

Court File No. CV-24-00721491-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

GERALD A. GAZAREK

Plaintiff

and

TORONTO-DOMINION BANK, RIAZ AHMED, AYMAN ANTOUN, AJAI
BAMBAWALE, MICHAEL BOWMAN, ANDREW CLARKE, JEAN-RENÉ
HALDE, BRIAN C. FERGUSON, MONICA KOWAL, BHARAT MASRANI,
BRIAN M. LEVITT, ALAN N. MACGIBBON, KEITH G. MARTELL,
HERBERT MAZARIEGOS, IRENE R. MILLER, CLAUDE MONGEAU, S.
JANE ROWE, LEO SALOM, KELVIN VI LUAN TRAN, NANCY G. TOWER
and MARY A. WINSTON

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

STATEMENT OF CLAIM

(Commenced by Notice of Action issued on June 4, 2024)

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

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If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: Toronto-Dominion Bank

AND TO: Riaz Ahmed

AND TO: Ayman Antoun

AND TO: Ajai Bambawale

AND TO: Michael Bowman

AND TO: Andrew Clarke

AND TO: Jean-René Halde

AND TO: Brian C. Ferguson

AND TO: Monica Kowal

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AND TO: Bharat Masrani

AND TO: Brian M. Levitt

AND TO: Alan N. MacGibbon

AND TO: Keith G. Martell

AND TO: Herbert Mazariegos

AND TO: Irene R. Miller

AND TO: Claude Mongeau

AND TO: S. Jane Rowe

AND TO: Leo Salom

AND TO: Kelvin Vi Luan Tran

AND TO: Nancy G. Tower

AND TO: Mary A. Winston

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CLAIM

RELIEF SOUGHT

1. The Plaintiff's claim is for:
 - (a) an order granting leave to proceed with statutory misrepresentation claims under Part XXIII.1 of the Ontario *Securities Act*,¹ and if necessary, equivalent provincial and territorial legislation throughout Canada;
 - (b) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, appointing the plaintiff as the representative plaintiff of the class;
 - (c) damages in the amount of \$6,750,000,000 pursuant to s. 138.5 of the *Securities Act* for the statutory misrepresentation claims and common law misrepresentation claims;
 - (d) a declaration that the Impugned Documents, as defined below, issued by the Toronto-Dominion Bank ("TD") contain misrepresentations under the *Securities Act*, as they omit to disclose one or more material facts required to be stated, or material facts required to make statements not misleading in the circumstances in which they were made, or contained one or more untrue statements of material facts;
 - (e) a declaration that the Impugned Documents contain misrepresentations and omissions at common law;
 - (f) a declaration that there were systemic deficiencies in TD's AML controls as of August 25, 2021, resulting in their insufficiency to effectively monitor, detect, report, and respond to suspicious activities, and resulting failures to comply with AML laws, thus exposing TD to the likelihood of serious regulatory, criminal and other penalties in the U.S. that would materially impact TD's U.S. operations, were a change in the business and operations of TD that would reasonably be expected to have a significant effect on the market price of TD securities, requiring the publication of a news release and material change report pursuant to section 75 of the *Securities Act*;
 - (g) a declaration that TD is vicariously liable for the acts and omissions of the Individual Defendants, alleged herein;
 - (h) a declaration that the Defendants are liable in damages to the Class Members who purchased TD securities on the secondary market pursuant to section 138.3 of the

¹ References to the *Securities Act* are inclusive of equivalent provincial and territorial legislation throughout Canada unless otherwise specified.

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Ontario *Securities Act* between August 25, 2021 and May 3, 2024 (the “**Class Period**”), and if applicable, equivalent provincial and territorial legislation throughout Canada:

- (i) for the AML Controls Misrepresentations;
 - (ii) for the AML Penalties Misrepresentations; and
 - (iii) and for the Accounting Misrepresentations.
- (i) a declaration that the Defendants are liable in damages to the Class Members who purchased TD securities in the primary market pursuant to sections 130 and 130.1 of the *Securities Act* within three years of the date of issuance of the commencement of this Action:
- (i) for the AML Controls Misrepresentations;
 - (ii) for the AML Penalties Misrepresentations; and
 - (iii) for the Accounting Misrepresentations.
- (j) a declaration that TD is liable in negligent misrepresentation for the common law misrepresentations and omissions contained in the Impugned Documents;
- (k) punitive damages against TD and the Individual Defendants, in an amount not exceeding \$100,000,000;
- (l) if necessary, following the determination of the common issues, a direction pursuant to s. 25(2) of the *Class Proceedings Act* directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (m) prejudgment interest and postjudgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*; and
- (n) costs of this action, costs of notice, and costs of administering the plan of distribution of the recovery in this action, and all applicable taxes; and
- (o) such further and other relief as counsel may advise and this Court may permit.

CURRENCY AND DEFINITIONS

2. Unless otherwise specified, all dollar amounts are in Canadian dollars.
3. The following terms have the following meanings:

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- (a) “**Accounting Misrepresentations**” mean the misrepresentations related to TD’s accounting practices, particularized in the Claim.
- (b) “**AFS**” means Annual Financial Statements.
- (c) “**AIF**” means Annual Information Form.
- (d) “**AML**” means Anti-Money Laundering.
- (e) “**AML Controls Misrepresentations**” means the misrepresentations related to TD’s AML Controls, particularized in the Claim.
- (f) “**AML Penalties Misrepresentations**” means the misrepresentations related to the penalties TD faced as a result of its AML deficiencies, particularized in the Claim.
- (g) “**Board**” means the Board of Directors of the Toronto-Dominion Bank.
- (h) “**BSA**” means the U.S. Bank Secrecy Act.
- (i) “**CEO Certifications**” means the certifications of the interim and/or annual filings by the CEO pursuant to NI 52-109.
- (j) “**CFO Certifications**” means the certifications of the interim and/or annual filings by the CFO pursuant to NI 52-109.
- (k) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
- (l) “**Class**” or “**Class Members**” means all persons, other than Excluded Persons, who acquired Toronto-Dominion Bank securities during the Class Period and continued to hold some or all of those securities until the publication of one or more of the corrections, as pleaded.
- (m) “**Class Period**” means the period between August 25, 2021 and May 3, 2024.
- (n) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
- (o) “**CSA**” means Canadian Securities Administrators.
- (p) “**DC&P**” means Disclosure Controls & Procedures as defined in NI 52-109.
- (q) “**Defendants**” means Toronto-Dominion Bank, Riaz Ahmed, Ayman Antoun, Ajai Bambawale, Michael Bowman, Andrew Clarke, Jean-René Halde, Brian C. Ferguson, Monica Kowal, Bharat Masrani, Brian M. Levitt, Alan N. MacGibbon, Keith G. Martell, Herbert Mazariegos, Irene R. Miller, Claude Mongeau, S. Jane Rowe, Leo Salom, Kelvin Vi Luan Tran, Nancy G. Tower, and Mary A. Winston.

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- (r) “**Defendant Directors**” means the Defendants Brian M. Levitt, Alan N. MacGibbon, Ayman Antoun, Jean-René Halde, Brian C. Ferguson, Keith G. Martell, Irene R. Miller, Claude Mongeau, S.Jane Rowe, Nancy G. Tower, and Mary A. Winston
- (s) “**Defendant Officers**” means the Defendants Bharat Masrani, Riaz Ahmed, Kelvin Vi Luan Tran, Michael Bowman, Herbert Mazariegos, Leo Salom, Ajai Bambawale, Andrew Clarke, and Monica Kowal.
- (t) “**DOJ**” means the U.S. Department of Justice.
- (u) “**Excluded Persons**” means the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an Individual Defendant.
- (v) “**Equivalent Provincial and Territorial Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4, the *Securities Act*, RSBC 1996, c 418, *The Securities Act*, CCSM c S50, the *Securities Act*, SNB 2004, c S-5.5, the *Securities Act*, RSNL 1990, c S-13, the *Securities Act*, SNWT 2008, c 10, the *Securities Act*, RSNS 1989, c 418, the *Securities Act*, S Nu 2008, c 12, the *Securities Act*, RSPEI 1988, c S-3.1, the *Securities Act*, RSQ, c V-1.1, *The Securities Act*, 1988, SS 1988-89, c S-42.2, and the *Securities Act*, SY 2007, c 16, all as amended;
- (w) “**FinCEN**” means the Financial Crimes Enforcement Network.
- (x) “**FinTRAC**” means the Financial Transactions and Reports Analysis Centre of Canada.
- (y) “**First Horizon**” means First Horizon Corporation.
- (z) “**HSBC**” means HSBC Holdings.
- (aa) “**ICFR**” means Internal Controls over Financial Reporting as defined in NI 52-109.
- (bb) “**IFRS**” means International Financial Reporting Standards.
- (cc) “**IFS**” means Interim Financial Statements.
- (dd) “**Impugned Core Documents**” mean the following documents:
 - (i) the August 25, 2021 Interim MD&A for the three and nine months ended July 31, 2021 (“**Q3 2021 MD&A**”);
 - (ii) the August 25, 2021 Interim Financial Statements for the three and nine months ended July 31, 2021 (“**Q3 2021 IFS**”);

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- (iii) the December 1, 2021 Annual MD&A for the year ended October 31, 2021 (“**2021 MD&A**”);
- (iv) the December 1, 2021 Annual Financial Statements for the year ended October 31, 2021 (“**2021 AFS**”);
- (v) the December 1, 2021 Annual Information Form for the year ended October 31, 2021 (“**2021 AIF**”);
- (vi) the March 2, 2022 Interim MD&A for the three months ended January 31, 2022 (“**Q1 2022 MD&A**”);
- (vii) the March 2, 2022 Interim Financial Statements for the three months ended January 31, 2022 (“**Q1 2022 IFS**”);
- (viii) the Management Proxy Circular submitted to SEDAR+ on March 7, 2022 (“**2022 Management Proxy Circular**”);
- (ix) the May 25, 2022 Interim MD&A for the three and six months ended April 30, 2022 (“**Q2 2022 MD&A**”);
- (x) the May 25, 2022 Interim Financial Statements for the three and six months ended April 30, 2022 (“**Q2 2022 IFS**”);
- (xi) the August 24, 2022 Interim MD&A for the three and nine months ended July 31, 2022 (“**Q3 2022 MD&A**”);
- (xii) the August 24, 2022 Interim Financial Statements for the three and nine months ended July 31, 2022 (“**Q3 2022 IFS**”);
- (xiii) the November 30, 2022 Annual MD&A for the year ended October 31, 2022 (“**2022 MD&A**”);
- (xiv) the November 30, 2022 Annual Financial Statements for the year ended October 31, 2022 (“**2022 AFS**”);
- (xv) the November 30, 2022 Annual Information Form for the year ended October 31, 2022 (“**2022 AIF**”);
- (xvi) the March 1, 2023 Interim MD&A for the three months ended January 31, 2023 (“**Q1 2023 MD&A**”);
- (xvii) the March 1, 2023 Interim Financial Statements for the three months ended January 31, 2023 (“**Q1 2023 IFS**”);
- (xviii) the Management Information Circular submitted to SEDAR+ on March 14, 2023 (“**2023 Management Proxy Circular**”);

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- (xix) the May 24, 2023 Interim MD&A for the three and six months ended April 30, 2023 (“**Q2 2023 MD&A**”);
 - (xx) the May 24, 2023 Interim Financial Statements for the three and six months ended April 30, 2023 (“**Q2 2023 IFS**”);
 - (xxi) the August 23, 2023 Interim MD&A for the three and nine months ended July 31, 2023 (“**Q3 2023 MD&A**”);
 - (xxii) the August 23, 2023 Interim Financial Statements for the three and nine months ended July 31, 2023 (“**Q3 2023 IFS**”);
 - (xxiii) the November 29, 2023 Annual MD&A for the year ended October 31, 2023 (“**2023 MD&A**”);
 - (xxiv) the November 29, 2023 Annual Financial Statements for the year ended October 31, 2023 (“**2023 AFS**”);
 - (xxv) the November 29, 2023 Annual Information Form for the year ended October 31, 2023 (“**2023 AIF**”);
 - (xxvi) the February 28, 2024 Interim MD&A for the three months ended January 31, 2024 (“**Q1 2024 MD&A**”);
 - (xxvii) the February 28, 2024 Interim Financial Statements for the three months ended January 31, 2024 (“**Q1 2024 IFS**”);
 - (xxviii) the Management Information Circular submitted to SEDAR+ on March 12, 2024 (“**2024 Management Proxy Circular**”);
 - (xxix) the May 22, 2024 Interim MD&A for the three and six months ended April 30, 2024 (“**Q2 2024 MD&A**”); and
 - (xxx) the May 22, 2024 Interim Financial Statements for the three and six months ended April 30, 2024 (“**Q2 2024 AFS**”).
- (ee) “**Impugned Documents**” means both the Impugned Core Documents and the Impugned Non-Core Documents.
 - (ff) “**Impugned Non-Core Documents**” means all documents, as defined in Part XXIII.1 of the *Securities Act*, described as containing a misrepresentation other than Core Documents.
 - (gg) “**Individual Defendants**” means all Defendants other than the Toronto-Dominion Bank.
 - (hh) “**KYC**” means Know Your Customer.

