian banking history. Yet, Defendants did not usher a word about it.

66.7 As appears from FINTRAC's statement, Exhibit P-28:

> The Toronto-Dominion Bank was found to have committed the following administrative violations:
>
> - Failure to submit suspicious transaction reports where there were reasonable grounds to suspect that transactions were related to a money laundering or terrorist activity financing offence;
> - Failure to assess and document money laundering/terrorist activity financing risks;
> - Failure to take the prescribed special measures for high risk;
> - Failure to conduct ongoing monitoring of business relationships; and
> - Failure to keep record of the measures taken and information obtained when conducting ongoing monitoring of business relationships.

66.8 This news again shocked the market and was immediately reported by numerous media outlets, as appears, *inter alia*, from several articles dated May 2, 2024 relating to FINTRAC's administrative penalty on TD, communicated *en liasse* herewith as **Exhibit P-29**.

66.9 This commotion obviously caused the price of TD's securities to continue plummeting. For example, on the TSX, TD's shares dropped by another 1.63% on May 2, 2024, as appears from TD's relevant share price history, Exhibit P-39.

(vi) Partial Public Correction No. 6: May 3, 2024

67. Defendant Masrani […] admitted several times that Defendants have committed a fault. This fault has caused the Class Members damages, whether viewed as a misrepresentation case or a 1457 CCQ case.

68. First, in […] an email to TD employees, Defendant Masrani wrote that:

> Simply put, our anti-money laundering program did not deliver. We did not meet our expectations or our regulatory obligations to monitor, detect, report and respond to suspicious activity.

as appears from the video, Exhibit P-10.

69. Second, although TD did allegedly report some of […] the money laundering criminal group's activities, Masrani highlighted that it was "not enough" and TD was "just too slow", as appears from the video, Exhibit P-10.

70. Third, during a leadership call at TD, he acknowledged that:

> [It's] simply appalling that these criminals were able to break through our defenses and it is unacceptable that we were not able to stop them.

as appears from the video, Exhibit P-10.

71. Furthermore, on May 3, […] 2024, TD published the following press release, finally admitting Defendants' fault openly to the market:

> TORONTO, May 3, 2024 /CNW/ - TD Bank Group ("TD" or the "Bank") (TSX: TD), (NYSE: TD), today made the following statement related to media reports about its anti-money laundering (AML) program:
>
> "Criminals relentlessly target financial institutions to launder money and **TD has a responsibility and an obligation to thwart their illegal activity**," said Bharat Masrani, Group President and Chief Executive Officer, TD Bank Group. "**I regret that there were serious instances where the Bank's AML program fell short and did not effectively monitor, detect, report or respond. This is unacceptable** and not in line with our values. As we have previously said, these matters are not in any way related to TD's good faith dealings with our customers."
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> A comprehensive overhaul of TD's U.S. and global AML program is well underway. TD has already invested over $500 million in program remediation and platform enhancements.
>
> The Bank has:
>
> - Hired recognized AML executives with proven leadership from across the private and public sectors.
> - Onboarded hundreds of new AML professionals, with deep expertise in program design, oversight, and execution.
> - Deployed new enterprise-wide training and onboarding programs to improve program performance and consistency.
> - Made significant investments in new technology, processes, and controls to enhance oversight across the enterprise, which have resulted in heightened account monitoring and mandatory reviews, accelerated escalations and new activity prohibitions.
>
> [Emphasis added]

as appears from a May 3, […] 2024 press release entitled "*TD addresses media reports about its AML program"*, […] Exhibit P-18.

71.1 On May 3, 3024, the public continued digesting the potential impact of the revelations concerning TD, including the clear possibility that the fine to be imposed by U.S. regulators could be much higher than previously anticipated, and potentially, in excess of US$ 2 billion. The market was also processing the fact that TD's expansion in the U.S. could possibly be limited, and that the general outlook of TD's business prospects were suddenly not as rosy, as appears, *inter alia*, from May 3, 2024 articles by the Globe and Mail titled "*How TD Bank got caught up in the global drug war, helping to launder hundreds of millions of dollars*", Exhibit P-30, and by the Canadian Press titled "*TD worst-case scenario more likely after drug money laundering allegations: analyst*", Exhibit P-31.

71.2 The Globe and Mail highlighted, in Exhibit P-30, that:

> (…) until Thursday [May 2, 2024], investors and analysts never seemed all that fussed about the outcome [of the U.S. regulators' investigation into TD's AML practices]. The working theory was that TD would pay a fine, but nothing obscene, and its expansion in the United States, its major growth market, would be limited for the near future.
>
> That narrative is now changing – fast. "We believe that TD could not only face a larger than expected fine [which could "easily hit $2-billion"], but also regulator-imposed limitations on its business activities," Gabriel Dechaine, a banking analyst at National Bank Financial, wrote in a note to clients." (…)
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> For months, investors and analysts have wondered if U.S. authorities were concerned about multiple AML breaches at TD over a long period of time, which might soften the financial blow, or if there was a new, major event that would result in much tougher enforcement. The revelation of TD's involvement in a major money laundering operation that spanned three states –New York, New Jersey and Pennsylvania – suggests the latter. (…)
>
> Until this week, TD had said little about its AML deficiencies and about what it was doing to remedy the problem, but on Friday chief executive Bharat Masrani used more forceful language in a statement. Not only did he acknowledge serious issues, he added: "Criminals relentlessly target financial institutions to launder money and TD has a responsibility and an obligation to thwart their illegal activity."

72. The market reacted dramatically to the discovery of this new information, which had been misleadingly omitted from Defendants' previous disclosures. For example, just on May 3, 2024, TD's share price materially dropped by 5.84% on the TSX. And between May 1 and 3, 2024, TD's stock price on the TSX dropped 8.59%, which is material.

(vii) Partial Public Correction No. 7: October 10, 2024

72.1 The full extent of the penalties imposed on TD in connection with the various regulatory charges laid against it in the U.S., as well as the extreme severity and egregiousness of its systemic failures, were finally revealed to the market on October 10, 2024.

72.2 On that date, TD pleaded guilty to (a) conspiring to fail to maintain an AML program that complies with the *Bank Secrecy Act*, (b) failing to file accurate Currency Transaction Reports (CTRs), and (c) laundering money, as appears, *inter alia*, from a statement released by the DOJ on October 10, 2024 titled "*TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in $1.8B Resolution*", Exhibit P-32, and from the guilty pleas of TD Bank N.A. and its parent company, TD Bank US Holding Company, Exhibit P-33 *en liasse*.

72.3 TD's guilty pleas are part of a coordinated resolution with the Board of Governors of the Federal Reserve Board (FRB), the Treasury Department's Office of the Comptroller of the Currency (OCC) and Financial Crimes Enforcement Network (FinCEN).

72.4 Pursuant to the plea agreements, TD is to pay a total of US$ 3.09 billion in penalties. The DOJ obtained the lion's share with US$ 1.8 billion, FinCEN got US$1.3 billion, and the OCC, US$ 450 million. FinCEN's $1.3 billion settlement is the largest civil penalty against a bank in the Treasury's history. In addition to these monetary penalties, several limits were also imposed on TD's business, discussed below and as appears, *inter alia*, from an October 10, 2024 WSJ article titled "*TD Bank Agrees to $3 Billion in Penalties and Growth Restrictions in U.S. Settlement*", Exhibit P-34.

72.5 In commenting TD's guilty pleas, the U.S. Attorney General Merrick B. Garland stated that "**By making its services convenient for criminals, TD Bank became one**." He added that "Today, TD Bank also became the largest bank in U.S. history to plead guilty to Bank Secrecy Act program failures, and the first US bank in history to plead guilty to conspiracy to commit money laundering. TD Bank chose profits over compliance with the law — a decision that is now costing the bank billions of dollars in penalties. Let me be clear: our investigation continues, and no individual involved in TD Bank's illegal conduct is off limits" [Emphasis added], as appears from the DOJ announcement, Exhibit P-32.

