

# Notice of Certification and Settlement Canadian Foreign Exchange Price-Fixing Class Actions

**Read this notice carefully.  
Your rights may be affected.**

- You could be affected by class action lawsuits involving alleged manipulation of the foreign exchange market (the “FX Market”).
- This notice is to advise class members that:
  - the Ontario action was certified on a contested basis as against the non-settled Defendants; and
  - settlements have been reached with the following defendants: Toronto Dominion Bank, TD Bank, N.A., TD Group Holdings, LLC, TD Bank USA, N.A., and TD Securities Limited (collectively, “TD”); Royal Bank of Canada and RBC Capital Markets LLC (collectively, “RBC”); Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse Securities (Canada), Inc. (collectively, “Credit Suisse”); and Deutsche Bank AG (“Deutsche Bank”).
- The settlements, if approved and conditions fulfilled, will settle, extinguish and bar all claims relating in any way to or arising out of the class actions against TD, RBC, Credit Suisse, and Deutsche Bank, and will also resolve the litigation in its entirety.
- The Ontario and Quebec actions have been certified for settlement purposes only on behalf of the Ontario and Quebec Settlement Classes.
- Hearings will be held during which Class Counsel will seek the Courts’ approval of the settlements, distribution of funds, and Class Counsel’s fees.

YOUR OPTIONS	
<b>Do Nothing:</b>	You do not have to do anything to stay in the class actions. The deadline to exclude yourself, sometimes referred to as “opting out”, has expired. The deadline to claim for settlement benefits has also expired. If there is another opportunity to file for settlement benefits, another notice will be disseminated.
<b>Object:</b>	If you want to object to the proposed settlement, distribution, or class counsel’s fee request, you should do so by setting out your objection in writing addressed to Class Counsel by September 13, 2021. You can also attend the hearing. See below for more information.

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## BASIC INFORMATION

### 1. Why was this notice issued?

This notice was issued to advise class members that settlements were reached with TD, RBC, Credit Suisse, and Deutsche Bank. If approved, these settlements will resolve the litigation in its entirety.

This notice explains the settlements and your rights in respect of the settlements. This notice was also issued to advise class members that the Ontario action was certified on a contested basis on behalf of a national class.

### 2. What is a class action?

In a class action, one or more people called “representative plaintiffs” sue on behalf of people who have similar claims. All of these people with similar claims are called the “class” or “class members”. The court resolves the issues for all class members, except those who removed themselves from the class.

### 3. What are these Proceedings about?

Class actions were commenced in Ontario (*Mancinelli, et al v. Royal Bank of Canada, et al*, Court File No. CV-15-536174CP) and Quebec (*Béland c. Banque Royale du Canada et als.*, No de Cour: 200-06-000189-152) (collectively, the “**Proceedings**”).

The Proceedings allege that, beginning at least as early as 2003 and continuing through 2013, the Defendants conspired with each other to fix prices in the FX Market in Canada. It is alleged that the Defendants communicated directly with each other to fix spot prices, control or manipulate FX benchmark rates, and exchange key confidential customer information to trigger client stop loss orders and limit orders.

None of these allegations have been proven in court, and the Defendants have not admitted liability.

In the Proceedings, the Plaintiffs are asking for money or other benefits for the Class. They are also asking for lawyers’ fees and costs, plus interest.

### 4. Who are the parties in the Proceedings?

In Ontario, the Plaintiffs are: Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos, and Jack Oliveira in their capacity as The Trustees of the Labourers’ Pension Fund of Central and Eastern Canada. In Quebec, the Plaintiff is Christine Béland.

The Defendants in the Proceedings (collectively, the “**Defendants**” or “**Named Defendants**”) are as follows:

- Bank of America Corporation, Bank of America, N.A., Bank of America Canada, Bank of America National Association (collectively, “**Bank of America**”)

- Bank of Montreal, BMO Financial Corp., BMO Harris Bank N.A., BMO Capital Markets Limited (collectively, “**BMO**”)
- Bank of Tokyo Mitsubishi UFJ Ltd., Bank of Tokyo-Mitsubishi UFJ (Canada) (collectively, “**Bank of Tokyo**”)
- Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Canada Inc. (collectively, “**Barclays**”)
- BNP Paribas Group, BNP Paribas North America, Inc., BNP Paribas (Canada), BNP Paribas (collectively, “**BNP**”)
- Citigroup, Inc., Citibank, N.A., Citibank Canada, Citigroup Global Markets Canada Inc. (collectively, “**Citigroup**”)
- Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse Securities (Canada) Inc (collectively, “**Credit Suisse**”)
- Deutsche Bank AG
- The Goldman Sachs Group, Inc., Goldman, Sachs & Co., Goldman Sachs Canada Inc. (collectively, “**Goldman Sachs**”)
- HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., HSBC Bank Canada (collectively, “**HSBC**”)
- JPMorgan Chase & Co., J.P. Morgan Bank Canada, J.P. Morgan Canada, JPMorgan Chase Bank, National Association (collectively, “**JPMorgan**”)
- Morgan Stanley, Morgan Stanley Canada Limited (collectively, “Morgan Stanley”)
- Royal Bank of Canada, RBC Capital Markets LLC (collectively, “**RBC**”)
- The Royal Bank of Scotland Group plc, RBS Securities Inc., The Royal Bank of Scotland N.V., The Royal Bank of Scotland plc (collectively, “**RBS**”)
- Société Générale S.A., Société Générale (Canada), Société Générale (collectively, “Société Générale”)
- Standard Chartered plc (“**Standard Chartered**”)
- Toronto Dominion Bank, TD Securities, TD Bank USA, N.A., T.D. Group Holdings, TD Bank N.A. (collectively, “**TD**”)
- UBS AG, UBS Securities LLC, UBS Bank (Canada) (collectively, “**UBS**”)