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- (ii) “**MD&A**” means Management’s Discussion and Analysis.
- (jj) “**Misrepresentations**” means all of the misrepresentations particularized within this Claim.
- (kk) “**NI 51-102**” means National Instrument 51-102 – *Continuous Disclosure Obligations*.
- (ll) “**NI 52-109**” means Nation Instrument 52-109 – *Certification of Disclosure in Issuers Annual and Interim Filings*.
- (mm) “**NYSE**” means the New York Stock Exchange.
- (nn) “**OCC**” means the U.S. Office of the Comptroller of the Currency.
- (oo) “**OSA**” or “*Securities Act*” means the Ontario *Securities Act*, R.S.O. 1990, c. S.5.
- (pp) “**PPP**” means the Paycheck Protection Program.
- (qq) “**SAR**” means Suspicious Activity Report.
- (rr) “**SEC**” means the U.S. Securities and Exchange Commission.
- (ss) “**SIB**” means Stanford International Bank.
- (tt) “**TD**” or the “**Bank**” means the Defendant Toronto-Dominion Bank.
- (uu) “**TSX**” means the Toronto Stock Exchange.

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OVERVIEW

4. For many years, TD Bank (“**TD**” or the “**Bank**”) represented that a critical corporate priority was to grow its US operations. To these ends, the Bank distinguished itself in a crowded US market by touting its reputational credentials as a trusted Canadian bank.

5. However, contrary to its professed reputation and its representations to the Class, the Bank had systemically deficient anti-money laundering (“**AML**”) controls throughout its operations for decades. The Bank was repeatedly faulted by politicians, judges and regulators for its instrumentality in facilitating staggering money laundering schemes. Yet the Bank did little to remedy its systemically-deficient AML controls for over to ten years. To the contrary, the Bank represented the strength of its AML controls and its trusted relationships with US regulators.

6. TD’s culture of AML non-compliance came to a head by February 2022. On or about February 22, 2022, Da Ying Sze pleaded guilty in the U.S. District Court of New Jersey to a complaint that charged him with conspiring to commit money laundering, facilitated through the bribery of a financial institution. The U.S. Attorney’s Office described a “staggering amount of money” laundered, “more than \$653.3 million in cash.” The laundering scheme was crude, and would have been easily detected by the most basic AML controls. The scheme involved hauling cash in money bags from branch-to-branch across at least three state lines. The complaint referred to one cash transaction of some \$2.3 million, purportedly on behalf of a sewing company in Queens, New York.

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7. Although the complaint described the bank anonymously, on May 2, 2024, it ultimately emerged that TD Bank was that bank. It also emerged that the guilty plea was tied to laundering of illicit fentanyl profits.

8. The criminal complaint refers to US law enforcement conducting “extensive analysis of evidence provided by financial institutions concerning bank accounts controlled by [the accused].” Therefore, by February 2022 at the latest, the Bank knew or ought to have known that it was instrumental in facilitating the laundering of staggering amounts of illicit fentanyl proceeds on behalf of Chinese money-brokers (tied to Mexican drug cartels), using a crude money laundering scheme that should have been detected by the most basic of AML controls. Fentanyl has contributed to a surging number of overdose deaths.

9. The Bank knew or ought to have known that its AML controls were abysmal. Instead, it represented throughout the class period that it had strong and compliant AML controls (“**AML Controls Misrepresentations**”). Further, the Bank knew or ought to have known that it would be subject to significant monetary penalties arising out of its systemic AML deficiencies (“**AML Penalties Misrepresentations**”). In addition, the Bank knew or ought to have known that its culture of repeated non-compliance in AML controls over 10 years, combined with the most recent explosive fentanyl episode, was reasonably likely to result in restrictions on its US operations that would likely materially impact the Bank’s US operations (“**AML US Operations Misrepresentations**”). Finally, the Bank materially misrepresented its financial position, in particular the performance of its US Retail business segment, and by overstating its revenues, net income, and profits, and understating its liabilities, and by overstating the financial performance of its US retail business segment (“**Accounting Misrepresentations**”). The AML Controls

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Misrepresentation, the AML Penalties Misrepresentation, the AML US Operations Misrepresentation and the Accounting Misrepresentation are collectively described as the **“Misrepresentations.”**

10. The Bank finally disclosed on April 30, 2024 that it took “an initial provision of US\$450 million in connection with discussions with one of its US regulators, related to previously disclosed regulatory and law enforcement investigations of TD’s US Bank Secrecy Act (BSA)/anti-money laundering program, implicating three US regulators and the US Department of Justice,” and that “TD’s AML program was insufficient to effectively monitor, detect, report and respond to suspicious activity. Work has been underway to remedy these deficiencies. [...]” On May 2, 2024, more details emerged concerning the announcement, finally publicly tying TD to the laundering of illicit fentanyl and other drugs.

11. The Bank knew or ought to have known that the AML Controls Misrepresentation was false as of August 24, 2021. Further, the Bank should have known that the Misrepresentations were false as of February 22, 2022 (when the Bank knew or ought to have known of the toxic effect of the Sze plea), or by October 2022 or November 2022 in the alternative (after a series of highly-unusual meetings between the Bank’s top executives and the US Office of The Comptroller of The Currency regarding the Bank’s systematically-deficient AML controls), or by February 2023, after a highly unusual meeting between the Bank’s CEO, senior US government officials, and the Bank’s outside counsel, or by August 24, 2023 in the further alternative (when the Bank referred generically to “responding to formal and informal inquiries,” to “pursuing efforts to enhance its Bank Secrecy Act/anti-money laundering compliance program” and to non-specified

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“monetary and/or non-monetary penalties to be imposed”, while stressing that its AML controls were compliant.)

12. TD also failed to recognize a provision for these investigations until April 30, 2024. TD knew or ought to have known no later than February 2022, when TD knew, or ought to have known, of the guilty plea of a member of a Chinese fentanyl trafficking organization pleaded guilty to charges alleging he had engaged in money laundering facilitated by TD staff and facilities. From that date onward, TD knew or ought to have known that a material provision was likely. As a result of this failure to recognize a provision, TD made accounting misrepresentations by overstating its net income and profits, understating its liabilities, and by positively stating that it did not believe outstanding regulatory and legal actions would have a material effect on its consolidated financial position.

13. The Misrepresentations were corrected through a series of partial corrections on August 24, 2023, January 8, 2024, January 9, 2024, April 30, 2024, May 2, 2024, and May 3, 2024. These publications brought the true nature and extent of TD’s AML issues to light and resulted in significant damages to the Class, as reflected in the decline in the price of TD securities following each of these events. For example, after the April 30 press release and May 2 and 3 newspaper articles, TD’s share price declined over \$6 per share, resulting in damages to Class Members pursuant to the *Securities Act*.

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THE PARTIES

The Plaintiff

14. Gerald A. Gazarek is a retail investor. Mr. Gazarek purchased 100 shares of TD common stock on the TSX on April 12, 2023 at an average price of \$80.70. Mr. Gazarek held those shares throughout the Class Period and continues to hold those shares when this claim was commenced.

The Defendants

15. TD is one of the largest banks in Canada and one of two Canadian banks designated as a Globally Systemically Important Bank (“**G-SIB**”). TD is a reporting issuer that is listed on both the TSX and the New York Stock Exchange (“**NYSE**”). TD has extensive retail operations in both Canada and the United States. TD’s overall strategic direction and growth was contingent on its planned expansion into the U.S. market. A critical component of its banking operations involved ensuring the bank’s overall good reputation among shareholders, customers and regulators, among others.

16. Bharat Masrani is the CEO of TD. He has held this position throughout the Class Period. Mr. Masrani, as CEO, executed interim and annual certifications as to the supposed effectiveness of TD’s Internal Controls over Financial Report (“**ICFR**”) and Disclosure Controls & Procedures (“**DC&P**”).

17. Riaz Ahmed was the CFO of TD from the start of the Class Period until September 2021. Mr. Ahmed, as CFO, executed the Q3 2021 interim certification as to the supposed effectiveness of TD’s ICFR and DC&P.

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18. Kelvin Vi Luan Tran is the current CFO of TD. He has held this position since September 2021. Mr. Tran, as CFO, executed interim and annual certifications as to the supposed effectiveness of TD's ICFR and DC&P.

19. Michael Bowman was the TD Chief Global Anti-Money Laundering Officer at TD from 2017 until November 2023. He was a key figure at TD who was responsible for ensuring the effectiveness of the TD AML controls.

20. Herbert Mazariegos is the current Chief Global Anti-Money Laundering Officer at TD. He was appointed after Mr. Bowman left this role in November 2023.

21. Leo Salom is the U.S. Retail Group Head at TD and President and CEO of TD Bank. He has held this position throughout the Class Period. Mr. Bowman reported to Mr. Salom.

22. Ajai Bambawale is the Chief Risk Officer (“CRO”) of TD. He has held this position throughout the Class Period. As CRO, Mr. Bambawale was intimately familiar with the AML issues at TD.

23. Andrew Clarke was the Chief Compliance Officer (“CCO”) of TD from the start of the Class Period until November 2022. As CCO, Mr. Clarke was also intimately familiar with the AML issues at TD.

24. Monica Kowal is the current CCO of TD. She has held this position since November 2022, when Mr. Clark left this role.

25. Throughout the Class Period, each of Mr. Masrani, Mr. Ahmed, Mr. Tran, Mr. Bowman, Mr. Mazariegos, Mr. Salom, Mr. Bambawale, Mr. Clarke, and Ms. Kowal (the “**Defendant**

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Officers”) knew, or ought to have known, of the deficiencies in TD’s AML systems and the involvement of TD branches, facilities, and employees in numerous instances of money laundering, including those involving laundering the proceeds of crime and criminal enterprises, such as the trafficking of fentanyl and other drugs. Despite this, each of these individuals authorized, permitted, or acquiesced in the disclosure of misrepresentations and omissions in each of the Impugned Documents.

26. From the commencement of the Class Period until January 31, 2024, Brian M. Levitt was the chair of the Board of Directors of TD. From February 1, 2024 to the date of this Statement of Claim, Alan N. MacGibbon has been the chair of the Board of TD. As chairs of the Board, Messrs. Levitt and MacGibbon approved TD’s periodic disclosure documents, including the Impugned Documents, and had responsibility for the oversight of the operations and governance of TD, including oversight of the Audit Committee.

27. The following Defendants were members of the Audit Committee of the TD Board of Directors during the Class Period: Ayman Antoun, Jean-René Halde, Brian C. Ferguson, Alan N. MacGibbon, Keith G. Martell, Irene R. Miller, Claude Mongeau, S. Jane Rowe, Nancy G. Tower, and Mary A. Winston. The Audit Committee oversees TD’s financial reporting, including the reporting in the Impugned Documents. As members of the Board, members of the Audit Committee approved of TD’s periodic disclosure documents, including the Impugned Documents.

28. The Audit Committee is also responsible for oversight of the adequacy and effectiveness of TD’s internal controls and the activities of TD’s Global Anti-Money Laundering group, Compliance group, and Internal Audit functions. As part of this purported oversight, senior

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management of the Legal, Compliance, and Global Anti-Money Laundering departments have regular meetings, and report regularly to the Audit Committee. The members of the Audit Committee knew or ought to have known of the extent and severity of the systemic deficiencies in AML controls at TD and authorized the release of the Impugned Documents and the misrepresentations contained within them.

29. Throughout the Class Period, each of Mr. Levitt, Mr. MacGibbon, Mr. Antoun, Mr. Halde, Mr. Ferguson, Mr. Martell, Ms. Miller, Mr. Mongeau, Ms. Rowe, Ms. Tower, and Ms. Winston (the “**Defendant Directors**”) knew, or ought to have known, of the systemic deficiencies in TD’s AML controls and likely consequential material impact on TD’s U.S. operations. Despite this, each of these individuals approved of the disclosure of misrepresentations and omissions in each of the Impugned Documents.

BACKGROUND FACTS

The Bank’s efforts to grow in the US

30. For many years, the Bank sought to expand its US operations as a key strategic goal. The Bank’s strategy for its US operations has centred on several key areas:

- i. Expansion through acquisitions: the Bank significantly grew its US presence through strategic acquisitions, such as the purchase of Commerce Bancorp, Inc. in 2008 and the recent acquisition of Cowen Inc., a US investment bank, which added extensive capabilities and client relationships to its portfolio;
- ii. Retail banking focus: the Bank emphasizes its retail banking network, branding itself as “America’s Most Convenient Bank.” This includes offering extended hours, seven-day-a-week service, and overall customer-friendly experiences; and
- iii. Organic growth: alongside acquisitions, the Bank continued to focus on organic growth by opening new branches and enhancing its digital banking services.

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31. These strategies helped the Bank to establish a significant presence in the US market, making it one of the top 10 largest banks in the country by assets.

The US regime for AML controls

32. As a nationally chartered bank, the Bank has long been subject to well-established standards in the US for maintaining an effective AML compliance program and complying with its obligations to identify and report suspicious activity under the Bank Secrecy Act (“**BSA**”). The Financial Crimes Enforcement Network (“**FinCEN**”), a bureau of the Department of Treasury whose mission is to safeguard the financial system from illicit use and combat money laundering and its related crimes, is the agency charged with enforcing the BSA. A primary goal of AML controls under the BSA is for financial institutions like the Bank to prevent the opening and use of suspicious bank accounts that criminal sectors rely on to store and funnel funds for illegal activity, and to regularly monitor and report any suspicious activity to FinCEN.

33. Under the BSA, financial institutions are required to regularly submit “suspicious activity reports,” or SARs, to FinCEN within 30 days of initial detection of red flags that indicate suspicious or criminal activity. According to FinCEN, SARs are “instrumental” in enabling law enforcement to combat major money laundering or terrorist financing operations, with the timely filing of these reports being critical to the success of those investigations. The BSA also requires financial institutions like the Bank to implement a comprehensive internal AML program with at least five components or “pillars” to ensure its effectiveness, including: (1) designation of a compliance officer responsible for managing BSA/AML compliance; (2) development of internal AML policies, procedures and controls to ensure ongoing BSA compliance; (3) ongoing, relevant BSA/AML training of employees; (4) independent testing for BSA/AML compliance; and (5)

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customer due diligence. In order to comply with its SARs reporting obligations, the Bank was required to install automated account monitoring systems that would identify transactions that were suspicious and alert the bank to them, which were then to be reviewed by BSA analysts to determine whether they needed to be reported and whether the Bank was required to take action to stop the suspicious activity.