72.6 The DOJ announcement, Exhibit P-32, added that:

> "**For years, TD Bank starved its compliance program of the resources needed to obey the law**. Today's historic guilty plea, including the largest penalty ever imposed under the Bank Secrecy Act, offers an unmistakable lesson: crime doesn't pay — and neither does flouting compliance," said Deputy Attorney General Lisa Monaco. "**Every bank compliance official in America should be reviewing today's charges as a case study of what not to do**. And every bank CEO and board member should be doing the same. Because if the business case for compliance wasn't clear before — it should be now."
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> "**For nearly a decade, TD Bank failed to update its anti-money laundering compliance program to address *known* risks**. As bank employees acknowledged in internal communications, these failures made the bank an 'easy target' for the 'bad guys.' These failures also allowed corrupt bank employees to facilitate a criminal network's laundering of tens of millions of dollars," said Principal Assistant Attorney General Nicole M. Argentieri, head of the Justice Department's Criminal Division. "U.S. financial institutions are the first line of defense against money laundering and illicit finance. When **they participate in crime rather than prevent it**, we will not hesitate to hold them accountable to the fullest extent of the law."
>
> "TD Bank prioritized growth and convenience over following its legal obligations," said U.S. Attorney Philip R. Sellinger for the District of New Jersey. "**As a result of staggering and pervasive failures in oversight, it *willfully* failed to monitor trillions of dollars of transactions** –including those involving ACH transactions, checks, high-risk countries, and peer-to-peer transactions – which allowed hundreds of millions of dollars from money laundering networks to flow through the bank, including for international drug traffickers. ***The bank was aware of these risks* and failed to take steps to protect against them**, including for two networks prosecuted in New Jersey and elsewhere – one that dumped piles of cash on the bank's counters and another that allegedly withdrew amounts from ATMs 40 to 50 times higher than the daily limit for personal accounts."
>
> According to court documents, between January 2014 and October 2023, TD Bank had **long-term, pervasive, and *systemic* deficiencies in its U.S. AML policies, procedures, and controls but failed to take appropriate remedial action**. **Instead, senior executives at TD Bank enforced a budget mandate**, referred to internally as a "flat cost paradigm," requiring that TD Bank's budget not increase year-over-year, despite its profits and risk profile increasing significantly over the same period. **Although**

TD Bank maintained elements of an AML program that appeared adequate on paper, fundamental, *widespread* flaws in its AML program made TD Bank an "easy target" for perpetrators of financial crime.

Over the last decade, TD Bank's federal regulators and TD Bank's own internal audit group *repeatedly* identified concerns about its transaction monitoring program, a key element of an appropriate AML program necessary to properly detect and report suspicious activities. Nonetheless, from 2014 through 2022, TD Bank's transaction monitoring program remained effectively static, and **did not adapt to address known, glaring deficiencies; emerging money laundering risks**; or TD Bank's new products and services. **For years, TD Bank failed to appropriately fund and staff its AML program, opting to postpone and cancel necessary AML projects** prioritizing a "flat cost paradigm" and the "customer experience."

Throughout this time, TD Bank *intentionally* did not automatically monitor all domestic automated clearinghouse (ACH) transactions, most check activity, and numerous other transaction types, **resulting in 92% of total transaction volume going unmonitored from Jan. 1, 2018, to April 12, 2024**. This amounted to **approximately $18.3 trillion of transaction activity**. TD Bank also added no new transaction monitoring scenarios and made no material changes to existing transaction monitoring scenarios from at least 2014 through late 2022; implemented new products and services, like Zelle, without ensuring appropriate transaction monitoring coverage; failed to meaningfully monitor transactions involving high-risk countries; **instructed stores to stop filing internal unusual transaction reports on certain suspicious customers**; and permitted more than $5 billion in transactional activity to occur in accounts even after the bank decided to close them.

TD Bank's AML failures made it "convenient" for criminals, in the words of its employees. These failures enabled three money laundering networks to collectively transfer more than $670 million through TD Bank accounts between 2019 and 2023. Between January 2018 and February 2021, one money laundering network processed more than $470 million through the bank through large cash deposits into nominee accounts. The operators of this scheme provided employees gift cards worth more than $57,000 to ensure employees would continue to process their transactions. And even though the operators of this scheme were clearly depositing cash well over $10,000 in suspicious transactions, TD Bank employees did not identify the conductor of the transaction in required reports. In a second scheme between March 2021 and March 2023, a high-risk jewelry business moved nearly $120 million through shell accounts before TD Bank reported the activity. In a third scheme, money laundering networks deposited funds in the United States and quickly withdrew those funds using ATMs in Colombia. Five TD Bank employees conspired with this network and issued dozens of ATM cards for the money launderers, ultimately conspiring in the laundering of approximately $39 million. The Justice Department has charged over two dozen individuals across these schemes, including two bank insiders. TD Bank's plea agreement requires continued cooperation in **ongoing investigations of individuals**.

As part of the plea agreement, TD Bank has agreed to forfeit $452,432,302.00 and pay a criminal fine of $1,434,513,478.40, for a total financial penalty of $1,886,945,780.40. TD Bank has also agreed to retain an independent compliance monitor for three years and to remediate and enhance its AML compliance program. TD Bank has separately reached agreements with the FRB, OCC, and FinCEN, and the Justice Department will credit $123.5 million of the forfeiture toward the FRB's resolution.

The Justice Department reached its resolution with TD Bank based on a number of factors, including the **nature, seriousness, and pervasiveness of the offenses, as a result of which TD Bank became the bank of choice for multiple money laundering organizations and criminal actors** and processed hundreds of millions of dollars in money laundering transactions. Although **TD Bank did *not* voluntarily disclose its**

wrongdoing, it received partial credit for its strong cooperation with the Department's investigation and the ongoing remediation of its AML program. TD Bank did not receive full credit for its cooperation because it failed to timely escalate relevant AML concerns to the Department during the investigation. Accordingly, the total criminal penalty reflects a 20% reduction based on the bank's partial cooperation and remediation. (…)

[Emphasis added]

72.7 These shocking and egregious revelations caused havoc in the market and were extensively covered by numerous media outlets.

72.8 For example, a CBC News article dated October 10, 2024 titled "*TD Bank fined $3B US after pleading guilty in historic U.S. money-laundering case*", Exhibit P-35, stated that:

"TD has been ordered to pay a total of $3.09 billion US in fines after pleading guilty to multiple charges, including conspiracy to violate the Bank Secrecy Act and commit money laundering.

The bank has also received a **cease-and-desist order** and non-financial sanctions from the Office of the Comptroller of the Currency (OCC), including an **asset cap that put limits on its growth in the U.S.** after it was found that TD had "significant, systemic breakdowns in its transaction monitoring program."

U.S. Attorney General Merrick Garland said TD created an environment "that allowed financial crime to flourish."

(…)

Bharat Masrani, CEO of TD Bank Group, said in a statement that the bank has "taken full responsibility," and will be making "the investments, changes and enhancements required to deliver on our commitments."

"This is a difficult chapter in our bank's history. These failures took place on my watch as CEO and **I apologize to all our stakeholders**."

Enormous deposits, years of suspicious activity, little action

For years, TD Bank "willfully" failed to monitor transactions properly, leaving gaping holes that allowed millions of dollars to flow through the bank, the DOJ revealed.

One money-laundering network "dumped piles of cash on the bank's counters," while another another (sic) "allegedly withdrew amounts from ATMs 40 to 50 times higher than the daily limit for personal accounts," U.S. Attorney Philip R. Sellinger for the District of New Jersey said in a statement.

