

TD BANK CANADIAN SECURITIES CLASS ACTION SETTLEMENT AGREEMENT

Made as of the 12th day of September, 2023

Between

**Majestic Asset Management and Turn8 Partners Inc.**

Representative plaintiffs in Québec Superior Court Action No.: 500-06-000914-180  
in their personal and representative capacities

- and -

**The Toronto-Dominion Bank**

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**RECITALS**

- A. **WHEREAS** the Action was commenced by the Plaintiffs on behalf of putative class members for, *inter alia*, damages for misrepresentation under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and for civil fault pursuant to article 1457 of the CCQ;
- B. **AND WHEREAS** TD Bank, its present and former directors, officers, employees, agents, representatives and insurers continue to deny any liability with respect to the allegations made, or which could have been made, in the Action;
- C. **AND WHEREAS** the Superior Court authorized a class action under articles 574 to 577 of the CCQ and an action pursuant to section 225.4 of the QSA in the Authorization Decision;
- D. **AND WHEREAS** the opt-out period in the Action concluded on August 2, 2019 and a total of thirteen (13) individuals and entities opted out, as appears from the affidavit of Paul Battaglia, President of Trilogy Class Action Services, attached herewith as Schedule A;
- E. **AND WHEREAS** counsel for the Parties have engaged in arm's length settlement discussions and negotiations, during the course of two mediations, the latter of which ultimately resulted in the Settlement;
- F. **AND WHEREAS** a trial was set to take place before the Honourable Mr. Justice Bernard Synnott S.C.J. from March to May, 2024;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of Court without costs, subject to the approval of the Superior Court, on the following terms and conditions.

**SECTION 1 - DEFINITIONS**

- 1.1 For the purposes of this Agreement, including the Recitals:

- (a) **Action** means *Majestic Asset Management LLC and Turn8 Partners Inc. vs. The Toronto-Dominion Bank*, brought in Superior Court of Québec Court File No.: 500-06-000914-180.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, tax and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Administrator or otherwise, for the approval, implementation and operation of this Agreement, including the costs of notices and claims administration, but not Class Counsel Fees.
- (c) **Agreement** means this settlement agreement, including the recitals.
- (d) **Authorization Decision** means the Judgement of the Honourable Gary D.D. Morrison of the Superior Court of Québec in the Action dated June 21, 2019.
- (e) **CCP** means the *Code of Civil Procedure*.
- (f) **CCQ** means the *Civil Code of Québec*.
- (g) **Claims Administrator or Administrator** means a third-party professional firm appointed by the Superior Court to administer this Agreement and the Plan of Allocation.
- (h) **Class Counsel** means Faguy & Co. Barristers and Solicitors Inc.
- (i) **Class Counsel Fees** means the fees and any proportionate amount of accrued interest on the Settlement Amount, Administration Expenses and Disbursements, holdbacks, GST/PST and other applicable taxes or charges of Class Counsel.
- (j) **Class Members or Class or Class Period** means the members or the period of the class specified in the Authorization Decision.
- (k) **Disbursements** means disbursements made by Class Counsel in connection with the prosecution of the Action and the implementation of this Agreement.
- (l) **Effective Date** means the date when the Final Order has been issued by the Superior Court approving the Agreement.

- (m) **Escrow Account** means an interest-bearing Escrow Account or product issued by or opened at the TD Bank in the name of Class Counsel and/or the Administrator for the benefit of the Class Members.
- (n) **Excluded Persons** means TD Bank and its directors, officers, subsidiaries and affiliates.
- (o) **Execution Date** means the date on the execution pages as of which the Parties have fully executed this Agreement.
- (p) **Final Order** means the later of a final judgment entered by the Superior Court of Québec approving this Agreement, the time to appeal such judgment having expired without any appeal being taken, if an appeal lies, and the approval of this Agreement upon a final disposition of all appeals.
- (q) **Non-Refundable Expenses** means certain Administration Expenses stipulated in Section 2.7 of the Agreement to be paid from the portion of the Settlement Amount allocated to Non-Refundable Expenses.
- (r) **Notice of Hearing** means the form or forms of notice, as agreed to by the Plaintiffs and TD Bank, and approved by the Superior Court, which inform(s) the Settlement Class Members of: (i) the date and location of the Settlement Approval Hearing; (ii) the principal elements of the Agreement; (iii) the process by which Settlement Class Members may object to the Settlement; (iv) the appointment of the Administrator; and (v) Class Counsel Fees sought and submitted for Superior Court approval by Class Counsel.
- (s) **Notice Program** means the notices and dissemination of the notices contemplated in Section 7 of the Agreement.
- (t) **Parties** means Majestic Asset Management, Turn8 Partners Inc., The Toronto-Dominion Bank and the Class.
- (u) **Plaintiffs** means Majestic Asset Management and Turn8 Partners Inc.