34. As part of this AML program, the Bank is also required to implement a Customer Identification Program designed to verify the true identity of customers and beneficial owners of accounts at account opening, and to conduct ongoing monitoring of accounts in order to identify and report any suspicious transactions—collectively known as the KYC or “Know Your Customer” procedures. KYC procedures were established by the 2001 U.S. Patriot Act in the wake of the 9/11 terrorist attacks, and are designed to, in short, ensure that a customer is who they say they are by requiring proof of identity with a photograph and separate proof of physical address (with more in-depth documentation required for higher-risk customers, products or services). These procedures are widely regarded as a critical first line of defense against illegal money laundering or terrorist financing. By verifying a customer’s identity and intentions upon opening a new account, and then monitoring any unusual transaction patterns—such as frequent wire transfers, international transactions, or interactions with off-shore financial centers—financial institutions can pinpoint suspicious activity and prevent the opening or use of fake accounts for money laundering. KYC procedures also require banks to regularly update customer information and request more documentation verifying the customer’s identity and purpose for the account if needed, particularly if ongoing monitoring identifies suspicious transactions.

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35. These AML requirements were not only well understood by the senior leadership of the Bank (including the defendants, Masrani, Salom and Tran), but these same executives were personally responsible for ensuring that the Bank’s BSA/AML compliance program satisfied US statutory standards and met US regulators’ expectations. Specifically, federal regulations make clear that responsibility for maintaining and monitoring an adequate AML compliance program rests squarely on the bank’s senior leadership, who are “ultimately responsible for ensuring that the bank maintains a system of internal controls to assure ongoing compliance with BSA regulatory requirements.” Indeed, the Federal Financial Institutions Examination Council BSA/AML Examination Manual used by the US Office of the Comptroller of the Currency (“OCC”) requires that any deficiencies in a bank’s AML controls be reported directly to the bank’s senior management and its Board of Directors.

36. The OCC also regularly reviews the adequacy of a bank’s AML program during annual supervisory reviews—one of which occurred during the Class Period in the fall of 2022—and the results of those reviews are also reported directly to senior management.

While TD touted its strong risk culture, its AML controls were abysmal for many years

37. While the Bank touted its “strong risk culture” as part of its core strategy, the Bank had a long and abysmal record of deficient AML controls. In the years leading up to and during the Class Period, numerous regulators, senior government officials, and federal courts in the U.S. and Canada regularly criticized the Bank for egregious AML failures. These failures included TD’s “knowing” and “willful” involvement in several of the largest Ponzi schemes in recent history, scathing regulatory reports singling out the bank for its “surprising” and “troubling” AML deficiencies, and US federal judges overseeing criminal trials calling out the Bank for being

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“asleep at the switch” with regard to AML controls. Significantly, these same regulators and courts found that the Bank’s AML failures were so pervasive that the most senior officers of the bank were indisputably fully aware of them.

38. For example, in 2013, TD entered into regulatory settlements concerning its role in the \$1.2 billion Rothstein Ponzi scheme, pursuant to which TD admitted that it had “wilfully violated” the US Bank Secrecy Act, due to what the OCC described as “a pattern of misconduct” that was “significant and egregious.” The OCC determined that the Bank’s AML program utterly failed to appropriately monitor the accounts through which Rothstein and Bank employees had perpetuated the scheme. While Rothstein was a major Bank client in 2008 and 2009, TD generated around 100 fraud alerts for Rothstein’s bank accounts, involving thousands of suspicious transactions. However, the Bank failed to timely file a single suspicious activity report (“SAR”) with regulators as required under the BSA, a striking failure of training and oversight. The OCC thus concluded that TD Bank had engaged in “a pattern of misconduct” that was “significant and egregious,” with thousands of transactions totaling \$900 million in aggregate suspicious activity flowing through Rothstein’s TD accounts. Similarly, FinCEN concluded that TD Bank “willfully” violated the BSA’s reporting requirements by failing to timely detect and adequately report suspicious activities, which the bureau attributed to “a lack of adequate training for both the anti-money laundering and business staff.”

39. In announcing the settlement, Andrew J. Ceresney, Co-Director of the SEC’s Division of Enforcement, stated: “TD Bank through a regional vice president produced false documents on bank letterhead and told outright lies to investors, failing in its gatekeeper role” to prevent money laundering and fraud. And as to TD Bank’s woefully deficient AML controls, FinCEN’s Director

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stated: “[I]t is not acceptable to have a poorly resourced and trained staff overseeing such a critical function,” noting that “in the face of repeated alerts on Mr. Rothstein’s accounts by [TD Bank’s] anti-money laundering surveillance software over an 18-month period, [TD Bank] did not do enough to prevent the pain and financial suffering of innocent investors.”

40. The Bank was also instrumental in facilitating the \$7 billion Stanford Ponzi scheme, the second-largest Ponzi scheme in history, in which the Bank paid a \$1.2 billion settlement in February 2023. Stanford used TD Bank to facilitate his massive long-running fraud, with the bank collecting almost \$7 billion in fake CDs over the course of ten years without ever once questioning highly suspicious red flags that constituted classic hallmarks of a Ponzi scheme. As detailed in a letter to TD Bank from U.S. Senators John N. Kennedy and Bill Cassidy demanding restitution for investors from the bank due to its direct participation in the scheme, “TD Bank ignored numerous inescapable signs of fraudulent activity” and “turned a blind eye to obviously fraudulent activity by Stanford.” Among other things, the Senators stated that TD blatantly ignored “large round sums leaving Stanford’s TD Bank accounts”; “actual investment returns that could not support the unreasonably high CD returns SIB was offering”; “SIB’s location in Antigua, one of the highest risk jurisdictions in the world known for money laundering”; and “Stanford’s declared bankruptcy and designation as a Politically Exposed Person.” Following Stanford’s guilty plea and conviction, Stanford customers sued TD Bank, alleging that it had played a critical role in facilitating the scheme. On January 20, 2022, Judge David C. Godbey of the United States District Court in the Northern District of Texas, where the Stanford lawsuit was pending, denied TD Bank’s motion for summary judgment. In that decision, the Court wrote that the evidence showed that TD “had clear insight into the destination of funds wired out of [Stanford’s] account, which clearly indicated that

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[Stanford's Bank] directed the bulk of incoming funds to paying earlier investors, an obvious hallmark of a Ponzi scheme." The court further determined that "TD Bank transacted with Stanford in full awareness that improper behavior was ongoing within the Stanford entities."

41. The Bank was also alleged to have facilitated a \$3 billion Ponzi scheme involving the internet phone service company TelexFree. Specifically, TD assisted TelexFree's illegal activities by opening up a number of TelexFree accounts, breaking up large checks in order to launder money to other banks, and writing reference letters on TD letterhead for TelexFree-related entities involved in the Ponzi scheme.

42. On August 31, 2022, the United States District Court for the District of Massachusetts denied TD's motion to dismiss and later held that, even after becoming aware of numerous red flags, "TD Bank continued to allow TelexFree to open new accounts, and subsequently facilitated large fund transfers between accounts to assist TelexFree in obscuring the source and movement of its funds"—including one instance in which "TD Bank facilitated the transfer of three million dollars between three accounts within the span of seven minutes." The court thus concluded that "[t]his is not a case where, despite certain suspicious activity, a bank failed to detect an underlying fraud"—but rather, "TD Bank's reactions to red flags" supported a finding "that TD Bank 'actually knew' that TelexFree was a fraud." TD ultimately settled the TelexFree lawsuit for \$95 million in October 2023.

43. The Rothstein, Stanford, and TelexFree Ponzi schemes were not isolated instances or the result of lapses from years ago. To the contrary, the Bank's egregious AML failures enabled Bank employees to use the Bank to launder criminal proceeds on a massive scale and carry out some of

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the largest financial frauds in recent memory leading up to and during the Class Period. All of these examples share a strikingly similar fact pattern: a plethora of flagrant red flags indicating obvious fraudulent activity that was readily apparent to senior management, and which any adequate AML program would have identified and prevented. Those failures resulted in numerous DOJ criminal prosecutions of Bank employees during the Class Period.

44. In one egregious example, TD's deficient AML program allowed a Bank representative, Oscar Marcelo Nunez-Flores, the "sales leader" and the "primary contact" for new and existing customers for the Bank's Scotch Plains, New Jersey branch, to launder millions of dollars in illicit drug sales for nearly one full year, primarily by enabling tens of thousands of obviously suspicious ATM transactions in Colombia. Mr. Nunez used his position at the Bank to facilitate transactions from these accounts that, on their face, contained clear hallmarks of illicit money laundering that should have, but did not, immediately trigger AML alarms—strongly indicating systemic AML failures at the Bank. The circumstances enabling Mr. Nunez's money laundering exhibit the absence of the most fundamental and rudimentary AML controls.

45. Mr. Nunez's scheme was far from the only situation where the Bank's grossly deficient AML program enabled a massive fraud that was prosecuted by the US DOJ during the Class Period. Another case involved what a US federal prosecutor described as "one of the largest COVID-19 relief cases in the country," in which a Bank regional vice president used his position at the bank to obtain \$15 million in fraudulent loans through the government's Paycheck Protection Program ("PPP") COVID-19 relief loan program. The PPP loans submitted by Mr. Hernandez and his co-conspirators were obviously fraudulent and should have been identified by basic AML

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checks. When other Bank employees raised concerns to their supervisors about the unusually high number of loans processed, they were either ignored, silenced or retaliated against.

46. In yet another fraudulent scheme that resulted in a criminal prosecution during the Class Period, Diape Seck, a Bank employee, opened hundreds of US bank accounts between January 2019 and January 2020 in order to facilitate the fraudulent depositing of checks stolen from the mail that were intended as donations to religious institutions.

47. After the jury found Mr. Seck guilty of conspiracy to commit bank fraud, the federal judge overseeing the trial—the Honorable Theodore D. Chuang—determined that Mr. Seck was entitled to a mitigation under the sentencing guidelines specifically because of the Bank’s complicity in failing to uncover and stop the fraud. As Judge Chuang recognized at Mr. Seck’s sentencing hearing in June 2023, the Bank’s senior leadership had all of the information necessary to identify and put a stop to the fraud—but consciously chose not to do so in order to inflate the bank’s bottom line. Indeed, Judge Chuang found that “the TD Bank people either were asleep at the switch or they were happy that they were getting these accounts.” As Judge Chuang stated: “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,

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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.”

The Bank’s AML controls were scrutinized and criticized by government regulators for many years

48. In 2017, the OCC issued the Bank a private reprimand for having engaged in sales misconduct for years by opening fake bank accounts and enrolling customers in TD services without customers’ permission—constituting clear violations of TD Bank’s own AML Statement that the Bank ensured AML and KYC compliance through accurate “customer and transaction record-keeping” and “ongoing monitoring to detect and report suspicious transactions or activities.”

49. In June 2022, Senator Elizabeth Warren and three other lawmakers sent an open letter to the OCC, citing the OCC’s 2017 confidential finding that the Bank was “one of a handful of retail financial institutions that had systemic problems in its account opening, verification and sales processes”—thus again constituting clear violations of KYC procedures requiring TD to verify customers’ identities and purpose in opening new bank accounts—that “stretched across retail branches from Maine to Florida.” The letter sharply criticized the OCC’s 2017 decision to issue only “a private reprimand” to TD “that would not materially impact TD Bank’s business practices,” which had “allowed TD Bank’s rampant fraud and abuse to go unpunished, even after the agency’s troubling findings in its own investigation of the bank.” The letter then specifically called upon Acting Comptroller Michael Hsu and the OCC to “closely examine” any “ongoing wrongdoing” at the Bank.

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50. In or around October 24, 2022, the OCC completed its annual supervisory examination of the Bank and its AML controls, and provided its feedback directly to the Bank's senior leadership, including Masrani, Salom and Tran. The feedback the OCC provided was highly critical and alerted Bank executives that bank regulators had identified serious lapses in the Bank's AML program. In fact, immediately following this review, in a series of secret meetings with the highest-ranking officials at the Bank's primary regulators at the Federal Reserve and OCC, the Bank's regulators openly discussed the Bank's severe AML failings with the Bank's senior executives—which had become the subject of a formal US DOJ probe. By this time, the Bank knew that the Misrepresentations were false.

51. The OCC's examination was promptly followed by urgent private meetings between the Bank's General Counsel, outside counsel Simpson Thacher and certain of the Bank's most senior executives—including Salom—and senior Federal Reserve and OCC officials and those agencies' counsel on no less than four separate occasions the following month. The highly serious nature of these meetings was made evident by the fact that these meetings involved, among others, the Bank's General Counsel, its most senior executives, and senior Federal Reserve and OCC officials and those agencies' counsel. These regulators had clearly identified serious issues with the Bank's AML controls and had informed the Bank's senior management that these issues were significant and would take years to remedy. By this time, the Bank knew that the Misrepresentations were false.

52. The message conveyed to the Bank's top executives through these meetings in November 2022 was clear: the OCC and Federal Reserve regulators had identified such serious problems in

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the Bank's AML controls that they were the focus of an ongoing DOJ investigation. By this time, the Bank knew that the Misrepresentations were false.

53. On February 22, 2023, Masrani scheduled a “highly unusual” meeting with senior OCC officials and the Bank's outside counsel for March 9, 2023. This eleventh-hour meeting and its involvement of Masrani, the Bank's outside counsel, and the OCC's most senior officials overseeing the merger was completely out of the ordinary. By this time, the Bank knew that the Misrepresentations were false.