In another money-laundering scheme, one TD Bank employee, identified as "David," moved more than $470 million dollars in illicit funds through TD Bank branches in the U.S. This individual, who has separately pled guilty to laundering drug proceeds through the bank, Garland said, found that "**TD Bank had the most permissive policies and procedures, and so chose to launder most of his funds there**."

On one occasion, David deposited more than $1 million US in cash in a single day, then moved the funds out of the bank using official bank cheques and wire transfers. More than $57,000 US in gift cards was provided to other bank employees as bribes.

Many employees were aware of the probable illegality of these actions.

> **In August 2021, a TD Bank store manager sent an email to another store manager, commenting, "You guys really need to shut this down. Lol,"** Garland said. On another occasion, **a store manager implored their supervisor to do something, stating that their tellers didn't feel comfortable handling the suspicious transactions**.
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> **TD Bank's own internal audit group repeatedly highlighted concerns** about the bank's transaction monitoring program between 2014 and 2022, according to the DOJ, **but the program remained largely stagnant** nonetheless, suffering with chronic underfunding and understaffing. (…)
>
> ***TD Bank to restructure, undergo monitoring***
>
> The bank has agreed to a major restructuring of their anti-money-laundering program, as well as three years of monitoring and five years of probation. The implementation of any new programs or services in their U.S. branches will have to go through more stringent approval processes as well, as ordered by the OCC.
>
> The asset cap placed on TD Bank by the [U.S.] Office of the Comptroller of the Currency will not apply to any of the bank's business in Canada or other countries. But it will curtail growth within the U.S., where TD is the 10th largest bank.
>
> Richard Powers, an associate professor at the Rotman School of Management at the University of Toronto, told CBC News prior to the ruling's announcement that approximately 25 per cent of TD's revenue comes from its U.S. operations.
>
> "They've been growing through acquisition," he said. "If that is put on hold or if that has restrictions put on it, how do they maintain that growth?"
>
> Last month, the bank announced that Raymond Chun would replace **Masrani** upon his retirement next year. The outgoing chief executive **said at the time that he took responsibility for shortcomings that occurred under his watch**, and echoed those sentiments on a conference call with investors and media on Thursday.
>
> **"We should have done better,"** he said on the call. "We know what the issues are, we are fixing them as we move forward. We're ensuring that this never happens again."
>
> [Titles in italics were bolded in original. Other bold added.]

72.9 These appalling revelations corrected Defendants' misrepresentations during the Class Period, exposed the severity of Defendants' failures, and informed TD's shareholders of the consequences of Defendants' pervasive violations.

72.10 The market reacted very strongly to this last partial Public Correction. For instance, TD's shares on the TSX dropped 6.14% in just one day on October 10, 2024, and continued plummeting by another 4.01% on October, 11, 2024, as appears from a copy of TD's share price on the TSX during the Class Period, Exhibit P-39. This drop is material.

72.11 Throughout the Class Period, each partial Public Correction had a significant negative impact on the price and value of TD's securities, and collectively, the impact of the entire Public Correction was undeniably material.

C. Related Misrepresentations Were Also Publicly Corrected

72.12 The foregoing misrepresentations constitute the central pillars of the proposed class action. Parsing the Defendants' misrepresentations further is not required and would not be a judicious use of judicial resources.

72.13 That said, should the Court require even greater specificity regarding related misrepresentations, Defendants made related misrepresentations during the Class Period, for which they are also liable. For instance, they failed to disclose that TD was facing regulatory investigations, thereby failing to adequately inform the public of the risks for TD's future business, including its expansion plans in the U.S. They also made accounting misrepresentations.

(i) Failure to Disclose that TD Was Facing Regulatory Investigations

72.14 Since at least November 2022, Defendants knew or should have known that TD was under investigation by multiple law enforcement agencies in the United States. TD had, *inter alia*, attended meetings with the U.S. Federal Reserve and the OCC, which had informed Defendants that they and the DOJ were investigating the Bank and had found deficiencies in TD's AML practices, as discussed above, and as appears in the January 8, 2024 Capitol Forum article, Exhibit P-24. At that time, Defendants nevertheless failed to inform the public, including TD's own shareholders, of these investigations. As mentioned above, they also failed to adequately inform them of the risks associated with TD's AML controls.

72.15 In addition, Defendants failed to inform the public of the risks these investigations posed, *inter alia*, to (a) TD's U.S. expansion plans, including (but not limited to) TD's merger with First Horizon and subsequent expansion projects, (b) its reputation, (c) its financial position (due to required internal adjustments, potential fines, possible litigation costs, and potential other expenses), and (d) its overall business.

72.16 Not only did Defendants not warn investors of the risks TD was facing, they also actively sought to hide these risks. For instance, during TD's Q4 2022 earnings call held on December 1, 2022 – just days after TD's November 2022 meeting with regulators -, Defendants were asked if regulators were "taking a closer look at anything" in the context of their analysis of the First Horizon acquisition. Defendant Masrani misleadingly responded: "*No, I'm not aware of anything of the sort you're mentioning*", as appears from the transcript of TD's Q4 2022 earnings call, communicated herewith as **Exhibit P-41**, at p. 13-14.

72.17 The fact that TD was under regulatory scrutiny and/or that regulators had identified deficiencies in TD's AML processes was material information that should have been disclosed to investors. Defendants waited until August 24, 2023 to finally admit that TD was the object of "formal and informal inquiries from regulatory authorities and law enforcement", as discussed above and as appears from Exhibit P-23. The subsequent partial public corrections revealed the full extent of these investigations and their consequences.

72.18 It should be noted that this misrepresentation directly benefited the Individual Defendants. At TD's Annual Meeting held on April 20, 2023, just weeks before it was finally announced the First Horizon deal would not close, TD's shareholders approved millions of dollars of additional compensation for executives, including defendants Masrani and Tran, for their role in facilitating the First Horizon Merger, as appears, *inter alia*, from a copy of TD's Notice of 2023 annual meeting of common shareholders and management proxy circular, communicated herewith as **Exhibit P-42**.

72.19 Defendants should normally also have been made aware of Canadian regulator FINTRAC's investigation of 2023, to which TD would have participated. Yet, again, Defendants mentioned nothing at the time.

(ii) Accounting Misrepresentations

72.20 In each of TD's Class Period financial statements, included in its annual reports, Exhibit P-5 *en liasse*, Defendants misrepresented that the Bank's financial reporting complied with all applicable accounting standards.

72.21 Throughout the Class Period, TD recorded significant goodwill associated with its U.S. business, based on the assumption that its expansion in America would generate significant further business growth, revenue, and cash flows. But the undisclosed regulatory and DOJ investigations and indictments, combined with the failure of the transaction with First Horizon, were significant impairment indicators which would have required a write-down on the value of the assets and goodwill related to this business. TD also recorded significant goodwill related to its Canadian business that should also have been written down during the Class Period. Those write-downs were not taken, which resulted, during the Class Period, in an overstatement of the value of TD's assets on its balance sheets.

72.22 Alternatively, or in addition thereto, Defendants should have recorded a larger provision during the Class Period to reflect the increasing and material risk that regulatory sanctions would negatively impact TD's business and income, due to its AML deficiencies.

D. Defendants' Knowledge of the Misrepresentations During the Class Period

72.23 Pursuant to section 225.13 of the QSA and paragraph 53 of the decision rendered in *Nseir* v. *Barrick Gold Corporation*, 2022 QCCA 1718, in the case at hand, the Plaintiff does not need to allege nor prove that Defendants knew their representations were misleading at the time they were made, for the purposes of the statutory secondary market claim.

72.24 Be that as it may, in fact, Defendants did know or ought to have known of the misleading nature of their representations at the time they were made.