As discussed below, a number of these entities have settled and are no longer actively part of the action. This notice relates to settlements reached with the last remaining defendants: TD, RBC, Credit Suisse, and Deutsche Bank.

## 5. What is the status of the litigation?

If approved, the settlements with TD, RBC, Credit Suisse, and Deutsche Bank will resolve the litigation in its entirety.

## NOTICE OF CERTIFICATION

### **6. What was the result of the contested Ontario certification motion?**

On April 14, 2020, Justice Perell certified the Ontario action as class proceeding against the Defendants who had not yet settled (Credit Suisse, Deutsche Bank, RBC, and TD).

The certified class is defined as:

All persons in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument\* transaction with a Named Defendant's salesperson either directly or through an intermediary. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates.

\*"FX Instruments" means FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX Market in Canada, excluding instruments traded on any exchange or on any electronic trading platforms.

The certified common issues are:

#### ***Breach of the Competition Act***

- i. Did the Non-Settling Defendants, or any of them, engage in conduct with any other Named Defendant(s) which is contrary to ss. 45 and/or 46 of the *Competition Act*, R.S.C. 1985, c. 34 in force during the applicable period (the "Competition Act")?
- ii. What damages, if any, are payable by the Non-Settling Defendants, or any of them, to the Class Members pursuant to s. 36 of the *Competition Act*?
- iii. By what amount, if any, should the damages otherwise payable by any Non-Settling Defendant pursuant to (ii) above be reduced because of: (a) amounts paid to Class Members by the Settling Defendants; and/or (b) the proportionate liability of the Settling Defendants?
- iv. Should the Non-Settling Defendants, or any of them, pay the full costs, or any, of the investigation into this matter pursuant to s. 36 of the *Competition Act*?

#### ***Conspiracy***

- v. Did the Non-Settling Defendants, or any of them, conspire with any Named Defendant(s) to harm the Class Members?
- vi. Did the Named Defendants, or any of them, act in furtherance of the conspiracy?
- vii. Was the predominant purpose of the conspiracy to harm the Class Members?
- viii. Did the conspiracy involve unlawful acts?
- ix. Did the Named Defendants, or any of them, know that the conspiracy would likely cause injury to the Class Members?
- x. Did the Class Members suffer economic loss?

- xii. What damages, if any, are payable by the Non-Settling Defendants, or any of them, to the Class Members?
- xiii. By what amount, if any, should the damages otherwise payable by any Non-Settling Defendant pursuant to (xii) above be reduced because of: (a) amounts paid to Class Members by the Settling Defendants; and/or (b) the proportionate liability of the Settling Defendants?

***Unjust Enrichment and Waiver of Tort***

- xiv. Have the Non-Settling Defendants, or any of them, been unjustly enriched by the conduct alleged?
- xv. Have the Class Members suffered a corresponding deprivation as a result of the conduct alleged?
- xvi. Is there a juridical reason why the Non-Settling Defendants, or any of them, should be entitled to retain the overcharge obtained as a result of the conduct alleged?
- xvii. What restitution, if any, is payable by the Non-Settling Defendants, or any of them, to the Class Members based on unjust enrichment?
- xviii. What restitution, if any, is payable by the Non-Settling Defendants, or any of them, to Class Members based on the doctrine of waiver of tort?
- xix. Are the Non-Settling Defendants, or any of them, liable to account to the Class Members for the wrongful profits that they obtained based on the doctrine of waiver of tort?

***Punitive Damages***

- xx. Are the Non-Settling Defendants, or any of them, liable to pay punitive or exemplary damages having regard to the nature of their conduct and if so, what amount and to whom?

***Interest***

- xxi. What is the liability, if any, of the Non-Settling Defendants, or any of them, for court ordered interest?

## INFORMATION ABOUT THE SETTLEMENTS

### 7. What are the settlement benefits?

Separate settlements have been reached with:

- TD for CAD \$4,500,000 less the CAD \$175,000 TD previously contributed to the costs of the certification motion;
- RBC for CAD \$6,556,000 less the CAD \$175,000 RBC previously contributed to the costs of the certification motion;
- Credit Suisse for CAD \$5,560,000; and
- Deutsche Bank for USD \$7,220,000, less the CAD \$175,000 (converted to USD \$144,000) Deutsche Bank previously contributed to the costs of the certification motion.