54. On May 8, 2023, *The Wall Street Journal* reported, based on internal sources, that the Bank's deficient AML compliance program and improper “handling of suspicious transactions” was behind regulators' refusal to approve the deal. The article noted that “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.” *The Wall Street Journal* specifically cited an instance relayed from regulators to the Bank in which TD Bank had reported only 28 SARs for suspicious customer transactions in the 30 days in which banks are required to report them to FinCEN—an extraordinarily low number for a large bank like the Bank.

55. In addition to consistently violating US regulations regarding AML policies, TD also ran afoul of Canadian banking AML regulations. The Cullen Commission—a formal money laundering inquiry established by the Canadian province of British Columbia that was convened to investigate hundreds of millions of dollars that had been laundered through British Columbian casinos between 2018 and 2021—singled out TD Bank as the worst money laundering offender by far among the six largest Canadian banks.

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56. The Cullen Commission’s final report, issued in June 2022, concluded that even though “TD was the largest source of bank drafts flagged as suspicious” by Canadian authorities dating back to 2018—and even though TD’s top AML executives “were aware of this fact and that TD risked being out of step with its peers if it did not take action to reduce the anonymity of its drafts”—TD did not take any action at all to address the issue until over a year later, and even then only after the Commission’s counsel wrote the bank a letter pressuring it to do so. The Cullen Commission described this conduct as “troubling,” and as rendering TD an outlier among Canadian banks in terms of having woefully deficient AML controls: “I am troubled by TD’s delay in implementing a change to its bank drafts (which did not involve tactical information sharing) to address a money laundering vulnerability flagged by law enforcement. It appears that, as early as December 2018, the vice president of Everyday Banking was advised of the [AML problem], the actions that other banks had taken to change their bank drafts, the potential for TD to be the sole bank among its peers not to do so, and the fact that failing to do so could make TD vulnerable for money laundering. Yet, no change was made to its bank drafts until September 2020. Further, this action appears to have been prompted by inquiries by Commission counsel, raising the question of whether it would have occurred otherwise.”

57. The Cullen Commission’s report explicitly criticized TD for its long delay in implementing simple anti-money laundering measures, which it found especially “surprising given that senior management in TD’s anti-money laundering unit were aware by at least May 2019 that their bank was the single largest source of suspicious bank drafts being tendered at BC casinos, representing a sum of \$26 million from March 2018 to January 2019 alone.” The report concluded that it was “concerning that one of Canada’s largest financial institutions was so delayed in addressing a

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vulnerability to bank drafts that had been identified by law enforcement,” stating that there were “costs to these decisions” with “millions of dollars of potentially suspicious funds entering BC casinos through TD bank drafts in the meantime.”

58. On May 2, 2024, the Financial Transactions and Reports Analysis Centre of Canada (“**FinTRAC**”) imposed its largest-ever monetary penalty on the Bank, after a compliance examination found that the Bank had faulty AML controls. FinTRAC’s compliance examination found that TD committed five administrative violations.

The Bank overhauls its AML group and AML controls

59. In the wake of these disclosures, the Bank terminated or replaced virtually every senior-level executive with responsibility over AML compliance, further evidencing the systemic AML failings at the Bank and demonstrating that the Bank’s claim that it followed “industry-best practices” was a fiction.

60. Among others, the Bank removed Michael Bowman as the Bank’s chief global AML officer; terminated Mia Levine, the Bank’s former U.S. Bank Secrecy Act officer; replaced Kevin Doherty, the head of the Bank’s Financial Intelligence Unit in Canada; and removed Allen Love, the former Head of Fraud Risk Management and Global Security & Investigations.

61. The Bank further announced a \$363 million restructuring charge and disclosed a massive increase in expenditures needed to address the Bank’s deficient controls. Based on the Bank’s disclosures, analysts estimated that it will cost the Bank hundreds of millions of dollars to come into compliance and expressed shock at just how deficient the Bank’s controls actually were.

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The Bank knew or ought to have known the consequences of its abhorrent AML controls would be punitive and serious

62. In 2012, HSBC Holdings (“HSBC”), was subject to a \$1.9 billion fine for serving as a conduit for Mexican drug cartels, among other things. The fine was the third time in a decade in which HSBC had been punished and ordered by US regulators to enhance its systems for thwarting illegal transactions. The scandal caused HSBC to significantly scale back its US operations.

63. Some ten years after the watershed HSBC scandal, the Bank knew or ought to have known the likely consequences flowing from its systemic AML controls failures would also result in material fines and material impacts on its US operations.

TD’S DISCLOSURE OBLIGATIONS

64. TD is a reporting issuer in Ontario under the *OSA* and in all other Canadian provinces and territories under the Equivalent Provincial and Territorial Securities Legislation and a registrant with the U.S. Securities and Exchange Commission with shares trading on the TSX and NYSE.

65. By electing to become and remain a reporting issuer, TD made its securities available to the broader investing public and therefore gained access to a broader source of capital. As a reporting issuer, TD was subject to continuous disclosure obligations prescribed by the *Securities Act*, and regulations promulgated thereunder. These obligations included (i) the obligation under s. 75 of the *Securities Act* to report on material changes as soon as practicable, and in any event within ten days of a change occurring, and (ii) periodic disclosure obligations under ss. 77 and 78 of the *Securities Act*. Additionally, pursuant to *OSA* ss. 81 and 86, TD is required to deliver an information circular to holders of its voting securities whose latest address is shown on its books whenever it intends to solicit proxies from the holders of those securities.

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66. To maintain its status as a reporting issuer and listing on the TSX, TD was required to comply with its Continuous Disclosure obligations under the *Securities Act*. Included among those obligations are the requirements set out in NI 51-102 – *Continuous Disclosure Obligations*, as adopted by regulation under the *Securities Act* pursuant to OSC Rule 51-801. NI 51-102 is the primary source of a Reporting Issuer’s continuous disclosure obligations. As a Reporting Issuer listed on the TSX, TD was also required to comply with the obligations contained in the TSX Company Manual. As an issuer listed on the NYSE, TD was also obligated to remain in compliance with the NYSE Listed Company Manual, and represented that it did so.

67. TD is required to file annual and interim comparative financial statements, including accurate statements of financial position, comprehensive income, changes in equity, and cash flows. Alongside these financial statements, TD is also required to file annual and interim Management’s Discussion & Analysis (“**MD&A**”). The MD&A and financial statements must be approved by the Board of Directors and Audit Committee. TD is required to file on an annual basis an Annual Information Form (“**AIF**”). TD is required to deliver an information circular to holders of its voting securities whose latest address is shown on its books whenever it intends to solicit proxies from the holders of those securities.

68. As part of the MD&A, TD is required by NI 51-102 to discuss (as much as possible in plain language) material information that is not fully reflected in financial statements. This discussion must also include important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future. These include industry and economic factors affecting the performance of TD, and known trends, demands, commitments, events or uncertainties reasonably likely to effect TD’s business. TD is required to provide

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disclosure of the operations of its business including commitments, events, risks or uncertainties that may reasonably be believed to affect its future performance including total revenue and profit or loss from continuing operations.

69. In addition to its periodic disclosure obligations, TD is also obligated to make timely disclosure of material changes to its business, operations, or capital. Following any material change, TD is required to immediately file a news release followed by a material change report as soon as possible, and in any event within 10 days, describing the nature and substance of these changes.

70. As a result, TD was required to provide truthful and accurate disclosure related to its business, operations, and financial condition. This included discussion in its interim and annual MD&As related to its commitments, events, risks or uncertainties that TD reasonably believed would materially affect its future performance, including total revenue and profit or loss from continuing operations.

71. Throughout the Class Period, TD and its officers and directors were also prohibited from making misrepresentations as set out in s. 126.2 of the *Securities Act* and detailed below.

72. In maintaining its status as a reporting issuer with shares trading on the TSX and NYSE, TD undertook to release documents that contain all material information and were free of misrepresentations pursuant to its various reporting obligations.

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INDIVIDUAL DEFENDANTS' DISCLOSURE OBLIGATIONS

73. The Individual Defendants were subject to a number of disclosure obligations throughout the Class Period. First, by operation of s. 126.2(1) of the *Securities Act* they were prohibited from making statements that they knew, or reasonably ought to have known were:

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative.

74. The Individual Defendants were also involved in certifying the accuracy of various of the Impugned Documents and the approval before filing and disclosure of the Impugned Documents as detailed below.

The Defendant Officers

The certifying officers

75. During the Class Period, Masrani, Ahmed, and Tran were certifying officers, as defined in NI 52-109. As certifying officers, these individuals were required to certify that TD's financial statements filed throughout the Class Period fairly presented in all material respects the financial condition, financial performance, and cash flows of TD as of the date of those statements.

76. Fair presentation of TD's financial position required the financial statements to be the product of appropriate accounting policies that were properly applied resulting in the generation of financial information that was informative and reasonably reflected TD's underlying transactions. Critically, fair presentation also requires additional disclosure to provide investors with a materially accurate and complete picture of TD's financial condition, performance, and cash flows.

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77. Masrani, Ahmed, and Tran were also required by NI 52-109 to certify the effectiveness of TD's internal controls. Internal controls are a process designed by, or under the supervision of, the certifying officers to provide reasonable assurance regarding the reliability of financial reporting and preparation of financial statements.

78. Specifically, the certifying officers throughout the Class Period certified that:

- (a) the financial statements and MD&As filed during the Class Period did “not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made”;
- (b) that the financial statements “fairly present[ed] in all material respects the financial condition, financial performance and cash flows of” TD;
- (c) that they had “designed DC&P, or caused it to be designed under [their] supervision, to provide reasonable assurance that” material information was made known to them and that information required to be disclosed was “recorded, processed, summarized and reported within the time periods specified in securities legislation”;
- (d) that they had “designed ICF, or caused it to be designed under [their] supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes”;

79. An appropriate control framework would also be reasonably designed to provide assurance of: the effectiveness and efficiency of TD's operations, the reliability of TD's financial reporting, and TD's compliance with applicable laws and regulations.

80. Throughout the Class Period, Masrani, Ahmed, and Tran improperly provided certifications for TD's financial statements pursuant to NI 52-109. These certifications were improperly provided because the statements failed to provide a materially accurate and complete picture of TD's financial condition, performance, and cash flows due to the presence of the

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misrepresentations detailed below. Further, the certification that effective DC&P and ICFR were in place at TD were improperly provided for the same reason.

The AML officers

81. All of the Defendant Officers played an important role in the AML systems and processes in place at TD during the Class Period. As such, they knew or ought to have known of the significant AML deficiencies at TD throughout the Class Period. These Defendants reported either directly or indirectly to the Audit Committee with respect to TD's AML systems and processes. They either failed to inform the Audit Committee of the significant deficiencies in TD's AML systems and processes or they reported these deficiencies and acquiesced in the Audit Committee's approval of the Impugned Documents containing the misrepresentations detailed below.

The Defendant Directors and the Audit Committee

82. With the exception of Levitt and MacGibbon, both of whom chaired the Board during the Class Period, all of the Defendant Directors were members of the TD's Audit Committee during the Class Period.

83. The Audit Committee played a central role in the supervision and maintenance of TD's AML systems and processes, and compliance within TD generally. The Audit Committee was tasked with overseeing the financial reporting process at TD. The Audit Committee was also responsible for: "overseeing reliable, accurate and clear financial reporting" to the Class, "overseeing the effectiveness of internal controls", receiving reports from the "chief compliance officer, and chief anti-money laundering officer, and evaluating the effectiveness and independence of each", and "overseeing the establishment and maintenance of policies and

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programs reasonably designed to achieve and maintain the Bank's compliance with the laws and regulations that apply to it". In each of these tasks, as detailed below, the Audit Committee failed resulting in significant losses to the Class Members.

THE MISREPRESENTATIONS

The AML Controls Misrepresentations

84. By no later than August 25, 2021, or in the alternative by February 2022, the Defendants were aware, or ought to have been aware, that TD's AML controls, systems, and processes were materially deficient. These deficiencies had been, and throughout the Class Period continued to be, exploited by criminal organizations, including drug traffickers, to launder hundreds of millions of dollars and transfer the proceeds of crime across international borders using basic methods that should have been flagged by properly-functioning AML controls. The Defendants knew or ought to have known that the reputational stain involved with fentanyl drug money laundering across three states, and other money laundering and financial fraud operations, facilitated by TD's systemic and basic flaws in its AML controls, and its lengthy and serious history of other AML failures, would likely result in material sanctions by U.S. regulators that would have a material impact on TD's U.S. operations.

85. By no later than August 25, 2021, or in the alternative by February 2022, the Defendants were aware, or ought to have been aware, that TD's systemic deficiencies in its AML controls posed a material risk to its U.S. operations and growth objectives. These were material facts and material changes that would reasonably be expected to have a significant effect on the market price of TD securities.

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86. By no later than August 25, 2021, or in the alternative by February 2022, the Defendants were aware, or ought to have been aware, that TD's ICFR and DC&P had material deficiencies that would materially impact TD's U.S. operations. Despite this, Mr. Masrani, Mr. Ahmed, and Mr. Tran executed interim and annual certifications stating that:

- (a) TD's disclosures did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made in the period covered by the relevant filings;
- (b) that they had designed, or caused to be designed under their supervision, DC&P sufficient to provide reasonable assurance that material information relating to TD was made known to them by others and that information required to be disclosed was recorded, processed, summarized, and reported; and
- (c) that they had designed, or caused to be designed under their supervision, ICFR to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with TD's GAAP.

87. TD failed to discharge its disclosure obligations by (i) failing to issue a press release and material change report informing its investors and the market of its systemic deficiencies in AML controls and the material effect that would have on TD's business and operations in the U.S. and (ii) by omitting to disclose these systemic deficiencies in AML controls, which were material facts required to be stated in the Impugned Documents, all of which are core documents issued throughout the Class Period.