72.25 The revelations of October 10, 2024 discussed at paragraphs 72.2 to 72.11 above leave little doubt that Defendants knew, throughout the Class Period, that TD's AML controls were highly inadequate. All of the U.S. regulators discussed above came to the same conclusion, after thorough investigations into TD's affairs: Defendants "*willfully*", *knowingly*, and "*intentionally*" failed to monitor suspicious transactions in the hope of increasing TD's bottom line. The regulators concluded that TD's "*serious*" and "p*ervasive*" violations were "*systemic*" and "*widespread*". They reported that TD's Audit Committee had concerns during the Class Period and that these concerns were not addressed. They highlighted that TD's employees, throughout the Class Period, knew of TD's AML violations, and, at times, tried to convince their superiors to put an end to this. Defendant Masrani admitted TD's violations and apologized to TD's stakeholders. TD also admitted its AML violations in guilty pleas, Exhibit P-33 *en liasse*. Commenting these pleas, the Attorney General of the United States insisted that TD was a criminal, as further discussed in the DOJ announcement of October 10, 2024, Exhibit P-32, and related media reports, Exhibits P-34 and P-35.

72.26 This compelling October 10, 2024 evidence should suffice to dispose of any question relating to Defendants' knowledge during the Class Period.

72.27 That said, if the Court requires additional evidence, the Plaintiff states that, as detailed above, Defendants knew, as of the beginning of the Class Period, that TD's AML processes were inadequate.

72.28 In November 2022, U.S. regulators explicitly informed TD at a meeting that they had found deficiencies in TD's AML processes.

72.29 Prior to this, on June 3, 2022, the Cullen Commission[1] issued its final report singling out TD as the worst money laundering offender with the worst AML procedures by far among the six largest banks in Canada.

72.30 Even before then, throughout the Class Period, Defendants were aware of numerous criminal charges against several of TD's employees relating to money laundering. Individually or collectively, these prosecutions should have alerted TD to an ongoing and systemic problem, and prompted them to tailor their disclosures accordingly.

72.31 According to the Globe and Mail, just two of these criminal prosecutions should be enough for one to conclude that TD's AML violations were systemic, but, as discussed below, there were many more instances during the Class Period, which TD was aware of.

> In January [of 2024], for instance, there were reports that the U.S. Drug Enforcement Administration filed a criminal complaint alleging a TD employee at a New Jersey branch accepted bribes and helped to shuttle millions of dollars in drug-trafficking proceeds from the U.S. to Colombia through accounts linked to shell companies. However, it wasn't clear if this was a one-off, or part of a systemic problem.
>
> The uncertainty was finally lifted Thursday with the revelation of TD's role in Mr. Sze's operation. (…)

as appears from the Globe and Mail May 3, 2024 article titled "*How TD Bank got caught up in the global drug war, helping to launder hundreds of millions of dollars*", Exhibit P-30.

72.32 The criminal charges laid on TD employees alleging money laundering during the Class Period include (without limitation) the following:

(i) The criminal charges in the case *USA* v. *Da Zing Sze* were laid on May 6, 2021, as appears from the criminal complaint, Exhibit P-15. On or about May 20, 2021, law enforcement agencies seized cheques deposited into TD accounts by Sze and/or his co-conspirators. Therefore, as of at least that date, Defendants knew of the existence of this serious criminal prosecution. And as of Mr. Sze's guilty plea of February 22, 2022, Exhibit P-16, Defendants undeniably knew that TD had been instrumental in facilitating

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[1] On May 15, 2019, the British Columbia provincial government set up a Commission of Inquiry into Money Laundering, headed by the Honourable Austin F. Cullen (the "**Cullen Commission**") to investigate money laundering in the real estate, gaming (casino), luxury goods, and corporate sector. The Cullen Commission investigated hundreds of millions of dollars that had been laundered in British Columbia between 2018 and 2021. In its final report, issued on June 3, 2022, the Cullen Commission singled out TD as the worst money laundering offender with the worst AML procedures by far among the six largest banks in Canada. It stated that it was "*surprised*" and "*troubled*" by TD's delay in "*address[ing] money laundering vulnerability flagged by law enforcement*". The report specifically criticized TD for being the only large Canadian bank that failed to implement basic AML controls to detect and prevent money laundering. It also noted that "*senior management in TD's anti-money laundering unit*" were "*aware by at least May 2019 [prior to the start of the Class Period] that their bank was the single largest source of bank drafts flagged as suspicious*" by Canadian authorities dating back to 2018. The Commission further observed that even though TD executives were "*aware that TD risked being out of step with its peers if it did not take action to reduce the anonymity of its drafts*", it delayed in implementing changes for over a year later, and even then only after the Commission's counsel wrote the bank a letter pressuring it to do so, the whole as appears from the Cullen Commission's final report, issued on June 3, 2022, communicated herewith as **Exhibit P-43**.

the laundering of staggering amounts of illicit fentanyl proceeds on behalf of Chinese money-brokers tied to Mexican drug cartels;

(ii) On February 24, 2023, Diape Seck, another TD employee, was convicted of conspiracy to commit bank fraud, among other offences. Between January 2019 and January 2020, Diape Seck and his co-conspirators opened approximately 412 TD chequing accounts, relying on purported Romanian passports and drivers license information. Seck and his associates deposited cheques payable to religious institutions into many of these TD accounts. After the jury found Mr. Seck guilty of conspiracy to commit bank fraud, the federal judge overseeing the trial determined that Mr. Seck was entitled to a mitigation under the sentencing guidelines because of TD's complicity in failing to uncover and stop the fraud. As the judge (Justice Chuang) recognized at Mr. Seck's sentencing hearing in June 2023, the Bank's senior leadership had all the information necessary to identify and put a stop to the fraud, but consciously chose not to do so in order to inflate its bottom line. The judge stated that "*the TD Bank people either were asleep at the switch or they were happy that they were getting these accounts*." "*There is something very troubling about tagging Mr. Seck with the full brunt of a Draconian sentence for his conduct in treating TD Bank as the victim of a fraud perpetrated by him when it was apparent from the evidence that* ***the leadership of TD Bank had sufficient information to uncover this fraud and the tools to put a stop to it, but it let it continue****. One need look no further than the fact that while the bank branch manager basically allowed this to continue, Mr. Thompson, a different employee at a different bank, upon looking at some records, pretty quickly figured out what was going on. With the most likely explanation being that the branch leadership likely, like Mr. Seck, preferred to have the statistics associated with opening all these accounts credited to them and the dollar amounts associated with that rather than trying to uncover the fraud*" [Emphasis added], as appears, *inter alia*, from the DOJ announcements relating to this case, and from the relevant Court documents, communicated *en liasse* herewith as **Exhibit P-44**;

(iii) Another example of TD's inadequate AML controls leading to a criminal prosecution was summarized as follows in a January 9, 2024 article from the Globe & Mail, Exhibit P-40: "In the Department of Justice case, former [TD] branch employee Oscar Marcelo Nunez-Flores was charged in October [2023] with allegedly helping create shell companies and issuing dozens of debit cards, allowing individuals in Colombia to withdraw laundered money. Investigators allege in a court filing that Mr. Nunez accepted bribes to give people online access to the accounts, along with dozens of debit cards that were used to withdraw cash from ATMs in Colombia. He allegedly received thousands of dollars in bribes for each account he opened. The probe found that millions of dollars were laundered to Colombia through accounts opened by Mr. Nunez since early 2022"; and

(iv) TD's AML significant failures led to yet another case filed against a TD employee during the Class Period, in March 2024, summarized as follows by Bloomberg: "The US case against Aquino Vargas, whom the government alleges was paid at least [US]$5,600 by a Colombian client and also boasted that he'd helped Venezuelans, Israelis, Bolivians and Peruvians use Toronto-Dominion accounts to skirt US rules, was filed in March. TD Bank, as the lender's US unit is known, is referred to only as "Financial Institution-A" in court documents. Hodgins [the Bank's spokesperson] said TD fired Aquino Vargas." TD also reports having dismissed Gomes, Nunez, more than a dozen people who worked with retail client, and close to ten senior leaders in compliance and legal roles for their failures and AML violations, the whole as appears from the June 3, 2024 Bloomberg article titled "*TD's Bribery Woes Spread to Florida as Fresh Allegations Surface*", communicated herewith as **Exhibit P-45**. If TD has already fired Mr. Vargas because of the issues described herein, it has knowledge of these issues.