- (v) **Plan of Allocation** means the plan for allocating and distributing the Settlement Amount and accrued interest, net of court-approved deductions, in whole or in part, as established by Class Counsel and approved by the Superior Court.
- (w) **Pre-Approval Order** means the preliminary order issued by the Superior Court approving the Notice of Hearing and the appointment of the Administrator.
- (x) **Superior Court** means Superior Court of Québec.
- (y) **QSA** means Québec *Securities Act*, CQLR c. V-1.1, as amended.
- (z) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages of any kind, whenever incurred, including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasers or any of them, whether directly, indirectly, derivatively or in any other capacity, ever had, may have, or hereafter can, shall or may have, relating to any conduct alleged or which could have been alleged in the Action as a result of the purchase of TD Bank securities during the Class Period.
- (aa) **Releasees** means TD Bank, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, partners, agents, consultants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees and assigns. It is expressly understood that, to the extent a Releasee is not a Party to the Agreement, all such Releasees are intended third party beneficiaries of the Agreement.
- (bb) **Releasers** mean, jointly and severally, individually and collectively, the Plaintiffs and all Class Members.
- (cc) **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.

- (dd) **Settlement** means the settlement provided for in this Agreement.
- (ee) **Settlement Amount** means the sum of twenty-two million dollars (CAD \$22,000,000.00).
- (ff) **Settlement Approval Hearing** means the hearing for the Superior Court's approval of the Settlement.
- (gg) **Settlement Approval Order** means the order of the Superior Court to be requested by the Plaintiffs, with the consent of TD Bank.
- (hh) **TD Bank** means the Defendant The Toronto-Dominion Bank.

## **SECTION 2- SETTLEMENT BENEFITS**

### **Payment of Settlement Amount**

- 2.1 TD Bank will pay the Settlement Amount to Class Counsel for deposit into the Escrow Account within thirty (30) days of the Execution Date.
- 2.2 TD Bank shall deposit the Settlement Amount into the Escrow Account by wire transfer. Class Counsel shall provide the necessary wire transfer information to Counsel so that TD Bank has a reasonable time to comply with Section 2.1.
- 2.3 The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.
- 2.4 The Settlement Amount shall be inclusive of interest, taxes, Disbursements and Class Counsel Fees. TD Bank shall take no position on the Plaintiffs' motion for approval of Class Counsel Fees.



- 2.5 The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Agreement or the Action.
- 2.6 Once the Administrator has been appointed, after payment of Class Counsel Fees, Disbursements and any Administration Expenses, as approved by the Superior Court, Class Counsel shall transfer the settlement amount, or control of the Escrow Account to the Administrator.

### **Non-Refundable Expenses**

- 2.7 Non-Refundable Expenses, reasonably incurred, and as approved by the Superior Court, shall be payable by Class Counsel and/or the Administrator from the Settlement Amount in the Escrow Account, when incurred, and shall include:
- (a) bank costs incurred in connection with the opening and operation of the Escrow Account;
  - (b) all costs incurred in publishing and distributing the Notice of Hearing; and
  - (c) if ordered by the Superior Court, the costs incurred by the Administrator in publishing notice to the Class that the Agreement has been terminated.
- 2.8 Class Counsel and/or The Administrator shall account to the Superior Court and to the Parties for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this account shall be delivered no later than ten (10) days after such termination.
- 2.9 Any disputes concerning the Non-Refundable Expenses shall be dealt with by a motion to the Superior Court on notice to the Parties.

## **SECTION 3 - CLASS COUNSEL FEES**

### **Class Counsel Fees Approval**

- 3.1 At the Settlement Approval Hearing, Class Counsel shall seek Superior Court approval of Class Counsel Fees and Disbursements to be paid as a first charge on the Settlement Amount.

