

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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IN RE TORONTO-DOMINION BANK  
SECURITIES LITIGATION

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: **1:17-cv-01665 (NLH/JS)**  
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: Class Action  
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**ORDER PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, an action is pending before this Court captioned *In re Toronto-Dominion Bank Securities Litigation*, Case No. 1:17-cv-01665-NLH-JS (the “Action”);

WHEREAS, Lead Plaintiff Ethan Silverman and Plaintiff Mark Blumenthal (“Plaintiffs”) on behalf of themselves and all Settlement Class Members, and The Toronto-Dominion Bank (“TD”), Bharat B. Masrani (“Masrani”), Riaz E. Ahmed (“Ahmed”), Colleen Johnston (“Johnston”), Teri Currie (“Currie”), Leo Salom (“Salom”), Mike Pedersen (“Pedersen”), and Mark Chauvin (“Chauvin”) (“Defendants”) (altogether, the “Parties”) have applied under Fed. R. Civ. P. 23(e) for an order preliminarily approving the Settlement of this Action, in accordance with a Stipulation of Settlement, dated June 20, 2019 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Action between the Parties and for dismissal of the Action against all Defendants, with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Court has read and considered the Stipulation and the Exhibits annexed thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and hereby preliminarily approves the Settlement set forth therein, subject to further consideration at the Settlement Fairness Hearing. Unless otherwise defined, all terms used herein shall have the same meanings as set forth in the Stipulation.

2. Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies, for purposes of settlement only, the following Settlement Class: All persons or entities who purchased, or otherwise acquired, U.S.-traded common stock of TD (NYSE: TD) between December 3, 2015 and March 9, 2017, both dates inclusive (the “Settlement Class Period”). Excluded from the Settlement Class are:

(a) Defendants; members of their immediate families and their affiliates; any executive officer or director of TD during the Settlement Class Period; any entity in which any Defendant had a controlling or partnership interest during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; counsel of record in the Action; and the successors, heirs, and assigns of any excluded persons and/or entities referenced above; and

(b) Persons who submit valid and timely requests for exclusion from the Settlement Class.

3. The “Settlement Fairness Hearing” shall be held before this Court on October 3, 2019, at 3:30 p.m., at the Mitchell H. Cohen Building & United States Courthouse, 4<sup>th</sup> & Cooper Streets, Court Room 3A, Camden, New Jersey 08101, to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; to determine whether a Judgment as provided in the Stipulation should be entered; to

determine whether the proposed Plan of Allocation should be approved; to determine any amount of fees, costs and expenses that should be awarded to Lead Counsel (to be distributed by Lead Counsel, in Lead Counsel's discretion, to any other counsel who contributed to the outcome obtained by Plaintiffs for the Settlement Class) for their efforts, and any compensatory awards that should be awarded to Plaintiffs for their service to the Settlement Class; to hear any objections by Settlement Class Members to the Stipulation, Plan of Allocation, or any award of fees and expenses to Lead Counsel or compensatory award to Plaintiffs; and to consider such other matters as the Court may deem appropriate.

4. Pursuant to Fed. R. Civ. P. 23(c), the Court appoints for settlement purposes only the firm of Epiq Class Action & Claims Solutions, Inc. (the "Claims Administrator") to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Within seven (7) days after the Court enters a Preliminary Approval Order, TD shall assist the Claims Administrator in obtaining, from TD's U.S. transfer agent, records of ownership sufficient to identify Settlement Class Members;

(b) The Court hereby approves, as to form and content, the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses, and Settlement Fairness Hearing ("Notice"), and the Proof of Claim and Release Form ("Proof of Claim"), substantially in the forms annexed to the Settlement Stipulation, and directs that no more than twenty-one (21) days after entry of this Order granting preliminary approval, Lead Counsel, through the Claims Administrator, shall cause a copy of the Notice in the form set forth in Stipulation Exhibit B2 and Proof of Claim in the form of Stipulation Exhibit D, to be mailed by First-Class Mail to all Settlement Class Members who can be identified with

reasonable effort and to be posted in the form of Exhibits B1, B2, and D on its website at [www.TorontoDominionSecuritiesSettlement.com](http://www.TorontoDominionSecuritiesSettlement.com);

(c) The Court hereby approves, as to form and content, the proposed form Publication Notice, substantially in the form of Exhibit C to the Stipulation, and directs that no more than twenty-one days (21) after entry of this Order granting preliminary approval, Lead Counsel, through the Claims Administrator, shall cause the Publication Notice to be published once over a newswire service that distributes nationally in both the United States and Canada; and

(d) Lead Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of publication of the Publication Notice.