72.33 Despite all these elements, taken individually or together, Defendants did not utter of word of the significant risks (including business risks and reputational risks) TD was facing due to its clear AML control deficiencies. On the contrary, during the Class Period, they boasted TD's controls and compliance in this regard. That is not in line with their "*bon père de famille*" obligations under a. 1457 of the CCQ, and it is a clear violation of the QSA and the other Securities Legislation.

E. Individual Defendants' Misrepresentations

73. Specifically, TD's directors and officers failed to disclose material information regarding TD's business, as required by the QSA, other Securities Legislation, and their general civil liability obligations.

74. The Individual Defendants knew or ought to have known, at the time that each of the Impugned Statements was released, that they contained misrepresentations.

75. Yet they certified all interim and annual financial statements and MD&As filed (the "**Filings**") during the Class Period attesting to the veracity and fair representation of all material facts presented in the Filings, as appears from Exhibits P-1 and P-2 (*en liasse*).

76. More particularly, for the period during which they were in function, they certified that:

i) they reviewed the Filings;

ii) the Filings did not contain any untrue statements of material facts or omitted to state a material fact required to be stated or that was necessary to make a non-misleading statement in light of the circumstances under which it was made;

iii) the Filings fairly represented in all material respects the financial condition, performance and cash flows of TD;

iv) they were responsible for establishing and maintaining disclosure controls and procedures as well as internal control over financial reporting;

v) they have designed, or caused to be designed under their supervision, disclosure controls and procedures to provide reasonable assurance that all material information relating to TD is made known to them and that information required to be disclosed by TD in its Filings or any other document submitted under a securities legislation is recorded, processed, summarized, and reported;

vi) they have designed, or caused to be designed under their supervision, internal control over financial reporting, to provide reasonable assurance regarding the reliability of financial reporting and the preparation specified in securities legislation; and

vii) they have evaluated, or caused to be evaluated under their supervision, the effectiveness of TD's disclosure controls and procedures as well as internal control over financial reporting at the financial year-end and that TD has disclosed their conclusions regarding effectiveness in its annual MD&A.

77. The Individual Defendants also authorized, permitted or consented to the release and publication of the Impugned Statements, during the Class Period, which contained misrepresentations.

F. The Relationship between the Misrepresentations and the Price and Value of TD's Securities

78. The Class relied on Defendants for accurate information about the Bank's business, operations, earnings, revenues, risks, and internal controls, which Defendants failed to adequately provide.

79. The price and value of TD's securities were directly affected each time that Defendants disclosed (or omitted to fully and timely disclose) material facts about TD's business, finances, risks, and operations, including their lack of compliance with ASM regulations.

80. At all material times, Defendants were aware or should have been aware of the effect of TD's disclosures about its business, finances, risks, and operations, including the severity of TD's lack of compliance with AML regulations, and its impact on TD's cash on hand, investments, policies, future sales, future revenue prospects, revenue growth percentages, compensation of insiders and management, and the number of TD's issued and outstanding securities, on the price of the Bank's publicly-traded securities.

81. The members of the Class, including the Plaintiff, relied on Defendants' disclosures, to their detriment.

82. The disclosure documents referred to herein were filed with SEDAR and/or EDGAR and/or posted to TD's website or other websites, and thereby became immediately available to and were reproduced for inspection for the benefit of the Plaintiff and the other members of the Class, the public, financial analysts, and the financial press through the internet and financial publications.

83. The price at which TD's securities traded on the TSX, and the price at which primary market securities were acquired, incorporated the information contained in the disclosure documents and statements referred to herein, including (without limitation) information about TD's compliance with ASM regulations.

V. RIGHTS OF ACTION

84. The Plaintiff asserts three rights of action against Defendants:

(a) A statutory right of action for misrepresentation in a secondary market (s. 225.4 *et seq.* QSA);

(b) A statutory right of action for misrepresentation in a primary market (s. 217 *et seq.* QSA); and

(c) A civil liability action (s. 1457 CCQ).

A. Statutory Right of Action for Misrepresentation in a Secondary Market Claim

85. Defendants' statements and omissions were materially false and misleading since they failed to disclose material adverse information and misrepresented the truth about TD's business.

86. As a result of these misrepresentations, the Plaintiff asserts a right of action under s. 225.8 *et seq.* of the QSA and, if necessary, the concordant provisions of other Securities Legislation, on behalf of all Class Members against Defendants.

87. TD is registered to do business in Québec, has thousands of employees in Québec, operates dozens if not hundreds of branches in Québec, and routinely markets itself to investors in Québec to raise capital.

88. TD is a reporting issuer in Québec under s. 68 of the QSA, as appears from an extract from the AMF's Reporting Issuers List, communicated herewith as **Exhibit P-19**.

89. TD's securities were issued from Québec, and distributed in Québec and throughout the world.

90. The secondary market claim against Defendants is asserted in respect of all Impugned Statements which contained the misrepresentations alleged herein.

91. Defendants knew that the Impugned Statements would be reviewed in Québec and throughout the world, by analysts, capital markets and the general public who would rely on these documents to make informed financial decisions.

92. The monetary damages suffered by the Plaintiff and Class Members are a direct result of Defendants' misrepresentations, which artificially-inflated the price of TD's securities.

93. Defendants authorized, permitted or acquiesced to the dissemination of false and misleading information in Québec and throughout the world, which they should have known was false and misleading at the relevant time, thus violating the QSA and concordant provisions of other Securities Legislation.

94. The Individual Defendants were officers and/or directors of TD during the release and publication of the Impugned Statements and, as such, were privy to TD's practices, shortcomings, as well as the Bank's finances, operations, prospects, and all documents filed in accordance with the applicable Securities Legislation.

95. At all relevant times during the Class Period, Defendants authorized, permitted or acquiesced to the release and publication of the Impugned Statements, which they knew or ought to have

known contained false or misleading information.

B. Statutory Right of Action for Misrepresentation in a Primary Market Claim

96. TD raised equity in Québec and throughout the world during the Class Period.

(i) Common Shares Offering Pursuant to TD's Dividend Reinvestment Plan (DRIP)

96.1 During the Class Period, TD issued its common shares to residents of Canada and the United States through a DRIP, pursuant to which existing holders of TD common shares reinvested cash dividends earned on their shares to purchase additional common shares of TD from its treasury, as appears, *inter alia*, from TD's 2021 annual report (at page 66 of its MD&A included therein, and at pages 137, 195-196), and TD's 2022 and 2023 annual reports, Exhibit P-5 *en liasse*.

96.2 These TD common shares were offered to Canadian residents via TD's DRIP Offering Circular effective February 20, 2002, its Short Form Base Shelf Prospectus dated January 4, 2021, and its Short Form Base Shelf Prospectus dated March 1, 2023, communicated *en liasse* herewith as **Exhibit P-46**.

96.3 As appears from the January 4, 2021 and March 1, 2023 prospectuses, they incorporated by reference several of the documents that contained the misrepresentations detailed herein, including, for instance, TD's 2021, 2022, and 2023 MD&As, annual financial statements, MICs, and AIFs, and all of TD's interim financial statements filed during the Class Period.

96.4 TD's CEO and its CFO at the relevant time signed certificates certifying that these prospectuses, and the documents incorporated therein by reference, constituted "full, true, and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s)", as appears from the prospectuses, respectively at pages 15 and 16. This was a misrepresentation.