88. The Defendant Officers authorized, permitted, and/or acquiesced in the disclosure of each of the Impugned Documents.

89. The Impugned Documents also contain untrue statements of material fact and omit material facts necessary to make certain statements not misleading in light of the circumstances in which

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they were made. For example, TD's December 1, 2021 Annual MD&A contains the following additional misrepresentations:

- (a) P. 55: **While the Bank takes numerous steps to continue to strengthen its conduct programs and its operational resilience, and prevent and detect outcomes which could potentially harm customers, colleagues or the integrity of the markets,** such outcomes may not always be prevented or detected.
- (b) P. 61: The [Global Anti-Money Laundering] Department is responsible for regulatory compliance with Anti-Money Laundering (AML), Anti-Terrorist Financing, Economic Sanctions, and anti-bribery/anti-corruption regulatory compliance and broader prudential risk management across the Bank in alignment with enterprise AML policies **so that the money laundering, terrorist financing, economic sanctions, and bribery and corruption risks are appropriately identified and mitigated.**
- (c) P. 74: Internal controls are one of the primary methods of safeguarding the Bank's employees, customers, assets, and information, and in preventing and detecting errors and fraud. Management undertakes comprehensive assessments of key risk exposures and the internal controls in place to reduce or offset these risks. Senior management reviews the results of these evaluations to **determine that risk management and internal controls are effective, appropriate, and compliant with the Bank's policies.**
- (d) P. 74: In order to reduce the Bank's exposure to future loss, it is critical that the Bank remains aware of and responds to its own and industry operational risks. **The Bank's policies and processes require that operational risk events be identified, tracked, and reported** to the appropriate level of management to facilitate the Bank's analysis and management of its risks and inform the assessment of suitable corrective and preventative action. **The Bank also reviews, analyses, and benchmarks itself against operational risk losses that have occurred at other financial institutions using information acquired through recognized industry data providers.**
- (e) P. 75: **The Bank develops and implements enterprise-wide fraud management strategies, policies, and practices that are designed to minimize the number, size and scope of fraudulent activities perpetrated against it. The Bank employs prevention, detection and monitoring capabilities across the enterprise that are designed to help protect customers, shareholders, and employees from increasingly sophisticated fraud risk. Fraud risk is managed by establishing and communicating appropriate policies, procedures, employee education in fraud risks, and monitoring activity to help maintain adherence to the Fraud Risk Management Framework.** The Fraud Risk Framework describes the governance, policies, and processes that TD's businesses employ to

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proactively manage and govern fraud risk within TD's risk appetite which is embedded in the Bank's day to day operations and culture.”

- (f) P. 88: The Compliance, [Global Anti-Money Laundering] and Regulatory Risk Departments **provide objective guidance and oversight with respect to managing [Legal, Regulatory Compliance, and Conduct] risk. The Legal and Regulatory Relationships and Government Affairs groups provide advice with respect to managing LRCC risk.** Representatives of these groups interact regularly with senior executives of the Bank's businesses. Also, **the senior management of the Legal, Compliance, and GAML Departments have established regular meetings with and reporting to the Audit Committee, which oversees the establishment and maintenance of policies and programs reasonably designed to achieve and maintain the Bank's compliance with the applicable laws and regulations.**
- (g) P. 89: In addition, the Compliance and [Global Anti-Money Laundering] Departments **have developed methodologies and processes to measure and aggregate regulatory compliance risks and conduct risks on an ongoing basis as a baseline to assess whether the Bank's internal controls are effective in adequately mitigating such risks** and determine whether individual or aggregate business activities are conducted within the Bank's risk appetite.
- (h) P. 96: An evaluation was performed under the supervision and with the participation of the Bank's management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Bank's disclosure controls and procedures, as defined in the rules of the SEC and Canadian Securities Administrators, as of October 31, 2021. Based on that evaluation, **the Bank's management, including the Chief Executive Officer and Chief Financial Officer, concluded that the Bank's disclosure controls and procedures were effective as of October 31, 2021.**
- (i) P. 96: **management has concluded** that as at October 31, 2021, **the Bank's internal control over financial reporting was effective** based on the applicable criteria.

90. These statements, and equivalent statements in the other Impugned Documents, contain untrue statements of material fact and omit material facts necessary to make the statements not misleading in light of the circumstances in which they were made as:

- (a) TD knew or ought to have known that there were systemic deficiencies in its AML controls, particularly in the U.S., over a 10+ year period;
- (b) TD knew or ought to have known that it had exhibited extraordinarily deficient AML controls in drug money laundering investigations fraught with reputational

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consequences, and that material restrictions on its U.S. operations were likely to result;

- (c) TD failed, through its Global Anti-Money Laundering and Regulatory Risk Departments or otherwise, to provide “objective guidance and oversight” of AML risks and the Audit Committee failed to oversee “the establishment and maintenance of policies and programs reasonably designed to achieve and maintain the Bank’s compliance with the applicable [AML] laws and regulations”;
- (d) TD was not taking sufficient steps to “strengthen its conduct programs and its operational resilience” and was aware, or ought to have been aware, that its AML systems and processes were insufficient to prevent and detect outcomes that could (and did) “harm customers, colleagues or the integrity of the markets”;
- (e) TD’s risk management and AML controls were not “appropriately identified and mitigated” throughout the Class Period;
- (f) TD’s internal controls were not “effective, appropriate, and compliant with the Bank’s policies” throughout the Class Period and any steps taken by Senior management to review them were wholly deficient for that purpose;
- (g) TD’s policies and processes failed to ensure “that operational risk events [were] identified, tracked, and reported”;
- (h) Fraud risk at TD was not “managed by establishing and communicating appropriate policies, procedures, employee education in fraud risks, and monitoring activity” to “proactively manage and govern fraud risk” at TD;
- (i) TD did not have “methodologies and processes to measure and aggregate regulatory compliance risks and conduct risks on an ongoing basis as a baseline to assess whether the Bank’s [AML] internal controls [were] effective in adequately mitigating [AML] risks”;
- (j) TD’s DC&P had material weaknesses and were not effective throughout the Class Period; and
- (k) TD’s ICFR were not effective and had material weaknesses throughout the Class Period.

AML operational risk misrepresentations

91. TD’s disclosures throughout the Class Period contain numerous misrepresentations relating to its operational risk controls, including AML controls. TD represented to the investing public that it had specific plans in place to address operational risks like AML risks, that it took

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reasonable steps to prevent outcomes that would harm its customers and the integrity of the market, that it appropriately identified and mitigated AML and compliance risks, that risks were monitored and steps were taken to ensure that internal controls including AML controls were effective, that it had in place reasonably designed policies and programs to ensure compliance with applicable laws and regulations including AML laws and regulations, and that TD had developed and maintained an effective AML program. None of these representations were true, as particularized below.

92. TD represented in Core Documents,² its interim and annual MD&As and Financial Statements throughout the Class Period, that “plans to mitigate top and emerging risks are prepared, monitored, and adjusted as required” to reasonably address risks in its operating environment. Specifically, TD represented:

The Bank considers it critical to regularly assess its operating environment and highlight top and emerging risks. These are risks with a potential to have a material effect on the Bank and where the attention of senior leaders is focused due to the potential magnitude or immediacy of their impact.

Risks are identified, discussed, and actioned by senior leaders and reported quarterly to the Risk Committee. **Specific plans to mitigate top and emerging risks are prepared, monitored, and adjusted as required.**

93. This was a misrepresentation because:

- (a) During the Class Period, the Defendants were aware, or ought to have been, that TD was an instrument for money laundering, including money laundering in the United States by organized crime and drug traffickers. This was a significant risk in TD’s operating environment that was not addressed through any “specific plan” to mitigate that risk, or any “specific plan” to address TD’s AML failures was

² Q3 2021 MD&A and IFS at p. 29; 2021 Annual MD&A at p. 52; Q2 2022 MD&A at p. 29; Q2 2022 IFS at p. 29; Q3 2022 MD&A at p. 30; Q3 2022 IFS at p. 30; 2022 Annual MD&A at p. 54; Q1 2023 MD&A at p. 29; Q1 2023 IFS at p. 29; Q2 2023 MD&A at p. 31; Q3 2023 IFS at p. 31; 2023 Annual MD&A at p. 53; Q1 2024 MD&A at p. 29; Q1 2024 IFS at p. 29.

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wholly deficient, insufficiently monitored, and not “adjusted as required” to avoid significant sanctions; and

- (b) TD failed to disclose that by no later than February 2022 that it was aware of criminal proceedings wherein TD branches and facilities in the United States were being used to launder drug trafficking proceeds.

94. During the Class Period, TD also represented in its annual MD&As,³ Core Documents, that TD took steps to “prevent and detect outcomes which could potentially harm customers, colleagues or the integrity of the markets”. Specifically, TD represented:

Canadian, U.S. and global regulators have been increasingly focused on conduct and operational resilience matters and risks, and heightened expectations generally from regulators could lead to investigations, remediation requirements, and higher compliance costs. **While the Bank takes numerous steps to continue to strengthen its conduct programs and its operational resilience, and prevent and detect outcomes which could potentially harm customers, colleagues or the integrity of the markets,** such outcomes may not always be prevented or detected.

95. This was a misrepresentation because:

- (a) TD failed to disclose that it was aware, or ought to have been, of instances where TD staff and facilities were used to facilitate money laundering activities, including by organized crime and drug traffickers, which was a necessary fact to make the above statement not misleading;
- (b) TD failed to disclose that it frequently failed to prevent or detect money laundering involving TD staff and facilities, which was a fact that necessarily have to be disclosed to make the above statement not misleading;
- (c) TD failed to disclose that there were material deficiencies in its AML controls, which was a fact that was necessary to disclose to make the above statement not misleading; and
- (d) TD omitted that it was subject to regulatory investigations in the United States which was a fact that was necessary to disclose to make the above statement not misleading.

³ 2021 Annual MD&A at p. 55; 2022 Annual MD&A at p. 57; and 2023 Annual MD&A at p. 57.

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96. During the Class Period, TD also represented in its annual MD&As,⁴ Core Documents, that TD ensured that “money laundering, terrorist financing, economic sanctions, and bribery and corruption risks are appropriately identified and mitigated”. Specifically, TD represented:

The GAML Department is responsible for regulatory compliance with Anti-Money Laundering (AML), Anti-Terrorist Financing, Economic Sanctions, and antibribery/anti-corruption regulatory compliance and broader prudential risk management across the Bank in alignment with enterprise AML policies **so that the money laundering, terrorist financing, economic sanctions, and bribery and corruption risks are appropriately identified and mitigated.**

...

The Bank also requires segments and oversight functions to assess key risks and internal controls through a structured Risk and Control Self-Assessment program. **Internal and external risk events are monitored to assess whether the Bank’s internal controls are effective. This allows the Bank to identify, escalate, and monitor significant risk issues as needed.**

97. These statements were misrepresentations because:

- (a) throughout the Class Period TD was aware, or ought to have been aware, that the GAML Department failed to appropriately identify and mitigate money laundering activities, including at TD’s US operations; and
- (b) the Defendants knew, or ought to have known, that the Bank’s monitoring of internal and external risk events was deficient and TD could not, in fact, “identify, escalate, and monitor significant risk issues as needed” with respect to the significant AML risks that materialized at TD before and during the Class Period.

98. TD also represented in its Annual MD&As throughout the Class Period that it had in place “policies and programs reasonably designed to achieve and maintain” compliance with applicable laws, including AML laws. Specifically, TD represented:

The Compliance, GAML and Regulatory Risk Departments provide objective guidance, and oversight with respect to managing LRCC risk. The Legal and Regulatory Relationships and Government Affairs groups provide advice with respect to managing LRCC risk. Representatives of these groups interact regularly with senior executives of the Bank’s businesses. Also, the senior management of the Legal, Compliance, and GAML Departments have established regular meetings

⁴ 2021 Annual MD&A at pp. 61, 62; 2022 Annual MD&A at pp. 63, 64; and 2023 Annual MD&A at pp. 64, 65.

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with and reporting to **the Audit Committee, which oversees the establishment and maintenance of policies and programs reasonably designed to achieve and maintain the Bank’s compliance with the applicable laws and regulations.**

99. Similarly, TD represented in the Annual MD&As throughout the Class Period that it “measure[d] and aggregate[d] regulatory compliance risks and conduct risks on an ongoing basis as a baseline to assess whether the Bank’s internal controls are effective”.⁵ Specifically, TD represented that:

In addition, **the Compliance and GAML Departments have developed methodologies and processes to measure and aggregate regulatory compliance risks and conduct risks on an ongoing basis as a baseline to assess whether the Bank’s internal controls are effective in adequately mitigating such risks** and determine whether individual or aggregate business activities are conducted within the Bank’s risk appetite. ... Processes employed by the Legal, Compliance, and GAML Departments (including policies and frameworks, training and education, and the Code of Conduct and Ethics) support the responsibility of each business to adhere to LRCC Requirements.

100. These statements were misrepresentations as there were neither “reasonably designed” AML policies and programs in place at TD nor were there “methodologies and processes” in place to assess whether TD’s internal controls were effective to mitigate AML risks.

101. TD made similar representations in its AIFs throughout the Class Period.⁶ Specifically, TD represented that the Audit Committee was engaged in:

Supervising the quality and integrity of the Bank’s financial reporting and compliance requirements: ... [Oversaw] the establishment and maintenance of policies and programs reasonably designed to achieve and maintain the Bank’s compliance with the laws and regulations that apply to it;

...

The [Audit] 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

⁵ 2021 Annual MD&A at p. 89; 2022 Annual MD&A at p. 91; and 2023 Annual MD&A at p. 93.