5. Brokers and other nominees who purchased or acquired U.S.-traded TD common stock (NSYE: TD) for the benefit of another Person during the Settlement Class Period shall be requested to send the Notice and Proof of Claim to such beneficial owners of U.S.-traded TD common stock within ten (10) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners. Additional copies of the Notice and Proof of Claim shall be made available to any nominee requesting same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees solely for their actual, reasonable out-of-pocket expenses, up to \$0.70 per notice mailed or \$.10 per name and address provided to Claims Administrator, reasonably incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the sending of such

notice, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

6. The form and content of the notice program described herein, and the methods set forth herein for notifying the Settlement Class of the Settlement and its terms and conditions, the Fee and Expense Application, and the Plan of Allocation:

(a) Meet the requirements of Fed. R. Civ. P. 23, § 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, the United States Constitution (including the Due Process Clause), the Rules of Court, and any other applicable law;

(b) Constitute the best notice practicable to Settlement Class Members under the circumstances of this Action;

(c) Are reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of this Action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the proposed Settlement; (iv) their right to appear at the Settlement Fairness Hearing, either on their own or through counsel hired at their own expense, if they did not exclude themselves from the Settlement Class; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on all persons not excluded from the Settlement Class; and

(d) Is reasonable and constitutes due, adequate and sufficient notice to all Persons entitled thereto.

7. Other than the costs incurred by Defendants (if any) in providing the names and addresses of record holders of TD common stock (NYSE: TD) during the Settlement Class

Period to the Claims Administrator, all fees, costs, and expenses incurred in identifying and notifying members of the Settlement Class shall be paid from the Settlement Fund as set forth in the Stipulation, and in no event shall any of the Released Parties bear any responsibility for such fees, costs, or expenses.

8. All Settlement Class Members (except Persons who request exclusion pursuant to ¶12 below) shall be bound by all determinations and judgments in the Action concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable, to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

9. Settlement Class Members who wish to participate in the Settlement shall complete and submit a Proof of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be received no later than September 19, 2019. Any Settlement Class Member who does not submit a Proof of Claim within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims Administrator but shall not incur any liability for declining to do so.

10. The failure to submit a valid Proof of Claim shall have no impact on the claims of Settlement Class Members relating to transactions in TD common stock that occurred on non-U.S. exchanges, or the claims of Plaintiffs or Settlement Class Members asserted against any of the Released Parties in the Canadian Action, except to the extent that such claim(s)

impermissibly seek relief that is duplicative of the relief sought in this Action arising from the Settlement Class's purchases or acquisitions of the U.S.-traded common stock of TD (NYSE: TD) during the Settlement Class Period that are encompassed within Settlement of this Action.

11. The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions, unless otherwise ordered by the Court: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of paragraph 9; (ii) it must be accompanied by adequate supporting documentation for the transactions in TD's U.S.-traded common stock (NYSE: TD) reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Lead Counsel or the Claims Administrator; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his, her, or its current authority to act on behalf of the Settlement Class Member must be included therein; (iv) it must be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (v) it must be signed under penalty of perjury.

12. Any Settlement Class Member may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Lead Counsel.

13. Any Settlement Class Member may, upon request, be excluded or "opt out" from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), which complies with the requirements set forth in the Notice and is received no later than twenty-one (21) days before the Settlement Fairness Hearing. All Persons who submit valid and timely Requests for Exclusion in the manner set

forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any Judgment. A Settlement Class Member may submit a written revocation of a Request for Exclusion up until five (5) days prior to the date of the Settlement Fairness Hearing and still be eligible to receive payments pursuant to the Stipulation provided the Settlement Class Member also submits a valid Proof of Claim prior to the Settlement Fairness Hearing .

14. Any Settlement Class Member and any other interested Person may appear at the Settlement Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at the hearing, provided, however, that no Person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection to such matters, unless no later than twenty-one (21) days before the Settlement Fairness Hearing, such Person files with the Court a statement of objection setting forth: (i) whether the person is a Settlement Class Member; (ii) the part(s) of the Stipulation to which the Settlement Class Member or interested Person objects; and (iii) the specific reason(s), if any, for such objection including any legal support the Settlement Class Member or interested Person wishes to bring to the Court's attention and any evidence the Settlement Class Member or interested Person wishes to introduce in support of such objection. Such Settlement Class Member shall also provide documentation sufficient to establish the amount of publicly traded U.S.-traded TD common stock (NYSE: TD) purchased and sold during the Settlement Class Period, and the prices and dates of such transactions. Objection materials must be sent to the following:

LEAD COUNSEL:



Matthew L. Tuccillo  
POMERANTZ LLP  
600 Third Avenue, 20th Floor  
New York, NY 10016

DEFENDANTS' COUNSEL

Richard C. Pepperman, II  
Matthew J. Porpora  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004

COURT

Clerk of the Court  
United States District Court District of New Jersey  
Mitchell H. Cohen Building & United States Courthouse  
4<sup>th</sup> & Cooper Streets  
Camden, New Jersey 08101

15. Any member of the Settlement Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, to the Fee and Expense Award, and to the compensatory award, unless otherwise ordered by the Court.