The settlements, if approved and conditions fulfilled, will settle, extinguish, and bar all claims relating in any way to or arising out of the Proceedings against TD, RBC, Credit Suisse, and Deutsche Bank. The settlements are a compromise of disputed claims and TD, RBC, Credit Suisse, and Deutsche Bank do not admit any wrongdoing or liability.

### 8. Who is affected by the settlements?

The settlements apply to all Persons in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument\* either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an FX Instrument (the “**Settlement Class**” or “**Settlement Class Members**”). Excluded from the Settlement Class are the defendants, their parent companies, subsidiaries, and affiliates; provided, however, that Investment Vehicles shall not be excluded from the Settlement Class.

\*“FX Instruments” includes FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX Market.

The Ontario and Quebec actions have been certified/authorized (for settlement purposes only) on behalf of Settlement Class Members.

### 9. Have there been other settlements?

Previous settlements were reached with UBS, BNP, Bank of America, Goldman Sachs, JPMorgan, Citigroup, Barclays, HSBC, Royal Bank of Scotland, Standard Chartered, Bank of Tokyo, Société Générale, Morgan Stanley, and BMO. The settlements total approximately CAD \$110 million.

### **10. Is there any money available now?**

The Ontario and Quebec Courts approved a method for disseminating the settlement funds achieved pursuant to previous settlements (the “**Distribution Protocol**”). The deadline to apply for settlement benefits expired on January 15, 2020. The Claims Administrator is currently processing claims.

Class Counsel propose to distribute the settlement funds pursuant to the Distribution Protocol. No further claims period is being contemplated.

## **YOUR OPTIONS IN RESPECT OF THE SETTLEMENTS**

### **11. What happens if I do nothing at all?**

You do not have to do anything to stay in the class action. The opt-out period has expired. If you opted out, you cannot rejoin the class action. If you did not opt-out, you will be legally bound by all orders and judgments of the Court, and you will not be able to sue the Defendants about the legal claims in this case.

### **12. When will the settlements and distribution be approved?**

Hearings will be held during which Class Counsel will ask the Courts to approve the settlements, plan of distribution, and legal fees plus disbursements and applicable taxes. Any approved legal fees or disbursements will be paid out of the settlement funds.

The hearing before the Ontario Superior Court of Justice will be held on September 23, 2012 at 10am (ET) by videoconference. The hearing before the Quebec Superior Court will be held on October 19, 2021 at 9 am (ET) by videoconference.

### **13. What if I don't agree with the settlements, distribution or class counsel's fee request?**

If you want to object, you should do so by setting out your objection in writing addressed to Class Counsel at Koskie Minsky LLP, 20 Queen St West, Suite 900, Box 52, Toronto, Ontario, M5H 3R3 or by email at [fxclassaction@kmlaw.ca](mailto:fxclassaction@kmlaw.ca). The deadline to object is September 13, 2021.

### **14. Can I exclude myself from the Proceedings?**

No, the deadline to exclude yourself – sometimes referred to as “opting out” – has passed.



## THE LAWYERS REPRESENTING YOU

### **15. Do I have a lawyer in the case?**

The law firms of Sotos LLP, Koskie Minsky LLP, Siskinds LLP, and Camp Fiorante Matthews Mogerma represent Settlement Class Members in the Ontario action. Siskinds Desmeules, s.e.n.c.r.l. represents Settlement Class Members in the Quebec action (collectively, these firms are referred to as “**Class Counsel**”).

### **16. How will the lawyers be paid?**

You will not have to pay any of the fees and expenses of Class Counsel. If the Court grants their request, Class Counsel’s fees and expenses will be deducted from the settlement amounts.

### **17. How much will the lawyers be paid?**

The Plaintiffs’ retainer agreements allow Class Counsel to seek fees up to 25% of all settlements reached prior to the certification motion and 30% of all settlements reached after the certification motion, plus applicable taxes and disbursements.

In relation to the TD, RBC, Credit Suisse, and Deutsche Bank settlements (all of which were reached after certification), Class Counsel will ask the Court to award fees up to 30% of the settlement amounts, plus applicable disbursements and taxes. In other words, Class Counsel will request fees up to CAD \$4,984,800 and USD \$2,166,000, plus disbursements and taxes.

With respect to prior settlements (listed in section 9, above), Class Counsel was awarded fees equivalent to 17.64% of the collective settlement amounts. At the approval hearing, Class Counsel will ask the Court to approve additional fees equivalent to 2.36% (CAD \$2,592,031) of the total prior settlement amounts.

## GETTING MORE INFORMATION

### **17. How do I get more information?**

You can get more information about this case:

**Class Counsel**

**Koskie Minsky LLP**

Toll Free Hotline: 1-855-535-2624

Email: [fxclassaction@kmlaw.ca](mailto:fxclassaction@kmlaw.ca)

20 Queen St West

Suite 900, Box 52

Toronto, ON M5H 3R3

Distribution of this notice was authorized by the Ontario Superior Court of Justice and the Quebec Superior Court

This notice contains a summary of some of the terms of the settlements. If there is a conflict between the provisions of this notice and the settlements, the terms of the settlement agreements will prevail.