- 3.2 TD Bank shall take no position on Plaintiffs' motion for approval of Class Counsel Fees and Disbursements.
- 3.3 Any order in respect of Class Counsel Fees and Disbursements, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement, or be a condition precedent to its approval, or affect or delay the Settlement of the Action as provided herein.
- 3.4 Forthwith after the Settlement becomes final, Class Counsel Fees and Disbursements approved by the Superior Court shall be paid to Class Counsel from the Escrow Account.

**Taxes and Interest**

- 3.5 Except as expressly provided herein, all interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the amount held in escrow pursuant to this Agreement (together with the Settlement Amount and the Administration Expenses and Disbursements, the "Escrow Amount").
- 3.6 Subject to Section 3.7, all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Amount shall be the responsibility of the Plaintiffs and the Settlement Class. Class Counsel or the Claims Administrator, as may later be appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Escrow Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Escrow Amount shall be paid from the Escrow Account.

**Defendant has no responsibility or liability for any taxes or withholdings**

- 3.7 TD Bank shall have no responsibility or liability in any way related to the administration of the Escrow Account including but not limited to, making any filings relating to the Escrow Account, paying tax on any income earned by the Escrow Amount, or paying any taxes on the monies in the Escrow Account. If this Agreement is terminated, all sums held in the Escrow Amount shall be refunded to TD Bank by the Administrator.

### **No Reversion**

- 3.8 Unless this Agreement is terminated as provided herein, TD Bank shall not be entitled to the repayment of any portion of the Escrow Amount and then only to the extent of and in accordance with the terms provided herein.

## **SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT**

### **Distribution of the Net Settlement Amount**

- 4.1 The formula for distribution of the Settlement Amount, and any remaining balance of the Disbursements after the payment of Disbursements, to Class Members shall be contained in the Plan of Allocation.
- 4.2 In conjunction with the Plaintiffs' motion to the Superior Court for approval of this Settlement, on notice to TD Bank, Class Counsel will make an application seeking an order from the Superior Court approving the Plan of Allocation.
- 4.3 TD Bank shall not have any input on, responsibility, financial obligations or liability whatsoever with respect to the Plan of Allocation, or the investment, distribution or administration of monies in the Escrow Account.

## **SECTION 5 - EFFECT OF SETTLEMENT**

### **No Admissions or Concessions**

- 5.1 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, and any action taken to implement this Agreement, shall not be deemed, construed or interpreted to be:
- (a) an admission or concession by TD Bank of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Action, or the application of the law of Québec to any of the claims made in the Action; or

- (b) an admission or concession by the Plaintiffs, Class Counsel or the Class of any weakness in the claims of the Plaintiffs and the Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action, if any.

### **Agreement Not Evidence Nor Presumption**

5.2 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, documents, discussions and proceedings associated with this Agreement (including, but not limited to, the Plan of Allocation), and any action taken to implement this Agreement, shall not be offered or received in the Action or any pending or future civil, criminal, quasi-criminal, administrative action or disciplinary investigation or proceeding in any jurisdiction:

- (a) against TD Bank, as evidence, or a presumption, of a concession or admission of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made against it in the Action; or
- (b) against the Plaintiffs, Class Counsel or the Class, as evidence, or a presumption, of a concession or admission:
  - (i) of any weakness in the claims of the Plaintiffs and the Class; or
  - (ii) that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action, if any.

5.3 Notwithstanding Section 5.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Superior Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

### **Pre-Motion Confidentiality**

5.4 Save for notification requirements under this Agreement and the CCQ, there shall be no public disclosure of the existence or contents of the Settlement Agreement until the signed Settlement Agreement is filed with the Superior Court as part of the motion seeking the Pre-Approval Order.

- 5.5 Thereafter, it is agreed that the Parties will not in any way disclose, advertise or communicate any information concerning the existence or contents of the Settlement Agreement, except by way of: (a) the Notice Programs or as may be required to comply with applicable provincial legislation or regulation; (b) as may be required to advise Class Members or Releasers of the particulars of the Settlement for the purposes of administering the Settlement, (c) if otherwise agreed to by the Parties.