16. Attendance at the Settlement Fairness Hearing is not necessary. Persons wishing to be heard orally in opposition to approval of the Settlement, the Plan of Allocation, or Fee and Expense Application are required to indicate in their written objection their intention to appear at the Settlement Fairness Hearing. Settlement Class Members do not need to appear at the Settlement Fairness Hearing or take any action if they do not oppose any aspect of the Settlement.

17. The Court reserves the right to alter the time or the date of the Settlement Fairness Hearing without further notice to the Settlement Class Members, provided that the time or the date of the Settlement Fairness Hearing shall not be set at a time or date earlier than the time and date set forth in ¶3 above and any new date / time will be promptly posted on the Claims Administrator's website upon being ordered, and the Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

18. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court. There shall be no distribution of any part of the Net Settlement Fund to the Settlement Class until the Plan of Allocation is finally approved and the Court issues the Settlement Fund Distribution Order and until the Order and Final Judgment becomes Final.

19. All papers in support of the Settlement, Plan of Allocation, and any Fee and Expense Application shall be filed and served no later than twenty-one (21) days before the Settlement Fairness Hearing, and any reply papers shall be filed and served no later than seven (7) calendar days before the Settlement Fairness Hearing.

20. The Released Parties shall have no responsibility for the Plan of Allocation or any Fee and Expense Application by Lead Counsel or compensatory awards to the Plaintiffs, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

21. At or after the Settlement Fairness Hearing, the Court shall determine whether the Plan of Allocation, any Fee and Expense Application proposed by Lead Counsel, and any compensatory awards sought by Plaintiffs should be approved.

22. Except for the obligation to cooperate in the production of reasonably available information with respect to the identification of Settlement Class Members from TD's shareholder transfer records, in no event shall the Defendants or any of the other Released Parties have any responsibility for the administration of the Settlement, and neither the Defendants nor any of the other Released Parties shall have any obligation or liability to the Plaintiffs, Lead Counsel, or the Settlement Class in connection with such administration.

23. All reasonable expenses incurred in identifying and notifying Settlement Class Members and administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Plaintiffs nor Lead Counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶2.7 of the Stipulation.

24. This Order and the Stipulation, whether the Settlement contemplated by the Stipulation is consummated or not, and any statement made or proceedings taken pursuant to them are not, shall not be deemed to be, and may not be argued to be or offered or received:

(a) Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants or other Released Parties with respect to the truth of any fact alleged by the Plaintiffs in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants or the Released Parties in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing or liability by any of the

Defendants or other Released Parties;

(b) Against any of the Defendants, the other Released Parties, the Plaintiffs, or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them with respect to any liability, negligence, fault, or wrongdoing as against any of them in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, the Defendants, the Plaintiffs, any Settlement Class Member, and the other Released Parties may refer to the Order or the Stipulation to effectuate the liability protection granted them hereunder;

(c) Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

(d) Against the Plaintiffs or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Plaintiffs or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund; and

(e) Against the Plaintiffs or any Settlement Class Member or Lead Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by the Plaintiffs in the First Amended Class Action Complaint or the Action or of any lack of merit to the claims or the Action or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action or any non-compliance with Fed. R. Civ. P. 11 or any similar rule or ethical obligation.

25. The Defendants, Plaintiffs, Settlement Class Members, other Released Parties, and each of their counsel may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

26. All proceedings in the Action are stayed, save for those related to and necessary for the Court's consideration of and decisions on the Settlement. Pending final determination of whether the Settlement should be approved, neither Plaintiffs nor any Settlement Class Member, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Settlement Class Claims and, conversely, neither the Defendants nor any of the other Released Parties shall, either directly, representatively, or in any other capacity, commence or prosecute against any of the Plaintiffs or the Settlement Class Members or their counsel any action or proceeding in any court or tribunal asserting any of the Released Defendant Claims.

27. However, nothing herein shall impair Plaintiffs' or any Settlement Class Member's ability to continue litigating claims against any of the Released Parties that are excluded from the Released Settlement Class Claims, including *inter alia*, (i) claims asserted in the Canadian Action, except to the extent that such claim(s) seek duplicative relief arising from the Settlement Class's purchases or acquisitions of the U.S.-traded common stock of TD (NYSE: TD) during the Settlement Class Period that are encompassed within Settlement of this Action; (ii) claims relating to transactions in TD common stock on non-U.S. exchanges; and (iii) claims relating to the enforcement of the Settlement.

28. In the event that the Settlement does not become Final and effective in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection therewith shall be null and void to the extent provided by and in accordance with the Settlement, and without prejudice to the rights of the parties to the Stipulation before it was executed.

IT IS SO ORDERED.

DATED: July 18, 2019

s/ Noel L. Hillman  
THE HON. NOEL L. HILLMAN  
UNITED STATES DISTRICT JUDGE