96.5 The DRIP Offering in the U.S. was made pursuant to TD's prospectus dated February 21, 2002, its prospectus supplement no. 8 dated August 27, 2020, its prospectus supplement no. 9 dated May 26, 2022, and its prospectus supplement no. 10 dated May 25, 2023, communicated *en liasse* herewith as **Exhibit P-47**.

96.6 Again, the 2002 prospectus incorporated by reference several of the documents that contain the misrepresentations detailed herein, including, for instance, TD's 2021, 2022, and 2023 annual reports (including MD&As), Exhibit P-5 *en liasse*. The subsequent prospectus supplements did not correct these misrepresentations.

(ii) Preferred Shares Offering Pursuant to a Prospectus Supplement

96.7 Under the March 29, 2022 prospectus supplement to the January 4, 2021 prospectus, TD issued 850,000 non-cumulative five-year fixed rate reset preferred shares at $1,000 per share, for an aggregate amount of $850 million, as appears from the March 29, 2022 prospectus supplement, communicated herewith as **Exhibit P-48**.

96.8 This prospectus supplement incorporated by reference several of the documents that contain the misrepresentations detailed herein, including, for example, TD's 2021 annual financial statements, annual report (including its annual MD&A), and AIF, its Q1 2022 MD&A and financial statements, and 2022 MIC.

(iii) <u>Senior Medium Term Notes Offering Pursuant to a Preliminary Short Form Base Shelf Prospectus</u>

<u>96.9</u> <u>TD offered and distributed senior medium term notes for an aggregate principal amount of up to five billion dollars, to be issued with 25 months from July 22, 2022, pursuant to its Preliminary Short Form Base Shelf Prospectus dated July 22, 2022, communicated herewith as **Exhibit P-49**.</u>

<u>96.10</u> <u>This prospectus incorporated by reference documents that contained the misrepresentations described herein, including, *inter alia*, TD's 2021, 2022, 2023 annual financial statements, MD&A, MIC, and AIF, and all TD interim financial statements filed after July 22, 2022.</u>

97. <u>TD's CEO and CFO at the relevant time signed the certificate at the end of the prospectus certifying that this prospectus and the documents incorporated therein by reference constituted "full, true, and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s)". This was a misrepresentation</u> […].

98. On behalf of all members of the Primary Market Sub-Class, the Plaintiff asserts, as against all Defendants, the right of action found in sections 217 et seq. of the QSA, and, if necessary, the concordant provisions of other Securities Legislation.

C. Civil Liability Right of Action

99. The Plaintiff asserts a civil right of action under art. 1457 of the CCQ, on behalf of himself and all Class Members, against Defendants for breach of their "*bon père de famille*" obligations, including their obligations to act reasonably and with prudence and diligence, owed to all Class Members.

100. TD's acts particularized herein were authorized, ordered and effected by the Individual Defendants, as well as other officers, agents, employees and representatives who were engaged in the management, direction, control and transaction of TD's business, finances, and operations and are, therefore, acts and omissions for which TD is vicariously and solidarily liable.

101. Defendants did not fulfill the legal obligations warranted by their relationship with the Class Members as required by law.

102. The Plaintiff and Class Members relied on Defendants' Impugned Statements, and they believed <u>that their public filings and statements to the public were complete and accurate.</u> They believed <u>Defendants' representations that</u> TD was complying with all applicable laws and regulations in the conduct of its business affairs and appropriately managing its reputational and other risks.

103. Moreover, the Plaintiff and the Class would not have acquired TD securities had they known it was fostering, fomenting and/or turning a blind eye to an environment allowing and encouraging money laundering and illegal activity.

104. The Plaintiff and the Class would not have acquired TD's securities or would not have acquired them at inflated prices had […] <u>they</u> been aware of Defendants' misrepresentations.

105. […] <u>Defendants'</u> misrepresentations were material.

106. The Plaintiff and Class Members acquired TD's securities at artificially-inflated prices during the Class Period, held those securities until after […] partial Public Corrections and suffered damages as a direct and immediate result of the misrepresentations affecting TD's securities.

D. No Safe Harbor

107. The statutory defence provided for by s. 225.22 and 225.23 of the QSA regarding forward-looking information in a document does not apply to any false and misleading statements alleged in the present claim since these statements relate to then-existing facts and conditions.

108. Defendants knew or should have known that their statements were misleading at the time they were made.

VI. THE CRITERIA OF ARTICLE 575 CCP

A. The Facts Alleged Appear to Justify the Conclusions Sought (art. 575 (2) CCP)

109. The QSA, the Securities Legislation, national instruments including NI 51-102, NI 52-109, and NI 52-110, all informed Defendants of their obligations.

110. Defendants also owed to the Class Members the obligations imposed under the CCQ.

111. Defendants committed faults by making the misrepresentations particularized herein.

112. The Individual Defendants oversaw the preparation of all filings and news releases, including the Impugned Statements, and knew or ought to have known of the alleged misrepresentations.

113. Consequently, not only is TD directly liable towards the Class Members for its own faults, but it is also liable for the faults committed by the Individual Defendants or any other officer, director, partner, or employee.

114. In light of Defendants' misrepresentations, TD securities traded at artificially-inflated prices and did not reflect their true value at all relevant times during the Class Period, thereby causing damages to the Plaintiff and Class Members.

115. Once the misrepresentations were corrected, the price of TD's securities materially declined, causing, again, significant damages to the Plaintiff and Class Members.

116. The faults committed by Defendants were the direct and immediate cause of the Plaintiff's and Class Members' damages.

117. In light of the above, Defendants are solidarily liable to the Plaintiff and Class Members.

B. The Claims of the Members of the Class Raise Identical, Similar or Related Issues of Law or Fact (art. 575 (1) CCP)

118. By reason of Defendants' unlawful conduct, the Plaintiff and Class Members have suffered damages, for which they are entitled to be compensated.

119. The recourses of the Class Members raise identical, similar or related questions of fact or

law, namely:

a) During the Class Period, did Defendants publish documents or make statements that contained misrepresentations within the meaning of the QSA and, if necessary, other Securities Legislation?

b) If so, which document or statement contains which misrepresentation?

c) Were the misrepresentations intentional?

d) Are any of the Defendants liable to the Class or any of its Members under the QSA, and if necessary, any concordant provisions of the other Securities Legislation and/or under art. 1457 of the CCQ?

e) If so, which Defendant is liable and to whom?

f) Is Defendants' liability solidary? and

g) What is the amount of the damages sustained by the Class Members?

C. The Composition of the Class Makes It Difficult or Impracticable to Apply the Rules for Mandates to Take Part in Judicial Proceedings on Behalf of Others or for Consolidation of Proceedings (art. 575 (3) CCP)

120. TD is a multinational company having, at all material times to the present proceedings, issued millions of common shares which are publicly traded on the TSX and NYSE stock exchanges.

121. There are thousands of members of the putative Class located throughout Québec, Canada, and the world.

122. In this context, it would be difficult or impracticable to apply the rules for mandates to take part in judicial proceedings.

D. The Class Member Requesting to be Appointed as Representative Plaintiff Is in a Position to Properly Represent Class Members (art. 575 (4) CCP)

123. The Plaintiff is a Québec resident who has investment experience.

124. As a result of Defendants' misrepresentations, he purchased TD shares during the Class Period, as appears from a copy of Mr. Glasberg's relevant trading statements during the Class Period, […] Exhibit P-20.

125. Mr. Glasberg held his TD shares until after […] partial Public Corrections.

126. After the misrepresentations were revealed by the partial Public Corrections, the value of the Plaintiff's shares plummeted and he suffered damages as a result.

127. The Plaintiff discussed the best means of asserting his rights and the nature of a potential action with attorneys.

128. He shares common interests with the Class Members and has instituted the present claim in good faith.

129. He has the resources, knowledge, time, and dedication required to act as the representative plaintiff of the Class and to advance the case on behalf of the Class.