## **SECTION 6 - STEPS TO IMPLEMENT AGREEMENT**

### **Reasonable Efforts**

- 6.1 The Parties shall take all reasonable steps to implement the Agreement and to secure its approval and have the Action declared settled out of Court. This Agreement shall only become final on the Effective Date.
- 6.2 Class Counsel shall file a motion to obtain the Pre-Approval Order authorizing the Notice of Hearing and the appointment of the Administrator.
- 6.3 The Plaintiffs will provide all materials to be filed with or provided to the Superior Court in connection with this Agreement to TD Bank in advance for review and comment, where appropriate.

### **Action in Abeyance**

- 6.4 Until the Parties have obtained the Final Order or this Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel agree to hold in abeyance all other steps in the Action, other than the settlement approval motion and such other matters required to implement the terms of this Agreement, unless otherwise agreed in writing by the Parties.

## **SECTION 7- NOTICE PROGRAM TO SETTLEMENT CLASS**

- 7.1 The Class shall be given the following notices: (i) the Notice of Hearing; (ii) notice if this Agreement is approved; (iii) notice if this Agreement is not approved, is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Superior Court.

7.2 The form of notices referred to in Section 7.1 and the manner and extent of publication and distribution shall be as follows:

- (a) by Class Counsel posting the Notice of Hearing on its website and by delivering a copy of the Notice of Hearing electronically to all individuals and entities who have contacted Class Counsel about this action and all individuals and entities who request it;
- (b) by Class Counsel placing the Notice of Hearing online in abbreviated form with a URL leading to more information on a number of websites for a period of thirty (30) days;
- (c) disseminated once through Canada NewsWire in English and French;
- (d) by publishing the notice once in French in a weekday tablet (online) edition of *La Presse*;
- (e) by publishing the notice on the Québec Class Action Registry; and
- (f) by publishing the notice once in English in the national print edition of The Globe and Mail, Report on Business section and in English in the national print edition of the National Post, Financial Post section.

or in such form or manner as approved by the Superior Court.

## **SECTION 8 - RELEASES**

8.1 As of the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Agreement, the Releasers forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have.

8.2 The Plaintiffs and Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Agreement, and it is their intention to release fully, finally and

forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

### **No Further Claims**

8.3 As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit cause of action, claim or demand against any Releasee in respect of any Released Claims.

### **No Further Litigation**

8.4 Class Counsel, and anyone currently or hereafter employed by, associated with, or in partnership with Class Counsel with respect to this Action, may not directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims and any of the facts alleged in the Action.

8.5 Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a Court.

8.6 Upon the Effective Date, the Action shall be declared settled out of Court, and without costs.

8.7 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsection 9.2), the releases and reservation of rights contemplated in this Section 8 shall be considered a material term of the Agreement and the failure of the Superior Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to Section 9 of the Agreement.

## **SECTION 9 - TERMINATION**

### **Right of Termination**

9.1 In the event that:

- (a) the Superior Court declines to approve this Agreement or any material part hereof;
- (b) the Superior Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Agreement;
- (c) the Superior Court declines to declare the Action settled out of Court; or
- (d) the Superior Court declines to approve the releases, covenants (including covenants not to sue), dismissals, and granting of consent contemplated in Section 8, or approves them in a materially modified form;

each of the Plaintiffs and TD Bank shall have the right to terminate this Agreement by delivering a written notice in accordance with subsection 9.3 within thirty (30) days following a decision described above if not appealed, or in the event of an appeal, within fifteen (15) days following the appeal ruling maintaining such a decision.

9.2 Any order, ruling or determination made (or rejected) by the Superior Court with respect to Class Counsel Fees or Disbursements shall not be deemed to be a material modification of all, or a part, of this Agreement and shall not provide any basis for the termination of this Agreement.

### **Notice of Termination**

9.3 If this Agreement is terminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination, in a form approved by the Superior Court, to be published and disseminated as the Superior Court directs.

### **Effect of Termination**

9.4 In the event this Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) the Parties will be restored to their respective positions prior to the execution of this Agreement, except as expressly provided for herein;



- (b) the Parties will cooperate in seeking to have all prior orders or judgments entered by a court in accordance with the terms of this Agreement set aside and declared null and void and of no force or effect, and any of the Plaintiffs and TD Bank shall be estopped from asserting otherwise, except where the effect of an order has already crystalized, including, without limitation, an order relating to Administration Expenses already incurred in accordance with the Court's instructions;
- (c) The Administrator shall, within thirty (30) business days of the issuance of the order contemplated by Section 9, return to TD Bank the Escrow Amount less taxes paid, if any, on interest and less any incurred Non-Refundable Expenses;
- (d) this Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
- (e) all Non-Refundable Expenses are non-recoverable from the Plaintiffs, the Class Members and Class Counsel; and
- (f) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against TD Bank, except if required by law.