⁶ 2021 AIF at pp. 18, 32, 39; 2022 AIF pp. 19, 34, 41; and 2023 AIF at pp. 19, 34, 41.

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(“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...

102. Similar, in its Management Proxy Circulars, which are Core Documents, throughout the Class Period,⁷ TD represented that the Audit Committee oversaw the effectiveness and execution of TD’s AML program. Specifically, TD represented that 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.

103. These statements were misrepresentations because throughout the Class Period, the Audit Committee did not adequately “oversee and monitor” an effective AML program at TD. Nor was TD in compliance with applicable laws and regulations, including the U.S. *Bank Secrecy Act*. AML related risk assessments either did not take place or were wholly inadequate such that the substantial AML risks TD faced materialized, culminating in significant regulatory action.

The AML Penalties Misrepresentations / AML US Operations Misrepresentations

104. By no later than February 2022, TD and the Individual Defendants were aware, or ought to have been aware, that TD branches, facilities, and employees had been used to launder hundreds of millions of dollars of proceeds of sale related to the sale of illegal drugs. TD knew, or ought to have known, that these events carried a substantial risk that significant penalties would be imposed on TD by regulators and law enforcement, with potentially material affects on its operations and financial performance.

105. One such drug money laundering operation involved criminals involved in an illegal fentanyl network hauling large bags of cash into TD branches to deposit. This scheme resulted in

⁷ 2022 Management Proxy Circular at p. 116; 2023 Management Proxy Circular at p. 113; and 2024 Management Proxy Circular at p. 114.

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charges being laid against one of the money launderers who subsequently pleaded guilty in February 2022. That investigation detailed the involvement of TD facilities in the money laundering scheme. Documents and information were obtained from TD in the course of the prosecution, demonstrating that TD was aware of these events.

106. In this particular money laundering scheme, criminals made enormous cash deposits, sometimes totalling millions of dollars, purportedly on behalf of sewing and other sundry companies in Queens, New York and elsewhere. The criminals paid bribes to TD employees to facilitate the cash deposits. The scheme would have been extraordinarily easy to detect with basic AML controls, but it continued at TD until over \$600 million had been successfully laundered across three U.S. states. In the circumstances, the Defendants knew or ought to have known that this episode, in combination with its history of AML control deficiencies, would result in serious reputational stains that would very likely give rise to regulatory action, having a material impact on TD's U.S. business and operations and thus its share price.

107. This money laundering through TD was far from an isolated incident. In October 2023 Oscar Marcelo Nunez-Flores, a TD Financial Services Representative and sales leader in New Jersey, was charged with facilitating the laundering of hundreds of millions of dollars in proceeds from the illicit sale of drugs including cocaine. He did so by enabling accomplices in Colombia to make over 20,000 ATM withdrawals. Mr. Nunez-Flores facilitated this money laundering by opening a plethora of TD accounts in the names of shell companies under the names of Mr. Nunez-Flores's criminal co-conspirators and facilitated transactions in these accounts. Such transactions were on their face suspicious and would have triggered AML alarms under any functioning AML system.

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108. TD failed to discharge its disclosure obligations by omitting these material facts from the Impugned Documents issued from February 2022 to the end of the Class Period. TD further failed to discharge its disclosure obligations by making statements that would require the disclosure of these material facts in the context in which they were made in order for those statements in those documents to not be misleading as further particularized below.

109. Even once TD's disclosure acknowledged it was subject to AML-related investigations by several US regulators and that penalties were anticipated, it omitted facts necessary to not make those disclosures misleading in its Q3 2023 IFS, 2023 AFS, and Q1 2024 IFS.⁸ Specifically, TD represented 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 U.S., 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.

110. These statements were misleading as TD failed to disclose that there was a high likelihood that significant penalties that would likely have a material affect on TD's financial statements for its US Retail Business segment and planned expansion in the United States, which facts were necessary in order to make the disclosure not misleading.

⁸ Q3 2023 IFS at p. 79; 2023 AFS at p. 85; and the Q1 2024 IFS omits any mention of regulatory and law enforcement action.

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Failure to issue a material change report notifying the market of the AML deficiencies

111. TD failed to discharge its disclosure obligations both by failing to issue a press release and material change report during the Class Period informing its investors and the market of its systemic deficiencies in AML controls and the material impact this would have on TD's business and operations in the US, and by omitting to disclose these material facts required to be stated in the Impugned Documents, all of which are core documents issued throughout the Class Period. The Defendant Officers authorized, permitted, or acquiesced in the disclosure of each of the Impugned Documents.

112. TD failed to discharge its disclosure obligations with respect to these and other instances of money laundering, including laundering the proceeds of drug traffickers. Despite these instances of large-scale money laundering, TD failed to issue a press release and material change report informing its investors and the market of its significant AML deficiencies and the likely regulatory consequences these events, and others known to TD but not yet publicly disclosed, would have on TD's business and operations in the US.

The First Horizon Misrepresentations and Omissions

113. TD made a number of misrepresentations about the First Horizon transaction, its expected timeline, the reason for delay in closing the transaction, and the reason that the transaction was abandoned and why TD agreed to pay a significant penalty to First Horizon. As particularized below, TD's representations were false and misleading because they failed to acknowledge that the reason for the delay in the approval of the transaction, and the reason it was ultimately abandoned, was due to scrutiny from the U.S. DOJ and various regulators related to the material AML deficiencies at TD. TD agreed to pay a significant penalty to First Horizon in order to delay

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or avoid entirely disclosure of its significant AML deficiencies, as particularized below. This information was highly material to the investing public.

114. In its Q2 2022 and Q3 2022 MD&As and IFSs, TD represented that the First Horizon acquisition was “expected to close in the first quarter of fiscal 2023”.⁹ Specifically, TD represented:

On February 28, 2022, the Bank and First Horizon Corporation (“First Horizon”) announced a definitive agreement for the Bank to acquire First Horizon in an allcash transaction valued at US\$13.4 billion, or US\$25.00 for each common share of First Horizon. In connection with this transaction, the Bank has invested US\$494 million in non-voting First Horizon preferred stock (convertible in certain circumstances into up to 4.9% of First Horizon’s common stock). **The transaction is expected to close in the first quarter of fiscal 2023**, and is subject to customary closing conditions, including approvals from First Horizon’s shareholders and U.S. and Canadian regulatory authorities.

115. Similarly, in its 2022 AIF, MD&A, and AFS TD represented that it was “currently planning to close the [First Horizon] transaction in the first half of fiscal 2023”.¹⁰ Specifically TD represented:

On February 28, 2022, the Bank and First Horizon Corporation ("First Horizon") announced a definitive agreement for the Bank to acquire First Horizon in an all-cash transaction valued at US\$13.4 billion, or US\$25.00 for each common share of First Horizon (the "First Horizon transaction"). **The Bank is currently planning to close the transaction in the first half of fiscal 2023**, subject to customary closing conditions, including approvals from U.S. and Canadian regulatory authorities.

116. In a February 9, 2023 Press Release TD and First Horizon announced that they had “mutually agreed to extend the outside date to May 27, 2023” for TD’s acquisition of First Horizon. TD represented that it was “fully committed to the merger” with First Horizon and that the parties

⁹ Q 2022 MD&A at pp. 5, 72; Q2 2022 IFS at p. 72; Q3 2022 MD&A at p. 6; and Q3 2022 IFS at pp. 6, 74.

¹⁰ 2022 AIF at p. 5; 2022 MD&A at p. 3; and 2022 AFS at p. 67.

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continued “to make significant progress in planning for the closing and the integration of the companies”.

117. Subsequently, in its Q1 2023 MD&A and IFS, TD represented that the parties to the transaction had mutually agreed to an extension of the closing date as regulatory approval was “not expected to be obtained prior to May 27, 2023”.¹¹ Specifically TD represented that:

The closing of the First Horizon transaction is subject to customary closing conditions, including U.S. and Canadian regulatory approvals, **which are not expected to be obtained by the outside date of May 27, 2023.**

...

On February 9, 2023, the parties announced they had mutually agreed to extend the outside date to May 27, 2023, in accordance with the terms of the merger agreement. **The closing of the transaction is subject to customary closing conditions, including approvals from U.S. and Canadian regulatory authorities, which now are not expected to be obtained prior to May 27, 2023.** Regulatory approvals are not within the Bank’s control. If the merger does not close by May 27, 2023, then an amendment to the merger agreement would be required to further extend the outside date. TD and First Horizon are discussing a potential further extension.”

118. The Defendant Masrani is quoted as stating, despite his knowledge of the significant AML issues faced by TD, that “TD is fully committed to the transaction and we are in discussions with First Horizon about a potential further extension beyond May 27th” and that “[t]his is a great transaction that offers scale and new capabilities for the U.S. bank.” Masrani ought to have disclosed the significant AML issues and their potential implications for the First Horizon transaction in order to make these statements not misleading, but failed to do so.

¹¹ Q1 2023 MD&A at pp. 2, 6; and Q1 2023 IFS at pp. 2, 6, 67.

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119. In a May 4, 2023 Press Release, TD announced that the First Horizon transaction would no longer close by mutual agreement between the parties and that TD would make a USD\$225 million (\$306 million) payment to First Horizon. Specifically, TD represented that:

TD Bank Group (TSX and NYSE: TD) ("TD") and First Horizon Corporation (NYSE: FHN) ("First Horizon" or "the Company") today announced that they have entered into a mutual agreement to terminate their previously announced merger agreement, originally announced on February 28, 2022. TD informed First Horizon that TD does not have a timetable for regulatory approvals to be obtained for reasons unrelated to First Horizon. Because there is uncertainty as to when and if these regulatory approvals can be obtained, the parties mutually agreed to terminate the merger agreement.

Under the terms of the termination agreement, TD will make a \$200 million cash payment to First Horizon. This payment is in addition to the \$25 million fee reimbursement due to First Horizon pursuant to the merger agreement. The shares of First Horizon Series G Preferred Stock that TD Bank purchased will continue to reflect a conversion price of \$25 per share. Neither party will pay any other fees or have any other liabilities to each other related to the merger agreement.

...

"This decision provides our colleagues and shareholders with clarity. Though disappointed with the outcome, we move forward with a strong, growing franchise in the United States, servicing more than 10 million customers across our footprint," said Bharat Masrani, Group President and Chief Executive Officer, TD Bank Group. "I want to thank First Horizon for their partnership over the last several months and wish them enormous success for the future. Above all, I want to thank our colleagues at TD Bank, America's Most Convenient Bank, for their tremendous efforts and steadfast dedication to the Bank, the millions we serve, and the communities in which we live and work."

120. TD repeated the representation that the TD and First Horizon had made a "mutual decision to terminate the Merger Agreement" in numerous core documents throughout the balance of the Class Period. Specifically, TD represented that:

On May 4, 2023, the Bank and First Horizon announced their mutual decision to terminate the Merger Agreement and the Bank made a \$306 million (US\$225 million) cash payment to First Horizon in connection with such termination.

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121. All of these representations omitted any information about TD's knowledge of the February 2022 guilty plea implicating TD in facilitating significant money laundering activities, including for Chinese fentanyl traffickers. They also omitted any information about the significant, long-standing AML compliance issues and the foreseeable impact this would have on the regulatory approval process for the First Horizon transaction. Further, these representations failed to include material facts that were necessary to make those representations not misleading, including:

- (a) the timeline for the approval of the First Horizon transaction was unrealistic and subject to material delay due to regulatory scrutiny of the AML deficiencies;
- (b) that the reason for the extension of the closing of the First Horizon transaction was due to heightened scrutiny by regulators concerned with TD's woefully deficient AML compliance systems and processes;
- (c) that the reason regulatory approvals were not expected to be obtained by May 27, 2023 was due to investigations and enforcement proceedings related to TD's lack of effective AML controls;
- (d) that the reason TD did not have "a regulatory timetable" for closing the transaction was due to its lack of effective AML controls and involvement in various investigations; and
- (e) that the real reason the transaction was terminated and TD agreed to pay a USD\$200 million settlement to First Horizon was to delay or avoid altogether disclosure of its significant AML deficiencies.

The Accounting Misrepresentations

122. In the Impugned Documents filed from February 2022 until the end of the Class Period, TD made numerous accounting misrepresentations with respect to: its anticipated provisions; net income, liabilities, and profits both of TD overall and with respect to its U.S. Retail business segment; and the effectiveness of its ICFR and DC&P. In particular, in its financial statements TD:

- (a) overstated its total income and the income attributable to its U.S. Retail business segment by failing to recognize the material negative impacts that timely recording of such a provision would have on its financial statements;

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- (b) understated its total liabilities and liabilities attributable to its U.S. Retail business segment; and
- (c) overstated profits throughout the balance of the Class Period.

Failure to record a timely, material provision

123. TD failed to disclose that it would likely be required to recognize a material provision of billions of dollars, due to the likely material impact on TD's U.S. operations because of regulatory action taken over TD's systemic AML control deficiencies.

124. For example, in relation to provisions related to the AML deficiencies, on August 24, 2023, TD made the following misrepresentations in Note 26 to its Q3 2023 Interim Financial Statements (nearly identical statements are contained in the IFS throughout the balance of the Class Period):¹²

The Bank establishes provisions when it becomes probable that the Bank will incur a loss and the amount can be reliably estimated. The Bank also estimates the aggregate range of reasonably possible losses (RPL) in its legal and regulatory actions (that is, those which are neither probable nor remote), in excess of provisions. **As at July 31, 2023, the Bank's RPL is from zero to approximately \$1.29 billion** (October 31, 2022 – from zero to approximately \$1.26 billion). **The Bank's provisions and RPL represent the Bank's best estimates based upon currently available information** for actions for which estimates can be made, but there are a number of factors that could cause the Bank's provisions and/or RPL to be significantly different from its actual or RPL

...