130. The Plaintiff has no conflict of interest with other Class Members and is represented by counsel that are experienced at litigating securityholders' claims in class actions against multinational corporations that list their securities on multiple exchanges.

VII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

131. The action that the Plaintiff seeks to institute on behalf of the members of the Class is an action in damages.

132. The conclusions that the Plaintiff seeks to introduce by way of an originating application are:

> **ALLOW** the class action of the Plaintiff and the members of the Class against Defendants;
>
> **GRANT** the Plaintiff's action against Defendants in respect of the rights of action asserted against Defendants under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and article 1457 CCQ;
>
> **CONDEMN** Defendants, solidarily, to pay the Plaintiff and the Class Members damages in an amount to be determined;
>
> **ORDER** that the above condemnation be subject to collective recovery;
>
> **CONDEMN** Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action, and **ORDER** that this condemnation be subject to collective recovery;
>
> **CONDEMN** Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

133. The interests of justice favour that this motion be granted in accordance with its conclusions.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

> **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
>
> **APPOINT** the plaintiff Brian Glasberg the status of representative of the persons included in the Class herein described as:
>
> "**Class**" and "**Class Members**" are comprised of the following, other than the Excluded Persons:
>
> (i) **Primary Market Sub-Class**: All persons and entities who acquired The Toronto-Dominion Bank securities in an Offering on or after <u>March 2, 2021</u> […], and held some or all of those securities until after the close of trading on

(1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024; and

(ii) **Secondary Market Sub-Class**: All persons and entities who acquired The Toronto-Dominion Bank securities on the secondary market on or […] after March 2, 2021, and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024;

DECLARE that the following persons are excluded from the Class ("Excluded Persons"): Defendants and, at all relevant times, members of their immediate families, their legal representatives, heirs, successors and/or assigns, directors, officers, subsidiaries, and affiliates;

IDENTIFY the principal questions of fact and law to be treated collectively as the following:

a) During the Class Period, did Defendants publish documents or make statements that contained misrepresentations within the meaning of the QSA and, if necessary, other Securities Legislation?

b) If so, which document or statement contains which misrepresentation?

c) Were the misrepresentations intentional?

d) Are any of Defendants liable to the Class or any of its Members under the QSA, and if necessary, any concordant provisions of the other Securities Legislation and/or under art. 1457 of the CCQ?

e) If so, which Defendant is liable and to whom?

f) Is Defendants' liability solidary? and

g) What is the amount of the damages sustained by the Class Members?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

> **ALLOW** the class action of the Plaintiff and the members of the Class against Defendants;
>
> **GRANT** the Plaintiff's action against Defendants in respect of the rights of action asserted against Defendants under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and article 1457 C.C.Q.;
>
> **CONDEMN** Defendants, solidarily, to pay the Plaintiff and the Class Members damages in an amount to be determined;
>
> **ORDER** that the above condemnation be subject to collective recovery;
>
> **CONDEMN** Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application

to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

ORDER the publication of a notice to the Class Members in accordance with article 579 CCP, pursuant to a further order of the Court, and **ORDER** Defendants to pay for said publication costs;

FIX the delay of exclusion at sixty (60) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by law;

THE WHOLE with costs including publication fees and all costs of expertise.

Montréal, this 15th day of October, 2024

(S) Faguy & Co.

FAGUY & CO.
Mtre Elizabeth Meloche
Mtre Shawn K. Faguy
329 de la Commune Street West
Suite 200
Montréal, Québec, H2Y 2E1
Telephone: (514) 285-8100
Telecopier: (514) 285-8050
Email: (emeloche@faguyco.com)
(skf@faguyco.com)

Attorneys for the Plaintiff

SCHEDULE A: DRAFT ORIGINATING APPLICATION

[TO BE COMMUNICATED WITH THE EXHIBITS IN SUPPORT OF THIS PROCEEDING]

(Class Action)
SUPERIOR COURT
Province of Québec
District of Montréal
N°: 500-06-001309-240

BRIAN GLASBERG

Plaintiff

v.

THE TORONTO-DOMINION BANK *ET AL.*

Defendants

AMENDED MOTION FOR AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE QUÉBEC SECURITIES ACT AND APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION

ORIGINAL

FAGUY & CO.
BARRISTERS & SOLICITORS INC.
Mtre Elizabeth Meloche
Mtre Shawn K. Faguy
329 de la Commune Street W, S. 200
Montréal, Québec H2Y 2E1
Telephone: (514) 285-8100
Telecopier: (514) 285-8050
emeloche@faguyco.com
sfaguy@faguyco.com
BM-1125

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

NO.: 500-06-001309-240

BRIAN GLASBERG

Plaintiff

v.

THE TORONTO-DOMINION BANK *ET AL.*

Defendants

LIST OF EXHIBITS IN SUPPORT OF
PLAINTIFF'S AMENDED MOTION FOR AUTHORIZATION

In support of the *Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the* Québec *Securities Act and to Institute a Class Action*, the Plaintiff intends to use the following exhibits:

Exhibit P-1: **as amended**	*(en liasse)* Filing certifications signed by the defendant Masrani as CEO during the Class Period;
Exhibit P-2: **as amended**	*(en liasse)* Filing certifications signed by the defendants Tran and Ahmed as CFO during the Class Period;
Exhibit P-3:	TD's Québec Enterprise registration (*cidreq*);
Exhibit P-4: **as amended**	*(en liasse)* TD's [M]anagement […] Information Circulars (MICs) throughout the Class Period;
Exhibit P-5: **as amended**	*(en liasse)* TD's […] annual reports published on SEDAR during the Class Period […];
Exhibit P-6: **as amended**	*(en liasse)* TD's Code of Conduct published on SEDAR numerous times during the Class Period;

Exhibit P-7: <ins>**as amended**</ins>	(*en liasse*) TD's AML Statements […] <ins>posted during the Class Period</ins>;
Exhibit P-8: <ins>**as amended**</ins>	(*en liasse*) TD's <ins>interim</ins> MD&As throughout the Class Period;
Exhibit P-9:	Globe & Mail article entitled "*TD Bank faces stiff penalty from FinTRAC for faulty controls to prevent money laundering*" dated January 26, 2024;
Exhibit P-10:	News release entitled "*How a fentanyl crime ring used a Canadian bank to do business | About That*" published as a video on May 21, 2024;
Exhibit P-11:	Transcript of TD's August 23, 2024 earnings call;
Exhibit P-12:	News article by Reuters entitled "*TD Bank CEO says anti-money laundering probe ongoing, addressing weakness*" published on April 18, 2024;
Exhibit P-13:	TD's press release entitled "*TD Bank Takes an Initial Provision Related to BSA/AML Matters*", posted after the close of trading on April 30, 2024;
Exhibit P-14:	Canadian Press article entitled "*TD penalties expected to be higher on alleged Chinese drug money laundering link: analyst*", dated May 3, 2024;
Exhibit P-15:	Criminal complaint in USA v. Da Zing Sze;
Exhibit P-16:	Guilty plea in USA v. Da Zing Sze;
Exhibit P-17:	Appendix F: Money Laundering and Terrorist Financing "Red Flags" to the FFIEC BSA/AML Examination Manual;
Exhibit P-18:	TD press release entitled "*TD addresses media reports about its AML program*" posted on May 3, <ins>2024</ins> […];
Exhibit P-19:	Extract from the AMF's Reporting Issuers List including TD;
Exhibit P-20: <ins>**as amended**</ins>	Mr. Glasberg<ins>'s relevant</ins> trading statements during the Class Period;