### **Disputes Relating to Termination**

- 9.5 If there is a dispute about the termination of this Agreement, the Parties agree that the Superior Court shall determine the dispute on a motion made by TD Bank or the Plaintiffs on notice to the Parties.

## **SECTION 10 – MISCELLANEOUS**

### **Motions for Directions**

- 10.1 Any of the Parties may apply to the Superior Court for directions in respect of any matter in relation to this Agreement.
- 10.2 All motions contemplated by this Agreement shall be on notice to the Parties.

### **Headings, etc.**

- 10.3 In this Agreement:

- (a) the division into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation;
- (b) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement; and
- (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

### **Computation of Time**

10.4 In the computation of time in this Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **Governing Law**

10.5 The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec, without prejudice to the position of TD Bank, as to the law applicable to the issues in the Action.

10.6 The Parties agree that the Superior Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Agreement and the Settlement Approval Order.

### **Severability**

10.7 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **Entire Agreement**

10.8 This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.

### **Confidentiality**

10.9 The Parties undertake not to make any public statements directly or indirectly related to the facts alleged in the Action or to the Settlement, other than those required by law or the settlement approval process.

10.10 All the information exchanged between the Parties during their discussions and negotiations leading to the preparation and the execution of this Agreement will be kept strictly confidential by them and shall not be disclosed to any third party whatsoever except to the extent such information subsequently becomes publicly available or unless so ordered by the Superior Court.

10.11 Any and all information and documents in any medium provided to the Parties in advance of any mediation or during discovery will remain confidential and subject to any and all applicable privileges. The Parties irrevocably undertake to maintain the strict confidentiality of such information and documents, and not to disclose same to any third party whatsoever except to the extent that such information subsequently becomes publicly available or unless so ordered by the Superior Court.

10.12 All agreements made during the course of the Class Action relating to the confidentiality of information will survive this Agreement.

### **Amendments**

10.13 This Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Superior Court.

### **Binding Effect**

10.14 If the settlement is approved by the Superior Court and becomes final, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, Class Counsel, TD Bank, the Releasees and the Releasers or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by TD Bank shall be binding upon all of the Releasees.

### **Survival**

10.15 The representations and warranties contained in this Agreement shall survive its execution and implementation.

### **Negotiated Agreement**

10.16 This Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

### **Transaction**

10.17 This Agreement constitutes a transaction in accordance with articles 2631 and following of the CCQ, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

### **Recitals**

10.18 The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

### **Acknowledgements**

10.19 Each Party hereby affirms and acknowledges that:

- (a) her, his or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
- (b) the terms of this Agreement and the effects thereof have been fully explained to her, him or it by her, his or its counsel; and
- (c) her, his or its representative fully understands each term of this Agreement and its effect.

### **Counterparts**

10.20 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an emailed pdf. signature shall be deemed an original signature for purposes of executing this Agreement.

### **Notice**

10.21 Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email to:

#### **For Plaintiffs and the Settlement Class:**

Shawn Faguy  
Maryam d'Hellencourt  
Elizabeth Meloche  
Faguy & Co.  
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Montreal, QC H2Y 2E1

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**For the Toronto-Dominion Bank:**

Marianne Ignacz  
Laurent Nahmiash  
Josée Cavalancia  
Lydia Amazouz  
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**This Agreement is executed as of September 12, 2023.**

Date: Sep-13-2023 | 1:25 PM PDT Craig McFadyen  
Plaintiffs' Representative

Date: 09.13.23 FAGUY & CO.  
Faguy & Co. Barristers and Solicitors, as Class Counsel for the Plaintiffs

Date: September 14, 2023 [Signature]  
The Toronto-Dominion Bank  
David Braunstein, Associate Vice-President

Date: September 14, 2023 INF S.E.N.C.R.L./LLP  
INF S.E.N.C.R.L./LLP, as Counsel for the Toronto-Dominion Bank