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.**

¹² Q3 2023 IFS at p. 79; 2023 AFS at p. 85; and Q1 2024 IFS at p. 74.

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...

In management’s opinion, based on its current knowledge and after consultation with counsel, **the ultimate disposition of these actions, individually or in the aggregate, will not have a material adverse effect** on the consolidated financial condition or the consolidated cash flows of the Bank. However, because of the factors listed above, as well as other uncertainties inherent in litigation and regulatory matters, there is a possibility that the ultimate resolution of legal or regulatory actions may be material to the Bank’s consolidated results of operations for any particular reporting period.

125. Following the August 24, 2023 disclosures, Mr. Masrani was asked about the above disclosure and the possibility of a provision by an analyst during a post-earnings conference call on or around August 24, 2023. Mr. Masrani was aware of, but failed to disclose, the likelihood of a provision being imposed, and the consequential impact on TD’s U.S. operations. Instead, he blandly stated that “we are pursuing efforts to enhance our U.S. AML compliance program”, without candidly describing the material risk to TD’s U.S. operations manifested by TD’s persistent and systemic deficiencies in its AML controls, involving scandalous fentanyl laundering issues across three U.S. states, among other things, which Mr. Masrani knew was the subject of extraordinary concern by U.S. regulators and politicians, that would likely materially impact TD’s U.S. operations. For Mr. Masrani’s statement to not be misleading, he would need to disclose these material facts but he failed to do so.

126. Note 18 to TD’s Interim Financial Statements dated February 28, 2024 fails to make any disclosure with respect to the ongoing regulatory proceedings relating to its Bank Secrecy Act/anti-money laundering compliance program or the likelihood of a material provision.

127. In the circumstances, the Defendants knew or ought to have known by February 2022, and in the alternative by August 24, 2023, the systemic failure of TD’s AML controls made it likely

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TD's U.S. operations would be subject to material restrictions by U.S. regulators and others, impacting TD's U.S. growth and operations.

Overstatement of net income and profits, and understatement of liabilities

128. By no later than February 2022, TD ought to have been aware that there was a significant probability that its AML deficiencies would result in material fines requiring it to record a provision. By failing to record a timely provision, TD overstated its net income and profits, and understated its liabilities in its financial statements.

129. TD also overstated the net income of its U.S. Retail business segment, whose net income the provision would be attributable to. For example, TD's 2023 Q3 MD&A states:

(a) **PP. 1-2: The U.S. Retail Bank delivered strong loan growth and resilient personal and business deposits**

U.S. Retail reported net income of \$1,314 million, a decrease of 9% (12% in U.S. dollars) compared with the third quarter last year. On an adjusted basis, net income was \$1,377 million, a decline of 6% (9% in U.S. dollars). Reported net income included acquisition and integration-related charges for the terminated First Horizon Corporation ("First Horizon") transaction of \$84 million or US\$63 million (\$63 million or US\$48 million after-tax). TD Bank's investment in The Charles Schwab Corporation ("Schwab") contributed \$191 million in earnings, a decrease of 34% (37% in U.S. dollars) compared with the third quarter last year.

The U.S. Retail Bank, which excludes the Bank's investment in Schwab, reported net income of \$1,123 million (US\$842 million), a decrease of 3% (a decrease of 6% in U.S. dollars) from the third quarter last year, primarily reflecting higher non-interest expenses and higher PCL, partially offset by higher revenue. On an adjusted basis, net income was \$1,186 million (US\$890 million), an increase of 1% (a decrease of 3% in U.S. dollars) from the third quarter last year, due to higher revenue which was partially offset by higher expenses, and higher PCL as credit conditions continue to normalize.

The U.S. Retail Bank, which excludes the Bank's investment in Schwab, reported net income of \$1,123 million (US\$842 million), a decrease of 3% (a decrease of 6% in U.S. dollars) from the third quarter last year, primarily reflecting higher non-interest expenses and higher PCL, partially offset by higher revenue. On an adjusted

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basis, net income was \$1,186 million (US\$890 million), an increase of 1% (a decrease of 3% in U.S. dollars) from the third quarter last year, due to higher revenue which was partially offset by higher expenses, and higher PCL as credit conditions continue to normalize.

The U.S. Retail Bank delivered another strong quarter, with personal loan growth of 11%, and business loan growth of 9%, reflecting new customer acquisition and deepening relationships in core franchise businesses. Total personal and business deposit balances remained resilient in a challenging environment, further strengthened by strong account acquisition in chequing and term deposits.

130. TD's 2023 Annual MD&A contains a number of misrepresentations relating to the net income of its overall operations and U.S. Retail business segment. For instance, it reports:

- (a) P. 24: U.S. Retail Bank reported net income for the year was \$4,656 million (US\$3,456 million), an increase of \$111 million or 2% (a decrease of US\$74 million or 2%) compared with last year, reflecting higher revenue, partially offset by higher non-interest expenses including acquisition and integration-related charges for the terminated First Horizon transaction and higher PCL. U.S. Retail Bank adjusted net income was \$4,915 million (US\$3,648 million), an increase of \$466 million (US\$197 million), or 10% (6% in U.S. dollars), reflecting higher revenue, partially offset by higher non-interest expenses and higher PCL. total net income of the U.S. Retail business segment of CAD\$14,442 million or USD\$10,709 million compared to CAD\$12,425 million or USD\$9,632 for 2022.

131. TD's Q1 2024 MD&A dated February 28, 2024 contains a number of misrepresentations relating to the net income of its overall operations and U.S. Retail business segment, specifically.

For instance, it reports:

- (a) P. 16: U.S. Retail Bank reported net income was \$713 million (US\$526 million), a decrease of \$570 million (US\$425 million), or 44% (45% in U.S. dollars), compared with the first quarter last year, primarily reflecting the FDIC special assessment in non-interest expenses, lower revenue and higher PCL. U.S. Retail Bank adjusted net income was \$1,023 million (US\$752 million), a decrease of \$340 million (US\$258 million), or 25% (26% in U.S. dollars), compared with the first quarter last year, reflecting lower revenue, higher PCL and higher non-interest expenses.

132. These statements were false and failed to state material facts necessary in order for them to not be misleading as by no later than February 2022, TD and the Individual Defendants generally

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and Mr. Masrani in particular, were aware, or ought to have been aware, that TD would likely need to record a material provision related to the AML regulatory investigations and litigation. This material provision would also result in a material decrease to net income of the U.S. Retail business segment of TD and the failure to recognize it resulted in a material over statement of TD's net income.

THE PARTIAL PUBLIC CORRECTIONS

133. The misrepresentations were corrected through a series of partial corrections on August 24, 2023, January 8, 2024, January 9, 2024, April 30, 2024, May 2, 2024, and May 3, 2024.

134. On August 24, 2023, TD announced for the first time in its Q3 2023 IFS that it had been responding to formal and informal inquiries from regulators and law enforcement relating to its AML compliance program and that it anticipated penalties to be imposed:¹³

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 U.S., 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.**

135. On January 8, 2024 *The Capital Forum* published an article about the significant AML issues at TD. *The Capital Forum* article reported that TD executives “knew of a DOJ anti-money laundering investigation more than six months before the company publicly disclosed the probe, which ended up scuttling their proposed \$13.4 billion buyout of First Horizon”. The article goes on to report that by November 2022 “the bank’s executives were aware that multiple federal law

¹³ Q3 2023 IFS at p. 79.

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enforcement agencies had found such serious lapses in anti-money launder (AML) controls that U.S. regulators might reject the merger”.

136. On January 9, 2024 the *Globe & Mail* reported on the revelations in *The Capital Forum* publication in an article entitled “TD Bank executives knew about U.S. probe six months before disclosing it, report reveals”:

Toronto-Dominion Bank executives knew about an anti-money-laundering probe by the U.S. Department of Justice more than six months before the company publicly disclosed the investigation that derailed its acquisition of Tennessee-based First Horizon Bank according to a report from The Capitol Forum.

The Capitol Forum’s story citing anonymous sources was published late Monday as details also emerged about a legal case filed last year against a former TD employee in New Jersey charged with helping launder millions of dollars in illegal drug sales since early 2022.

TD’s share price tumbled 4.4 per cent Tuesday, posting steeper losses than the S&P/TSX Composite Banks Index’s 1.6-per-cent drop and the 1.1 per cent slump at the KBW Bank Index, which tracks major U.S. lenders. In part, the stock price also fell because Tuesday was TD’s ex-dividend date, when the stock trades without its next dividend payment.

Canada’s second largest lender announced the First Horizon acquisition in February 2022. **In November that same year, the TD’s executives were aware that multiple federal law enforcement agencies had found failures in the anti-money-laundering processes so significant that the deal was at risk of being rejected by U.S. regulators, according to the Capitol Forum report.**

...

In the Department of Justice case, former branch employee Oscar Marcelo Nunez-Flores was charged in October 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**

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were laundered to Colombia through accounts opened by Mr. Nunez since early 2022.

“As alleged, Nunez corruptly exploited his position inside a bank to help launder millions of dollars in drug money in exchange for bribes,” U.S. Attorney Philip R. Sellinger said in a statement in October. “Today’s arrest shows that my office will expose and prosecute those who abuse positions of trust and seek to corrupt our financial institutions.”

...

In relation to the undisclosed anti-money-laundering issues related to the U.S. Department of Justice investigation, **analyst have estimated that the penalty could range between US\$500-million and US\$1-billion.**

Depending on the severity of the infractions, fines could far exceed those estimates. In 2012, HSBC paid about US\$2-billion to settle charges connected to illegal drug money laundering.

137. On April 30, 2024, after the close of trading, TD released a press release reporting that as a result of the Bank Secrecy Act/anti-money laundering investigation, it was recording an initial provision of US\$450 million:

TD Bank Group ("TD" or the "Bank") (TSX: TD), (NYSE: TD), today announced that **it has taken an initial provision of US\$450 million 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.**

138. In the same press release, TD also confirmed for the first time the systemic deficiencies in its AML controls:

The Bank's regulatory and law enforcement discussions with three U.S. regulators (including the regulator referenced in the paragraph above) 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.

TD's AML program was insufficient to effectively monitor, detect, report, and respond to suspicious activity. Work has been underway to remedy these deficiencies. TD is a strong institution with the capital, liquidity, and capacity to

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fund the critical effort currently underway to strengthen its AML program, invest in the business, and continue to serve its customers and clients with excellence.

The above-referenced provision of US\$450 million can be found in the U.S. Report of Condition and Income (the "Call Reports"), for the three-month period ended March 31, 2024, filed earlier today by the Bank's U.S. bank subsidiaries, TD Bank, N.A. and TD Bank USA, with their U.S. regulators. The Call Reports are filed quarterly and do not comprise the Bank's second fiscal quarter consolidated financial results, which are scheduled to be released on May 23, 2024.

139. This disclosure was followed by news coverage in various publications including *The Wall Street Journal* and the *Globe & Mail* on May 2, 2024, revealing TD's involvement in criminal money laundering, including the proceeds of the sale of fentanyl, cocaine, and other drugs by organized crime because of its insufficient AML systems. In an article titled "TD Bank Probe Tied to Laundering of Illicit Fentanyl Profits" *The Wall Street Journal* reported the following, all of which is pleaded and relied upon:

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.

While TD disclosed a Justice Department probe into its anti-money-laundering practices last year, **the focus on money laundering related to illegal drug sales hasn't been previously reported.**

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 \$450 million to resolve one of those inquiries and said it expects additional penalties. On Thursday, a Canadian banking regulator fined TD the equivalent of \$6.7 million 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. TD built one of the largest U.S. regional banks over the past two decades with a flurry of

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acquisitions. Early last year, it was on the cusp of extending its reach into the Southeast with a \$13.4 billion deal to buy Tennessee's First Horizon. But regulators' concerns over how TD tracked and flagged suspicious customer transactions helped scuttle the deal, The Wall Street Journal reported a year ago.

A TD spokeswoman said in a statement Thursday that it is cooperating with law-enforcement officials and regulators and strengthening its anti-money-laundering program.

She said criminals constantly seek to use banks to launder money and the bank's systems didn't effectively thwart these activities. "This is unacceptable, and we must and we will do better," she said.

...

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.

Under surveillance

During one day of surveillance, agents followed members of Sze's organization in a box truck as they stopped at three separate TD branches. Prosecutors alleged that Sze and others provided gift cards and other bribes worth at least \$57,000 to employees of the bank. He concealed the laundered funds by purchasing cashier's checks and wired funds to thousands of individuals and entities in the U.S., Hong Kong and elsewhere, prosecutors say.

In a separate 2023 case, the U.S. Attorney's Office in New Jersey charged Oscar Marcelo Nunez-Flores, an employee at a TD branch in Scotch Plains, with taking

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bribes and using his position to facilitate the laundering of millions of dollars in drug proceeds. A lawyer for Nunez-Flores declined to comment on the charges, which remain pending.

140. Also on May 2, 2024, a National Bank analyst published a report titled “Toronto-Dominion Bank: The AML plot thickens. Worst-case scenarios need reassessing”. This report analyzed the implications of *The Wall Street Journal* article for TD’s longer-term prospects, noting that a fine may not be the only sanction:

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.

141. The National Bank report also noted that the non-monetary penalties faced by TD may be more significant than the monetary penalties:

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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.**

We believe consent orders emerged as a serious consideration of operating in the U.S. (i.e., for Canadian investors) following the consent order issued by the Office of the Comptroller of the Currency (OCC) against RY's City National division in January 2024. RY is hardly the first bank to have been issued a consent order by a major U.S. regulator. In Figure 1 we list some of the most notable examples of consent orders issued against banks. We note that this table includes: 1) the monetary fines associated with the consent orders; 2) additional restrictions or non-monetary penalties associated with each infraction; and 3) additional penalties assessed against the institution, including civil fines. **Interestingly, TD has already been dealt a consent order in the past, tied to its involvement in the Rothstein Ponzi scheme case.** However, the two standout examples from below are HSBC and WFC. What we see in these two examples are not only the large direct financial costs, but the much larger and long-term indirect ones.