Exhibit P-21:	The Wall Street Journal article dated May 8, 2023 titled "*Concern Over TD Anti-Money-Laundering Practices Helped Scuttle First Horizon Deal*";
Exhibit P-22:	Bloomberg article dated May 8, 2023 titled "*TD's Transaction Practices Drew Regulatory Scrutiny on Nixed Deal*";
Exhibit P-23:	TD's Q3 2023 financial report to shareholders for the three and nine-month period ended July 31, 2023, published on August 24, 2023;
Exhibit P-24:	Capital Forum article titled "*TD Bank/First Horizon: Buyer Knew It Faced a Serious Money-Laundering Probe Months Before Deal Collapsed*", published after the close of trading on January 8, 2024;
Exhibit P-25:	The Wall Street Journal article published on May 2, 2024 titled "*TD Bank Probe Tied to Laundering of Illicit Fentanyl Profits*";
Exhibit P-26:	Globe and Mail article dated May 2, 2024 titled "*U.S. probe of TD Bank tied to US$653-million money-laundering and drug-trafficking case*";
Exhibit P-27:	National Bank of Canada report titled "*Toronto-Dominion Bank: The AML plot thickens. Worst-case scenarios need reassessing*" dated May 2, 2024;
Exhibit P-28:	FINTRAC announcement dated May 2, 2024 titled "*FINTRAC imposes an administrative monetary penalty on The Toronto Dominion Bank*";
Exhibit P-29:	*(en liasse)* News reports dated May 2, 2024, by Reuters titled "*Canada's anti-money laundering agency imposes [U.S] $6.7 mln fine on TD Bank*", and by the Globe & Mail titled "*TD Bank hit with $9.2M penalty after failing to report suspicious transactions*";
Exhibit P-30:	Globe and Mail article titled "*How TD Bank got caught up in the global drug war, helping to launder hundreds of millions of dollars*", dated May 3, 2024;
Exhibit P-31:	Canadian Press article titled "*TD worst-case scenario more likely after drug money laundering allegations: analyst*", dated May 3, 2024;

Exhibit P-32:	October 10, 2024 DOJ statement titled "*TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in $1.8B Resolution*";
Exhibit P-33:	(*en liasse*) Guilty pleas of TD Bank N.A. and its parent company, TD Bank US Holding Company;
Exhibit P-34:	The Wall Street Journal article titled "*TD Bank Agrees to $3 Billion in Penalties and Growth Restrictions in U.S. Settlement*", dated October 10, 2024;
Exhibit P-35:	CBC News article titled "*TD Bank fined $3B US after pleading guilty in historic U.S. money-laundering case*", dated October 10, 2024;
Exhibit P-36:	Extract from FinCEN's website;
Exhibit P-37:	Extract from FINTRAC's website;
Exhibit P-38:	(*en liasse*) TD's 2021, 2022, and 2023 AIFs;
Exhibit P-39:	Extract from the TMX Money website showing TD's share price history on the TSX during the Class Period;
Exhibit P-40:	Global and Mail article titled "*TD Bank executives knew about U.S. probe six months before disclosing it, report reveals*", published on January 9, 2024;
Exhibit P-41:	Transcript of TD's Q4 2022 earnings call held on December 1, 2022;
Exhibit P-42:	TD's Notice of 2023 annual meeting of common shareholders and management proxy circular re: annual meeting of April 20, 2023;
Exhibit P-43:	The Cullen Commission's final report issued on June 3, 2022;
Exhibit P-44:	DOJ releases relating to the case of USA v. Diape Seck, and related Court documents;

Exhibit P-45:	Bloomberg article titled "*TD's Bribery Woes Spread to Florida as Fresh Allegations Surface*" dated June 3, 2024;
Exhibit P-46:	*(en liasse)* TD's DRIP Offering Circular effective February 20, 2002, its Short Form Base Shelf Prospectus dated January 4, 2021, and its Short Form Base Shelf Prospectus dated March 1, 2023;
Exhibit P-47:	*(en liasse)* TD's prospectus dated February 21, 2002, its prospectus supplement no. 8 dated August 27, 2020, its prospectus supplement no. 9 dated May 26, 2022, and its prospectus supplement no. 10 dated May 25, 2023;
Exhibit P-48:	March 29, 2022 prospectus supplement to TD's January 4, 2021 prospectus;
Exhibit P-49:	TD's Preliminary Short Form Base Shelf Prospectus dated July 22, 2022.

Montréal, this 15th day of October, 2024

(S) Faguy & Co.

FAGUY & CO.
Mtre Elizabeth Meloche
emeloche@faguyco.com
Mtre Shawn K. Faguy
skf@faguyco.com
329 de la Commune Street W., bur.200
Montréal, (QC), H2Y 2E1
Tel.: (514) 285-8100
Fax: (514) 285-8050
Attorneys for the Plaintiff

FAGUY & CO.

Marjorie Aimé <mma@faguyco.com>

NOTIFICATION - BRIAN GLASBERG v. THE TORONTO-DOMINION BANK et al. (500-06-001309-240) Y/F: 00782-2971

1 message

Elizabeth Meloche <emeloche@faguyco.com> Tue, Oct 15, 2024 at 10:25 AM
To: notifications-mtl@torys.com, "Rodrigue, Sylvie" <srodrigue@torys.com>, "Richter, Chris" <crichter@torys.com>, "Boulanger, Karl" <kboulanger@torys.com>
Cc: Shawn Faguy <skf@faguyco.com>, Marjorie Aimé <mma@faguyco.com>

NOTIFICATION PAR COURRIEL / NOTIFICATION BY EMAIL
(Articles 133 et/and 134 C.p.c. / C.C.P.)

EXPÉDITEUR / SENDER

FAGUY & CO. BARRISTERS & SOLICITORS INC.
Mtre Elizabeth Meloche
329 de la Commune ouest, Bureau 200
Montréal (Québec) H2Y 2E1
Tél. : (514) 285-8100 ext. 228– Fax : (514) 285-8050
emeloche@faguyco.com

Date :	October 15, 2024
Nature du document / Nature of the document :	**Plaintiff's *De Bene Esse* Motion for Leave to Amend the Motion for Authorization to Bring an Action pursuant to Section 225.4 of the Québec *Securities Act* and Application to Institute a Class Action**
No. dossier de cour / Court file No. :	500-06-001309-240
Nom des parties / Name of the parties :	*BRIAN GLASBERG* *Plaintiff* *v.* *THE TORONTO-DOMINION BANK* *ET AL.* *Defendants*
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DESTINATAIRE / RECIPIENT

Nom / Name : Me Christopher Richter **Étude / Firm : TORYS** **Courriel/Email:** crichter@torys.com	**Nom / Name :** Me Karl Boulanger **Étude / Firm : TORYS** kboulanger@torys.com
Nom / Name : Me Sylvie Rodrigue **Étude / Firm : TORYS**	**Étude / Firm : TORYS** notifications-mtl@torys.com

Courriel/Email: srodrigue@torys.com	

Elizabeth Meloche
T. 514.285.8100, Ext. 228 | emeloche@faguyco.com

FAGUY & CO.
AVOCATS | BARRISTERS

329 de la Commune W., Suite 200
Montreal, QC, Canada, H2Y 2E1

T. 514.285.8100 | F. 514.285.8050
www.faguyco.com

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(Class Actions)
SUPERIOR COURT
Province of Québec
District of Montréal
N°: 500-06-001309-240

BRIAN GLASBERG

Plaintiff

v.

THE TORONTO-DOMINION BANK *ET AL.*

Defendants

LIST OF EXHIBITS IN SUPPORT OF PLAINTIFF'S AMENDED MOTION FOR AUTHORIZATION

ORIGINAL

FAGUY & CO.
BARRISTERS & SOLICITORS INC.

Mtre Elizabeth Meloche
emeloche@faguyco.com

Mtre Shawn K. Faguy
sfaguy@faguyco.com

329 de la Commune Street W,
S. 200, Montréal, (QC) H2Y 2E1
Tel.: (514) 285-8100 | Fax: (514) 285-8050

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