142. The National Bank report compared the AML issues and potential penalties faced by TD to those levied against HSBC and WFC:

We believe the historical examples of HSBC and WFC regulatory issues are the most relevant cases to study when assessing potential downside risks to TD. **Not only were the direct financial penalties assessed against each institution very large, the long-term implications were materially negative to future performance. It shouldn't come as a huge surprise that a bank under intense regulatory scrutiny will have difficulties pursuing a normal growth strategy.** That may be because of a consent order or simply because of the distraction created by the regulatory issue itself. We believe WFC has been used more frequently as a case study for TD downside risk assessment given the very public nature of the asset cap imposed on the bank. **Indeed, the bank has been subject to a cap since 2018, and its asset base held steady at around US\$1.9 trillion since 2016. However, HSBC was arguably even more impacted by its regulatory issues. The bank initially received a 2010 consent order from the OCC (and two in**

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2012 from both the Fed and the OCC) that was ultimately lifted in 2022, a 10+ year period during which HSBC's asset growth in the U.S. fell dramatically short of the U.S. banking industry...

143. The report goes on to present a worst-case scenario for what TD's AML issues may amount to and suggested these issues could take five years to resolve and have as much as 7% downside to TD's earnings potential. There was significant market reaction to this report which was described in numerous articles on May 3, 2024.

144. The Q3 2023 IFS released on August 24, 2023, January 8, 2024 article by *The Capital Forum*, April 30, 2024 press release, May 2, 2024 publications, and May 3, 2024 news stories were partially corrective of the alleged misrepresentations. They revealed to TD investors the seriousness of the reputational issues at stake and the likely impact on TD's U.S. operations.

145. In the alternative, the Q3 2023 MD&A dated August 24, 2023 was corrective of the alleged misrepresentations made by the Defendants before that date.

146. In the alternative, the January 8, 2024 article by *The Capital Forum* and January 9, 2024 *Globe & Mail* article were corrective of the alleged misrepresentations made by the Defendants before that date.

147. In the alternative, the April 30, 2024 press release was corrective of the alleged misrepresentations.

148. In the further alternative, the May 2, 2024 and May 3, 2024 news stories were corrective of the alleged misrepresentation.

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Post-correction details of TD's AML issues continue to emerge

149. Over the following month, the extent of TD's AML deficiencies and involvement in laundering the proceeds of drug sales continued to be disclosed through media reports. A June 3, 2024 *Bloomberg* article titled "TD's Bribery Woes Spread to Florida as Fresh Allegations Surface" reported the following facts which are pleaded and relied upon:

Fresh allegations that a longtime Toronto-Dominion Bank branch worker in Florida took a series of \$200 bribes to help clients move millions to Colombia by skirting anti-money-laundering defenses are adding to the lender's mushrooming US legal problems.

...

The cases — which haven't yet been reported and don't identify Toronto-Dominion by name — are part of a sweeping probe by officials at the Justice Department, bank regulators and Treasury Department into allegations of money laundering and other financial crimes at the bank. **The dragnet may ultimately lead to a costly settlement for TD that some analysts now peg at \$2 billion and, perhaps worse for the firm's investors, a yearslong setback for its lofty US ambitions.**

...

The US case against Aquino Vargas, whom the government alleges was paid at least \$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 said TD fired Aquino Vargas. His lawyer didn't respond to messages seeking comment on the case against him, which include alleged misconduct as recent as last fall. Court documents show he waived his rights to a preliminary hearing and hasn't yet entered a plea.

...

That anemic growth has stoked speculation that American authorities were preventing the bank from a big US expansion amid the money-laundering probe.

The company isn't currently under any restrictions from regulators on growing in the US, but there isn't yet clarity at Toronto-Dominion over whether it will eventually face such limits, said a person with knowledge of the bank's internal response.

When pressed last month by analysts, Leo Salom, who runs Toronto-Dominion's US operations, said the lender is "deliberately pacing" how many locations it opens. The bank continues to talk with regulators and invest in compliance. **Salom declined to comment directly on whether regulators had blocked its expansion.**

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...

US authorities say that when Toronto-Dominion later blocked some of the cards, Aquino Vargas called the bank's hotline and vouched for the transactions. A few weeks before opening those accounts, Aquino Vargas discussed getting paid by his alleged Colombian conspirator via WhatsApp for 28 debit cards, seeking \$200 per debit card.

"That \$200 I'm giving you guys, I'm not doing anymore," Aquino Vargas wrote, according to prosecutors' translation of the messages in Spanish. "With other people it's \$500-\$800 per account man."

After he received payment to his personal Toronto-Dominion account through Zelle, prosecutors say Aquino Vargas sent another WhatsApp message to the Colombian: "Gracias," he said, with a meme of actor Jean-Claude Van Damme giving a thumbs up.

...

Masrani recently told analysts that Toronto-Dominion's compliance issues were "unacceptable" and that he hoped Toronto-Dominion would reach a resolution with authorities "as soon as possible."

He was even more pointed in his remarks to employees in May, when he said he took the situation "very personally." Masrani had just flown to Hollywood, Florida — the same town where Aquino Vargas is alleged to have run his scheme — to reassure executives. The bank often hosts internal events in the beach town, about 20 miles north of Miami.

"This is going to get tougher before it gets better. More information is going to drip out over the next little while," he said, according to a transcript of his remarks. "We have the means to fix this and we will."

MATERIALITY AND THE EFFECT OF THE DISCLOSURE ON THE PRICE OF TD'S SECURITIES

150. The filing and publication of the Impugned Documents directly affected the price of TD securities throughout the Class Period. The Defendants were aware throughout the Class Period of the affect that the Impugned Documents had upon the price of TD securities.

151. The information in the corrective disclosures was material, as the facts they revealed related to the significant AML deficiencies at TD would be considered important by a reasonable investor making an investment decision. These material facts predictably would have a significant

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effect on the market price or value of TD securities, as demonstrated by the significant response from market participants to the corrective disclosures.

152. The materiality of the corrective disclosures is also confirmed by the sudden and direct decrease in the market price for TD securities and the response from market participants following their publication.

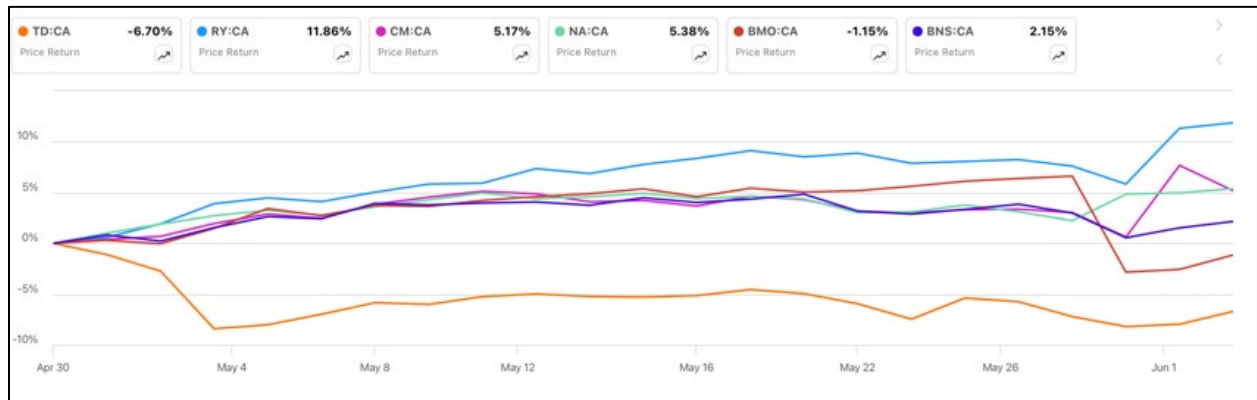
153. Following the August 24, 2023 corrective disclosure, the price for TD common shares declined by \$2.69 from a closing price of \$83.36 on August 23, 2023 to a closing price of \$80.67 on August 24, 2023.

154. Similarly, after trading resumed following the January 8, 2024 corrective disclosure, the price for TD common shares declined by \$3.82 the following day, and over \$6.00 by the end of that week from a closing price of \$86.89 on January 8, 2024 to \$80.49 on January 12, 2024.

155. Following the series of disclosures starting on April 30, 2024, TD's share price declined a significant amount – over \$6.00 per share – from a closing price of \$81.67 on April 30, 2024 to a closing price of \$74.80 on May 3, 2024.

156. These disclosures were material and TD specific. While TD's share price declined following these disclosures, the share prices of Canadian bank stocks and financial institutions generally were increasing as seen in the following chart displaying share prices from April 30 to June 3, 2024:

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CAUSES OF ACTION

Statutory Primary and Secondary Market Liability

157. The plaintiff advances the statutory cause of action created by sections 130, 130.1, and 138.8(1) of Part XIII.1 of the *Securities Act*, and if necessary, in Equivalent Provincial and Territorial Securities Legislation, against the Defendants for the misrepresentations detailed above contained in the Impugned Documents.

158. With respect to the primary market claims, the prospectuses and/or offering memoranda for securities TD distributed during the class period omitted any mention of the AML deficiencies at TD throughout the class period as well as the significant risk of penalties faced by TD, as particularized above. Purchasers of such securities have a cause of action against the Defendants pursuant to ss. 130 and 130.1 of the *Securities Act*.

159. With respect to the secondary market claims, the Impugned Documents are all either “core documents” or “documents”, and at all times during the Class Period TD was a “responsible issuer” within the meaning of Part XXIII.1 of the *OSA*. The Impugned Documents contained “misrepresentations” within the meaning of the *Securities Act*, as described above, and as such

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individuals that acquired TD securities during the Class Period have a cause of action against the Defendants pursuant to s. 138.3 of the *Securities Act*.

160. The Individual Defendants were each Directors or Officers of TD during the Class Period and they authorized, permitted or acquiesced in the release of the Impugned Documents containing the misrepresentations particularized above.

161. The Defendants knew at the time the Impugned Documents were released that they contained misrepresentations, or in the alternative, they reasonably ought to have known or deliberately avoided acquiring knowledge of the misrepresentations.

Negligent Misrepresentation

162. The Impugned Documents were prepared and disseminated for the purpose of providing material information to the investing public and the Class. They were prepared and disseminated to solicit investment from the public capital markets and to induce participants in those markets, like the Class Members, to purchase TD shares.

163. The Defendants undertook the preparation of the Impugned Documents with reasonable care, knowing that the plaintiff and the Class would reasonably rely, to their detriment, on the information provided in the Impugned Documents when making investment decisions. The Defendants were aware that the information provided in the Impugned Documents would be incorporated into the total mix of information available to the capital markets and would have a direct affect on the trading price of TD securities.

164. The Defendants, by virtue of their responsibility for the preparation and dissemination of the Impugned Documents for the benefit of the Class, had a common law duty of care to exercise

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due care and diligence to ensure that the Impugned Documents fairly and accurately disclosed all material information about the AML issues TD was experiencing and related regulatory actions it faced. The Defendants' duty is informed by the statutory scheme created by the *Securities Act* and the TSX Company Manual and NYSE Listed Company Manual (which TD represented it complied with), as described above.

165. The Defendants breached their duties by:

- (a) failing to take reasonable steps to understand the consequences of the AML deficiencies, including regulatory consequences, on TD's planned U.S. expansion;
- (b) failing to exercise due care in the creation and dissemination of the Impugned Documents to ensure they were fair, accurate, and complete; and
- (c) failing to disclose the existence of the numerous instances of TD being used as a money laundering instrument in the U.S. and elsewhere before and throughout the Class Period.

166. The Defendants had information about the business and operations of TD that was not available to the Class or the public. They were the primary source of information about the operations and compliance of TD with applicable laws and regulations, which was relevant and material to each Class Member's decision to acquire TD securities and the price at which they acquired them throughout the Class Period. The Class Members relied, directly or indirectly, upon TD's misrepresentations in deciding to acquire TD securities and suffered damages when the misrepresentations were publicly corrected.

Vicarious Liability

167. TD is vicariously liable for the acts and omissions of the Individual Defendants. The acts or omissions of TD described in this claim were authorized, ordered, and executed by the Individual Defendants while they were engaged in management, direction, oversight, and control

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of the business and affairs of TD. Due to the relationship between TD and the Individual Defendants, these acts are not only the acts and omissions of the Individual Defendants but also the acts and omissions of TD.

LEGISLATION RELIED UPON

168. The plaintiff pleads and relies upon the following statutes, and the regulations promulgated thereunder:

- (a) *Class Proceedings Act*, 1992, SO 1992, c 6;
- (b) *Courts of Justice Act*, RSO 1990, c C.43; and
- (c) *Securities Act*, RSO 1990, c S 5.

169. The plaintiff pleads and relies upon the following regulations:

- (a) General Regulation, RRO 1990, Reg 1015 under the *Securities Act*;
- (b) National Instrument 51-102 – *Continuous Disclosure*;
- (c) National Instrument 52-109 – *Certification of Disclosure in Issuers Annual and Interim Filings*; and
- (d) *Ontario Securities Commission Rule 51-801 Implementing National Instrument 51-102*, OSC Rule 51-801.

SERVICE EX JURIS

170. This original process may be served without court order outside Ontario because the claim is:

- (a) In respect of a tort committed in Ontario (Rule 17.2(g) of the *Rules of Civil Procedure*); and
- (b) Brought against a person ordinarily resident or carrying on business in Ontario (Rule 17.02 (p) of the *Rules of Civil Procedure*).

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(Date of issue)

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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